

IN THE SUPREME APPELLATE COURT, GILGIT BALTISTAN
CPLA No. 39/2009

Before: Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.
Mr. Justice Muhammad Yaqoob, Judge.

Rakaposhi Flour Mill Jaglote through Mr. Manzorr Mir and 21
others

Petitioners

Versus

Provincial Government through Chief Secretary Gilgit Baltistan and
03 others.

Respondents.

**CIVIL PEITION FOR LEAVE TO APPEAL UNDER
ARTICLE 60(13) GILGIT BALTISTAN
(EMPOWERMENT AND SELF GOVERNANCE)
ORDER 2009 AGAINST THE JUDGMENT DATED
15-09-2009 AND 24-03-2009 PASSED BY THE
CHIEF COURT GILGIT BALTISTAN.**

Mr. Muhammad Issa, Sr. Advocate assisted by Malik Shafqat Wali
Sr. Advocate for the petitioners.
Advocate general for Gilgit Baltistan
Deputy Director Civil Supply Gilgit

Date of Hearing 05-05-2010

JUDGMENT

Mr. Justice Muhammad Nawaz Abbasi CJ: This petition under article 60 (3) Gilgit Baltistan (Empowerment and Self Governance) Order 2009 has been directed against the two different Orders of the Chief Court passed in two separate writ petitions. The first Writ Petition was on the subject of allocation wheat quota to the Mills owners which was disposed of vide judgment dated 24-03-2010 and second writ petition was filed for the implementation of the direction given in the judgment in the first Writ Petition which was disposed of vide order dated 15-09-2009. The petitioners being not satisfied with the orders of the Chief Court in the above Writ Petition on the same subject have challenged both the order in this consolidated Petition before this Court.

The Federal Government of Pakistan with a view to supply atta in Gilgit Baltistan with special subsidy made a scheme according to which wheat is supplied to the registered flour mills at subsidized rates and flour Mills after grinding of the wheat with five percent ratio of choker supply Atta to the Food Department Government of Gilgit Baltistan for sale in the market at the fixed rate in which the grinding charges of the Mills owners and other expenditure incurred in the process are included. The Mills owners also authorized to sell the Chokar at the rate of Rs. 3 per Kg. in the local Market. The wheat quota to be supplied to the registered Mills owners by the Food department was reduced due to the shortage of wheat and further in certain areas people also demanded that wheat quota of their districts may not be supplied to the Flour Mills rather the wheat may be supplied to them directly.

The Wheat quota under the scheme is allocated to the Flour Mills on behalf of people of the respective district for grinding with the condition that Mills owner will supply Atta in equal quantity to the Food Department Government of Gilgit Baltistan at the prescribed rate for sale to the people on subsidized price. Therefore the essential question for determination would be whether wheat quota supplied to the Flour Mills for grinding purposes at fixed rate is a transaction of sale of wheat and Mills owners may or may not supply the Atta to the government depots for sale to the public at the rate fixed by the Food Department and further they are also not obliged to sell the Chokar at the fixed rates in the local Market rather the Mills owners in their discretion may sell the Atta and Chokar in the open Market.

The scheme has two parts. The first part is whether the wheat quota is the right of flour Mills or it is allocated to each Flour Mill on behalf of the public and after grinding of wheat Flour Mills are bound to sell the Atta to department at the fix rate or they may sell Atta directly in the Market. The Second part is whether the mills owners are not obliged to sell Chokar in local market at the rate fixed by the Government and may sell it at their choice other then the local market.

The Chief Court after a detail discussion disposed of the petition with conclusion that the Flour Mills owners cannot claim allocation of quota as of right rather under the scheme subsidy has been provided to the people of Gilgit Baltistan and Mills owners only perform the duty of grinding the wheat and are bound to supply Atta to government on fix rate for sale to the public at subsidized rates. The Chief Court further observed that increase or reduction in Wheat quota is a policy matter and Flour Mills owners cannot claim increase in Wheat quota as of right. The Chief Court on the question of issue of license for establishment of new flour Mills directed that Industry Department will not issue license for establishment of new Flour Mills without prior approval of the Chief Secretary Gilgit Baltistan whereas on the question of sale of Chokar, the Flour Mills owners cannot be allowed to sell the Chokar at rate different to the rate fixed by the Food department Gilgit Baltistan or to transport it out of the territory of Gilgit Baltistan. The Food Department was directed to regulate the supply of Ata at the fix price strictly in accordance with the scheme.

Learned counsel for the petitioners has contended that the petitioners have established the flour mills in far flung areas with huge investment at the assurance of the concerned authorities that the wheat would be supplied to them for grinding on the subsidized rates with reasonable margin of profit in the ex-Mill price in addition to the grinding charges but the Mills owners are not allowed the legitimate right of profit and added that restriction on sale of Chokar at the price fixed by the government only in local market is in conflict to their fundamental right of lawful business. The learned counsel forcefully argued that under the scheme the government has to supply the Atta to the people at subsidized rate and not the wheat, therefore the Food Department of Government of Gilgit Baltistan is under legal obligation to regulate the allocation of wheat quota with reasonable increase in quota to the Flour Mills to meet the shortage of Atta in the market.

Learned Advocate General assisted by the Director Food and the officials of Department has submitted that the private Flour Mills have been established by the Mills owners for the personal benefit and commercial activities and government has neither provided any assurance to them for supply of wheat nor is obliged to extend any favour in the matter of supply of wheat to the Flour Mills. Instead the wheat is supplied by the Government of Pakistan to the people of Gilgit Baltistan and Food Department Government of Gilgit Baltistan is responsible to regulate the system of supply of wheat for grinding and sale of Atta to the people at subsidized rates. Precisely The Learned Advocate General argued that wheat is supplied to the Mills at fix rate for grinding for the benefit of the

people of the area and not for the Mills Owners who are entitled to get grinding charges and fix sale price of choker in local market.

Having examined the scheme in detail, we have not been able to find out any substance in the contention that wheat quota is independent to the scheme of supply of Atta on subsidized rate and Mills owners are not obliged to sell the Atta to the Food Department of Government of Gilgit Baltistan and Choker in the local market at fixed price. The scheme of subsidy on Atta has been framed for the benefit of the public in general, therefore the Mills Owners, the depot holders and other persons engaged in the process for supply of wheat and Atta to the people of Gilgit Baltistan under this scheme are only entitled to the labour and service charges etc without any profit on the price of Atta to be fixed by the Government.

There is no cavil to the proposition that every person is free to enter into lawful business with margin of reasonable profit but the subsidy scheme of wheat supply in Gilgit Baltistan is not the commercial activity of the nature which create a vested right in favour of mills owners to sell the Atta directly in the market after grinding the wheat which is supplied to them by the government under the scheme. The condition of sale of Atta to the government by Mills owners and Chokar in the local Market at the fixed rate is based on the policy of supply of wheat and Atta to the people, therefore courts are not supposed to interfere in such policy matters and fix the price of the Food items or other commodities. The interference of the court in such function of the government would amount to encroach upon the policy decision of the

government and disturb the concept of independent and good governance of the government. However, notwithstanding the policy of supply of wheat quota and Atta at subsidized rates, the Food Department may consider the grievance of the person engaged in the business relating to the reasonable margin of profit.

In consequence to the above discussion we without taking any exception to the direction contained in the Judgment of the Chief Court, deem it proper to direct Secretary Food, Government of Gilgit Baltistan to constitute a committee for ascertainment of the question relating to the increase of the quota, the fair price of the wheat and Atta and the Chokar in the Local Market with some margin of profit of Mills owners and Depot Holders. The Committee after scrutiny of all aspects of the matter will submit report to the Food Secretary and in the light thereof the Food Secretary may fix the sale price of Chokar in local Market and if there is no consumption of Chokar in local Market, the method in which the Mills owners can be compensated without disturbing the subsidy scheme or permitting the Mills owners to sell the Chokar beyond the territory of Gilgit Baltistan.

In the light of foregoing reason we with the above direction upheld the judgment of the Chief Court and dismiss this petition.

Dated: 23rd June, 2010.

Chief Judge

Judge