

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.  
Ghulam Mustafa Mughal, J.

Civil Appeal No.28 of 2019  
(PLA Filed on 11.10.2018)

Kashmir United Flour and General Mills Limited  
through its Managing Director (Sardar  
Muhammad Aziz Khan) situated at Hamak  
Sahalla Islamabad Pakistan.

.... APPELLANT

**VERSUS**

1. Azad Jammu & Kashmir Govt. through  
Secretary Food Department, Azad Govt. of  
the State of Jammu & Kashmir, Civil  
Secretariat, Muzaffarabad.
2. Secretary Food Department, Azad Govt. of  
the State of Jammu & Kashmir Civil  
Secretariat Muzaffarabad.
3. Director Food Department of the Azad  
Jammu & Kashmir having his office at  
151/D Satellite Town Rawalpindi Pakistan.
4. Sarwar Flour and General Mills Limited  
through its Managing Director, situated at  
Plot NO. 81-C, Street NO.06, Sector 1-10-3,  
Islamabad.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated  
18.9.2018 in Writ Petition No. 103 of 2017)

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FOR THE APPELLANT:                      Sardar Muhammad Habib  
Zia, Advocate.

FOR THE RESPONDENTS: Meer Sharafat Hussain,  
Advocate.

*Date of hearing:* 4.11.2019.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J—*** The captioned appeal by leave of the Court arises out of the judgment dated 18.9.2018 passed by the Azad Jammu & Kashmir High Court in writ petition No. 103 of 2017.

2. The brief facts forming the background of the captioned appeal are that the appellant, herein, filed a writ petition before the Azad Jammu & Kashmir High Court on 17.1.2017 alleging therein that the petitioner is 1<sup>st</sup> class State Subject and he established a Flour Mills known as “Kashmir Flour Mills Limited” at Hummak Sihalla Islamabad and he is Managing Director of the said Mills. It was stated that the petitioner requested for allocation of the quota from AJK Govt. regarding wheat grinding, but the same has not been approved, whereas, Govt.

agreed to the extent that the petitioner's Mills shall provide flour to the area of Azad Jammu & Kashmir during the emergency service on need basis. In this regard, a letter was issued by respondent No. 2 to respondent No.3 on 28.9.2008 and notification was issued on 30.9.2006. It was further alleged that the petitioner's Mills have been providing flour to depots including Gillani Flour Mills Kohala at emergency services basis during the fiscal year 2016-17. It was averred that administration of Gillani Flour Mills submitted a representation to the Govt. to discontinue its service due to renewal of its installed machinery and up-gradation of Mills. However, without abrogating notification of the petitioner, the emergent service of one thousand metric ton quota of government wheat has been granted to respondent No.3, Sarwar Flour and General Mills Ltd. vide notification dated 30.12.2016, which is against law, hence, the same may be declared null and void. The writ petition was

admitted for regular hearing and the respondents contested the writ petition by filing written statement stating therein that the petitioner executed agreement on 4.3.2007 in which it is clearly mentioned that the agreement is only for emergency. It was further stated that Gillani Flour Mills is a necessary party, which has not been arrayed, hence, the writ petition is liable to be dismissed. It was next stated that the petitioner was allotted supply of flour for the year 2016-16, which has been expired, therefore, the writ petition is liable to be dismissed on this ground too. The learned High Court after hearing the parties vide impugned judgment dated 18.9.2018 has dismissed the writ petition.

3. Sardar Muhammad Habib Zia, the learned Advocate appearing for the appellant argued that the appellant-Mills demanded the Government for additional quota of wheat for grinding purpose and supply to different areas within the Azad Jammu & Kashmir but the

request was not acceded to. He argued that respondents vide letter dated 11.12.2004 agreed to the extent that during emergency of any Flour Mills established in the Azad Jammu & Kashmir, the wheat falling in the quota of that Mills shall be got grinded from the petitioner's Mills. The learned advocate submitted that to this extent a notification was issued by the Government on 30.9.2006 followed by an agreement. He argued that the appellant-Mills remained implementing the notification in case of emergency whenever it was demanded. He further argued that Gillani Flour Mills Kohala applied to the Government that it wants to install the new machinery, therefore, the quota approved in favour of the Mills may be given to some other Mills till the up gradation and installation of new machinery. The learned Advocate argued that the quota allotted to the Gillani Flour Mills, in view of the contract, was to be allotted to the appellant's Mills, but the respondents arbitrarily allotted the quota to the

respondent's Flour Mills in violation of Government notification dated 30.12.2016. The learned Advocate further argued that the notification dated 30.12.2016 was arbitrary, illegal and violative of notification dated 30.9.2006, hence, was liable to be struck down, but the learned High Court has not taken into consideration the true aspect of the case and came to a wrong conclusion.

4. Meer Sharafat Hussain the learned Advocate appearing for the respondents has defended the impugned judgment of the High Court and submitted that no any violation has been committed by the High Court while handing down the impugned judgment. He argued that the contractual obligation cannot be gone into in writ jurisdiction. He next argued that the appellant has not invoked the jurisdiction of the High Court with clean hands. He further argued that the notification dated 30.9.2006 operates only in emergency cases and

for the whole life no any right can be claimed on the basis of this notification.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. The sole point needs resolution is that a notification has been issued by the Government of the Azad Jammu & Kashmir on 30.9.2006, whereby it was agreed that in case of any emergency the appellant's flour Mills shall be awarded contract for grinding wheat till such emergency exists. It is on the record that Gillani Flour Mills was closed for up-gradation and maintenance and the quota allocated to this Mills was given to the Server Flour Mills Islamabad for grinding vide notification dated 30.12.2016. This notification on the face of it is violative of the earlier commitment of the Government and the notification issued in favour of the appellant-Mills.

In view of the above, the appeal is accepted, resultantly, the writ petition filed by

the appellant-Mills before the High Court stands accepted in the manner that the Government is bound to furnish the quota allocated to Gillani Flour Mills to the appellant-Mills during the period the Gillani Flour Mills remained close due to up-gradation and installation of new machinery. We accordingly order. The impugned notification stands cancelled.

JUDGE

CHIEF JUSTICE.

Mirpur.  
11.2019.