



GAHC010194042021

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

Case No. : WP(C)/6191/2021

M/S GOLDEN TEA HOUSE EXPORTS AND ANR
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT VIVEKANANDA PATH,
ULUBARI, GUWAHATI, 781007, BEING REPRESENTED BY ITS PROPRIETOR
SHRI MANASH CHAKRABORTY

2: SHRI MANASH CHAKRABORTY
S/O LATE NAGENDRA CHANDRA CHAKRABORTY
A RESIDENT OF VIVEKANANDA PATH
ULUBARI
GUWAHATI 78100

VERSUS

THE UNION OF INDIA AND 4 ORS
THROUGH THE SECRETARY, DEPARTMENT OF COMMERCE, MINISTRY OF
COMMERCE AND INDUSTRY, UDYOG BHAWAN, NEW DELHI 110107

2: THE STATE OF ASSAM

THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM
MINISTRY OF COMMERCE AND INDUSTRY
DISPUR
GUWAHATI
781006
KAMRUP ASSAM

3: THE TEA BOARD INDIA

THROUGH ITS DEPUTY CHAIRMAN
14
B.T.M SARANI (FORMERLY BRABOURNE ROAD) KOLKATA 700001

4: THE GUWAHATI TEA AUCTION CENTRE



OFFICE OF THE TEA AUCTION COMMITTEE
DISPUR
GUWAHATI 781006

5:THE SECRETARY.
GUWAHATI TEA AUCTION COMMITTEE
G.S ROAD
DISPUR
GUWAHATI 78100

Advocate for the Petitioner : MR. S DUTTA

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the petitioner :Mr. S Dutta, Sr. Advocate
Ms. I Das, Advocate

For the Respondents : Ms. S Sarma, Mr. CKS Baruah, Mr. J Payeng.
Government Advocate

Date of Hearing : 27.07.2022

Date of Judgment & Order : 27.10.2022

JUDGEMENT & ORDER (CAV)

Heard Mr. S Dutta, learned Senior counsel assisted by Ms. I Das, learned counsel for the petitioner. Also heard Ms. S Sarma, learned counsel representing respondent Nos. 4 and 5, Mr. CKS Baruah, learned counsel representing respondent No. 3 and Mr. J Payeng, learned counsel representing Union of India.

2. The present writ petition is filed assailing the action of the respondent No. 4 i.e. Guwahati Tea Auction Centre (hereinafter referred to as GTAC) in issuing circular dated 19.01.2021 whereby upward segment movement of sample holder buyer has been prohibited.

3. **Background fact of the case:**

The facts leading it to the filing of the present writ petition can be summarized as follows:

I. The Guwahati Tea Auction Centre is a licensed Tea Auction Centre (hereinafter referred to as GTAC) and a Society registered under Societies Registration Act, 1860, which came into existence on 25.06.1986.

II. The GTAC facilitates buying and selling of tea under license from the Tea Board, a statutory authority (hereinafter referred to as the Board) and the petitioner is a small sample holder buyer and as per the prevailing norms, the petitioner is entitled for upward segment movement from small sample holder buyer to medium sample holder buyer. However, for the circular impugned in the present writ petition is the obstacle to such upward movement, claims the petitioner.

III. In the aforesaid backdrop, the respondent Nos. 4 and 5 have raised an preliminary objection as to the maintainability of the present writ petition on the ground that the respondent No. 4 is a private body and not amenable to the writ jurisdiction. Point of maintainability is also raised on the ground that there is an arbitration clause in Guwahati Tea Auction Rule, which provides for an alternative remedy of arbitration for resolution of dispute amongst the members

of GTAC inasmuch as the petitioner is a member of GTAC. Accordingly, before going to the merit of this case, this court first shall determine the maintainability of the present writ petition.

4. **Argument of the respondent Nos. 4 and 5 touching the issue of maintainability:**

Ms. S Sarma, learned counsel while raising the issue of maintainability of the writ petition argues the followings:

- I. The GTAC is a Society registered under the Societies Registration Act, 1860, which came to existence on 25.06.1986. The GTAC is a licensee under the Tea Act, 1953 to operate as an auction centre.
- II. There is no control whatsoever, operational, financial or administrative of the Tea Board upon the GTAC and in the present proceeding no action of the Tea Board being under challenge, the present writ petition against the society functioning as licensed auction centre cannot be brought under the purview of writ jurisdiction.
- III. The control of the tea board upon its agents like GTAC are only regulatory and the licensee being an independent authority the dispute amongst its members cannot be a subject matter of writ jurisdiction.
- IV. The management and other activities of the GTAC is governed by its own set of rule called GTAC Rules, it survives upon the subscription fee paid by its member on annual basis including the petitioner. The members of GTAC are the tea sellers, buyers, brokers and warehouse keepers under the Rule 2 (a) of the GTAC Rules. Therefore, the action impugned cannot be a subject matter of

a writ petition, the GTAC not being an State within the meaning of Article 12 of the Constitution of India.

V. The Rule 23 of the GTAC Rules provides for an alternative remedy of arbitration. When any dispute is between the members of the GTAC and GTAC and therefore, the petitioner could not have approached this court without availing such alternative efficacious remedy.

VI. There is no public element whatsoever involved in buying and selling tea a commercial product. Therefore, public function doctrine cannot also be brought in the present case.

VII. In support of aforesaid, Ms. S Sarma, learned counsel relies on the judgment of **Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology** reported in **(2002) 5 SCC 111**, **Lt. Governor of Delhi vs. VK Sodhi** reported in **(2007) 15 SCC 136**, **Biman Krishna Bose vs United India Assurance Co. Limited and Anr.** reported in **(2001) 6 SCC 477** and **the BCCI vs Cricket Association of Bihar** reported in **(2015) 3 SCC 251**.

5. **Counter argument of the petition touching to issue of maintainability:**

Countering such argument of Ms. Sarma, Mr. S. Dutta, learned Senior counsel argues the following:

I. From the composition of GTAC as reflected in the Guwahati Tea Auction Rules, it is clear that GTAC is composed of members, of whom at least four including the Chairman are the Government officials. Thus, it cannot be said that the GTAC is a purely private body.

II. The GTAC is an "organizer of tea auction" licensed by the statutory

authority (Tea Board) and it conducts public auction of tea and is governed by Tea Act, 1953 and Tea Marketing Control Orders issued time to time by the Tea Board and thus the GTAC acts as an arm of Tea Board and discharges statutory function which is entirely public in nature. Therefore, it discharges a public duty within the reign of statutory bound.

III. The Guwahati Tea Auction Rule, 1970 is neither a statute nor does have any force of law. Therefore, the plea of alternative remedy under Rule 23 of GTAC is un-sustainable and deserves rejection inasmuch as the same relates to determination of dispute amongst the members of the GTAC not a dispute involving the power of GTAC in issuing the impugned circular.

IV. As in the present case the impugned action of the respondent Nos. 4 and 5 directly violates the rights of the petitioner as guaranteed under Article 14 and 19 (1) (g) of the Constitution of India, the plea of alternative remedy raised by the respondent Nos. 4 and 5 is not tenable in view of the ratio laid down by the Hon'ble Apex Court in ***Whirlpool Corporation vs Registrar Of Trade Marks, Mumbai & Ors.*** reported in ***(1998) 8 SCC 1.***

V. There is a public element in the function of GTAC and it's functions are essentially public in nature. Therefore, it is amenable to the writ jurisdiction of this court.

6. **Determination on Maintainability by the court:**

For a proper determination of the issue of maintainability as raised in the present writ petition, certain provisions of Tea Act 1953, Control Orders, Rules and some facts are necessary and accordingly the same are summarized as follows:

A. Provision of Act and Control Order and Rules:

- I. Tea Act, 1953 was enacted to provide for the control by the Union of India over the tea industry, including the control of the cultivation of tea, export of tea from India and for that purpose to establish a Tea Board and levy duty of excise on tea produce in India.
- II. Section 4 of the Act provides for establishment and constitution of the Tea Board.
- III. Section 10 of the Tea Act mandates that it shall be the duty of the Board to promote, by such measure as it thinks fit the development of the tea industry under the control of Central Government.
- IV. Subsection 2 of Section 2 provides certain measure to achieve such purpose including regulating the production and extent of cultivation of tea, quality of tea including regulation of sale and export of tea, registering and licensing of manufacturers, brokers, tea base dealers and the persons engaged in the business of blending tea.
- V. Chapter (VI) of the Act deals with control by the Central Government of tea.
- VI. Section 30 empowers the Central Government to fix maximum or minimum price, which may be charged by a grower of tea, manufacturer or dealer, wholesaler or retailer whether for Indian market or for export, through notification to be published in official Gazette.
- VII. The Central Government is similarly empowered to fix maximum quantity, which may, in one transaction to be sold to any person, fix prices of

tea differently in different localities, or for different classes of dealers or for grower of tea or manufacturers.

VIII. Section 33 empowers the Central Government to grant license to brokers, tea manufacturers etc by framing rules through publication in official Gazette. Section 33 further mandates that if any person on or after such publication of Rule engages himself without obtaining a license issued by the Board shall be deemed to have contravened the provision of Section 33.

IX. Chapter 8 dealing with miscellaneous provisions also makes provision for penalties and offences for contravention of provision of the Tea Act and the Rules framed thereunder.

X. Section 48 empowers the Central Government to make rule subject to condition of previous publication, for carrying out the purpose of the Act.

XI. The Union of India in exercise of power under Section 30 (3) and (5) notified a Tea Marketing Control Order, 2003 in superstation of Tea Marketing Control Order, 1984 (hereinafter referred to as Control Order, 2003).

XII. The salient feature of the Control Order, 2003 can be summarized as follows:

- a. “Organizer of Tea Auction” as defined under Section 2 (j) of the Control Order, 2003 means any one including any person, corporate body, co-operative society or association, whether registered or not under whose control or auspices public auctions of tea take place.
- b. Paragraph 6 mandates that no buyer shall carry on activities of buying tea from any public auction licensed by Tea Board or directly from



manufacturer except under a valid registration obtained under the Control Order, 2003.

c. Paragraph 9 mandates that organizer of tea auction shall not carry on business of organizing and holding or conducting public tea auctions under its control or auspices without a license obtained under the Control Order, 2003.

d. Paragraph 13 of the Control Order, 2003 empowers the licensing authority at any time during the valid period of license to issue directions to organizer of tea auction/ brokers either individually or collectively if, firstly, the licensing authority has reason to belief that an organizer of tea auction is indulging in or likely to indulge in mal-practices in the conduct of or in relation to public auction, held under its control or auspices and secondly, improving the efficiency of the public tea auction system and thirdly, to bring about uniformity in the procedure of public tea auction held in various parts of the country.

e. Paragraph 21 mandates that every registered manufacturer, from the date of commencement of Control Order, 2003 shall sale such percentage as may be prescribed by the registering authority through public auction in India held under control or auspices of organizers of tea auction licensed to do so.

f. Paragraph 22 of Control Order, 2003 mandates that every registered buyers, on and from the date of commencement of the order shall buy such percentage of his total purchase of tea as may be directed through public

tea auction held under the control or auspices of Organizers of tea auction licensed to do so.

XIII. Prior to issuance of the Control Order, 2003, Tea Marketing Control Order, 1984 was issued in exercise of power under Section 30(3) and (5) of the Tea Act.

XIV. Subsequently, on 01.02.2021, an order was issued in exercise of power under clause 9 of Tea (Marketing Control) Order 1984 on "eligibility of buyers" for free trade sample. Reading of the said order reflects that the licensing authority had directed all the auction organizers of Kolkata, Siliguri, Guwahati, Kochi, Conoor and Koimbator to take all necessary steps for implementation of the relevant Auction Rules. Said Order further provides that it has determined, categorized and fixed minimum qualifying percentage for the year 2000 to 2001 onwards for entitlement of free samples. The said order further reflects that there are three categories of buyers, i.e. small, medium and large and that they are entitled for free trade sample corresponding to their status. The said order further reflects that eligibility for free sample is determined on the aggregate purchase of previous two consecutive purchase years, for the sampling year 2000-2001 and sampling year 2001-2002 onwards, the basis of eligibility is determined on the basis of aggregate purchase of previous three years consecutive purchase etc.

XV. From the affidavit-in-opposition of GTAC, it is clear that the Pan India Auction Rules was notified on 18.02.2006, which provided for certain relaxed norms for qualification for 'medium category'.

XVI. Clause 12 of the Pan India Auction Rules deals with eligibility of buyers to receive free trade sample and reflects that the Tea Organizer can fix such eligibility considering the transaction volume by the buyer and the same should be implemented, on prior intimation and approval of the Tea Board.

B. Necessary facts:

I. There is no dispute regarding the status of the petitioner as a registered buyer and status of the respondent No. 4 as an Organizer of Tea auction centre and there is also no dispute that the petitioner is purchasing tea through the public auction conducted by the respondent No. 4. There is also no dispute that the petitioner was a small buyer.

II. The petitioner claims that the petitioner had qualified for small sample during the year 2021 based on the performance of the year 2017-2018, 2018-2019 and 2019-2020.

III. The petitioner further claims that by way of the impugned circular, the GTAC has granted relaxation as one time measure on purchase figure for the year 2020-2021 and the same will be used for the sampling year 2021-2022, 2022-2023 and 2023-2024. However, such relaxation was not allowed to be utilized for segment up-gradation. Thus, the petitioner will remain in the small category though relaxation is granted under the impugned circular.

IV. Accordingly, the petitioner further claims that the list of sample holder buyers published by the GTAC on 11.08.2021, the petitioner was classified as small buyer.

V. Being aggrieved, the petitioner filed representation before the Tea Board and GTAC. The further grievance of the petitioner is that the GTAC had refused the petitioner's claim, though admitted that during the period 2018-19 and 2019-20, the petitioner qualified for medium sample.

VI. The Tea Board by communication dated 08.10.2021 intimated the petitioner that the Tea Board is aware of the decision of the GTAC and in case the petitioner is having any factual evidence and specific details where violation made by the GTAC can be substantiated, the petitioner may submit same before the Tea Board for further investigation of the matter.

7. **Conclusion :**

I. The scheme of the Tea Act reflects that cultivation, production, manufacture, sell, export of tea are directly controlled by the Tea Board and the Tea Board is a statutory authority created by virtue of Tea Act. By virtue of the Tea Act, tea industry is one, which by act of Parliament comes under the control of Union of India and tea is a controlled product. Though GTAC is a registered society, its identity for the purpose of the determination of the present lis, undisputedly is a licensed organizer of tea auction and such auction is to be done under the direct control and regulation of the Tea Board and the Chairman of Tea Board under the scheme of the Tea Act.

II. Thus, from the aforesaid it is clear that cultivation, manufacture, sale and purchase of tea are authorized to be controlled by the Tea Board and registering authority under the Scheme of Tea Act and Rules and Control Orders framed



therein i.e. tea is a controlled product in India. It is also clear that the eligibility of buyers for free trade sample is also determined by the Tea Board in exercise of its statutory power.

III. In the present case, the petitioner has challenged the impugned circular mainly on the ground that the same is issued in violation of the Control Order and Pan India Auction Rules. The petitioner further questions the authority of GTAC to issue the circular and determine the eligibility as has been done. In other words, the petitioner argues that the GTAC is having no sanction and authority under law to issue the impugned circular, that too without approval from the Tea Board.

IV. Therefore, in the aforesaid backdrop, this court is of the considered opinion that so far relating to the issue of sale and purchase of tea through GTAC, same is to be done strictly as per the provision of the Tea Act, Rules and Control Order framed time to time by the Board and instructions issued by the statutory body, tea being a controlled product. When the petitioner, who is a licensed buyer under the licensing authority i.e. Chairman, Tea Board, raises a grievance that a licensed Organizer of Tea Auction (GTAC) has violated the provision of statutory rules and control orders and had issued an circular without having any power resulting in violation of its right under the Act and effecting the sale and purchase of tea, a writ petition shall be maintainable, irrespective of the status of the organizer of tea auction being a society registered under Societies Act, 1860 or not inasmuch as such action under challenge is being exercised as a licensed organizer of tea auction and not as a

society. Further, other facet of grievance of the petitioner is inaction on the part of the Tea Board in exercising its statutory duty of control over the sale and purchase of tea under GTAC as the impugned circular is alleged to have been issued without approval of the GTAC.

V. The Rule 23 of the GTAC Rules operates in a field when there is dispute amongst the members of the society and same cannot involve an arbitration, when it relates to issue of sale and purchase of a controlled product controlled by Union of India through the Tea Board constituted under Tea Act, more particularly when jurisdiction and authority of GTAC is questioned in issuing the impugned circular.

VI. Therefore, in view of the aforesaid reason and discussion, this court is of un-hesitant view that the argument of doctrine of public function and question of Article 12 shall not be necessary in the given fact and circumstance of the present case inasmuch as action under challenge is not of a society but an action which is required to be done under the provision of a statute and Control Orders relating to sale of a control product controlled by the State i.e. the Union of India.

VII. Accordingly, it is answered that in the given fact of the present case, a writ petition is maintainable against the GTAC by the petitioner.

8. **Decision on merit of the claim:**

I. Having held so, while coming to the merit, this court at the cost of repetition holds that the scheme of the Tea Act clearly depicts that a statutory expert authority has already been constituted, which is having total control over

the tea industry including cultivation of tea, export of tea from India and sale and purchase of tea in India.

II. Chapter III deals in details regarding control over the extension of tea cultivation including its method, limitation, grant of permission to plant tea in special circumstances.

III. Chapter IIIA deals with the power of the Central Government to manage and control of tea undertaking or tea unit in certain circumstances.

IV. Chapter IV deals with control over the tea and tea seeds including plant of license and permit, allotment of export quotas and maintenance of account quotas etc.

V. Chapter V deals with finance, account and audit, which includes imposition of charge on tea produce in India, constitution of fund, borrowing, writing of losses etc.

VI. Chapter VI deals with power of the Central Government to control price and distribution of tea or tea waste. Chapter 7, which is miscellaneous chapter deals with licensing brokers, tea manufacturers, power of inspection of Tea Board, imposition of penalty, power to remove tea plantation which has been done without permission of the Board, penalty for contravention of order relating to price and distribution etc.

VII. The Tea Act is a complete code in itself, so far it relates to the control of tea and entire responsibility to implement the object and purport of the control product tea is vested upon Tea Board, which consists of a Chairman and not exceeding 40 members to be appointed by the Central Government. Such

member includes owner of tea estates and gardens, growers of tea, persons employed in tea estate and garden, manufacturer of tea, dealer, both export and internal trader of tea, consumers, the representative from Parliament, the Government of principal tea grower states and such other persons, who in the opinion of the Central Government ought to be represented in the Board.

VIII. Thus, the Board itself is an expert body. Therefore, under the aforesaid statutory scheme, this court is of the considered opinion that the issue in the present lis should be left to be determined by the said expert body i.e. Tea Board inasmuch as the communication dated 08.10.2021 written by the Tea Board to the petitioner, an option was given to the petitioner to approach the Board with sustainable material for redressal of its grievances.

IX. Though, Tea Board has not filed any affidavit in the present writ petition, however, the learned counsel for Tea Board has placed on record a written instruction which discloses that the Board has not issued any direction to issue the impugned circular. The impugned circular has been issued by GTAC in terms of one Ahuja Committee report 20.04.1990. However, the Board has not commented anything on the legality and validity of the circular issued by the GTAC, which is under challenged.

X. The learned counsel for the petitioner has raised certain issues that Ahuja Committee report is based on the Tea Marketing Control Order, 1984 and the same has long been superseded by Tea Marketing Control Order, 2003. Therefore, the recommendation of Ahuja Committee report dated 20.04.1990 shall not have any effect. The other argument of the learned counsel for the

petitioner is that even if it is assumed that the impugned circular has been issued on the basis of recommendation of Ahuja Committee Report, while issuing such circular, no approval of the Tea Board has been taken and as mandated in Pan India Auction Rule. As the Board has not filed any affidavit in the present writ petition and has expressed its willingness to determine the issue as reflected in the communication dated 08.10.2021, this court considering the matter in its entirety is inclined to direct the Tea Board and its Chairman to re-consider the claim of the petitioner regarding the validity of the circular dated 19.01.2021 after giving an opportunity of hearing to both the petitioner and GTAC and pass a reasoned order in this regard. While passing such reason order, the Board shall also consider the issue of authority of GTAC to issue the impugned circular and whether such circular can be implemented without approval of the Tea Board being a statutory controlling authority over the GTAC, so far the same relates to sale of tea through public auction. In the event, it is held that the impugned circular dated 19.01.2021 is not permissible and/ or bad in law, the Board shall consider granting the consequential relief to the petitioner and pass a reasoned order.

9. **Directions:**

For the reasons and determination made herein above, the following directions are passed:

- I. The petitioner shall be at liberty to file a fresh representation before the Chairman Tea Board, within a period of two weeks from passing of this order, if so desires.



II. The Tea Board through its Chairman shall consider the claim/grievances of the petitioner including the validity of the circular dated 19.01.2021 after giving an opportunity of hearing to both the petitioner and GTAC and pass a reasoned order in this regard.

III. While passing such reason order, the Board shall also consider the issue of authority of GTAC to issue the impugned circular and whether such circular can be implemented without approval of the Tea Board.

IV. In the event, it is held that the impugned circular dated 19.01.2021 is not permissible and/ or bad in law, the Board shall consider granting the consequential relief to the petitioner and pass a reasoned order.

V. The entire exercise shall be carried out within a period of six weeks from the date of receipt of the present order to be furnished by the petitioner.

10. With the said reasons, discussions and directions, this writ petition stands disposed of. Parties shall bear their own costs.

JUDGE

Comparing Assistant