

# **HIGH COURT OF JAMMU AND KASHMIR**

AT JAMMU

LPAOW no. 67/2010

CMA no. 98/2010

Date of order: 29.01.2013

Pushpa Devi

v

State of J&K and ors.

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**Coram:**

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice**

**Hon'ble Mr. Justice Hasnain Massodi, Judge**

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**Appearing counsel:**

For the petitioner(s) : Mr. S. K. Shukla, Advocate.

For the respondent(s) : Mr. V. B. Gupta, Advocate.

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|----|--|---|--------|
| 1) | Whether approved for reporting<br>in Press/Media | : | Yes/No |
| 2) | Whether to be reported in<br>Digest/Journal      | : | Yes/No |
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M. M. Kumar, CJ

1. The instant appeal under Clause 12 of the Letters Patent is directed against judgment and order dated 28.09.2010 passed by the learned Single Judge of this Court in OWP no. 1158 of 2009 rejecting the claim made by the appellant-petitioner. The case of the appellant-petitioner before the Writ Court was that respondent no. 4-Rakesh Kumar should not be permitted to open an additional Flour Mill (Atta Chakki) in Village Thana Plassi, as there are sufficient number of Atta Chakki operating in that village. The learned Single Judge rejected her claim on the ground

that right to carry on any occupation, trade or business is a fundamental right under Article 19(1) (g) of the Constitution of India which can of course be regulated by imposing reasonable restrictions. The Writ Court also rejected the argument that the respondent authority did not apply its mind with regard to availability of sufficient raw material in the area or the yield of wheat/rice/maize from the farm. The Writ Court also rejected the argument that the power to issue license for opening a new Atta Chakki could not be exercised by the Sub Divisional Magistrate and proceeded to observe that the aforesaid power has been exercised in pursuance of an order passed by the respondents-State under the chairmanship of Minister concerned. Thus there is valid delegation and respondent no. 3 is fully competent to grant license.

2. We have heard learned counsel for the parties at some length and are of the view that once the authority was satisfied with all the condition for grant of license contemplated by Control order dated September 09,1958 (Annexure-B), there was no possibility to reject the application of respondent no. 4 to permit him to operate his Chakki Atta.

3. Moreover, we find that there are other three Atta Chakki operators and none of them has raised any grievance. Therefore, the effort of the appellant-petitioner to monopolize the trade or to avoid any competition must be defeated. It is in fact a case which would attract the well known legal principles which has acquired the status of maxim namely, *damnum sine injuria esse protest*. In other words there may be damage or loss inflicted without any act being done which the law deems an injury.

4. The appeal does not warrant admission and is liable to be dismissed. Accordingly, the appeal fails and the same is dismissed.

**(Hasnain Massodi)**  
**Judge**

**(M. M. Kumar)**  
**Chief Justice**

**Jammu,**  
**26.12.2012**  
**Parshant**