

GAHC010018212022



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/830/2022

M/S SHIVASAIS OIL PALM PRIVATE LIMITED AND ANR
PLOT NO. 7A, INDUSTRIAL ESTATE, ELURU-534007, WEST GODAVARI
DISTRICT, ANDHRA PRADESH, A COMPANY REGD. UNDER THE
COMPANIES ACT, 1956, REP. BY ITS MANAGING DIRECTOR.

2: KONDAPAVULURI HEMANTH KUMAR

S/O. KONDAPAVULURI VENKATA DURGA RAMARAO
MANAGING DIRECTOR OF M/S SHIVASAIS OIL PALM PVT. LTD. R/O. PLOT
NO. 7A
INDUSTRIAL ESTATE
PEDAPADU MANDALAM
VATLURU
INDUSTRIAL ESTATE
WEST GODAVARI DISTRICT
ANDRA PRADESH
PIN-534007

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, AGRICULTURE
DEPTT., DISPUR, GUWAHATI-781006, ASSAM.

2:THE DIRECTOR OF AGRICULTURE

GOVT. OF ASSAM
KHANAPARA
GUWAHATI-781022
ASSAM

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : SC, AGRI. DEPARTMENT

Linked Case : WP(C)/2746/2022

M/S SHIVASAIS OIL PALM PRIVATE LIMITED AND ANR
A COMPANY REGISTERED UNDER THE COMPANIES ACT
1956
REP. BY THE ITS MANAGING DIRECTOR SRI KONDAPAVULURI HEMANTH
KUMAR AND HAVING ITS REGISTERED OFFICE AT- PLOT NO. 7A
INDUSTRIAL ESTATE
ELURU WEST GODAVARI DISTRICT
ANDHARA PRADESH
PIN-534007.

2: SRI KONDAPAVULURI HEMNATH KUMAR
S/O KONDAPAVULURI VENKATA
DURGA RAMA RAO
MANAGING DIRECTOR OF M/S SHIVASAIS OIL PALM PRIVATE LIMITED
HAVING ITS OFFICE AT PLOT NO. 7A
INDUSTRIAL ESTATE
ELURU
WEST GODAVARI DISTRICT
ANDHARA PRADESH
PIN-534007.
VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY
AGRICULTURE DEPARTMENT
GOVT. OF ASSAM
DISPUR-781006
ASSAM

2:THE DIRECTOR OF AGRICULTURE GOVT. OF ASSAM

KHANAPARA
GUWAHATI-781022
ASSAM

3:RUCHI INDUSTRIES PVT. LTD.
RUCHI HOUSE
ROYAL PALMS SURVEY
NO. 169
AAREY MILK COLONY NEAR MAYAR NAGAR
GOREGAON (EAST)

MUMBAI-400065
MAHARASHTRA.

Advocate for : MR. R B PHOOKAN
Advocate for : SC
AGRI. DEPARTMENT appearing for THE STATE OF ASSAM AND 2 ORS

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Advocates for the petitioners : Mr. R.B. Phookan, Mr. R. Sarmah.

Advocates for the respondents : Mr. B. Choudhury, SC, Agriculture.
: Mr. M.K. Choudhury (R3)
: Mr. U. Choudhury (R3).

Date of Hearing : 19.04.2024.

Date of Judgment : **29.07.2024.**

JUDGMENT & ORDER (CAV)

Heard Mr. R.B. Phookan, learned counsel for the petitioners. Also heard Mr. B. Choudhury, learned Standing Counsel, Agricultural Department, Assam and Mr. M.K. Choudhury, learned Sr. Counsel assisted by Mr. U. Choudhury for respondent No. 3 in WP(C) No. 2746/2022.

2. By way of W.P.(C) No. 830 of 2022, the petitioners Company is challenging the EOI being No. AGRI/NMEO-OP/Mou/102/2021-22/141 dated 13.01.2022 inviting application for empanelment for cultivation of Oil Palm in 18 districts of Assam, so far the District of Kamrup and Goalpara is concerned. In W.P. (C) No. 2746 of 2022, the petitioners Company is challenging the consequent actions of the Respondent Authorities in appointing Ruchi Soya Industries Ltd. (Respondent No.3) as empanelled Company for cultivation of Oil Palm in the entire districts of

Kamrup (R) and Goalpara, in violation of the "Deed of Memorandum of Understanding" dated 27.01.2014 by virtue of which the petitioners Company is operating as empanelled company for oil cultivation in the entire districts of Kamrup (R) and Goalpara.

3. Both the writ petitions are being taken up together for disposal.

4. The facts of the case are as follows:-

4.1. The Directorate of Agriculture, Govt. of Assam with the view to initiate oil palm cultivation in the State of Assam, by Notice Inviting Expression of Interest bearing No. Agri/Plan/OilPalm/Scheme/2013-14/46 dated 01.10.2013 (*hereinafter referred to as "EOI dated 01.10.2013"*) invited EOI from registered firm/companies for cultivation of palm oil in the districts of Kamrup (R), Goalpara and Bongaigaon districts of Assam.

4.2. Pursuant to the said EOI dated 01.10.2013, the petitioners Company upon being eligible and having experience of carrying out cultivation of oil palm in other parts of the Country applied against the said EOI dated 01.10.2013 and after selection, was appointed to take activity of oil palm development activity in the districts of Kamrup(R), Goalpara and Bongaigaon as pilot project (considering the said three districts as one zone).

4.3. Accordingly, the Government of Assam represented by the Directorate of Agriculture entered into a *Deed of Memorandum of Understanding* on 27.01.2014 with the petitioners Company (*hereinafter referred to as the said MOU dated 27.01.2014*).

5. Pertinent that under the said MOU dated 27.01.2014, the petitioners Company has been appointed as the empanelled company for the entire districts of Kamrup(R), Goalpara and Bongaigaon as Pilot Project (considering three districts as one zone).

6. Further, under the said MOU, the petitioners Company was given a target of 5000 hectares of land for oil palm cultivation. Pertinent that no specific 5000 hectares of land within Kamrup(R), Goalpara and Bongaigaon was identified/demarcated and handed over to the petitioners Company. The petitioners Company could achieve the target of 5000 hectares within any area of Kamrup(R), Goalpara and Bongaigaon, as these three districts together constituted one zone for the said MOU dated 27.01.2014.

7. It is the case of the petitioners that the petitioners Company after being appointed as empanelled partner/company/processor has been taking all steps for the development of oil palm cultivation in the zone (Kamrup(R), Goalpara and Bongaigaon) allotted to it with utmost sincerity and upto the satisfaction of the respondent authorities and that after the said MOU dated 27.01.2014, the petitioners Company has made investment towards production of saplings in a nursery, supply of such saplings to the farmers free of cost and training the farmers etc. The petitioners Company accordingly has been taking all steps required for the development of oil palm in the allotted zone as per the said MOU dated 27.01.2014. It is the further case of the petitioners that till date there has been no complaint whatsoever by the respondent authorities as regard implementation of the oil palm cultivation in the districts specifically allotted to the petitioners Company. The petitioners Company has also organized farmers awareness programmes on oil palm cultivation by arranging exposure visit to the other Oil

Palm growing States like Mizoram and Andhra Pradesh. It is the further case of the petitioners that the farmers were also provided with bio repellents free of cost to fight the problem of elephants, rodents, wild boars, etc. It is the further case of the petitioners that as per the said MOU dated 27.01.2014 entered with the Government of Assam, the petitioners Company had started procurement of FFB from September 2021 onwards and arranging payments for the material purchased from them and anticipating further business growth, the petitioners Company is looking forward for further expansion. Therefore, the petitioners Company was expecting to continue to render its work and services under the MOU dated 27.01.2014 for a long period of time.

8. But surprisingly, respondent authorities issued Notice Inviting Expression of Interest bearing No. AGRI/NMEO-OP/MoU/102/2021-22/66 dated 21.12.2021 wherein amongst others, the districts of Kamrup(R) and Goalpara are once again up for empanelment.

9. Being aggrieved by the issuance of the EOI dated 21.12.2021, the petitioners Company submitted a detailed representation on 05.01.2022 to the respondent authorities stating the facts as stated hereinabove and also in the pre-bid meeting held on 10.01.2022.

10. The respondent authorities on careful scrutiny of the aforesaid representation realizing that EOI for empanelment could not be issued for the district of Kamrup(R) and Goalpara as the same has already been allotted to the petitioners Company withdrew the EOI dated 21.12.2021. It is pertinent to state that the petitioners had preferred a writ petition being W.P.(C) No. 360/2022 challenging the EOI dated 21.12.2021 but the same was withdrawn on 25.01.2022 when came

up for motion as by that time the said EOI dated 21.12.2021 was already withdrawn.

11. The respondent authorities though have withdrawn the EOI dated 21.12.2021 but for reasons other than bonafide have decided to again issue the EOI being No. AGRI/NMEO-OP/Mou/102/2021-22/141 dated 13.01.2022 (*hereinafter referred to as impugned EOI dated 13.01.2022*) inviting application for empanelment for cultivation of Oil Palm in 18 districts of Assam including whole of Kamrup and whole of Goalpara.

12. It is the further case of the petitioners that the respondent authorities could not have issued another EOI for appointment of empanelment of oil palm cultivation in the district Kamrup(R) and Goalpara, during the subsistence of the MOU dated 27.01.2014, for which the impugned EOI dated 13.01.2022 is arbitrary and illegal. Being aggrieved, the petitioners by filing WP(C) No. 830/2022, challenged the impugned EOI dated 13.01.2022 so far it relates to Kamrup(R) and Goalpara wherein this Hon'ble Court by Order dated 14.02.2022 protected the petitioners Company to the extent of areas already covered by the petitioners Company. Being aggrieved, W.A No. 77/2022 was preferred, but on the submission of the Standing Counsel of the Department that 2300 hectares in Kamrup (R) District and 1950 hectares of land in Goalpara district would not be part of the bidding process, the said writ appeal was disposed off with a direction to disposed off the writ petition WP(C) 830/2022 as expeditiously as possible.

13. But, the respondent authorities in complete violation of its own undertaking as well as the direction of the Hon'ble Division Bench in W.A No. 77/2022 have appointed Ruchi Soya Industries Ltd. (Respondent No.3) as empanelled company in

respect of Zone IV i.e. for the whole of Kamrup, whole of Goalpara and Nagaon by Notification bearing File No. Agri/NMEO-OP/MOU/102/PT/2021-22/64 dated 11.04.2022 in pursuant to the impugned EOI dated 13.01.2022 for which the petitioners Company preferred the second writ petition, i.e., WP(C) No. 2746/2022.

14. Mr. R.B. Phookan, learned counsel for the petitioners submits that the impugned action of the respondent authorities in issuing the impugned EOI dated 13.01.2022 so far as it concerns the districts of Kamrup(R) and Goalpara, which is already allotted to the petitioners is totally illegal. He further submits that the consequent empanelment of the respondent No.3 for allotment of oil palm zones in respect of Kamrup(R) and Goalpara and execution of agreement thereof is totally null and void, inasmuch as, the said districts are under the occupation of the petitioners Company. He further submits that the action of the respondent authorities in allotting the districts of Kamrup(R) and Goalpara to the respondent No.3 during the tenure of the petitioners Company is arbitrary, discriminatory and unfair.

15. Mr. B. Choudhury, learned Standing Counsel for the Agriculture Department submits that the petitioners Company could not achieve the target stipulated in the districts allotted to the petitioners Company. He further submits that the empanelment of the respondent No. 3 does not in any manner curtail the rights of the petitioners Company.

16. Mr. M.K. Choudhury, learned Sr. Counsel appearing for the respondent No. 3 submits that the petitioners Company cannot be said to be an affected party, inasmuch as, the areas covered by the petitioners are not allotted to the

respondent No. 3 in terms of the interim orders passed by this Court.

17. I have heard the parties at length and perused the materials available on record.

18. The issue arising out in the instant two writ petitions is as to whether the respondent authorities in the subsistence of the MOU dated 27.01.2014, whereby the petitioners Company was allotted amongst others the districts of Kamrup (R) and Goalpara for cultivation of Oil Palm can be re-tendered/re-allotted to the respondent No. 3 by subsequent impugned Tender and consequent MOU thereof.

19. Before entering into the controversies raised in the instant writ petitions, pertinent to refer to the background as regards the development of oil palm in India.

20. Oil palm is known to be the highest edible oil yielding perennial crop. It is the present and the future vegetable oil economy of the world as well as of India. It has a variety of uses right from edible oil, cosmetics, pharmaceuticals, bio lubricants to the making of soaps, candles etc. It appears that to meet its growing demand, India had to depend mostly on import for which India started to formulate scheme for oil palm cultivation from the mid-1980s onwards which is discussed in detail hereinbelow. The basis of every scheme appears to be for the benefit of the farmers by taking up oil palm cultivation and consequent expansion of oil palm cultivation thereof. Under every scheme, it is the responsibility of the private entrepreneurs to get farmers to cultivate oil palm, distribute saplings to them, educate and train them on oil palm cultivation and thereafter, buy the Fresh Fruit Branches (in short 'FFB') from the farmers at the rate fixed by the

Government. Therefore, the private entrepreneurs extract the oil from FFB and as such, they play a vital role.

21. It further appears that in all such schemes of the Govt. of India, a geographical unit which is usually one or more districts or taluks or mandals or villages is considered as standard for fixing as operating zone of each entrepreneur. Each such zone or area identified/demarcated as a whole unit is allotted to a single private entrepreneur who is known as the occupier of the zone and are responsible for development of Oil Palm cultivation within the zone duly catering to the needs of the farmers of that particular zone. Anticipated targets are communicated to the Government to consider this as a goal for ensuring the period of time and also to facilitate the Government to prepare action plan. No other companies/entrepreneurs are allowed to operate in the zone which has been allotted to a particular company/entrepreneur/processor. It further appears that each zone has a factory which is known as "factory zone".

22. It further appears that the selected empanelled entrepreneur for a particular zone has to grow the saplings of the oil palm in his own nursery which process is usually more than one year. Thereafter, on receiving the releasing order from the concerned department of the State the saplings are handed over to the farmers free of cost within the allotted zone of the entrepreneur. The entrepreneur is also responsible for training the farmers and creating awareness and interest in cultivation of oil palm. It further appears that the farmers on receiving the said saplings, cultivates the crop and from then onwards the plant takes around 4-5 years for producing "FFB" and the production increases progressively over the years. The FFB are bought by the empanelled entrepreneur at a price fixed by the Government and in the instant case the Govt. of Assam. This ensures assured

market accessibility to the farmers. The empanelled entrepreneur has to submit the list of farmers from whom it has collected the FFB to the concerned department of the State.

23. It further appears that as oil palm is a long duration crop and have longer gestation period, it takes more than a decade to achieve operational break even. In other words, the entrepreneur has to invest a huge amount of money for development of saplings, plantation and establishment of processing unit till they reach the stage of break even. Moreover, cultivation of oil palm requires large areas. Accordingly, it appears that the scheme initiated by the Govt. of India for development of oil palm has been structured in such a way that the empanelled private partners/processor for oil palm development and cultivation are allotted specific zones, i.e. districts/taluks/villages and are given contract as empanelled partners for a long duration of time so as to encourage farmers to take oil palm cultivation. The Companies after allotment requires long duration of time to achieve the desired target and accordingly contracts are given for longer time and in most cases, it extends to 25-30 years. It appears that in respect of other States like Andhra Pradesh etc, the companies are running since 1990 till date.

24. At this stage, it is appropriate to highlight the various "Schemes Initiated for Oil Palm development in India" in brief. In order to attain self-sufficiency in edible oil production, it appears that the Govt. of India has initiated various scheme/development programme/mission etc, as described below-

i) Technology Mission on Oilseeds & Pulses (TMOP) was launched in May 1986 to increase the production of oil seeds to reduce imports and achieve self-sufficiency in edible oils. Subsequently, pulses, oil palm & maize were also brought

within the purview of the Mission.

ii) OPDP- Oil Palm Development Programme was taken up during Eighth & Ninth Five Year Plan. Launched during 1999-2000 under the TMOP with a focus on area expansion of oil palm plantation.

iii) ISOPOM- "Integrated Scheme of Oil Seeds, pulses, Oil Palm and Maize (ISOPOM) was started during the Tenth and Eleventh Five-Year Plan i.e. from 2004-05 onwards.

iv) OPAE under RKVY - from March 2011 a special initiative was undertaken under RKVY for implementation of a Special Programme on Oil Palm Area Expansion (OPAE) in order to augment the production of palm oil by 2.5 to 3.00 lakh tonnes in the next 5 years and with an objective to bring 60,000 ha area under Oil Palm cultivation during the year 2011-12. It was continued till March, 2014.

v) NMOOP (MM-II) - During 2014-15, a new "National Mission on Oilseeds and Oil Palm (NMOOP)" was launched under which Mini Mission-II (MM-II) of NMOOP was dedicated to oil palm area and continued upto 2017-18. MM-II is being implemented in 12 States VI2 expansion and productivity increases Andhra Pradesh, Telangana, Chhattisgarh, Tamil Nadu, Kerala, Gujarat, Karnataka, Odisha, Mizoram, Nagaland, Assam and Arunachal Pradesh w.e.f. 01.04.2014.

vi) NFSM (Oil Seeds & Oil Palm) - From 2018-19, the NMOOP was merged with National Food Security Mission (NFSM) - Oilseeds & Oil Palm. NFSM-OilPalm is dedicated to oil palm area expansion and productivity increases. It continued till 2021.

vii) NMEO-OP - In 2021, a new Centrally Sponsored Scheme namely, National Mission on Edible Oil - Oil Palm (NMEO-OP) was launched by Government to promote oil palm cultivation for making the country Aatma nirbhar in edible oils with special focus on North Eastern States and A&N Islands. The present Scheme to run from 2021-22 upto 2025-26.

25. Pertinent that though the schemes refers to many nomenclatures, the object is always to increase the domestic edible oil production and to keep down the dependency on imports. Basically, the nature of financial assistance from the Central Government undergo changes from schemes to schemes. However, it appears that the concept of zone and role of the empanelled entrepreneur/implementing companies/processors as explained above remains the same under every scheme.

26. Pertinent that as observed, each time a new scheme is launched, existing implementing companies/processors are not changed and the existing implementing companies/ processors are not required to execute new MoU.

27. Recently, it appears that the Centre has launched a new scheme namely, "National Mission of Edible Oil - Oil Palm" in the year 2021 but the mode of operation has remained exactly as the previous schemes. Under the new scheme, the Govt. of India has only increased the subsidies and formulated a new price policy for buying the FFB so as to insulate the farmers from the volatility of international crude palm oil prices.

28. The role of the entrepreneur or the empanelled company as explained hereinabove, is reflected in the "Status Paper of Oil Palm" prepared by the

Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture and Farmers Welfare, Government of India, updated on 24.11.2016 which is enclosed as Annexure- 4 to the writ petition in WP(C) 2746/2022.

29. Pertinent that similar explanation is also provided in the undated "Final Report" prepared by North Eastern Development Finance Corporation Ltd. (NEDFi) under the heading "Analysing the Government Policies", which was furnished to the Court during the course of hearing with a copy to the respondents and the same is marked as 'X' and kept on record.

30. Apparent that the said MOU dated 27.01.2014 entered between the Government of Assam and the petitioners Company provides that "*about 5000 hectares area has initially been identified as potential area for oil palm development in the State of Assam and being implemented by the Department of Agriculture in the potentials districts of the State*".

31. Further, it also provides that "*AND WHEREAS, SHIVASAIS agrees to take up the Districts namely Kamrup (R), Goalpara & Bongaigaon for pilot project initiated by the Department of Agriculture, Assam for the development of Oil Palm cultivation and processing subjected to approval and fund received from GOI on terms and conditions of scheme.*"

32. Pertinent to refer to Clause 2 of the said MOU dated 27.01.2014 which provides that "*..SHIVASAIS shall take the activity of development of Oil Palm cultivation and processing in the allotted to the SHIVASAIS..*".

33. Pertinent also to refer to Clause 4 of the said MOU dated 27.01.2014 which

provides that "*SHIVASAIS shall not involve themselves in any activity relating to the Development of Oil Palm cultivation in any areas other than what is allotted to them, without the prior directions of the Director to this regard*".

34. Pertinent also to refer to Clause 27 of the said MOU dated 27.01.2014 which provides that "*In case the SHIVASAIS fails to comply with the desired target the Oil Palm development in the allotted area, then the entire security amount shall be forfeited and legal action would be initiated for violation of terms of this Agreement...*"

35. A bare perusal of the aforesaid clauses indicates that the petitioners Company was given a target of 5000 hectares of land for oil palm cultivation in the districts of Kamrup(R), Goalpara and Bongaigaon. Thus, the said three districts i.e. Kamrup(R), Goalpara and Bongaigaon constitute one zone and the same is allotted as a whole to the petitioners Company for cultivation of Oil Palm.

36. It is thus evident that the petitioners Company has to achieve the target within the allotted area, and accordingly, the target and the allotted area cannot be same. It is for this reason that no specific 5000 hectares of land within Kamrup(R), Goalpara and Bongaigaon was identified or demarcated and handed over to the petitioners Company, as the petitioners Company under the said MOU dated 27.01.2014 could achieve the target of 5000 hectares within any area of the allotted zone i.e Kamrup(R), Goalpara and Bongaigaon. Now the areas which have been cultivated within these districts by the petitioners Company cannot thereby become zone for the purpose of the said MOU dated 27.01.2014 as the Zone has to be allotted at the time of execution of the said MOU dated 27.01.2014 itself. In fact, the entire districts within the zone allotted to the petitioners Company, is

available to the petitioners Company for carrying on the activity of cultivation as required by the petitioners Company. In fact, the entire district is under the occupation of the petitioners Company. Merely because the petitioners Company has carried on cultivation activities in a particular area within the districts allotted to the petitioners Company, does not by any stretch of imagination can be said to curtail the scope of operation initially allotted to the petitioners Company. This is so because in order to achieve the target, it is essential to give the entire districts as a whole to the petitioners Company so as to give a free hand to the petitioners Company to carry on the activity of cultivation anywhere within the allotted district as per the suitability of the land. Thus, after initially started planting sapling in a particular area of the districts allotted, if it come to the notice of the petitioners Company that the particular area is not suitable for such cultivation, the petitioners Company immediately can relocate to another area of that allotted district.

37. Pertinent that a zone could be one or more district or Taluks or Villages, but keeping at the nature of the crop and the modus of the business operations for the cultivation of oil palm which requires large areas, a zone is usually always taken as one or more districts as would be evident from the various MOU executed in other States. Copies of such agreements in other States mentioned hereinbelow has been furnished to the Court during the course of hearing, with copies to the respondents, which is kept on record and marked as 'Y'.

SL No	State	Company	Date of MoU	Zone	Relevant Page
1.	Mizoram	Ruchi Soya Industries Ltd	03.10.2006	Districts of Lunglei	7
2.	Odisha	Ruchi Soya Industries Ltd	28.03.2007	Mayurbhanj & Balasore Revenue Districts	15

3.	Tamil Nadu	Ruchi Soya Industries Ltd	29.02.2008	Theni Districts	21
4.	Mizoram	Ruchi Soya Industries Ltd	04.12.2009	Districts of Lawngtlai	27
5.	Odisha	Ruchi Soya Industries Ltd	22.12.2010	Bhadrak District	34

38. Apparent from the above that a zone is usually constituted with more than one district. Therefore, a district in its entirety comes within the ambit of a zone.

39. Pertinent that the said practice of identifying and demarcating more than one district as zone has also been followed in the present impugned EOI dated 13.01.2022. Relevant portion of the said impugned request EOI is extracted hereunder for ready reference:-

“REQUEST FOR EMPANELMENT FOR ALLOTMENT OF OIL PALM ZONES

In cancellation, of the previous E01 (No. AGRI/NMEO-OP/MoU/102/2021-22/66,Dated 24/12/2021) for development of oil palm area & processing published in newspapers viz. The Times of India, Hindustan Times, The Telegraph, The Indian Express, The Assam Tribune & Asomiya Pratidin on 21.12.2024, the Director of Agriculture, Assam, Khanapara, Guwahati-22 Invites Request for Empanelment for allotment of Oil Palm Zones from eligible registered firm/company/associations formed specially for development, cultivation & processing of Oil Palm in the country for development and area expansion of Oil Palm cultivation & processing in the 18 selected districts (in six zones) of Assam viz. Cachar, Chirang, Dhemaji, Dibrugarh, Dima Hasao, Goalpara Golaghat, Hailakandi, Jorhat, Karbi Anglong, Karimganj, Kamrup, Lakhimpur, Nagon, Sonitpur, Tinsukia,, Udaguri & West Karbi Anglong under the scheme National Mission on Edible Oils-Oil Palm (NMEO-OP) 2021-22

Application forms along with Terms & Conditions and terms of reference (TOR) shall be available in the office of the undersigned from 14/01/22. The same is also made available in the departmental website www.diragri.assam.gov.in

Last date of submission of applications along with required documents, certificates etc is 27/01/2022 before 2.00 pm and the same should be submitted to the following address.

*Nodal Officer,
IPMU-RKVV-NFSM,
Directorate of Agriculture
Krishi Bhawan, Khanapara,
Guwahati-781022, Assam*

Empanelment Security for an amount of Rs.5,00,000.00/- (Rupees five Lakh) only in the form of FD/TDR favouring 'The Director of Agriculture, Assam, Khanapara, Guwahati-22' and with minimum 3 (three) years validity shall have to be submitted along with the application form.

*Director of Agriculture, Assam
Khanapara, Guwahati - 22 “*

40. Therefore, it is abundantly clear that the entire district is considered as one zone for the cultivation of oil palm under the subject allotment. Therefore, it is manifestly clear that the three districts i.e Kamrup(R), Goalpara and Bongaigaon as allotted earlier to the petitioners Company is one zone for the purpose of the petitioners Company for development, cultivation and processing of oil palm.

41. In the present case, it appears that while the said MOU dated 27.01.2014 of the petitioners is subsisting, the said districts allotted to the petitioners Company as one zone was retendered and subsequently allotted to the respondent No. 3. It further appears that the respondents authorities have not terminated the said MOU dated 27.01.2014 with the petitioners Company. As referred above, Clause 27 of the said MOU dated 27.01.2014 clearly stated that in case the petitioners Company fails to comply with the desired target of oil palm development/cultivation in the allotted area, the respondents authorities are entitled to initiate legal action for such violation. Having held that the three districts awarded to the petitioners earlier is to be constituted as one zone, the same while the said MOU dated 27.01.2014 of the petitioners is subsisting cannot be retendered and awarded thereof to another bidder. Such allotment of the district allotted to the petitioners Company to another bidder shall reduce the scope of operation of the petitioners

Company which would affect the achievement of the target prescribed to the petitioners Company under the subject MOU dated 27.01.2014 to the utter prejudice of the petitioners Company and therefore, such action is in total violation of Article 14 of the Constitution of India and as such, is wholly arbitrary, unreasonable, discriminatory and illegal. It is a settled law that the State has a duty to act fairly, justly and reasonably even in contractual matters. Reference is made to the decision of the Apex Court in the case of ***Shrilekha Vidyarthi (Kumari) Vs. State of U.P.***, reported in **(1991) Vol. 1 SCC at Page 212**. Paragraphs 18 to 22 of the aforesaid decision is reproduced hereunder for ready reference-

“18. The scope of judicial review permissible in the present case, does not require any elaborate consideration since even the minimum permitted scope of judicial review on the ground of arbitrariness or unreasonableness or irrationality, once Article 14 is attracted, is sufficient to invalidate the impugned circular as indicated later. We need not, therefore, deal at length with the scope of judicial review permissible in such cases since several nuances of that ticklish question do not arise for consideration in the present case.

19. Even otherwise and sans the public element so obvious in these appointments, the appointment and its concomitants viewed as purely contractual matters after the appointment is made, also attract Article 14 and exclude arbitrariness permitting judicial review of the impugned State action. This aspect is dealt with hereafter.

20. Even apart from the premise that the ‘office’ or ‘post’ of DGCs has a public element which alone is sufficient to attract the power of judicial review for testing validity of the impugned circular on the anvil of Article 14, we are also clearly of the view that this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more? We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist.

21. The Preamble of the Constitution of India resolves to secure to all its

citizens Justice, social, economic and political; and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Directives Principles of State Policy' which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article 14 — non-arbitrariness which is basic to rule of law — from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.”

42. What transpires from the above is that the State authorities cannot act as per their whims and caprices even after entering into contract with the selected bidders and shall continue to be obliged to act reasonably, fairly and justly.

43. The respondent No. 2 (Director of Agriculture) at paragraph 12 of the

affidavit-in-opposition filed on 09.06.2023 in WP(C) No.2746/2022 has admitted that the petitioners Company has been allotted three districts for Oil Palm development work with an initial target of 5000 Ha but has underperformed. Paragraphs 12, 15 and 18 of the said affidavit-in-opposition are reproduced hereunder for ready reference-

“12. That as regards the statement and averment made in paragraph No.12 of the Writ Petition, this deponent begs to state that it is true that the Directorate had allotted three districts to the petitioners for the Oil Palm development work with an initial target of 5000 ha to be covered under oil palm in the allotted districts. But, they could plant only 2084 ha, which is approximately 41% of the target. It is to be noted that, though the petitioners claimed that they have planted the 2084 Ha, but in reality most of the plants do not exist in the field as the farmers lost their hope in earning income from oil palm due to failure in buying back by the petitioners.

15. That as regards the statement and averment made in paragraph No.15 of the Writ Petition, this deponent begs to state that the GOI has selected 18 districts for implementation of the new scheme and gave a target of 2 Lakh ha to be covered under oil palm by 2025-26. The petitioners has been allotted with 3 districts with a target of 5000 ha only during 2013-14 on a pilot basis. The potentiality of Goalpara and Kamrup is much higher than the allotted target.

18. That as regards to the statement and averment made in paragraph No.18 of the Writ Petition, this deponent begs to state that the state has not received any GOI release from 2019-20 onwards, and therefore the state could not provide any supply order to them. However, the petitioners got ample time when the GOI budget was there (from 2014-15 to 2017-18), but during that period the petitioners could hardly achieve 42% of the target. The petitioners should place the proper bills, if any for payment. The department has initiated the process of taking government land for processing mill establishment by the petitioners 2 years back, which itself proves the positive effort of the Department/government. However, the fixation of lease rent and other formalities had taken time, But as per the condition no 28 of the MOU, the petitioners should have acquired Land of their own, when they did not get Land from the Govt. The FFB started coming from the year 2018-19 onwards and they have awaited 3 years for government land. This reveals the insincerity and irresponsibility of the petitioners towards farmers service.”

44. The aforesaid contention of the respondents authorities to the effect that the petitioners Company has underperformed appears to be totally fallacious inasmuch

as the subject MOU dated 27.01.2014 specifically stipulated that in case of underperformance, legal actions can be initiated. However, in the present case, no such legal action whatsoever has been taken against the petitioners Company.

45. Pertinent that in the additional affidavit filed on 19.04.2024 in WP(C) No. 830/2022, in terms of the Order dated 15.03.2024 passed by this Court, the respondent No. 2 (Director of Agriculture) stated that the project area is equivalent to factory zone. Paragraphs 4 to 11 of the aforesaid additional affidavit are reproduced hereunder for ready reference-

“4. That National Mission on Oilseeds and Oil Palm (NMOOP) was launched during 2014-15 and it envisages increasing production and productivity of oilseeds crops and oil palm through bringing in fallow areas under oilseed crops and diversification of area from low yielding cereals. It aims to achieve the required target by addressing major constraints to crop productivity through promotion of relevant technological interventions. Under the Mission, Mini Mission-II (MM-II) is dedicated to oil palm area expansion and productivity increases. MM-II of NMOOP was implemented in 13 States viz; Andhra Pradesh, Assam, Arunachal Pradesh, Chhattisgarh, Gujarat, Karnataka, Kerala, Mizoram, Nagaland, Odisha, Tamil Nadu, Telangana and Goa. The funding pattern was 50:50 between Central and State Governments during 2014-15, which has been revised to 60:40 in case of general category States and 90:10 in case of North-Eastern and hill States from 2015-16.

By this Mission, the various schemes on Oil Seeds, Oil Palm and Maize was restructured into NMOOP, which is evident from the communication dated 22.01.14 received by Vinod Kumar Pipersenia, the then Additional Chief Secretary, Department of Agriculture, Assam from the Ministry of Agriculture, Govt. of India.

With the initiation of NMOOP, the Director of Agriculture, Assam, the Annual Action Plan on Oil Palm Scheme for the year 2014-15 was prepared

5. That, since executing the memorandum of Understanding on 27.01.2014 (Annexure-4 to the writ petition), the petitioners has been working in Goalpara and Kamrup district under the Pilot Project. It will be relevant to mention herein that though Bongaigaon district was also included along with the aforesaid two districts as Pilot Project, but till date the petitioners has not initiated any work at Bongaigaon.

6. That, with effect from September 2018, the NMOOP was merged with RE-VAMPED National Food Security Mission(NFSM) and thereafter no fund was released to State Government for Oil Palm activities. As a result no area expansion target was given to the petitioners.

7. That, from 01.11.2021, the new scheme "National Mission on Edible Oils-Oil Palm"

(NMOOP) was launched by Government of India and a target of 2.0 lakh ha was assigned to the State of Assam. This new scheme had additional assistance provisions for both farmers as well as Oil Palm Processing Companies. Further, Government of India re-assessed the potential areas of the country and found 3.75 lakh ha area of Assam as potential. 10 districts were notified as potential by the Central Government and instructed the State Govt. to find out if any other district of the state can be suitable for Oil Palm Cultivation. Finally, 18 districts were notified by the Central Government and asked the State to notify the Zones and allocate the Zones to the Implementing partners i.e. Oil Palm Companies.

8. That, accordingly, 18 districts were classified into 6 Zones based on transportation connectivity, similarity of climatic conditions etc. Thereafter, Expression of Interest was floated by the Directorate of Agriculture vide no. Agri/NMOOP/MoU/102/2021-22/141 dated 14.01.2022(Annexure-(to the writ petition) for selection of Implementing partners i.e. Oil Palm Companies. It was an on-line bidding system and open for all oil palm companies. However, Shivasais did not participate in the bid on the ground that they were already into an MoU for Goalpara, Kamrup and Bongaigaon.

9. That, as the previous schemes (NMOOP & NFSM) on Oil Palm had a limited scope of provisions and lower cost norms against the activities allowed under the schemes than those in the new scheme NMOOP, the State Government included all the notified 18 districts in the EOI floated under a NMOOP so that all these districts can be brought under the purview of the new scheme and farmers as well as the implementing partners can avail all benefits of the new scheme.

Some examples of additional provisions under NMOOP are:

- i. Assistance for Oil Palm companies to establish Oil Palm Nurseries in their allotted Zones.
- ii. Assistance to Processors/ Oil Palm Companies to set up mills in NE states
- iii. Special Package for NE states including assistance to farmers for land clearance before plantation of oil palm, assistance for making terrace in case of hilly areas, assistance for raising bio-fencing, and assistance for adoption of integrated farming systems.
- iv. Payment of Viability Gap Price to the farmers selling FFB to the Oil Palm Processing Industries.
- v. Increase in cost norms for all components

10. That, the deponent states that State Government started the Pilot Project in 2014-15 wherein Zone Notification was not issued and "Project Area" of 5000 ha was fixed covering areas in Kamrup, Goalpara, and Bongaigaon districts. This "Project Area" is equivalent to "Factory Zone" term used in the Draft Assam Oil Palm Act 2013. And the 5000 ha project area was calculated covering suitable areas of Kamrup, Bongaigaon and Goalpara and the time frame was 2014-15 to 2018-19 under NMOOP scheme.

Project Area distribution as per AAP 2014-15:

Kamrup = 2300 ha

Goalpara = 1950 ha

Bongaigaon = 750 ha

Total = 5000 ha

The deponent states that it was only after launching of NMEO-OP in 2021, that State Government has notified the 6 Zones for development of Oil Palm in the state covering 18 districts which also includes Goalpara and Kamrup. This notification of Zones was done as per the directives of Central Government vide File No. 3-30/2021-NMEO-OP(SB);E-102771 dated 11.10.2021.

However, abiding by the Order dated 14.02.22 passed in W.P.(c) no 830/2022 and Order dated 03.03.22 passed in W.A. 77/2022 by this Hon'ble Gauhati High Court, Blocks where area expansion has already been done under the Pilot Project of 2014-15 to 2018-19 by the petitioners, have been excluded while allotting areas to the new implementing partner company.

Further it is to be mentioned that no activities have been taken up by the new implanting partner in Kamrup and Goalpara district and they are waiting for the Hon'ble Court's verdict.

11. That, the deponent as per the information received from the District Agriculture Officer, the Potential area in the Blocks, where the petitioners is carrying out his activities and allowed as per Hon'ble Court's Order are mentioned hereinbelow:

Blocks under Goalpara District:

Balijana = 998 ha

Krishnai = 935 ha

Lakhipur = 1005 ha

Kushdhowa = 942 ha”

46. The said contention of the respondents to the effect that the "Project Area" is the "Factory Zone" is also totally fallacious and not based on any material on records. As per Clause 27, the target of 5000 hectares has to be achieved within the allotted area. As such, the allotted area [comprising of entire 3 districts of Kamrup(R), Goalpara and Bongaigaon] is the zone in the instant case and 5000 hectares is the initial target. Thus, the 5000 hectares which is the target (or project area) cannot be construed to be the allotted area. Moreover, the WHEREAS clause, as noted above, specifically provides that "AND WHEREAS, SHIVASAIS agrees to take up the *districts namely Kamrup (Rural), Goalpara and Bongaigaon for pilot project initiated by the Department of Agriculture, Assam for the development of OilPalm cultivation....*". Thus, it is abundantly clear that the said three districts are allotted to the petitioners Company and the same constitutes one zone for

cultivation of Oil Palm and that pursuant to the MOU dated 27.01.2014, the said three districts are under the occupation of the petitioners Company.

47. Further, the attempt of the respondent authorities in their additional affidavit to distinguish the schemes prior to 2014 and the schemes formulated thereafter, to the effect that the concept of zonalization is pursuant to 2014 is also fallacious and is not substantiated by any materials whatsoever. It appears that the modus of operation in all the schemes referred in the additional affidavit has remained the same and the concept of zone and role of the empanelled entrepreneur/implementing companies/ processors as stated above remains the same under every scheme though the schemes referred several nomenclatures. What is observed is that the nature of financial assistance from the Central Government changes under various schemes. However, as stated hereinabove, each time a new scheme is launched, existing implementing companies/processors are not changed and the existing implementing companies/processors are not required to execute new MOU.

48. Thus, it is apparent that the petitioners Company has been allotted the entire district of Kamrup(R), Goalpara and Bongaigaon by MOU dated 27.01.2014. Hence, when the said MOU dated 27.01.2014 is still in operation, the respondent authorities could not have issued another impugned EOI dated 13.01.2022 for appointment of empanelment Company for oil palm cultivation in the district Kamrup(R) and Goalpara which is already allotted to the petitioners. Therefore, during the subsistence of the said MOU dated 27.01.2014, another impugned EOI dated 13.01.2022 and consequent impugned allotment thereof in favour of respondent No.3 could not have been made. Apparent that the respondent authorities have acted as per their whims and caprices. Any tender issued, during

the subsistence of a contract for the same work, subsequent such tender covering the operational areas allotted to another under the subsisting contract shall be totally illegal, arbitrary and unreasonable. Thus, the impugned EOI dated 13.01.2022 and the subsequent allotment vide Notification dated 11.04.2022 is illegal, arbitrary and unreasonable.

49. Pertinent that till date the Respondent No.3 has not started any nursery or operation/work in these two districts.

50. Furthermore, the petitioners Company/entrepreneur i.e. the petitioners Company have legitimate and vested right over the zone as per the provisions of the said MOU dated 27.01.2014. Giving scope for others to enter into a particular zone with similar activity is against the said MOU dated 27.01.2014 and it will curtail the right and scope of the petitioner Company's activity occasioning complete failure of the entire scheme, inasmuch as, restricting the petitioners Company to a certain limit of plantation development leads to a state of criss-crossing two company's representative in one single piece of land which is practically not possible to monitor. As observed above, the modus operandi of implantation of the plantation development is to fix up a geographical zone to the companies and thus the zonalization is universally followed. As the petitioners Company have been awarded as empanelled company for the districts of Kamrup(R) and Goalpara vide the said MOU dated 27.01.2014 which is still in force till date, it has the vested right to act as an empanelled company for the said districts till its said MOU dated 27.01.2014 is terminated as per law and no other entity could be appointed as empanelled company in these districts during the subsistence of the said MOU dated 27.01.2014.

51. It appears that the respondent authorities have resorted to such illegalities for reasons best known to them. Admittedly, the petitioners are in operation in the districts of Kamrup(R) and Goalpara. Therefore, there was no occasion of the respondent authorities to appoint Respondent No.3 as empanelled company in respect of these two districts. Hence, the impugned EOI dated 13.01.2022 and impugned Notification dated 11.04.2022 have violated Article 14, 19 and Article 21 of the Constitution of India. Hence, the writ petitions succeed.

52. Resultantly, the impugned "Request for Empanelment for Allotment of Oil Palm Zones" by EOI bearing No. AGRI/NMEO-OP/102/2021-22/141 dated 13.01.2022 in respect to Kamrup(R) and Goalpara districts and the impugned Notification bearing File No. Agri/NMEO-OP/MOU/102/PT/2021-2022/64 dated 11.04.2022, whereby the results of the EOI dated 13.01.2022 was notified so far as pertaining to Kamrup (R) and Goalpara districts and consequent appointment of respondent No.3 as empanelled company in respect of Kamrup(R) and Goalpara districts are set aside and quashed.

53. Accordingly, the writ petitions stands allowed and disposed of.

JUDGE

Comparing Assistant