

**ORDER ON PRICE OF RICE TO BE RECOVERED  
AND EMOLUMENTS TO BE PAID TO THE PDS DEALERS**

The High Court while laying down the parameters of this judicial inquiry has directed that this Commission shall fix the price of rice at which recovery has to be made from the PDS dealers and the emoluments which the PDS dealers were entitled to receive as transportation and handling charges. Since this inquiry is a judicial inquiry, it was only appropriate that the State Government and the PDS dealers must be given opportunity to put forth their pleas on these issues. The Commission issued a public notice by publishing in the Dainik Bhaskar and Dainik Hindustan. This notice was published on 22/04/2017 for hearing the parties or their counsel on 29/04/2017. On that day the hearing was postponed to 16/05/2017 and later to 23/05/2017. The dealers or their counsel were invited to advance their submissions on these matters.

2- Mr Lalit Kishore, Principal Addl. Advocate General, Bihar appeared on 23/05/2017. He <sup>submitted</sup> states that the State Government did not propose to gain profit by realizing the price of rice at a rate higher than the rate at which it had acquired the rice. He submitted that the State Government is however obliged to realize it at the rate of acquisition. Realisation of the price at a lower rate would cause loss to the State exchequer. He further submitted that the rate of realisation of price of rice must be fixed by this Commission at Rs 1370/- per quintal. He submitted that this was the stand of the State Government before the Hon'ble High Court as well. He submitted that the State Government is fully justified in realising the price of rice at that rate.

3- The Counsel for the parties on the other hand, submitted that the rate of realization should not be more than Rs 622/- per quintal as that is the rate at which the Government was selling rice to the BPL card holders.

4- Mr Lalit Kishore, Principal Addl. Advocate General submitted that the price of acquisition of rice by the State Government was @ Rs 1370/- per quintal. To establish his submission he relied upon a circular issued by the FCI (Food Corporation of India) in which it had mentioned that the price of rice under SGRY supplies. The circular reads as follows :

Every kharif season the Corporation declares the estimated crop year based economic cost of rice for that particular season. The rate is issued for the purpose of issues under various economic cost based schemes like SGRY, Defence etc”.

The price for common variety of rice is mentioned as Rs 1370/- per quintal. Thus, the State Government finances will be debited for the rice issued to it @ Rs 1370/- per quintal.”

5- At Chapter-II of the Government of India guidelines paragraph-2.5 it states that “the Department of Rural Development will release funds for the food grains directly to the FCI at the economic cost”. Economic cost for SGRY has been indicated in the FCI circular dated 25/10/2005 *quoted above,*

6- Mr Lalit Kishore, Principal Addl. Advocate General laid emphasis on the above circular and submitted that the circular specifically mentions SGRY as the economic cost of rice of common variety. That being so, he submitted that it is obvious that this is the price of rice at which the acquisition of rice must be held to have been done. On that very basis the State Government finances must have been debited.

The submission of Mr Lalit Kishore has substance. Here was a situation where the FCI laid down the price to be realized on account of SGRY. It supplied rice and the State Government accepted it. There was thus a binding contract between the Food Corporation of India and the State Government. The acceptance by the State Government without any demurrer about the rate will amount to acquiescence in the purchase at that rate. The statement in the circular and the receipt of grains completes the contract. It is obvious that in realizing the price of rice @ Rs 1370/- per quintal does not indicate any profit to the State Government. The loss would be obviated.

7- Mr Lalit Kishore was candid in stating that if the entire rice received by the State Government/Bihar State Food & Civil Supplies Corporation had been distributed the entire cost would have been borne by the State Government but the realization is being made because huge quantity thereof found dubious alleys or were negligently mishandled.

8- As I stated earlier, the submission urged on behalf of the PDS dealer that realization of the price of rice should be only @ Rs 622.60 per quintal as that was the rate at which the rice was being sold to BPL workers. It was submitted that it would not be fair for the State Government to charge a higher price from the PDS dealers. This was their submission before the High Court as well.

9- It is well known that the rice being sold to BPL workers @ Rs 622.60 per quintal was a subsidized rate. In my view, this submission on behalf of the PDS dealers is not acceptable. The BPL rate being a subsidized rate was not the cost price in their acquisition. Since the rice had found their track to dubious quarters there is no reason they should be made to pay at a subsidized rate only.

10- Having considered this submission of the parties I am clearly of the view that the State Government is fully justified in realizing the cost price. The plea of charging at a rate which was a subsidized rate does not appeal to me. The subsidy was a favour shown to the consumers. That would not be the cost price. I am therefore, of the view that the price to be realized for the balance rice must be pegged at Rs 1370/- per quintal.

11- In course of submission it was also submitted on behalf of the PDS dealers that if the BPL rate was not acceptable for realization it must be done only at the APL rate. On behalf of the parties reliance was placed on a circular issued by Mr. K.C. Saha, Secretary-cum-Commissioner, Food & Consumer Protection Deptt dated 12/04/2007. This letter was addressed to the Managing Director, Bihar State Food & Civil Supplies Corporation. The subject of the letter is fixation of price under BPL Scheme in view of increment of the commission. This circular shows the price of rice for BPL rate as Rs 606.65 per quintal and the APL rate as Rs 860/- per quintal. Heavy reliance was placed on this circular to submit that if the BPL rate was not acceptable then the APL rate may be the price for realization of the rice.

12- I regret there is no substance in this submission as well. The APL rate was also a subsidized rate. The Secretary, Rural Development Deptt stated clearly that the APL rate and the BPL rate were subsidized rates. The rates being subsidized rates there is no justification for fixing the price at Rs 860/- per quintal which was the APL rate. The subsidy was a favour shown to poor consumers. It was not meant to be a favour to the PDS dealers for their enrichment. In my view, therefore, the subsidized rates i.e. APL and BPL cannot form the basis for realization of the price of rice which the PDS dealers mishandled or misappropriated.

13- On record there is a letter written by Mr A. Santosh Mathew dated 13/06/2011. In this letter Mr Mathew, Principal Secretary, Rural Development Deptt, directed all the District Officers/DDCs that the price of residual rice should be realized @ Rs 1370/- per quintal. Surprisingly, on the very same date Mr Mathew had written to the Accountant General, Bihar seeking his guidance in regard to the price of rice to be fixed for

realisation of the price. In that letter he had suggested that the realization will be made @ Rs 622/- per quintal.

14- I am unable to appreciate the stance of Mr Mathew. The Accountant General, Bihar had no role to play in the matter of fixation of price of rice. The State Government had received the rice @ Rs 1370/- per quintal. The only parties relevant for fixation of the price were Food Corporation of India and the State Government. Any third party had no role to play. That should be the end of the matter. The advice sought from the Accountant General, Bihar was irrelevant and possibly for that very reason the Accountant General Office never replied to it. The Accountant General Office was a third party who had no role in this controversy. There can be no question of the State Government seeking any guidance from any third party. The guidance sought was irrelevant and rightly not attended to by the Accountant General Office. I am not laying any value to the price being fixed at Rs 1370/- per quintal by Mr Mathew. The only question is at what rate the State Government had acquired and at what rate it was fixing the sale price. No profit no loss must be the rationale.

15- Market Price :

Another question arises whether the market price of rice should be looked into for fixing the rate. The market price will not be a proper guide because the market price fixed by the Statistics Deptt is a package of several districts of the State where situations vary. That is a vague concept. Besides that the Senior Joint Director, Planning & Development Deptt (Economic & Statistics Directorate) had reported that between 2006-08 the collection of market price had been discontinued. He had also reported that the Directorate did not collect separate figures for boiled and arwa rice. Since the collection of figures between 2006-08 had been discontinued, market price would not be correct index. In 2009 for whatever it is worth, the market price as found by the Directorate was Rs 1342.20 for course rice and Rs 1672.90 for medium rice. In 2010 the figures were Rs 1467.89 and Rs 1629.39. For 2011 the figure sent by the Directorate is Rs 1745.22 and Rs 2001.99 for course and medium rice. In that state of statistics, I do not consider it appropriate to place any reliance on the figures sent to us by the Planning & Development Deptt (Economic & Statistics Directorate).

16- Learned counsel for the PDS dealers drew my attention to the Minutes of a Review Meeting held by Mr Anup Mukherjee dated 21/08/2008. This was a meeting for reviewing some welfare schemes in operation in the State. Some DDCs were also present at that meeting. In

that meeting at para-9 it was resolved that the price of rice which had not been consumed by the PDS dealers must be realized at the APL rate and the sale proceeds may be deposited in the Government Treasury for being used in NREGS (National Rural Employment Guarantee Scheme). It was submitted on behalf of the PDS dealers that in terms of this decision price may be realized at APL rate.

17- I am unable to place any value in this decision of Mr Anup Mukherjee. I cannot put any value to it for the reason that this decision at review seminar was not followed up by any Government order.

18- It was only a wishful thinking of Mr Anup Mukherjee. In order to give that decision a binding effect it was essential that government order should have been issued in terms of the recommendation of Mr Mukherjee. No such order was passed by the Government. I am unable to place any value on para-9. The meeting was held two and half years after closure of the SGRY scheme. The Government had been sleeping over the matter of disposal of the residual rice for over two years. To cover up that loss this ameliorative conclusion was arrived at. It is obvious that Mr Mukherjee was trying to save his skin. The decision of Mr Mukherjee on 09/09/2008 cannot have any value for the reason that the decision to permit the PDS dealers to sell at APL rate went by default. No PDS dealer deposited the price at the APL rate in the Government Treasury. In that view of the matter, I am unable to accept that the APL rate should be the basis for charging the PDS dealers to pay the price of residual grains.

19- Having given my thought to the entire matter I am firmly of the view that Rs 1370/- per quintal was the price at which the State Government had acquired the rice. That should be the price for realisation. The APL/BPL rates being subsidized rates cannot form any basis for that conclusion. The circular of the Food Corporation of India and acceptance by the State Government over the rate of Rs 1370/- per quintal for SGRY clinches the issue. No further argument is called for in that view.

20- The law must prevail. There is no scope for being extra sympathetic to any dealer.

21. Emoluments to be paid to the PDS dealers :

In regard to emoluments to be paid to the PDS dealers, the letter of Mr Pradeep Kumar, Managing Director, Bihar State Food & Civil Supplies Corporation dated 07/06/2011 addressed to the District Officers that Rs 37/- was being received by it from the State Government

as transportation and handling charges. This letter supplemented by a circular issued under the signature of Mr K.A.H. Subrahmaniam shows that Rs 50/- may be the rate for payments as transportation and handling charges. In my view, this appears to be reasonable. The circular of Mr Subrahmaniam has no binding force but I consider it reasonable. The PDS dealers must be paid at that rate for the rice lifted/handled by them.

22- Mr Rakesh Ranjan submitted that Mr Justice Samrendra Pratap Singh while disposing of writ applications filed by Chandra Shekhar Singh and several other applications had ordered that the dealers will pay 20% of the value price calculated @ Rs 10/- per kg. He submitted that the order of Mr Justice Samrendra Pratap Singh having become final, this Commission will be acting beyond its scope and power if a different rate is fixed.

23- This submission is fallacious. The order of Mr Justice Samrendra Pratap Singh was an interim order. He did not decide the whole dispute between the PDS dealers and the State. The very fact that the Certificate Proceeding was stayed on the basis of part payment of the price indicates that it was an interim order. In para-2 of the order Mr Justice Samrendra Pratap Singh has specifically mentioned that the writ applications filed by Chandra Shekhar (vide order dated 18/10/11 in CWJC No.10774/2011 and Raj Kishore Singh (vide order dated 18/11/11 in CWJC No.10759/2011 would be entitled to the same interim protection as ordered in CWJC No.711/2011 and 757/2011.

24- The order disposing all writ applications having granted interim protection, the efficacy of the order cannot be more than that of an interim order. The submission urged by Mr Rakesh Ranjan is not acceptable.

25- His Lordship did not state anywhere that the claim of the Deptt in terms of several proceedings was being rejected. Therefore its value cannot be higher than that of an interim order.

26- It was faintly suggested at the bar that in fixing the rate of realization it would be useful to examine the rate at which the FCI had purchased the rice. Such suggestion is meaningless. It makes no sense. We are concerned with the stage when the FCI declared its economic cost for SGRY. Any question relating to prior activity of the FCI makes no sense.

27- In fine, the two questions to be answered are as follows :-

- (i) Realisation of price of rice shall be @ Rs 1370/- per quintal.
- (ii) The PDS dealers must be paid @ Rs 50/- per quintal for transportation and handling charges.

28- Before concluding on the discussion in regard to the payments to which the PDS dealers would be entitled, I must refer to the guidelines of SGRY issued by the Government of India in regard to payment of handling and transportation charges etc. In Chapter II Para-2.8 it has been prescribed as follows :-

**“2.8 Provision of Empty Gunny Bags**

The gunny bags in which the food grains are received for distribution under the programme will be disposed of in accordance with the prescribed procedure in the State and the sale proceeds of the same can be used for making payment towards the transportation cost/handling charges.”

29- This shows that payment of handling and transportation charges was to be funded partially by the sale price fetched by the sale of gunny bags. In that view of the matter only such dealers would be entitled for transportation and handling charges who have deposited the gunny bags. If they have not deposited the gunny bags then they will not be entitled for transportation and handling charges. The payment of handling charge was correlated with the surrender of gunny bags.

sd/-

**Chairman**  
Justice Uday Sinha Judicial  
Inquiry Commission, Patna

certified to be true copy  
6412  
30/05/2017

**उमाकान्त दास**  
प्रशाखा पदाधिकारी,  
न्यायमूर्ति उदय सिन्हा न्यायिक जांच आयोग  
बिहार, पटना।