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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 10.01.2022
% **Judgment delivered on: 19.05.2022**

\+ **W.P.(C) 2037/2021 and C.M. Nos.5977/2021, 11265/2021, 14906/2021, 21333/2021, 32080/2021, 32082/2021, 32083/2021, 32149/2021, 32172/2021, 32212/2021, 37963/2021, 37964/2021 & 37981/2021**

DELHI SARKARI RATION DEALERS SANGH
DELHI ..... Petitioner

Through: Mr. Visheshwar Shrivastav, Advocate.

versus

COMMISSIONER FOOD AND SUPPLIES
GOVT OF NCT OF DELHI & ORS. ..... Respondents

Through: Dr. Abhishek Manu Singhvi & Mr.Rahul Mehra, Senior Advocates with Mr. Gautam Narayan, ASC and Ms. Asmita Singh, Advocate, for the State/ GNCTD.
Ms. Aishwarya Bhati, ASG with Ms.Monika Arora, CGSC and Mr. Yogesh Panwar, Mr. Ameyavikrama Thanvi & Mr.Shoumendu Mukherjee, Advocates for respondent/ UOI.
Mr. Anurag Sarda & Mr. Ashutosh Mishra, Advocates for respondent No.6/ Brandavan Food Products.
Mr. D.P. Singh, Mr. Saumay Kapoor & Ms. Puja Raghavan, Advocates for respondent No.9.
Mr. Talha A Rahman, Mr. M. Shaz Khan, Mr. Harsh V Kediya and

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Mr.Saurabh Seth, Advocates for Intervenor/ Bandhua Mukti Morcha.

\+ **W.P.(C) 13104/2021 and C.M. Nos.41322/2021 & 41323/2021**

DELHI RATION DEALERS UNION & ORS. ..... Petitioners
Through: Mr. Yash Aggarwal & Ms.Chitrakshi, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Manish Mohan, CGSC with Ms.Dhwani Sharma, Advocate for respondent/ UOI.
Mr. Om Prakash, Standing Counsel with Mr.Pradeep Kumar Tripathi & Mr. Anil Kapoor, Advocates for respondent No.4/FCI
Dr. Abhishek Manu Singhvi & Mr.Rahul Mehra, Senior Advocates with Mr. Gautam Narayan, ASC and Ms. Asmita Singh, Advocate, for the State/ GNCTD.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

VIPIN SANGHI, J.

INTRODUCTION – SUBJECT MATTER OF CHALLENGE

1. In challenge in these two writ petitions, primarily, is the Door Step Delivery of Ration Scheme evolved by the Government of National Capital

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Territory of Delhi (GNCTD). The same, in effect, seeks to by-pass the existing Fair Price Shop (FPS) Owners/Dealers in the matter of distribution of foodgrains and wheat flour (Atta) at the door step of the beneficiaries under the Targeted Public Distribution System (TPDS).

2. W.P.(C) No. 2037/2021 has been preferred by a registered society of FPS Owners/Dealers i.e. the FPS licensees appointed under the Essential Commodities Act, 1955 (ECA).

3. W.P.(C) No. 13104/2021 has been preferred by the Delhi Ration Dealers Union through its President and six other individual petitioners. Whereas, petitioner No.1 is a Union of more than 700 FPS owners under the National Food Security Act, 2013 (NFSA), who are engaged in providing rations to TPDS card holders, petitioner Nos. 2 to 7 are some of the FPS owners who are also members of the petitioner No.1 union. These petitioners have been licensed by the GNCTD to provide ration to TPDS card holders.

4. While in W.P.(C.) No. 2037/2021, the petitioners challenge the *Mukhya Mantri Ghar Ghar Ration Yojna* (MMGGRY) Scheme and the tender numbers - Bid I.D. No. 2021_DCCWS_198395_TENDER Issuing Date: 06/01/2021, Bid I.D. No.2021 DSCSC198921_1 TENDER Issuing Date: 19/01/2021, and Bid I.D. No.2021 DSCSC198916_1 TENDER Issuing Date : 19/01/2021 issued by the GNCTD. In W.P.(C.) No. 13104/ 2021, the petitioners seek a restraint against the GNCTD from authorizing delivery of Ration at the Doorsteps of the TPDS beneficiaries through any other agency, other than the FPS owners. The petitioners seek a direction to the GNCTD to allow FPS Owners to deliver the Ration at the doorstep of

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ration cardholders/ TPDS beneficiaries. The challenge is founded upon the submission that the MMGGRY Scheme and the tenders aforesaid are arbitrary to the statutory provisions and schemes in vogue, and seriously impinging on the rights and business interest/ viability of the members of the petitioner association. At this stage itself, we may observe that during the pendency of W.P.(C) No. 2037/2021, the MMGGRY Scheme was rescinded by the Council of Ministers on 24.03.2021. However, the Council of Ministers decided to implement the same scheme – without the same nomenclature though, and, therefore, the challenge to the said Scheme survives. The arguments in these petitions have proceeded in the aforesaid background. The Door Step Delivery of ration under challenge is referred to as the impugned Scheme or MMGGRY in this judgment hereinafter for the sake of convenience.

5. We may now narrate the relevant facts which have led to filing of these two writ petitions.

RELEVANT FACTS

6. On 06.01.2021, the Delhi Consumer Cooperative Wholesale Store Limited (DCCWSL), Government of NCT of Delhi, which is respondent No. 3 in W.P.(C.) No. 2037/ 2021 issued a Notice Inviting e-bid (NIB)/ Request for Proposal (RFP) vide tender reference No: Bid I.D. No. 2021_DCCWS_198395_1 for the selection of delivery agency for implementation of direct to home delivery of Public Distribution Scheme (PDS) commodities under MMRRGY Scheme in Delhi, and to carry out the following activities:

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1. *Receipt of FPS wise Allocation order and SFA delivery schedule.*
2. *Planning and Scheduling of DHD Operations.*
3. ***Identify Set-up and Operate FPS shops with large storage at District/Group level.***
4. ***Receipt of Packed Commodities at FPS Shops with large storage at District/Group level.***
5. ***Identify Set-up and Operate Fair Price Shops at Circle level.***
6. *Doorstep Delivery of SFAs.*
7. *Setting up of MMGGRY Call Centre.*
8. *Training and Capacity Building.*
9. *Grievance Resolution and Management.*
10. *Scope of Work for the PoS vendor.*
11. *Periodic reporting to DCCWS. "* (emphasis supplied)

7. The introduction to this NIB, *inter alia*, stated as follows:

> *"Targeted Public Distribution System (TPDS) is a food security system, established by the Government of India under the Ministry of Consumer Affairs, Food and Public Distribution and managed jointly with the State/UT Governments/Administrations, to distribute highly subsidized food grains to the economically weaker sections of the society.* ***Under the PDS scheme, the subsidized food grains (Wheat and Rice) and other essential commodities like Sugar, Salt, and non-food commodities like Kerosene are distributed through a network of Fair Price Shops (also known as ration shops) established across the state.***
>
> *The operation related to Public Distribution System (PDS) in the National Capital Territory of Delhi (NCTD) is managed by the Department of Food and Supplies, GNCTD. The primary policy objective of the Department is to ensure food security for the state through timely and efficient procurement and distribution of essential commodities. This involves procurement of essential commodities, building up and*

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> *maintenance of food stocks, their storage, movement and delivery to the distributing agencies."* (emphasis supplied)

8. It disclosed that the commodities delivered and distributed each month under the TPDS are rice, wheat and sugar. The total number of ration cards issued across the NCT of Delhi were disclosed as 17,54,863.

9. It also took note of the fact that the job of lifting of commodity from the FCI godowns is managed by Delhi State Civil Supplies Corporation Ltd. (DSCSC) – respondent No. 2 in W.P.(C) No. 2037/2021, and the distribution of commodities in Delhi is currently managed by a network of 2000+ licensed fair price shops which are appointed by the department in line with the TPDS guidelines. It further stated:

> *"The beneficiaries registered under the TPDS are tagged to a Fair Price Shop as per the prescribed guidelines. The responsibility of registration of beneficiary and tagging them to the FP Shops is being carried out by the Department of F&S. For the purpose of buying the entitled ration a beneficiary reaches out to the tagged FPS. The FPS dealer performs all the kinds of operation which includes display of information on a notice board at a prominent place in the shop on daily basis regarding.*
>
> *a) Entitlement of foodgrains,*
>
> *b) Scale of issue,*
>
> *c) Retail issue prices,*
>
> *d) Timings of opening and closing of the fair price shop including lunch break, if any,*
>
> *e) Stock of foodgrains received during the month,*
>
> *f) Opening and closing stock of foodgrains,*
>
> *g) The mechanism including authority for redressal of grievances with respect to quality and quantity of*

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foodgrains under the Targeted Public Distribution System and

h) Toll-free helpline number etc.

Apart from the above, the FPS dealer is also responsible for:

i. Producing books and records relating to the allotment and distribution of foodgrains to the inspecting agency and furnishing of such information as may be called by the designated authority;

ii. Maintaining accounts of the actual distribution of foodgrains and the balance stock at the end of the month, at the fair price shops and reporting the same to the designated authority of the State Government with a copy to the local authority'

iii. Maintaining opening and closing of the fair price shop as per the prescribed timings displayed on the notice board etc.

The entire operation involved in the sale of commodity at Fair Price Shops, is directly monitored by the officials of Department of Food, Supplies and Consumer Affairs at District and Circle level. The responsibility of the department officials is to carry out regular inspections of fair price shops to ensure that stocks of foodgrains under the Targeted Public Distribution System, as issued from the Corporation godowns, are not replaced or tampered during storage, transit or at any stage till delivery to the ration cardholder."

10. The NIB states, in paragraph 1.2 – under the heading "*Overview of Mukhya Mantri Ghar-Ghar Ration Yojna*", that over the years, post implementation of TPDS scheme in Delhi, feedback has been received from citizens through various channels regarding the enumerated deficiencies in the existing TPDS system. The deficiencies pointed out were the following:

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"

a) *Non-issuance of commodity to the end user beneficiary.*
b) *Non-issuance of commodity as per the entitlement.*
c) *Commodity supplied by Delhi State Civil Supplies Corporation is replaced with substandard/expired commodity.*
d) *Beneficiaries are misled by FPS.*
e) *FPS have been found to be closed during official operating hours.* "

11. The NIB further notes that with the aim to reform the TPDS, and to ensure that the targeted beneficiaries receive their monthly ration in a transparent manner with maximum ease, the GNCTD had planned to launch a new scheme, namely MMGGRY with the aim to make quality ration available at the door step of the beneficiary in a packaged form to ensure that the right quality and right quantity is received by the beneficiary.

12. It further states that the MMGGRY involves distribution of wheat flour (Atta) instead of wheat, which is being distributed as a part of the existing NFSA Scheme. Further, rice could be distributed to the beneficiaries in packaged form after removing foreign objects/ impurities.

13. The aforesaid scheme of the GNCTD envisaged that the Miller would lift NFSA wheat and Rice from the FCI Depots, where after wheat would be processed into wheat flour (Atta) to be made available for distribution in packaged form. Rice would be cleaned, and packed prior to distribution to the end beneficiaries. Post processing of wheat flour (Atta) and rice, the Miller would lift and deliver the same – packaged in a master bag to the FPS shops of Direct to Home Delivery (DHD) agency – to be empanelled by the

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Delhi Consumer's Co-operative Wholesale Store Ltd. (DCCWS) Respondent No. 3, as per agreed schedule between the Miller and DHD agency within stipulated time frame and subject to directions issued by DSCSC/ DCCWS/ Department of F&S, GNCTD. The packaged wheat flour (Atta) and rice will then be delivered at the door step (direct to home) of the beneficiary by a DHD agency appointed by the department. The beneficiary will be informed in advance, for convenience, and the distribution will take place after successful biometric authentication of the beneficiary.

14. Clause 2 of the NIB sets out the scope of work for the bidder which, *inter alia*, envisaged the rendering of service as a door step delivery agency for wheat flour (Chakki Atta), Rice and Sugar to be distributed at the door step of the NFSA beneficiaries in Delhi under the MMGGRY Scheme. Clause 2.3 of the NIB/ RFP states that the bidder shall be responsible for the identification and setting up of fair price shop(s) with larger storage facility for DCCWS under MMGGRY Scheme at the district or group level for interim storage of commodity, prior to the distribution of the same at the door step of the beneficiary. The bidders must open adequate number of such fair price shops with large storage facility considering the number of households to be catered, and the quantity of commodity to be distributed in the group allotted to the bidder. The bidder shall identify the FPS location and inform the same to DCCWS. DCCWS would then obtain the necessary licenses against each identified premises from the Department of Food and Civil Supplies, GNCTD. Clause 2.6 states that the bidders must ensure that the delivery of packaged commodity lifted from the FPS shop at district/

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group level takes place at the door step of MMGGRY beneficiary in a timely manner in accordance with the delivery schedule.

15. The aforesaid RFP/ NIB was followed by two more RFP/ NIB's both dated 19.01.2021 issued by the DSCSCL – respondent No. 2 in W.P.(C.) No. 2037/ 2021. The first of these two NIB's bearing reference No.: Bid I.D. No.2021_DSCSC_198916_1, was issued for the purpose of inviting electronic bids/ proposals for the empanelment of qualified Flour/ Chakki Miller located in Delhi to dedicatedly work for DSCSC and carry out the following activities:

"

1. *Transportation of NFSA Wheat packed in bags of different sizes on principal to principal basis from FCI Godowns located in National Capital Territory of Delhi to the place of dedicated milling unit.*
2. *Processing of Wheat into Wheat Flour (Atta) at dedicated milling unit.*
3. *Packaging of Wheat Flour (Atta) in different size at dedicated milling unit as per the requirement of DSCSC and*
4. *Delivery of Wheat Flour (Atta) packet from the dedicated milling unit to the designated FPS shop as per the delivery scheduled agreed between the Bidder and the doorstep delivery agency."*

16. Clause 2.0 of this RFP/ NIB sets out the scope of work for the bidder, and the same, inter alia, states that "*DSCSC is looking forward to empanelling Flour/Chakki Atta who will work dedicatedly for DSCSC and will be responsible for lifting, transportation, milling, packing of Wheat*

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Flour (Atta) (WFA) and delivering the packaged commodity at the designated FPS shop…"

17. Thus, it would be seen that the aforesaid RFP/ NIB dated 19.01.2021 was issued in relation to the processing of NFSA wheat into wheat flour (Atta) for distribution under the MMGGRY Scheme of GNCTD. On the same day, the DSCSC – respondent No.2 issued another RFP/ NIB vide tender reference No. : BID I.D. No. 2021_DSCSC_198921_1 for the purpose of empanelment of agency for transportation, cleaning, processing, packaging and delivery of packaged Rice for distribution under MMGGRY Scheme of GNCTD.

18. The purpose of this RFP/ NIB was to empanel qualified bidders for doing dedicated work for the DSCSC, and to carry out the following activities:

"

1. *Transportation of NSFA Rice packed in bags of different sizes on principal to principal basis from FCI Godowns located in National Capital Territory of Delhi to the place of dedicated Rice processing (cleaning and packaging) unit.*
2. *Cleaning of Rice to ensure it does not contain any impurities or foreign substance.*
3. *Packaging of Rice in different sizes at dedicated unit as per the requirement of DSCSC.*
4. *Delivery to packaged Rice from the dedicated Rice processing unit to the Designated FPS as per the delivery scheduled agreed between the Bidder and the doorstep delivery agency storage location."*

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19. The scope of work contained in Clause 2 of this RFP/ NIB, inter alia, states that "*DSCSC is looking forward to empanelling Bidders who will work dedicatedly for DSCSC and will be responsible for lifting, transportation, cleaning, packing of Rice and delivering the packaged Rice at the designated FPS shops*"

20. Thus, the aforesaid RFP related to transportation, processing, packaging and delivery of packaged Rice for distribution under the MMGGRY Scheme. The terms and conditions of the aforesaid two RFP/ NIB dated 19.01.2021 are, otherwise, more or less similar, except that while the first deals with the aspect of lifting, transportation, processing and distribution to the fair price shops of NFS Wheat (Atta) up to the fair price shops, the second deals with the lifting, transportation, cleaning, packaging and delivery of rice at the designated FPS.

21. The petitioners sought information on 22.12.2020 in relation to the MMGGRY from the GNCTD. The petitioners, inter alia, sought a copy of the said Scheme, and raised various issues in relation to the sanction/ approval of the scheme by the Cabinet of Ministers of the GNCTD; the Legislative Assembly of Delhi; the Lieutenant Governor of the GNCTD, and raised other related queries. On 01.01.2021, the GNCTD responded in the affirmative to the query whether the Government of NCT of Delhi is operating a scheme called MMGGRY. In relation to all the other queries, the answer given was that "*since door step delivery of ration scheme is being implemented consequent to Cabinet Decisions informations can't be provided in terms of Section 8(i) of Right to Information Act, 2005*."

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22. The MMGGRY Scheme was notified by the Department of Food Supplies and Consumer Affairs of the GNCTD on 20.02.2021. The framework of door step delivery of ration under the notified scheme is stated as follows in the aforesaid notification:

> ***3. Framework for Doorstep Delivery of Ration***
>
> ***As per new scheme i.e. Mukhya Mantri Ghar Ghar Yojna, food grains will be lifted from FCI godown by the Millers empanelled by DSCSC through tendering process and transported to the milling units, where Wheat will be converted into Wheat Flour (Chakki) Atta (WFA) and packed in packets of different weights as per requirement. Similarly, Rice will be lifted from FCI godown to Rice Processing Units where it will be cleaned and packed in packets of different weights as per requirement. These packed items will be delivered to designated FPSs by the Millers which will be further delivered to the doorstep of beneficiaries. Distribution of packaged items (Wheat Flour Atta & Rice) will be done only after successful biometric authentication using e-PoS devices. The cost of subsidized food grains and a specified amount as milling/conversion charges will be collected from the beneficiaries.***
>
> *The scheme will be optional, and an option shall be taken from the beneficiaries of existing TPDS scheme in Delhi, as to whether they want to enrol under MMGGRY or continue under existing TPDS. Those who are not opting for MMGGRY shall continue to get their ration as per existing mechanism and price. Beneficiaries will be able to exercise option in the beginning of every financial year.*
>
> *Implementation of the MMGGRY scheme will be done into two stages.*
>
> *i.* ***Stage-1:*** *Delhi State Civil Supplies Corporation Ltd. (DSCSC) has been engaged as the implementation and monitoring agency for Stage-1 and is entrusted with the*

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empanelment of millers/processing unit, who shall carry out the lifting of foodgrains (Wheat and Rice) from FCI godowns, transporting to their dedicated milling units, where it would be Milled/processed, packed and then transported to the designated Fair Price Shops for doorstep delivery of ration to the end beneficiaries.

The DSCSC Ltd. will empanel Millers who shall setup and operate milling and processing units for MMGGRY Scheme. These Millers will be responsible for lifting and transportation of commodities (Wheat and Rice) from FCI godown to these dedicated milling and processing units. The Millers/Processing Units shall store, clean and grind the wheat using only the stone (chakki) mills to make Wheat Flour (Atta). Similarly, the Rice shall be cleaned of all impurities like straws, jute bag thread, dust etc. The Wheat Flour (Atta) and clean Rice shall be packed using standard quality of packaging material and shall have the name of mill, batch no., date of manufacturing, expiry (best before) date, and all mandatory information on each packet. These packed Commodities shall be then delivered at the Fair Price Shops of DCCWS for further distribution to the doorstep of the end beneficiaries.

ii. Stage-2: Delhi Consumer's Co-operative Wholesale Store Ltd. (DCCWS) has been engaged with the responsibility of setting up of Fair Price Shops across various districts of Delhi. Further, it shall empanel Direct to Home Delivery (DHD) agencies for delivering the packaged commodities to the doorstep of the end beneficiaries from DCCWS associated Fair Price Shops.

The DCCWS shall empanel Direct to Home Delivery Agencies who shall be responsible for lifting the packed rations from Fair Price Shops and deliver the same to doorstep of beneficiaries.

The DHD Agency shall notify the beneficiary in advance through SMS. The packed ration shall be handed over to

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> *the beneficiary only after his/her successful biometric authentication using the e-PoS device. An e-PoD (Proof of Delivery) shall be captured for records. The ration card holders may draw their full entitlements of food grains (packed rations) in more than on instalment.*
>
> *There will be provision of a grievance management system to enable the beneficiaries of MMGGRY to raise their grievances related to the scheme. A call centre for beneficiaries is also envisaged under the scheme. The DHD Agency shall also carry out beneficiary reach out programmes from time to time and provide various scheme related information to the beneficiaries.*
>
> *To ensure transparency and to prevent leakage/diversion/substitution/theft etc., the scheme shall be monitored closely by the Department. The entire operation from lifting of food grains form FCI, milling, packaging all the delivery of packaged commodities to the beneficiary shall be carried out under CCTV monitoring, and the transportation of commodities shall be done in GPS fitted vehicles.*
>
> *This issues with the prior approval of Hon'ble Minister (Food, Supplies & Consumer Affairs) based on Cabinet Decision No. 2561 dated 06.03.2018, Cabinet Decision No. 2857 dated 21.07.2020 and Cabinet Decision No. 2878 dated 09.10.2020."* (emphasis supplied)

23. In the aforesaid background, W.P.(C.) No. 2037/ 2021 came to be filed before this Court.

24. Correspondence ensued between the GNCTD and the Central Government, and also between Chief Minister and the Lieutenant Governor – in the form of file notings, of which we shall take notice a little later. The same resulted in the decision dated 24.03.2021 No. 2987, of the Council of Ministers, which reads as follows:

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NOTE FOR COUNCIL OF MINISTERS

"GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI DEPARTMENT OF FOOD, SUPPLIES & CONSUMER AFFAIRS - BLOCK, VIKAS BHAWAN, I.P. ESTATE, NEW DELHI - 110002

MINSTER-IN-CHARGE : Shri Imran Hussain

SECRETARY-IN-CHARGE : Shri Ankur Garg

NOTE FOR COUNCIL OF MINISTERS

1. *The Council of Ministers, GNCTD vide Cabinet Decision No.2561 dated 06/03/2018 (Annexure-I), approved the scheme of delivery of ration (Wheat Flour (Atta), Rice and Sugar as per entitlement) at the doorstep of the end beneficiaries under Targeted Public Distribution System.*

2. *The Council of Ministers, GNCTD vide Cabinet Decision No. 2857 dated 21/07/2020 (Annexure-II) approved certain modifications in the scheme as detailed at para 12 to 20 in the scheme of Home Delivery of Ration under TPDS approved vide Cabinet Decision No. 2561 dated 06/03/2018 and also decided to name the scheme 'Mukhya Mantri Ghar Ghar Ration Yojna'.*

3. *Accordingly, the "Scheme Document" of Door Step Delivery of Ration (Wheat Flour, Rice and Sugar) under Targeted Public Distribution System under "'Mukhya Mantri Ghar Ghar Ration Yojna" was notified vide notification dated 20/02/2021 (Annexure-III).*

4. *Deptt. of Food & Public Distribution, M/o Consumer Affairs, Food & Public Distribution, GoI vide letter No.D.O.No.24(Delhi)/2021-PD.II(E.374438) dated 19/3/2021 (Annexure-IV) clarified that the subsidized food grains being allocated by M/o Consumer Affairs, Food & Public Distribution, GoI for distribution under the National Food Security Act (NFSA) cannot be used for the operationalization of any State specific/ other scheme under a different name/ nomenclature/ scheme other than NFSA, as the same is not permissible under*

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the Act. Further, any changes/ amendments in the provisions of the Act including nomenclature/ schemes used for distribution of NFSA food grain can only be done through the Parliamentary procedures.

5. *Further, highlighted thatwhile States may like to enhance the distribution of subsidized food grains, including additional entitlements, more subsidy, etc. the nomenclature/ scheme from NFSA to any local state scheme name may be misinterpreted by the beneficiaries as State benefit and may give rise to confusion regarding their rights under the Act.*

6. *Gazette Notification with the nomenclature/ scheme "MMGGRY" has already been issued vide No. F.2(172)/F&S/IT/2017-18/Vol./185-215 dated 20/02/2021.*

7. *The matter has been examined in the light of communication received from Deptt. of Food & Public Distribution, M/o Consumer Affairs, Food & Public Distribution, GoI vide letter No.D.O.No.24(Delhi)/2021-PD.II(E.374438) dated 19/3/2021 and the following is accordingly proposed:-*

   (i) *The scheme "'Mukhya Mantri Ghar Ghar Ration Yojna " notified vide dated 20.02.2021 be rescinded/ withdrawn herewith.*

   (ii) *Implementation process of door step delivery of processed and packaged Wheat Flour Atta, Rice and Sugar shall be continued in accordance with the provisions of NFS Act 2013 and TPDS.*

   (iii) *All activities undertaken by the Deptt. including the tendering process for empanelment of agencies for implementation of the Door Step Delivery of processed and Packaged ration of NFSA will remain valid and shall continue.*

8. *In view of above, the proposal at para-7 above is submitted for kind consideration of Council of Ministers.*

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(IMRAN HUSSAIN)
Minister of Food, Civil Supplies & Consumer Affairs"

CABINET DECISION

"GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
GENERAL ADMINISTRATION DEPARTMENT
(CO-ORDINATION BRANCH)
DELHI SECRETARIAT, I.P. ESTATE, NEW DELHI

No.F:03/10/GAD/CN/2021/dsgadiii/1683-9 Dated:24/03/2021

TABLED ITEM

CABINET DECISION NO. 2987 DATED 24.03.2021

Subject: Door Step Delivery of Ration

Decision: The Council of Ministers considered the Cabinet Note of Minister (F, CS & CA) and approved the proposal contained in para-7 (i),(ii) and (iii) of the Cabinet Note.

--Sd--
(Vijay Kumar Dev)
Secretary to the Cabinet"

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

25. The submission of Mr. Shrivastav, learned counsel for the petitioners is that the impugned Scheme, and the three tenders floated by the GNCTD even prior to the promulgation of the scheme, seek to destroy the statutory framework created for distribution of food articles under the TPDS to the

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beneficiaries, by by-passing the existing FPS, and substituting them with other third parties who may succeed in the tendering process initiated by the respondents, as aforesaid.

26. Mr. Shrivastav submits that the existing fair price shop owners have been granted licenses under Section 3 of the ECA. He submits that under Section 3 of the ECA, from time to time, orders have been issued for the purpose of continuation of the licenses of the existing fair price shops. He has drawn our attention to the statutory scheme. He submits that fair price shops have always been the point of distribution of foodgrains under the PDS to the beneficiaries, and that position has not changed despite introduction of different schemes, from time to time. Under the ***Delhi Specified Food Articles (Regulation of Distribution) Order, 1968***, (Order 1968), clause 2(7) defines a Fair Price Shop Holder to mean a retail dealer authorized under Clause 3 in respect of any specified food article. Under Clause 3, the administrator (or any authorized officer) could authorize any person or body of persons to be, inter alia, a Fair Price Shop Holder in respect of specified food articles. The authorized Fair Price Shop Holder could obtain and supply specified food articles in accordance with the provisions of the order. Even when the ***Delhi Specified Articles (Regulation of Distribution) Order, 1981***, (Order 1981), was issued by the Administrator of the UT of Delhi on 12.01.1981, it continued with the institution of Fair Price Shops by defining in Clause 2(9) a "*Fair Price Shop Holder*" to mean a retail dealer authorized under Clause 3 in respect of any specified article. The existing Fair Price Shop Holders under the previous order were continued, unless their appointment/ authorization was rescinded.

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Clause 3(1) enabled the Administrator, or (an authorized officer), to authorize a Fair Price Shop Holder to deal in specified articles i.e. to obtain and supply specified articles in accordance with the provisions of the said Order. Even when the ***Public Distribution System Order 2001***, (PDS Order 2001), was issued by the Central Government under Section 3 of the ECA, the institution of fair price shop was continued. The Public Distribution System, under the PDS Order 2001, was defined to mean the system for distribution of essential commodities to the ration card holders through Fair Price Shops such as rice, wheat, sugar, edible oils, kerosene and such other commodities, as are notified by the Central Government under Clause (a) of Section 2 of the ECA. Clause 6 of this Order, which dealt with the aspect of distribution of foodgrains, inter alia, charged the Fair Price Shop owners with the responsibility of taking delivery of food stocks from authorized nominees of the State Governments to ensure that essential commodities are available at the Fair Price Shops within one week of the month for which the allotment is made. The District authority entrusted with the responsibility of implementation of Public Distribution System was charged with the responsibility to ensure that the stocks provided to the Fair Price Shops are physically delivered to them by the authorized nominee. Even when the NFSA was enacted in 2013, the institution of Fair Price Shops was continued. Section 2(4) of the NFSA defined "*Fair Price Shop*' to mean a shop which has been licensed to distribute essential commodities by an order issued under Section 3 of the ECA to the ration card holders under the TPDS. The ration card, itself, was defined as a document issued for the purchase of essential commodities from the FPS under the TPDS. The TPDS was defined to mean a system for distribution of essential

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commodities to the ration card holders through FPS. Thus, it is argued that the FPS has remained the nodal point for distribution of foodgrains etc. to the beneficiaries under the statutory schemes which have prevailed from time to time.

27. The submission of Mr. Shrivastav is that Section 12 of the NFSA speaks about the reforms that the Central and State Governments shall endeavour to progressively undertake in the implementation of the TPDS System. He submits that the reforms, inter alia, include "*door step delivery of foodgrains"* to the TPDS outlets i.e. Fair Price Shops. He submits that the NFSA nowhere contemplates the doing away with the existing Fair Price Shop structure, and replacing the same with a wholly new set of Fair Price Shops as envisaged under the RFP/ NIB dated 06.01.2021 and the impugned Scheme.

28. Even Section 22 of the NFSA obliges the Central Government to, *inter alia*, provide assistance to State Governments in meeting the expenditure incurred by it towards intra-state movement, handling of foodgrains and margins paid to fair price shop dealers.

29. Mr. Shrivastav submits that, particularly, the RFP/ NIB dated 06.01.2021 seeks to put the existing Fair Price Shop dealers out of business by diverting foodgrains allocated by the Central Government under the NFSA, so as to implement the impugned Scheme, for which purpose the GNCTD proposes to issue Fair Price Shop licenses to the successful bidders who would perform the obligations in terms of the requirements of the RFP/ NIB dated 06.01.2021. Mr. Shrivastav submits that this action of the GNCTD is in the teeth of the obligation cast on GNCTD by Section 24 of

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the NFSA. Section 24 charges the State Governments with the responsibility for implementation of monitoring of schemes of various Ministries and Departments of the Central Government in accordance with the guidelines issued by the Central Government for each scheme, for ensuring food security to the targeted beneficiaries in the NCT of Delhi. Section 24(2) specifically charges the GNCTD with the responsibility under the TPDS, to deliver the foodgrains from the designated depots of the Central Government in the NCT of Delhi, "*at the door step of each Fair Price Shop*"

30. He submits that the GNCTD is also obliged to ensure actual delivery or supply of foodgrains to the entitled persons at specified prices. However, for that purpose, it is the obligation of the GNCTD to follow the statutory scheme laid down in the NFSA and in the TPDS Order, 2015.

31. Mr. Shrivastav submits that though the GNCTD is entitled to formulate other food based welfare schemes, and to evolve schemes for providing benefits higher than those provided under the NFSA and the TPDS Order, 2015, from its own resources, in the garb of so doing, the GNCTD cannot destroy the existing structure of Fair Price Shops and put them out of business.

32. Mr. Shrivastav points out that the Central Government has framed the ***Food Security Allowance Rules, 2015*** (Allowance Rules, 2015), under Section 39(2)(c) read with Section 8 of the NFSA. Under these Rules, Food Security Allowance is payable to the beneficiaries to whom foodgrains are not supplied. However, Rule 9 states that Food Security Allowance shall not be payable to an entitled person who does not visit Fair Price Shop to

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claim his entitlement during the month. Thus, under the Scheme of the NFSA and the Rules framed thereunder, the Fair Price Shops are envisaged as the last point – in the TPDS, wherefrom foodgrains are required to be collected by the targeted beneficiaries. Similarly, the ***Food Security (Assistance to State Governments) Rules, 2015*** (Assistance to State Governments Rules, 2015), framed by the Central Government envisages intra-state movement as movement of foodgrains within a State from a designated depot to the door step of the Fair Price Shops. In this regard, he has also drawn the attention of the Court to Rules 3 and 5 of the said Rules.

33. Even under ***the Targeted Public Distribution System (Control) Order, 2015***, (TPDS, Order 2015), Clause 7(11) obliges the State Government to devise suitable mechanism for transportation of foodgrains from the FCI godowns, inter alia, to the door-step of Fair Price Shops. Mr. Shrivastav submits that Clause 8 of the TPDS, Order 2015 mandates that the allocation of the foodgrains made to the State Government shall be used for distribution as per the provisions of the NFSA, and not for any other purpose. Clause 8(3) mandates the State Government to ensure that physical delivery of foodgrains takes place to the Fair Price Shops in a time bound manner. Under Clause 8(4), the State Government is obliged to obtain a monthly certificate confirming delivery of allocated foodgrains to the fair price shops. He further submits that under Clause 10 of the TPDS Order, 2015, it is the responsibility of the Fair Price Shop owners to disburse foodgrains to the ration card holders as per their entitlement under the TPDS. Thus, Mr. Shrivastav submits that, particularly, by notifying the RFP/ NIB dated 06.01.2021, the respondent GNCTD is seeking to

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completely destroy the existing structure for distribution of foodgrains under the NFSA and TPDS, by inviting other agencies to take over the task of distribution of foodgrains to the TPDS beneficiaries. This is being done under the garb of empanelling agencies who would supply the foodgrains at the door step of the beneficiaries after the same is processed, such that wheat is converted into Atta, and rice is cleaned and both are packed in packages. He further submits that under the impugned Scheme, the GNCTD has purportedly given an option to the TPDS beneficiaries as to whether they would like to be covered by the said Scheme, or whether they would like to continue to avail of the benefits of the TPDS through the existing system of retail Fair Price Shops.

34. Mr. Shrivastav submits that the financial viability of the Fair Price Shops has to be ensured, and the introduction of the impugned Scheme, and appointment of contractors in response to the RFP/ NIB issued by the respondent GNCTD, would take away a substantial number of ration card holders who are registered with the existing Fair Price Shops, thereby resulting in reduction of the turnover of the existing Fair Price Shops, and making the Fair Price Shops financially unviable.

35. In support of this submission, Mr. Shrivastav, firstly, relies on Rule 8 of the Assistance to State Governments Rules, 2015, which obliges the State Government to ensure payment of Fair Price Shop margins in advance. It also provides that if the price of foodgrains payable by Fair Price Shop dealers in any State or Union Territory, is lower than the Fair Price Shop dealer's margin, the State Government shall ensure upfront payment of margin, in full, to fair price shop dealers. Even under the TPDS Order,

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2015, the viability of Fair Price Shops has been statutorily mandated. Rule 9(5) stipulates that license of Fair Price Shop owners shall be issued, keeping in view the viability of the Fair Price Shops. He submits that this only means that not only the Fair Price Shop to which the license may be issued should be financially viable, but also that the existing Fair Price Shops who continue to remain financially viable. The issuance of any fresh license to a Fair Price Shop owner cannot be at the cost of financial viability of the existing Fair Price Shops. Rule 9(6) obliges the State Government to ensure that the number of ration card holders attached to a Fair Price Shop is reasonable. Rule 9(7) obliges the State Government to fix an amount as the Fair Price Shop owner's margin, which shall be periodically reviewed for ensuring sustained viability of the fair price shop operations and to improve the viability of the Fair Price Shop operations. Rule 9(9) mandates that the State Government shall allow the sale of commodities, other than foodgrains distributed under the TPDS system, at the Fair Price Shops. Thus, the financial viability of the existing Fair Price Shops is bound to be protected by the State Government. However, the proposed issuance of Fair Price Shop licenses to the successful bidders under the tenders in question, coupled with the taking over of the operations of the existing Fair Price Shops for the purpose of attainment of door step delivery of foodgrains at the door step of beneficiaries, would completely destroy the financial viability of the existing Fair Price Shops. Mr. Shrivastav submits that the impugned Scheme and the tenders in question, are in the teeth of the NFSA and the TPDS Order, 2015. He has also relied upon the *Justice Wadhwa Committee Report* (the said Committee was constituted under the directions of the Supreme Court in W.P.(C.) No. 196/ 2001 to look into the maladies

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affecting the proper functioning of the Public Distribution System and to suggest remedial measures). One of the specific points of reference made by the Supreme Court was "*the ideal commission or the rates payable to the dealers"*, wherein the Committee, in depth, examined the question of viability of Fair Price Shops. It also took note of the existing guidelines of the Food Department, requiring 1000 food cards to be attached to a Fair Price Shop unit.

36. Mr. Shrivastav submits that the issue with regard to distribution of wheat flour (atta) to ration card holders through TPDS under the NFSA was addressed by the Central Government on 03.11.2014, wherein the Government issued a direction to the State Government that they "*may distribute wheat flour (Atta) through the network of Fair Price Shops to the eligible TPDS beneficiaries under the NFSA, 2013, subject to certain conditions*."

37. Therefore, Mr. Shrivastav submits that there is nothing novel about the conversion of wheat into Atta, and about its distribution to the TPDS beneficiaries. Similarly, he submits that even in respect of door step delivery of foodgrains to eligible beneficiaries under the TPDS, the issue was addressed by the Central Government, as early as on 01.02.2018. The Central Government, by this communication, addressed to all the States and Union Territories, *inter alia*, directed as follows:

"

> *3. The matter of distribution of entitled quantity of foodgrains to such beneficiaries has been under the consideration of Government of India. After careful*

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examination of the matter, it is proposed to put in place the following special dispensation of such beneficiaries:

a) NFSA beneficiary(ies), who are above sixty five years of age, or who are differently abled, and have no other adult family member (16 to 65) listed in the Ration Card, and are not in a position to visit the Fair Price Shop themselves, would be eligible to be covered under the special dispensation.

b) State/UT Government may consider adopting any of the two approaches mentioned below to ensure regular supply of foodgrains to beneficiaries under such special dispensation:

i. Home delivery of the entitled quota of foodgrains: State may devise the procedure for supply of foodgrains at the doorstep of such beneficiaries without adding any additional cost to the beneficiaries. A few states like Odisha have adopted this mode for distribution of foodgrains.

ii. Delivery through authorized nominees of such beneficiaries: Such beneficiaries should apply for special dispensation to the authority issuing ration cards along with details and Aadhaar number of their nominee for receiving the entitled foodgrains on their behalf. Such nominee must fulfil following conditions:

- *The nominee must be a NFSA beneficiary tagged to the same FPS.*
- *Foodgrains should be issued to the nominee only after proper authentication/identification as in case of any other NFSA beneficiary.*
- *FPS dealer or his/her family members cannot be authorized as a nominee.*

iii. After approval, the nominee may be added in the ration card of such beneficiary and would be entitled to receive the ration of such beneficiary on his/her behalf.

iv. Vigilance Committee(s) may also be advised to identify and recommend such beneficiaries to be covered under special dispensation to the concerned District Supply Officer."

(emphasis supplied)

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38. The submission of Mr. Shrivastav is that the Fair Price Shop owners are themselves poor and marginalized sections of the society, and the object of appointing them as Fair Price Shop licensee is to provide gainful employment to them. In this regard, he has placed reliance on the memorandum issued by the NCT of Delhi laying down the policy for allotment of PDS outlets. It stipulates that: a) 10% of the PDS outlets shall be reserved for women candidates, whose spouse is not gainfully employed. Preference may be given to young widows; b) 10% of the PDS outlets shall be reserved for ex-servicemen and war-widows with preference to war-widows; c) 10% reservation will be kept for women out of SC quota (which is 25% of overall vacancies), and d) The remaining preferential categories of physical handicapped persons, cooperative societies and employed graduates. He submits that the impugned RFP/ NIB dated 06.01.2021 goes contrary to the aforesaid governmental decision. He submits that under the RFP/ NIB dated 06.01.2021, there is no preference/ reservation provided for any of the aforesaid categories. Clause 3.3 talks about formation of consortium by bidders of a maximum of 2 bidders. The bidder, and each member of consortium, is not allowed to participate in more than one bid. He submits that the bidders are required to furnish, as part of their bid, an earnest money deposit (EMD) of Rs.88 lakhs by means of a bank guarantee valid for 180 days. He, thus, submits that the endeavour of the GNCTD is to highjack the system of procurement and distribution of foodgrains under the TPDS, and to place it in the hands of people with deep pockets.

39. Mr. Shrivastav submits that the Central Government has not only not approved of the impugned Scheme formulated by the Council of Ministers,

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but has expressly disapproved of the same. In this regard, he has drawn our attention to the communication dated 19.03.2021 of the Central Government, issued with reference to the notification issued by the GNCTD dated 20.02.2021 for implementation of the MMGGRY – door step delivery of ration scheme under the TPDS. The Central Government informed the GNCTD that the subsidized foodgrains being allocated by the Central Government for distribution under the NFSA cannot be used for the operationalisation of any State specific/ other scheme under a different name/ nomenclature, other than NFSA, as the same is not permissible under the NFSA. Further any change/ amendments in the provisions of the Act, including nomenclatures used for distribution of NFSA foodgrains can only be done through the Parliamentary procedure. The Central Government stated that it will have no objection if a separate scheme is made by the State Government, without mixing the elements of NFSA foodgrains. The GNCTD was called upon to follow the norms and provisions of the NFSA in the rightful spirit and manner for the distribution of NFSA foodgrains to the eligible beneficiaries under the Act.

40. Mr. Shrivastav has also drawn our attention to the communication issued on 17.06.2021, whereby the Central Government communicated to the GNCTD the non-compliance of some of the provisions of the NFSA by the GNCTD. The communication specifically referred to non-compliance of Section 12; non-compliance of Section 28; non-compliance of Section 29 and non-compliance of Section 38 of the NFSA. It also gave a direction under Section 38 of the NFSA to the GNCTD to take steps to fulfill the pending obligations under Section 12 of the Act immediately, to enable the

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transparent distribution of foodgrains (through *ePoS*) under both – NFSA and PM-GKY, to all NFSA beneficiaries in Delhi, including migrants through One Nation One Ration Card (ONORC).

41. Mr. Shrivastav submits that on 22.06.2021, the Central Government, once again, pointed out concerns and shortcomings in the door step/ home delivery of ration (wheat flour, rice and sugar) under TPDS Scheme of the GNCTD. On 08.10.2021, the Central Government again directed the GNCTD to follow the norms and provisions of the NFSA, 2013 in rightful spirit and manner, while distributing foodgrains to the eligible NFSA beneficiaries under the TPDS. At the same time, it stated that "*This Department will have no objection if a separate scheme is made by the State Government without mixing the elements of the NFSA foodgrains. It is therefore informed that all the statutory provisions of NFSA, 2013 are mandatory, and operation of TPDS as mandated shall be conducted in the manner prescribed under the NFSA, in order to ensure transparent and rightful targeting. The alleged proposal under consideration with Delhi Government for HOME DELIVERY does not fulfil the norms of NFSA and therefore, is not permissible in its current form by Government of India*.

42. Mr. Shrivastav submits that in relation to a Union Territory "*State Government*" is defined in Section 2(d) of the ECA, to mean the Administrator thereof. Mr. Shrivastav submits that the Council of Ministers headed by the Chief Minister, is bound to place all matters before the Lieutenant Governor. He submits that the impugned Scheme has been disagreed with by the Lieutenant Governor. The only course open to the GNCTD was to have the disagreement resolved by the President. In the face

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of the disagreement expressed by the Lieutenant Governor, the Council of Ministers – headed by the Chief Minister, could not have proceeded to pursue their impugned scheme and tenders. In this regard, he has drawn our attention to Articles 239 and 239AA – particularly Sub Article (4) thereof, and to the provisions of the ***Government of National Capital Territory of Delhi Act, 1991*** (GNCTD Act) – in particular Sections 41-45 contained in Part IV thereof.

43. Mr. Shrivastav submits that a perusal of the impugned Scheme – notified by the GNCTD on 20.02.2021 at the end states "*This issues with the prior approval of Hon'ble Minister (Food, Supplies & Consumer Affairs) based on Cabinet Decision No. 2561 dated 06.03.2018, Cabinet Decision No. 2857 dated 21.07.2020 and Cabinet Decision No. 2878 dated 09.10.2020.*" The approval of the Lieutenant Governor – in whose name official acts have to be undertaken, is conspicuous by its absence. This is because the Lieutenant Governor did not agree with the Cabinet decision framing the impugned Scheme.

44. Mr. Shrivastav submits that the GNCTD has acted deliberately, in violation of Article 239AA(4) of the Constitution of India. The MMGGRY Scheme was notified, despite difference of opinion with the Lieutenant Governor and without the reference being made to the President of India. In this regard, he has drawn our attention to the file noting in the relevant file at Page 2/N at serial No.11, wherein the FSO (Policy), inter alia, observed on 22.05.2021: "*Government of NCT of Delhi (Amendment) Act, 2021 has come into force with effect from 27th April, 2021 vide Ministry of Home Affairs, GoI Notification No. S.O. 1705 (E) dated the 27th April, 2021, and pursuant*

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to this Notification, order dated 28th April, 2021 of PpI Secy to LG specified the subjects for the opinion of Hon'ble LG. Accordingly, the Law department has advised that since the draft Notification is under NFSA Act, 2013 in exercise of the powers of the State Government, the opinion of Hon'ble LG shall be obtained before taking action pursuant to the decision of the Hon'ble Council of Ministers. Therefore, the draft notification rescinding the earlier notifications dated 20.02.2021 (placed at page-3-6/C) and fresh draft notification on Home Delivery of processed and packaged NFSA Ration under Targeted Public Distribution System (copy at page ~~-46-49/C~~ 49-53/C)) may kindly be placed before the Hon'ble Lt. Governor, Delhi for his opinion".

45. He has also drawn the attention of the Court to the file noting dated 26.07.2021 at page 14/ N made by the Lieutenant Governor, wherein in paragraph 51 he states "*It is noted that the above communication dated 22.06.2021 of Central Government has not yet been considered by the Council of Ministers, GNCTD. Therefore, in case the Hon'ble Chief Minister, GNCTD still differs, I would request the Hon'ble Chief Minister, GNCTD to refer this matter to the Council of Ministers for its consideration and decision in accordance with Rule 49 of the TBR, 1993 read with section 45 (c) of the Government of NCT of Delhi Act, 1991*."

46. Mr. Shrivastav submits that the impugned RFP/ NIB dated 06.01.2021 seeks to paint the TPDS System black, by claiming that, over the years, post implementation of TPDS Scheme in Delhi, feedback has been received from citizens through various channels regarding the deficiencies in the existing TPDS system taken note of hereinabove. Mr. Shrivastav submits that,

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firstly, there is no data placed on record to show as to on what premise the GNCTD claims that the aforesaid deficiencies exist in the existing TPDS System. Secondly, he submits that in the existing statutory framework, there are numerous provisions to ensure that the existing TPDS System functions efficiently and transparently. He submits that, in fact, it is a failure of the GNCTD in not fully implementing the legal provisions relating to transparency, accountability and vigilance in the matter of implementation of the TPDS system if it were to be accepted that deficiencies exist in the present system to implement TPDS. He further submits that the respondent GNCTD is merely seeking to replace one set of persons i.e. the Fair Price Shop owners, with another set of persons. That, by itself, would not, in any way, improve the TPDS system. On the contrary, with big fishes taking over the TPDS system, the system is likely to suffer erosion of credibility. In this regard, Mr. Shrivastav has referred to the powers vested in the State to confiscate essential commodities which are seized in pursuance of an order issued under Section 6A of the ECA on account of contravention of the provisions of the Act and the Orders issued thereunder. Section 7 lays down the penalties which may extend to imprisonment for a term up to 7 years.

47. Mr. Shrivastav submits that Section 8 of ECA provides that any person who attempts to contravene, or abets a contravention of any order made under Section 3 of the ECA, shall be deemed to have contravened that Order. Section 10B of the ECA empowers the Court to convict a company (means any body corporate, and includes a firm or other associations of individuals) under the Act, and to publish the factum of such conviction and

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such other particulars, as the Court may direct. Section 10C of the ECA raises a presumption of culpable mental state. The trial of a case, under the orders of the Central Government, may be undertaken summarily under Section 12A of the ECA.

48. Under the NFSA, Chapter IX deals with the obligations of State Government for ensuring Food Security. The responsibility for implementation and monitoring of the schemes of the various Ministries and Departments of the Central Government – in accordance with the guidelines of the Central Government for each scheme, and their own schemes, for ensuring food security to the targeted beneficiaries, falls upon the State Government.

49. Chapter XI of the NFSA specifically deals with the aspect of transparency and accountability which provides, in Section 27, that all TPDS related records shall be placed in the public domain and kept open for inspection to the public. Section 28 talks of conduct of social audit by every local authority or any other authority or body prescribed by the State Government, to be conducted periodically on the functioning of Fair Price Shops, TPDS System and other welfare schemes, and to cause publication of its findings, and take necessary action as may be prescribed by the State Government. Mr. Shrivastav submits that even the communication issued by the Central Government dated 17.06.2021 points out the lack of action taken by the GNCTD in this regard. Section 29 talks of setting up of vigilance committees for ensuring transparency and proper implementation of the TPDS, and accountability of the functionaries in such system by every State Government. Such Vigilance Committees should have representation

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of the local authorities, Scheduled Castes, Scheduled Tribes, women and destitute persons, or persons with disability. The Vigilance Committee is empowered to carry out the following functions:

> *"(a) regularly supervise the implementation of all schemes under this Act;*
>
> *(b) inform the District Grievance Redressal Officer, in writing, of any violation of the provisions of this Act; and*
>
> *(c) inform the District Grievance Redressal Officer, in writing, of any malpractice or misappropriation of funds found by it."*

50. Mr. Shrivastav submits that even in this regard, the GNCTD has not taken any action as pointed out by the Central Government in its communication dated 17.06.2021.

51. Mr. Shrivastav submits that the TPDS Order 2015, which also draws its authority from Section 3 of the ECA, is equally binding on the GNCTD. The TPDS Order provides in Clause 11 that the State Government shall ensure regular inspections of Fair Price Shops, not less than once in 3 months, by the designated authority. The State Government shall ensure that stocks of foodgrains under the TPDS as issued from the FCI godowns, are not replaced or tampered with during transit, or at any other stage, till delivery to the ration card holder. The State Government is obliged to set up vigilance committees for TPDS at the State, District, Block and Fair Price Shop levels in terms of the NFSA. The State Government is obliged to send a report annually to the Central Government on the functioning of the Vigilance Committees in the prescribed format. The number of vigilance meetings held by Vigilance Committee is required to be displayed on the State Web Portal, and the actions taken on the issues disclosed in meetings

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of Vigilance Committees are required to be reviewed in the next meeting. The State Government is obliged to notify an internal grievance redressal mechanism which shall include a toll free call centre and use of State Web Portal. The State is obliged to give wide publicity and to update details of the grievance redressal mechanism. The State is obliged to provide early redressal to such grievances as are raised, and also to furnish a report to the Central Government in this regard in the prescribed format. The State Government is obliged to put in place a system of periodic reporting, including through electronic platform regarding the functioning of Fair Price Shops. The State Government is obliged to ensure monitoring of the end-to-end operations of the TPDS through the electronic platform.

52. Mr. Shrivastav points out that clause 12 of the TPDS Order, 2015, mandates that all TPDS related records shall be placed in public domain and shall be kept open for inspection to the public. It also provides for conduct of social audit with regard to functioning of the TPDS, and publication of its findings, and for taking of necessary action as may be prescribed by the State Government. The State Government is vested with police powers to conduct searches and seize books of accounts, stocks of foodgrains where it appears that they are used, or will be used, in contravention of the provisions of the TPDS Order.

53. Mr. Shrivastav submits that with the introduction of technology, such as, use of *ePoS* machines, geo-tagging and geo–positioning of the foodgrains, the so-called malpractices or deficiencies in the implementation of the TPDS have got substantially reduced. He submits that the respondent GNCTD is merely seeking to replace one set of persons – who belong to the

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poorer and disadvantaged sections of the society, with another set of persons – who are financially strong, rather than focusing on the aspect of monitoring the working of the PDS System, and implementing provisions relating to transparency and accountability.

54. Mr. Shrivastav submits that the stand taken by the GNCTD with regard to the working of the existing TPDS System by the existing FPS demonstrates the approach with which the GNCTD has proceeded while issuing impugned RFP/ NIB, and framing the impugned Scheme. He lastly submits that the members of the petitioner's association are ready and willing to undertake delivery of foodgrains or wheat (Atta) at the door step of the TPDS beneficiaries, if the GNCTD were to evolve an appropriate scheme for that purpose.

SUBMISSIONS ON BEHALF OF UNION OF INDIA

55. Before we proceed to notice the defence of the GNCTD, we may notice the submissions of the Union of India, and the Lieutenant Governor, as their stands are in support of the petitioner's submission with regard to the statutory status of the Fair Price Shop owners, and they also submit that the GNCTD has not adhered to the statutory and constitutional framework while introducing their impugned Scheme.

56. Ms. Aishwarya Bhati, learned ASG, who appeared for the Union of India submitted the State Government *(as defined under section 2(22) of the NFSA Act*), has to act in consonance with the role envisaged for them under the NFSA with respect to implementation of the TPDS *(as defined under Section 2(23)*), for the distribution of the foodgrains (*as defined under section 2(5)*), through the Fair Price Shops *(as defined under Section*

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2(4)).The scheme of the Act envisages that the foodgrains are to be provided by the Central Government from the Central Pool to the State Governments, and the State Governments are entrusted with the execution of the TPDS i.e. with the pick-up of the foodgrains from the Central Depots of FCI; undertake their transportation, and; distribution to the Fair Price Shops. It is for the State Governments to monitor, supervise and check whether the Fair Price Shops are making the foodgrains available to the TPDS beneficiaries, who pick up their allocated rations from the Fair Price Shops to which they are assigned. Chapter VIII of the NFSA deals with the obligations of the Central Government, wherein the Central Government – in order to ensure the regular supply of foodgrains to persons belonging to eligible households, shall allocate from the central pool the required quantity of foodgrains to the State Governments under the TPDS, as per the entitlements under section 3, and at prices specified in Schedule I. Section 24, under Chapter IX titled as the "*Obligations of the State Government for Food Security*", enlists obligations of the State Governments in relation to the implementation and monitoring of schemes for ensuring food security.

57. Section 11 of the NFSA casts an obligation on the State Governments to place the list of the identified eligible households in the public domain, and display it prominently. Section 14 under Chapter VII – "*Grievance Redressal Mechanism*", casts an obligation on the State Government to put an internal grievance redressal mechanism in place. Section 15 of the said Chapter further deals with the appointment or designation of District Grievance Redressal Officers for each district, for expeditious and effective redressal of grievances of the aggrieved persons in matters relating to

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distribution of entitled foodgrains or meals, and to enforce the entitlements under the Act. Chapter XI deals with "*Transparency and Accountability*", and obliges the State Government to place TPDS record in public domain, and keep open for public inspection as may be prescribed by the Central Government. Section 28 deals with conduct of periodic social audit, either by a local authority, or any other authority or body authorized by the State Government on the functioning of the Fair price shops, TPDS and other welfare schemes, and cause to publicise its finding and take necessary actions. Sub-section (2) of Section 28 empowers the Central Government to conduct, or cause to be conducted, social audit through experienced independent agencies. The duty to set up Vigilance Committees at the State, District, Block and fair price shop levels is cast on the State Government under Section 29, for ensuring transparency and proper functioning of the TPDS, and accountability in the system. The Vigilance Committees shall regularly supervise the implementation of the Scheme under the act; inform the District Grievance Redressal Officer, in writing, of any violation of the provisions of the Act, and; also about any malpractice or misappropriation of funds found by it. Ms. Bhati further submitted that in order to bring reforms in TPDS under Chapter V of the Act, the Central Government introduced electronic machines i.e. *ePoS* at the Fair Price Shops to ensure transparent recording of transactions at all levels, and to prevent diversion.

58. Section 32 of the NFSA deals with the aspect of Other Welfare Schemes, which states that the provisions of the Act shall not preclude - either the Central, or the State Government, from continuing or formulating other food based welfare schemes. Sub-section (2) of Section 32 states that

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the State Governments may continue with, or formulate food or nutrition based plans or schemes for providing benefits higher than the existing benefits being provided under the Act, from its own resources.

59. Ms. Bhati referred to the provisions of the TPDS Order, 2015 issued by the Central Government under Section 3 of the ECA taken note hereinabove. Clause 6 of the Order deals with the delivery of foodgrains to the designated depots in each State by the Food Corporation of India, under the TPDS, as per the allocation made by the Central Government. Clause 8 deals with further distribution of the foodgrains, allocated by the Central Government, by the State Government through TPDS. Under sub-clause 3 of Clause 8, the State Government is required to *ensure, through the authorized agency, physical delivery of foodgrains to the fair price shop by end of the month preceding the allocation month and, in any case, not later than the first week of the allocation month*. Clause 9 provides for licensing and regulation of fair price shops by the State Government, for regulating the sale and distribution of the essential commodities. Clause 10 enlists the operation of the fair price shops wherein the fair shops owner shall disburse foodgrains

60. Section 38 of the NFSA empowers the Central Government to issue orders for the effective implementation of the provisions of the Act, and the State Governments are bound to comply with such directions.

61. The Department of Food and Public Distribution, under the Ministry of Consumer Affairs Food and Public Distribution, vide order dated 19.03.2021 issued instructions to the GNCTD against the impugned scheme namely, "*Mukhya Mantri GharGhar Ration Yojana*" (MMGGRRY). The

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order informed the GNCTD that the new nomenclature/scheme name for distribution of NFSA foodgrains by GNCTD is not permissible, but that the Central Government would have no objection if a separate scheme is made by the State Government, without mixing it with the elements of the NFSA foodgrains. The relevant extract of the order issued by the Central Government under Section 38 of the NFSA is reproduced hereinbelow:

"JOINT SECRETARY
GOVERNMENT OF INDIA
MINISTRY OF CONSUMER AFFAIRS,
FOOD & PUBLIC DISTRIBUTION
DEPARTMENT OF FOOD AND PUBLIC DISTRIBUTION
KRISHI BHAWAN, NEW DELHI-110001

D.O. No. 24 (Delhi)/2021-P.D. II(E.374438)

Dated: 19/03/2021

Dear Ms. Padmini,

This refers to the Notification of the Government of NCT of Delhi dated 20/02/2021 for the implementation of a State specific scheme titled as "Mukhya Mantri GharGhar Ration Yojana (MMGGRY)" for door-step delivery of ration (packaged wheat flour, packaged rice and packaged sugar) under the Targeted Public Distribution System.

2. ***Upon examination of the said notification, it is clarified that the subsidized foodgrains being allocated by this Department for distribution under the National Food Security Act(NFSA) cannot be used for the opertionalisation of any State specific/ other scheme under a different name/ nomenclature other than NFSA, as the same is not permissible under the Act. Further, any changes/amendments in the provisions of the Act, including nomenclatures used for distribution of NFSA foodgrain, can only be done through the Parliamentary procedures.***

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3. It is also highlighted that while States may like to enhance the distribution of subsidized foodgrains, including additional entitlements, more subsidy, etc. the nomenclature from NFSA to any local state scheme name may be misinterpreted by the beneficiaries as State benefit and may give rise to confusion regarding their rights under the Act.

4. In view of the above, the use of new nomenclature/scheme name for distribution of NFS foodgrains by GNCTD as noted above is not permissible ***but this department will have no objection if a separate scheme is made by the State Govt without mixing the elements of the NFSA foodgarins. It is therefore requested that GNCTD may follow the norms and provisions of the NFSA in rightful spirit and manner for the distribution of NFSA foodgrains to the eligible beneficiaries under the Act.***

Best Wishes,

Yours sincerely,

(S Jagannathan)"

(emphasis supplied)

62. Further, while exercising its power under Section 38 of the NFSA Act, the Central Government vide order dated 17.06.2021, highlighted some of the non-compliances by the GNCTD of the provisions of the NFSA, and directed the GNCTD to comply with the same. The Central Government called upon the GNCTD to operationalise the *ePoS* devices at the Fair Price Shops, to ensure transparency in distribution of foodgrains, non-operationalising of which was resulting in blocking the implementation of the One Nation One Ration Card (ONORC). Other shortcomings pointed out in this Order, were failure to conduct periodic social audit on the functioning of Fair Price Shops; not setting up Vigilance Committees at the Fair Price

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Shops level to enable monitoring the implementation of the NFSA at the grass root levels; not maintaining data on NFSA beneficiaries under the Scheduled Caste (SC) and Scheduled Tribe (ST) categories. The relevant extract of the order is reproduced hereinbelow:

"F. No. 24 (Delhi)/2021 – PD – II (E:374438)

Government of India
Ministry of Consumer Affairs, Food & Public Distribution
Department of Food & Public Distribution
*****
Room No. 275, Krishi Bhawan, New Delhi
Dated : 17.06.2021

To,

Secretary-cum-Commissioner,
Food & Civil Supplies Department,
Government of NCT of Delhi
Delhi.

Subject: Non-compliance of some provisions of the National Food Security Act, 2013 (NFSA) by Government of NCT of Delhi –reg.

Madam,

You are aware that the National Food Security Act (NFSA) 2013 came into force on July 5, 2013. The Government of NCT of Delhi had adopted the Act from October 2013. However, compliance of the following key provision/sections of the Act remains pending in Delhi till date.

i. Non compliance of Section 12 of the Act:

Section 12 of the NFSA states that the Central and State Government shall endeavor to progressively undertaken necessary reforms in the Targeted Public. Distribution System that include.

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a) *Doorstep delivery of foodgrains to the Targeted Public Distribution System outlets (i.e. FPSs).*

b) *Application of information and communication technology tools including end-to-end computerization in order to ensure transparent recording of transactions at all levels, and to prevent diversion.*

c) *Leveraging "Aadhar" for unique identification, with biometric, information of entitled beneficiaries of proper targeting of benefits under this Act.*

d) *Full Transparency of records.*

This Section emphasizes on application of ICT tools and use of Aadhaar for transparency in PDS operations. By not operationalising ePoS devices at the FPSs (for transparent distribution of foodgrains), GNCTD is in violation of the Section-12 of the Act, Reforms under TPDS are mandated under the Act to promote transparency and rightful targeting.

In this connection, this Department has been continuously pursuing the implementation of ePoS distribution of foodgrains from all FPSs of Delhi for the last 3 years More than 12 letter/DOs have been written to GNCTD from all levels in this Department. However, the distribution of foodgrains in Delhi is still being done using old/manual register-based mechanisms.

Further, this non-compliance is also blocking the implementation of One Nation One Ration Card (ONORC) for numerous migrant beneficiaries of the National Capital.

ii. <u>Non compliance of Section 28 of the Act:</u>

Section 28 of the Act states that every local authority, or any other authority or body, as may be authorized by the State Government shall conduct or cause to be conducted periodic social audits on the functioning of Fair Price

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Shops, Targeted Public Distribution System and other welfare schemes, and cause to publicise its findings and take necessary action in this regard. However, GNCTD has not put in place any such machinery and no social audits are being conducted. No response from GNCTD has been received in this regard so far.

iii. <u>Non compliance of Section 29 of the Act:</u>

Section 29 of the NFSA states that for ensuring transparency and proper functioning of the Targeted Public Distribution System and accountability of the functionaries in such system, every State Government shall set up Vigilance Committees as specified in the Public Distribution System (Control) Order, 2001, made under the Essential Commodities Act, 1995, as amended from time to time, at the State, District, Block and fair price shop levels consisting of such persons, as may be prescribed by the State Government giving due representation to the local authorities, the Scheduled Castes, the Scheduled Tribes women and destitute persons or persons with disability. GNCTD has not set up vigilance committees at the FPS level which is the most important level for monitoring implementation of NFSA at the grass root levels.

iv. <u>Non compliance of Section 38 of the Act:</u>

Directions were issued to all State Governments under Section 38 of the Act to maintain data on NFSA beneficiaries under the Scheduled Caste (SC) and Scheduled Tribe (ST) category. Since all Ministries are mandated to allocate a certain proportion of their fund allocation towards SC/ST welfare, data on the same is now required to be maintained to ascertain that the benefits of the Act are reaching these vulnerable Sections. It is very unfortunate that while other State Governments have assured that they would do the needful in this regard, GNCTD merely informed that the data was not available with them. It may be noted that Section 38 of the National Food Security Mandates that

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the Central Government may from time to time give directions to the State Governments as it may consider necessary for effective implementation of the provisions of the Act and the State Governments shall comply with such directions. The Government of Delhi in this case seems to be insensitive to needs and rights of this vulnerable section of the society and to ensure that the benefits mandated under the Act are reaching them.

2. Hence, directives are hereby given under Section 38 of the NFSA that GNCTD shall take steps to fulfil the pending obligations of Section-12 of the Act immediately to enable the transparent distribution of foodgrains (through ePoS) under both NFSA and PM-GKAY to all NFSA beneficiaries in Delhi, including migrants through One Nation One Ration Car (ONORC) plan. A compliance to this effect may be sent by 30th June 2021.

Yours faithfully

-Sd-

(D. K. Gupta)

Director (PD)

Tel:011-23070429"

63. The Department of Food and Public Distribution, vide a detailed order dated 22.06.2021 raised its concerns, and communicated the shortcomings observed by it in the impugned scheme on Door-Step/Home Delivery of Ration (Wheat Flour, Rice and Sugar) issued by the GNCTD under TPDS. The relevant extract of the said communication is extracted hereinbelow:

"1. ***Challenges observed in contravention of the statutory provisions of the National Food Security Act (NFSA):***

i. Under the Act, foodgrains are distributed through TPDS, alike in all States/UTs, at highly subsidized Central Issue Prices of Rs. 3, 2 and 1 per Kg of Rice, Wheat and Coarse

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grains respectively. However, the proposed scheme involves distribution of packaged food commodities Wheat Flour (Atta) instead of Wheat and Rice.

ii. The issue prices of the packaged Atta & Rice are not mentioned in the GNCTD's notification dated 20.02.2021. It is not clear whether they be distributed as per the Central Issue Prices and Quantities contained in the Schedule-1 of the Act or additional amount will be charged from the beneficiaries?

a) As the home delivery of packaged Atta & Rice shall involve milling, processing, packing, additional transportation, vendor/delivery cost etc. Hence, it will naturally increase the per Kg cost of the commodities, and will have a direct financial implication on the poor NFSA beneficiaries/ households, as it is expected that food security entitlements shall be cost more to beneficiaries, than the CIPs under NFSA.

b) It is highlighted that, as per NFSA rules, wheat flour (Atta) can only be distributed and at a higher issue price (considering only the additional cost of milling) after taking proper consent of the NFSA beneficiaries. Further, it shall be obligatory on part of the State Govt. to clearly mention the additional cost of milling (per kg.) over-and-above the CIP of wheat. Whereas, Rice cannot be distributed at higher issue prices (per Kg) than CIP under NFSA. Further, it is not clear whether consent of NSA beneficiaries has been obtained by the GNCTD in this aspect or not?

iii. Since, NFSA beneficiaries have to exercise an option to either choose for Home Delivery of packaged food commodities, or to lift their entitled foodgrains from FPSs, once in the beginning of every financial year, the beneficiaries opting the new scheme shall be bound to receive only packaged food-commodities (at higher prices) and at the address mentioned in their ration card only for entire year. Further, it is not clear whether they shall be allowed to opt-out from the scheme anytime during the year, if they no longer wish to stay dependent on Home Delivery and forced to incur higher

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monthly cost, and may want to lift their monthly foodgrains at NFSA CIPs of Rs.3 & Rs.2 per Kg from the FPSs.

iv. There is no clarity on how the GNCTD shall maintain/update the addresses of beneficiaries in RCMS to ensure uninterrupted Home Delivery of packaged commodities every month, even in case of change of address of the beneficiaries.

a) Most poor beneficiaries and tenants keep on changing their temporary accommodation. Thus, it is not clear how the GNCTD shall ensure continuous updation of their addresses in RCMS, to ensure food-security entitlements continue to reach their new door steps every month, without interruption.

b) Further, what is the database (of such persons) available with GNCTD and how they plan to keep updating the same for associated planning and logistics - expected to change every month.

v. - It is also not clear that, how the GNCTD plan to manage and ensure the following activities having a direct Impact on the performance of the scheme and thus food security of the NFSA beneficiaries:

a) Ensure unrestricted reach of delivery vehicles/vans up to the doorsteps of beneficiaries, even in narrow streets/lanes/by-lanes, etc. Free movement of delivery vehicle may be hindered. Moreover, doorstep, delivery may not be successful in multi storey buildings, with multiple floors. Thus, these constraints may defeat the whole purpose of the 'home delivery' and in fact the beneficiaries may be actually called to come till van/vehicle and collect their packets.

b) Ensure coordination with beneficiaries, as most of them are daily wagers, laborers, household jobs, MNREGA, etc. and timely delivery at fixed date/timing may be hampered due to tackling the traffic congestions, break-down of delivery vehicles, etc.

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- *Absence of beneficiaries during home delivery date/time/trips of van shall impact their food security, as compared to their freedom of choosing their own convenient date, time and cost of lifting their foodgrains (part lifting from available money) from the nearby FPSs.*

c) Moreover, every beneficiary shall expect the vehicle in front of their door. If not, there may be issues of favoritism and nepotism.

d) How the biometric authentication of beneficiaries through ePOS devices shall be ensured during home delivery. Further, how strong and stable internet connectivity shall be maintained, even in shadow areas?

2. ***Observations regarding administrative and financial aspects of Home Delivery.***

i. There is no clarity, whether the scheme is being started as Pilot in selected areas, or being rolled out in entire Delhi in one go. It is suggested to first start on pilot basis.

ii. No clarity on type/tenure of delivery partner(s) contracting i.e. annually or long-term/multi-year? As it will have direct impact on costs and continuity of food security of beneficiaries.

iii. What will be the amount of EMD and PBG secured from the bidders (as per GFR 2017) to ensure performance of the delivery partners, hence the scheme.

iv. Will there be a single contractor for whole of Delhi, or multiple contractors will be engaged? How they will be made accountable under NFSA? Further, engaging private parties/contractors and ad-hoc delivery persons shall not fully conform to Government Ecosystem and Charter of delivering government benefits/subsidies. It may become counter-productive for the existing foodgrain distribution system/TDS, where the licensed FPS dealers are fully accountable as per the provisions

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of NFSA & TDS Control Order, 2015 of this Department under the Act.

v. The scheme may also face administrative and operational hurdles in terms of leakages, diversions, accountability issues, and assurance of timely availability of right quantity and quality of foodgrains to the NFSA beneficiaries.

vi. Most importantly, how the GNCTD intends to ensure continuous online monitoring of delivery/distribution of food security entitlements, as it will be difficult in a scenario where the existing distribution process itself is not yet automated and integrated with the central online systems - Annavitran Portal. In the absence of an institutionalized oversight mechanism this may also give rise to grievances, complaints and petitions in the courts.

3. ***Concerns regarding implementation of One Nation One Ration Card (ONORC) for food security of migrant beneficiaries in Delhi.***

i. It is not clear that, how the GNCTD plan to integrate their 'home delivery' scheme with ONORC? i.e. how the numerous street dwellers, rag-pickers, migratory labourers, construction workers, rickshaw pullers, auto/taxi drivers, etc. - who do not have any permanent address in Delhi will be given their monthly NFSA entitlements (as It may not be feasible to door deliver to them every month),

a) Providing ration card portability benefits will be a major challenge under the doorstep delivery model due to address change and RCMS maintained in respective home States/UTs.

b) Most migrants as tenants keep on changing their temporary accommodation. How the GNCTD shall provide food-commodities at their new door steps every month. What is the data base (of such persons) available with GNCTD and how they plan to address their food security through home delivery scheme?

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*4. **Other concerns in home delivery scheme:***

i. For prevention of adulteration and diversion of food items by delivery vehicle operators, strong online systems are needed.

ii. For ensuring correctness of quantity / weight of pre-packaged food items to be delivered to beneficiaries at their doorsteps may be a challenge. Further, weighment of pre-packaged packets on an electronic weighing scale fitted in a delivery vehicle/van may not always be accurate due to disturbance in calibration and misalignment due to vehicle movement.

iii. Food items loaded on the delivery vehicles for doorstep delivery may be subjected to variable weather conditions such as rain, heat, mist, dust, pollution, humidity, etc resulting in wastage. Thus, spoiling of subsidized foodgrains shall be an issue.

iv. Absence of institutional Grievance Redressal oversight as per the provisions of NFSA - As per the law, vigilance committees (though not yet formed in Delhi so far) are meant for the monitoring of the functioning of FPSs. But, they do not cover the oversight/monitoring of the functioning of delivery vehicles/partners.

v. Independent State Food Commission (as per obligations of the State Govt. under NFSA) is also not existing in Delhi.

vi. The viability of FPS will adversely impacted by the suggested proposal of home delivery by GNCTD.

5. Therefore, in view of the above observations and concerns, it is clarified that the proposal of GNCTD doesn't meet the statutory and functional requirements of the National Food Security Act (NFSA) and therefore, proposal made by GNCTD can't be accepted."

64. Vide letter 08.10.2021, the Central Government – while making reference to the representation made by the Petitioners to the Lieutenant

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Governor, informed the GNCTD that the Home Delivery Scheme/ proposal was not permissible in its current form. The Central Government, in this communication, inter alia, states as follows:

> *" A copy of letter from Delhi Sarkari Ration Dealer's Sangh (DSRDS)- Delhi dated 07.10.2021 addressed to Hon'ble Lt. Governor, GNCTD and copy endorsed to Secretary (FPD) which is a representation of DSRDS to Hon'ble Lt. Governor to immediately stop implementation of MMGGRY Scheme has been received. In the said letter, the apprehensions of DSRDS are that foodgrains is to be distributed to ration cardholders by a direct home delivery agency engaged by the successful bidder who shall also set up his privately owned FPSs. DSRDS find this scheme alleged to be formulated under NFSA, 2013, is totally alien to the NFSA regime as the same did not have the requisite sanction."*

65. This communication, again directed the GNCTD to "*3….follow the norms and provisions of NFSA, 2013 in rightful spirit and manner while* distributing *foodgrains to the eligible NFSA beneficiaries under TPDS and it is also conveyed that this Department will have no objection if a separate scheme is made by the State Government without mixing the elements of the NFSA food grains. It is therefore informed that all the statutory provisions of NFSA, 2013 are mandatory, and operation of TPDS as mandated shall be conducted in the manner prescribed under the NFSA, in order to ensure transparent and rightful targeting. The alleged proposal under consideration with Delhi Govt for HOME DELIVERY does not full fill the norms of NFSA and therefore, is not permissible in its current form by Govt. of India*."

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66. Ms. Bhati submits that the GNCTD has been slow in implementing the Central Government Scheme i.e. ONORC. In this regard, she has drawn the attention of the Court to the Judgment passed by the Supreme Court in ***Bandhua Mukti Morcha v Union of India & Ors,*** Suo Motu Writ Petition (Civil) No. 6 of 2020 decided on 29.06.2021, (2021 SCC OnLine SC 441), wherein it was observed as follows:

> ***35****…. "One Nation One Ration Card" is a scheme implemented by the Government of India providing for nation-wide portability of National Food Security Act Ration card. Several States have been integrated under One Nation One Ration Card cluster at the National level. In the affidavit, the Department of Expenditure, Ministry of Finance, has granted additional drawing permission to States for completing One Nation One Ration Card system. One Nation One Ration Card is an important citizen centric reform. Its implementation ensures availability of ration to beneficiaries under National Food Security Act (NFSA) and other welfare schemes, especially to the migrant workers and their families at any Fair Price Shop across the Country. To ensure seamless inter-State portability of the ration card, Aadhaar seeding of all ration cards as well as Biometric Authentication of beneficiaries through automation of all Fair Price Shops (AFPS) with installation of electronic- Point of Sale (e-POS) devices are necessary.*
>
> ***36****. As stated above, the Union of India, Department of Expenditure has permitted State-wise additional borrowing for completion of One Nation One Ration Card Scheme. Shri Tushar Mehta, learned Solicitor General during his submissions has submitted that Four States have not yet implemented the One Nation One Ration Card Scheme being the States of Assam, Chhattisgarh, Delhi and West Bengal.*
>
> ***37****. Learned counsel appearing for Delhi submits that Government of NCT Delhi has implemented the One Nation One Ration Card Scheme. Shri Tushar Mehta's submission is that the Government of NCT Delhi has not implemented the*

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> *scheme fully and only in one circle, i.e., Circle No.63, Seemapuri, only a handful of transactions with 42 e-POS machines have been done.* ***One Nation One Ration Card scheme is one of the important welfare measures to extend food security to migrants who are covered under the National Food Security Act Scheme. When migrant workers are spread throughout the Country, each State has to implement the scheme, which is a necessary welfare measure towards food security to this class of persons. The States are duty bound to implement this Scheme, which is a welfare scheme in the interest of poor and marginal sections of the society. When a migrant labour reaches to a particular State for work/employment and is covered by National Food Security Act Scheme, the receiving State is under duty to ensure that his rights and entitlement under National Food Security Act is not denied merely because of the fact that he is not in his native State from where he was issued the ration card under National Food Security Act scheme.***
>
> ***38. We, thus, are of the view that those States who have not yet implemented One Nation One Ration Card scheme should implement the same. We direct the States who have not implemented the One Nation One Ration Card scheme to implement the scheme by not later than 31.07.2021.***
>
> (emphasis supplied)

67. Ms. Bhatti concluded her submissions by submitting that the impugned tenders/schemes floated by GNCTD are in contravention of the mandate of the NFSA 2013. Her submission is that the GNCTD cannot tinker with the architecture of the Public Distribution System created under the ECA, and adopted under the NFSA and the TPDS Order, 2015. The Fair Price Shops are at the centre, and are the nodal points for distribution of the foodgrains to the beneficiaries under the TPDS. They are the interface between the State and the beneficiaries. The GNCTD, rather than adopting

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the existing architecture of the TPDS, is seeking to create a parallel system, which is alien to the existing TPDS, which is statutorily created. This is being done on the premise that the existing TPDS system - through the Fair Price Shops has lacunas and there are malpractices prevalent. However, the GNCTD has not taken the steps to maintain vigilance, monitor and keep a check on the TPDS through the Fair Price Shops, which would stop the malpractices and remove lacunas in the existing system. She submits that the GNCTD is only seeking to replace the existing Fair Price Shops with another set of persons – who would be recognized as Fair Price Shop owners, which is not the solution to the problems pointed out by it, and is also not permissible under the existing statutory regime.

68. She submits that the NFSA does not allow interference with the existing TPDS. The GNCTD is in non-compliance of making *ePoS* operational at FPS, which forms an integral part of the TPDS to ensure that direct benefits reach to the beneficiaries. It is the obligation of the State Government to ensure viability of FPS. The beneficiaries – who are migrant wagers/labourers, who are otherwise able to share their allocated entitlements under the NFSA with their families staying in their home State, will be losers under the impugned Scheme of the GNCTD. The Central Government introduced Biometric enabled *ePoS* to ensure delivery of the essential commodities to the beneficiaries through FPS as envisaged under the Act. The right based approach was introduced under the NFSA in 2013, which should be implemented by the States. The scheme under NFSA is not a commercial venture, and is funded by exchequer's money. The architecture of the NFSA has to be preserved and implemented in its letter

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and spirit, to ensure accountability, targeted delivery and welfare based approach. The data with respect to the distribution of the foodgrains have to be collected, maintained, shared and audited regularly. The State Governments are at liberty to provide any other welfare based entitlements, without disturbing or destroying the mandate of the NFSA. The State Government, in view of the orders passed by the Central Government from time to time, may remove the operational irregularities, and strengthen the TPDS by complying with the architecture of the Scheme envisaged under the NFS and other prevailing Orders and Rules.

SUBMISSIONS ON BEHALF OF LIEUTENANT GOVERNOR

69. Learned Counsel D P Singh, who appeared for the Hon'ble Lieutenant Governor pointed out several communications exchanged between the Lieutenant Governor and the Council of Ministers headed by the Chief Minister, with regard to the impugned scheme of home delivery of foodgrains to the beneficiaries under the TPDS. Vide noting dated 20.03.2018, the Lieutenant Governor flagged the issue raised by the Finance Department, that replacing of one set of human intervention with the another i.e. Service providers and their agents, may not eliminate the diversion of ration materials and corruption. The Lieutenant Governor proposed the adoption of the Direct Benefit Transfer (DBT), where the money would be directly transferred to the bank account of the beneficiary, thereby, totally eliminating the middlemen, and making available funds to provide higher benefits to the beneficiaries.

70. Reference was made to the letter dated 01.02.2018 issued by the Central Government, which provides for 'home delivery' of rations only as a

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special dispensation, for a category of beneficiaries who are above 65 years of age, or are differently-abled, or have no other adult family members listed in the ration cards, and are not in position to visit FPS themselves. The Lieutenant Governor advised the GNCTD to ensure compliance of TPDS Order, 2015, NFSA and the directions under Section 38 of the NFSA contained in the letter dated 12.08.2018 issued by the Central Government, before taking a final decision with respect to the home delivery of ration under TPDS. The relevant extract of the noting dated 20.03.2018 is reproduced hereinbelow:

> *"105. In this context, I note that the Finance Department has observed that the proposed system of home delivery of ration will only replace one set of human intervention with the other i.e. service providers and their agents. Hence, diversion of ration material and corruption may not be eliminated under the proposed scheme. The best option would be adoption of the Direct Benefit Transfer (DBT), where the money would be directly transferred to the bank account of the beneficiary, thus totally eliminating middlemen. The Finance Department has also noted that an expenditure of about Rs. 2.50 Crores per annum likely to be incurred on the home delivery scheme, and if DBT is adopted, the beneficiaries can procure an additional 5kg of Atta per family per month, with the money so saved. For the poor marginalized sections of the society, this additional 5kg of Atta per family per month would be a huge welfare measure resulting from adoption of DBT. Therefore, in my view, suggestion of Finance Department is worth considering.*
>
> *x x x x x x x x x x x x*
>
> *111. Therefore, I would advise that the proposal of home delivery of ration under TPDS may be referred to Government of India with full details including all implementation issues, before a final decision is taken."*

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71. Since he did not agree with the proposal of the Council of Ministers, vide office noting dated 02.06.2021, the Lieutenant Governor advised the Council of Ministers to place the proposal of home delivery of ration before the Government of India for approval in accordance with section 12(2)(h) of the NFSA.

72. Subsequently, the Council of Ministers – headed by the Chief Minister, in its note dated 17.06.2021 observed that there appears to be a serious misunderstanding, and claimed that *"The instant matter before the Hon'ble LG is not "approval" of the scheme of doorstep delivery of ration. The Scheme has already attained finality."*

73. The Lieutenant Governor in its noting dated 24.06.2021, referred to the letter dated 22.06.2021 issued by the Department of Food & Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution GOI, and advised the GNCTD to comply with the directions issued by the Central Government, wherein it has been specifically stated that the proposed scheme has not been accepted by the Ministry as it *"does not meet the statutory and functional requirements of the National Food Security Act 2013."*

74. By noting dated 26.07.2021, the Lieutenant Governor – while making reference to the abovementioned noting dated 24.06.2021, clarified that the observation made therein was only a conciliatory advice in *sync* with the observations made by the Supreme Court in the judgment of ***State (NCT of Delhi) v. Union of India and Anr.*** (2018) 8 SCC 501, wherein it was emphasized that there is a need of discussion and deliberation, and fine nuances are to be dwelled upon with mutual respect.

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75. The Lieutenant Governor stated that vide the directions contained in the letter dated 22.06.2021 - under Section 38 of the NFSA, 2013, the Central Government has already conveyed its concerns and decision with respect to the proposed Scheme of Door Step Delivery of Ration to the GNCTD. He further directed that the matter be reconsidered by the Council of Ministers in accordance with Rule 49 of the ***Transaction of Business Rules, 1993*** (TBR), read with section 45(c) of the GNCTD Act, 1991, since the Council has not considered the letter dated 22.06.2021 of the Central Government.

76. Mr. D.P. Singh thus submits that the Council of Ministers has not complied with the mandate of Article 239AA of the Constitution, as well as Section 44 of the GNCTD Act, 1991 by referring the issue/ scheme with regard to door to door delivery of Ration and under the TPDS to the President, despite there being a difference of opinion between the Lieutenant Governor and his Ministers. Without resolving the difference of opinion, as aforesaid, the GNCTD could not have proceeded to implement the door-to-door delivery scheme, while interfering with the architecture to implement TPDS under the NFSA. Thus, the actions of the GNCTD are illegal and unconstitutional. Mr. Singh concluded his submissions by stating that there is no response, till date, to the aforementioned noting from the Council of Ministers. The Scheme is a unilateral measure of the Hon'ble Chief Minister, without concurrence of the Council of Ministers. He further submitted that the State should conform with the existing Central law which is the NFSA 2013.

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SUBMISSIONS ON BEHALF OF APPLICANT IN C.M. 21333/2021 IN W.P.(C.) No. 2037/2021 BANDHUA MUKTI MORCHA

77. Mr. Talha Abdul Rahman appeared for the applicant – Bandhua Mukti Morcha (Bonded Labour Liberation Front), a Non-Governmental Organization, who have sought the following prayers in their application:

> *"*
>
> *A. Allow the present impleadment application;*
>
> *B. Direct the Respondent No.1 to immediately implement the Door to Door Ration Delivery Scheme of GNCTD to such persons who opt for the same, subject to outcome of the present proceedings;*
>
> *C. Alternatively to Prayer B, direct immediate implementation of the Door to Door Ration Delivery Scheme of GNCTD in accordance with Central Government's Instructions contained in Letter dated 01.02.2018 (File No. 5(3)/2017-PD)(**Annexure A-14**) issued by Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution, Krishi Bhawan, New Delhi to home deliver SFAs to those who are unable to visit FPSs;"*

78. The case of the Applicant is that they have been engaged in distributing food – both in cooked and raw form, including dry ration in Delhi and other states in an attempt to ensure that the poor and marginalized people, including migrant and unorganized sector labourers, are not subjected to starvation amid the prevailing pandemic situation across the country. Since, due to the closure of Schools, mid meals or dry ration could not reach the beneficiaries, it becomes obligatory for the State authorities to ensure that the rations reach the beneficiaries.

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79. Mr. Rahman referred to the order dated 20.08.2001, passed by the Supreme Court in ***People's Union for Civil Liberties (PDS matters) v. Union of India and Ors.,*** (2013) 2 SCC 688. The Supreme Court observed that prevention of hunger and starvation among the destitute and weaker sections of society is one of the prime responsibilities of the Government — whether Central or State. The mere existence of schemes without implementation are of no use, and "*food must reach the hungry*". Similar view was reiterated by the Supreme in the said case in the order dated 02.05.2003. The relevant extract of the order dated 02.05.2003, relied upon by the counsel, is reproduced hereinbelow:

> *"6.....The anxiety of the Court is to see that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the Government - whether Central or State. Mere schemes without anu implementation are of no use. What is important is that the food must reach the hungry."*

80. Mr. Rahman also placed reliance on the order passed by the Supreme court in the case of ***Swaraj Abhiyan v. Union of India and Ors***. (2016) 7 SCC 498, wherein the Court directed the State Governments to take proactive measures to ensure that food was made available to the drought-affected areas, without being made conditional on possession of ration cards. The relevant paragraphs from the judgment are being reproduced hereinunder:

> ***"118.*** *Similarly, the entitlement of food grains at 5 kg per person per month (as per the NFS Act) is a goal that must be achieved by the State at the earliest particularly in drought-affected areas. In fact, statute or no statute and implementation or non implementation of a law enacted by Parliament, the*

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> *State ought to appreciate and realise that an adequate supply of food grains must be made available without much fuss to people in drought-affected areas. As it is, because of the drought such persons undergo immense hardship mainly for reasons beyond their control and if there is a scarcity of food, it would only add to their misery and adversity if not multiply it. The State being a welfare State must take these factors into consideration and strain every nerve to ensure that the mandate of the NFS Act is adhered to."*

81. Mr. Rahman further submitted that time and again, it has been recognized by the Supreme Court that it is the obligation of the State Government to ensure that the food reaches to the beneficiaries. Mere delivery of the food to the PDS network of FPS licensees does not amount to compliance of the obligations of the State authorities to guarantee adequate food and nutrition under Article 21 and 47 of the Constitution of India. He submitted that the doorstep delivery of the ration at the beneficiaries' doorstep will effectively fulfill the said obligation.

82. It was contended by the Applicant that standing in a queue for taking ration violates the right of dignity of a person. Requiring a person to stand in queue at the ration shop for receiving, what the law regards his or her entitlement, is against the right to dignity and privacy to compel a poor person to necessarily queue up. Mr. Rahman placed reliance on ***Jeeja Ghosh v. Union of India***, (2016) 7 SCC 761, wherein the Supreme Court made observations for protection of the Right to human dignity, as a part of the constitutional value enshrined in Article 21. The relevant extract of the judgment is reproduced hereinbelow:

> ***"37.*** *The rights that are guaranteed to differently-abled persons under the 1995 Act, are founded on the sound principle of human dignity which is the core value of human right and is*

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> *treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has it roots in Article 21 of the Constitution……..*
>
> *We have a written Constitution which guarantees human rights that are contained in Part III with the caption "Fundamental Rights". One such right enshrined in Article 21 is right to life and liberty. Right to life is given a purposeful meaning by this Court to include right to live with dignity. It is the purposive interpretation which has been adopted by this Court to give a content of the right to human dignity as the fulfilment of the constitutional value enshrined in Article 21……..."*

83. Mr. Rahman, to advance his aforesaid submission placed reliance on the judgment rendered by the Constitution Bench of the Supreme Court in ***K.S. Puttaswamy (Aadhaar-5J.) v. Union of India***, (2019) 1 SCC 1.

84. Mr. Rahman concluded his submission by submitting that the door step delivery of ration is a statutory mandate under the NFSA, and various judicial orders passed, from time to time, have obligated the State governments to ensure that the food does, in fact, reach those who are hungry. In fact, the Central Government has itself directed for home delivery of ration to some categories.

SUBMISSIONS ON BEHALF OF THE GNCTD

85. We may now take note of the submissions advanced by Dr. Abhishek Manu Singhvi, Senior Advocate on behalf of the GNCTD – in defense of the impugned Scheme; the impugned tenders/ NIBs, and the actions taken by the GNCTD in relation thereto.

86. Dr. Singhvi submits that the impugned Scheme and the Tenders/ NIBs floated by the GNCTD, in no manner, endeavour to by-pass the distribution

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of ration through the FPSs. He submits that the impugned scheme and NIBs contemplate that there would be new FPSs licensed under the ECA across various districts in Delhi at the Circle Level. The Scheme is a welfare measure, as envisaged under Section 32(2) of the NFSA, which the States are competent to frame in terms of the judgment in ***Swaraj Abhiyan*** (supra). The relevant extract of the judgment relied upon by him states:

> ***"128.5*** *It is made clear that each of the State before us is fully entitled to provide any foodgrains or other items over and above and in addition to the entitlement of a household under the NFS Act. There is no restriction in this regard."*

87. Dr. Singhvi has primarily argued that in the absence of an express or implied prohibition against the doorstep delivery of rations to the beneficiaries under the NFSA, the proposed scheme cannot be objected to – either by the Petitioners, or the Central Government, or the Lieutenant Governor. It cannot be said that the said door step delivery scheme violates the existing TPDS regime. The impugned Scheme aims to ensure delivery of the entitled foodgrains, packaged (4 kg of wheat (Wheat Flour (Chakki) Atta ("WFA")) and 1 kg of rice per person per month for priority households, and 35 kg per household for AAY, and sugar, provided by the State Government from its own resources to the beneficiaries at their doorstep under the NFSA. The impugned Scheme is optional. The identified beneficiaries under the TPDS, in the beginning of every financial year, shall have an option to either opt-in, or opt-out, from the door-to-door delivery of packed ration under the impugned Scheme i.e. to have their entitlements packed and delivered at their doorsteps, or continue to take the ration from the FPS under the impugned Scheme. Those who do not opt for home

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delivery, by failing to register themselves for delivery through FPS, shall be covered by the home delivery scheme.

88. Dr. Singhvi referred to the operational guidelines of the scheme to submit that the impugned scheme is in consonance with the provisions of the NFSA. As taken note hereinabove, the impugned Scheme has two stages: Stage 1 – pick up/ transportation of wheat/ rice from the godowns of FCI; its processing i.e. conversion into wheat flour/ atta at dedicated milling units and cleaning of rice; packaging of wheat flour/ Atta and rice in different sizes as per requirement, and; delivery of the wheat flour/ Atta and rice packets to the designated FPS shops as per delivery schedule. Stage 2 - doorstep delivery of the entitlements by the FPS appointed, at the doorstep of the beneficiaries. The respondent no. 3 – DCCWS is the monitoring agency, which is entrusted with the task of setting up FPSs across various districts in Delhi, and one in each of the 70 Circles. Respondent No. 3 will empanel DHD Agencies, which shall collect the packets from the FPS, and deliver the same to the doorstep of the beneficiary. The Delivery shall be authenticated via an *e-PoS* device on the basis of biometric authentication.

89. Dr. Singhvi submitted that the Court cannot injunct the performance of its statutory obligation by the State. He submits that far from being contrary to the provisions of the NFSA or the TPDS Order, the scheme of the GNCTD seeks to achieve the full implementation of the TPDS by ensuring delivery of the foodgrains/ Atta at the doorstep of the beneficiary.

90. Dr. Singhvi further referred to the letter dated 03.11.2014, issued by the Central Government to all States to provide Wheat Flour (atta), in place of Wheat grain, through TPDS under NFSA at the option of beneficiaries.

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The State/UT may raise the end retail price of wheat from Rs. 2/kg – stipulated for wheat, and the cost incurred on conversion of wheat into wheat flour may be recovered from the eligible households under NFSA i.e. Priority households and AAY households. The relevant extract from the said communication, *inter alia*, states:

> *"x x x x x x x*
>
> *3 In light of the issue raised by States/UT's during the conferences, the matter has been re-examined by the Department in consultation with the Ministry of Law & Justice. It is to intimate that States/UTs may distribute wheat four (atta) through the network of fair price shops to the eligible TPDS beneficiaries under NSA 2013, subject to the following terms and conditions:-*
>
> *(a) States/UTs may distribute wheat four (atta) to priority households @ 5 kg per person per month and to Antodaya Anna Yojana (AAY) households (@ 35 kg per household per month after adjusting the loss occurring during the process of converting wheat into wheat flour (atta).*
>
> *(b) States/UTs may provide wheat flour (atta)in lieu of the entitled quantity under NFSA, 2013provided that the proportion of wheat flour (atta)derived from wheat is determined by the State Governments/ UT Administrations in such a manner that maximum quantity of wheat four (atta) is obtained from the wheat issued to flour mills for this purpose. States/ UT's shall ensure that the shortfall in quantity of wheat flour (atta) distributed to beneficiaries is limited to the loss occurred during the process of conversion of wheat into wheat flour (atta).*
>
> *(c) States/UTs may raise the end retail price of wheat flour (atta) from Rs.2/ kg stipulated for wheat under NFSA, 2013 so as to cover the cost of conversion of wheat into wheat flour (atta) and recover the same from the eligible households under NFSA, 2013 i.e. priority households and AAY households. While recovering the cost of conversion of wheat into wheat*

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flour (atta), the States/ UTs shall keep in mind that the additional cost being charged is limited to the actual cost of conversion.

(d) State Governments/ UT Administrations shall distribute wheat or wheat flour (atta) at the option of the beneficiaries.

4. The issue is supersession of this Department's letter of even number dated 26.03.2014 on the subject……."

91. Vide another letter dated 17.01.2008, after taking note of requests made by various States to distribute wheat products such as wheat flour and suji, instead of wheat grains, in specific areas, and orders passed by the Supreme Court, the Central Government directed all States to take up distribution of wheat flour through the network of FPS to AAL, BPL and APL categories of card holders under the TPDS, subject to specified terms and conditions. The said terms and conditions are relied upon and are reproduced herein below:

"(a) Distribution of wheat products other than wheat flour such as suji, maida, rawa etc. will not be permissible from the allocations of wheat made by the Deptt. of Food and Public Distribution, Govt. of India under the TPDS.

(b) The wheat flour to be distributed to ration card holders shall conform to all quality standards/specifications of whole wheat atta prescribed under the Prevention of Food Adulteration Rules, 1955. The State/UT Governments shall put in place adequate safeguards to ensure that the quality of wheat flour issued to card holders is as per the standards/specifications prescribed under PFA Rules, 1955.

(c) From commencement of this policy and thereafter in the beginning of every financial year, State/UT Govt. should assess the requirement of wheat flour in their State/UT based on options, if any, to be excercised by the ration card holders under the TPDS. However, this requirement of wheat and

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wheat flour would be limited to the monthly allocation of wheat to the concerned State/UT under the TPDS.

(d) The State/UT Governments should distribute wheat flour in quantities equal to about half of the monthly allocations of wheat to ration card holders under the TPDS from March, 2008 onwards. This should be done particularly in those areas where evaluation studies have shown high levels of diversion/leakages of foodgrains under the TPDS and where it would be more convenient for the ration card holder families to get delivery of the wheat flour.

(e) The wheat flour should be properly packaged in suitable quantities.

(f) The ratio of whole wheat flour to whole wheat should be fixed by the State/UT Govts. appropriately in such a way as maximum quantity of wheat flour is obtained from the whole wheat to be issued to flour mills for this purpose.

(g) Expenses on milling/grinding of whole wheat, packaging and transportation of whole wheat to mills of wheat flour from the mills to distribution centres, etc. should be borne by the State/UT Govts. Or they should be adjusted suitably in the quantity/issue price of wheat flour in such a manner as no additional burden is passed over to the targeted AAY, BPL and APL ration card holder families.

(h) The State/UT Govts. should ensure that no unreasonable monetary advantage is allowed to flour mills in the process.

(i) For distribution of wheat flour instead of whole wheat to eligible ration card holders under the TPDS, it will not be necessary for State/UT Govts. to obtain specific permission or prior concurrence of the Govt. of India for this purpose. However, the quantum of wheat flour distributed under the TPDS will be reported every month to GOI.

(j) The quantity of unlifted wheat flour/atta fair price shops, if any, during a month may not be disposed of in the open market but carried forward to the next month for distribution subject to it retaining the required quality and the wheat allocation to RFMs/chakki mills for conversion into wheat flour

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for the next month will be proportionately reduced by the State/UT Govt. authorities.

(k) The State/UT Governments or their Agencies will not make any profit in implementation of the scheme.

(l) The distribution of wheat flour/atta through PDS outlets will be made as per provisions of the PDS(Control) Order, 2001 and any violation of the Order will result in imposition of penalties under the EC Act, 1955.

(m) Based on assessment of the State/UT Governments, distribution of fortified wheat flour may also be taken up in selected areas or for selected categories of ration card holders or for all categories of the ration card holders, for improving nutritional standard of the families covered.

(n) Distribution of wheat flour to the targeted families under the TPDS as per the terms and conditions specified above shall be sole responsibility of the concerned State/UT Governments. The State/UT Governments shall ensure proper implementation and regular monitoring of the scheme. It shall be ensured that there is no diversion of TPDS wheat flour to the open market."

92. Dr. Singhvi submitted that these steps were an innovative/progressive reform and promoted good governance. He submits that there is no prohibition in the NFSA against conversion of wheat grain to wheat flour. Similarly, delivery at the door step of the beneficiary is not prohibited under the NFSA, and is another measure of good governance.

93. Dr. Singhvi referred to another letter dated 01.02.2018 issued by the Central Government, proposing to put in place *special dispensation* of foodgrains to the beneficiaries, recognized under the NFSA, such as, persons above 65 years of age; differently-abled and families; who have no adult member listed in the ration card and are not in a position to visit Fair Price Shop. They would be covered under the special dispensation. Those

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beneficiaries who have applied for special dispensation, would be regularly supplied foodgrains at the door step by authorized nominees, by applying to the Ration Card issuing authority along with details and Aadhaar number of their nominee. He submitted that the aforesaid letter was addressed to all States/ & Union Territories, encouraging them to adopt the special dispensation to such identified beneficiaries under the NFSA. Dr. Singhvi submitted that there is no embargo in adopting the said model for all the TPDS beneficiaries. Dr Singhvi placed reliance on S. No. 2 and 3(b)(i)) of the said letter dated 01.02.2018. The relevant extract of the letter is reproduced hereinbelow:

> *"2. However, some media reports appearing recently, suggest that some of the beneficiaries experience difficulty in getting their entitled quantum of subsidized foodgrains because of their inability to visit the Fair Price Shop for reasons such as old age, physical disability etc.*
>
> *3. The matter of distribution of entitled quantity of food grains to such beneficiaries has been under the consideration of Government of India. After careful examination of the matter, it is proposed to put in place the following special dispensation for such beneficiaries:*
>
> *(a) NFSA beneficiary(ies), who are above sixty five years of age, or who are differently-abled, and have no other adult family member (16 to 65 years) listed in the Ration card, and are not in a position to visit the Fair Price Shop themselves, would be eligible to be covered under the special dispensation.*
>
> *(b) State/UT Government may consider adopting any of the approaches mentioned below to ensure regular supply of foodgrains to beneficiaries under such special dispensation:*
>
> *(i)* ***<u>Home delivery of the entitled quota of foodgrains:</u>***
>
> *State may devise the procedure for supply of foodgrains at the doorstep of such beneficiaries without adding any*

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additional costto the beneficiaries. A few states like Odisha have adopted this mode for distribution of foodgrains.

(ii) ***Delivery through authorized nominees of such beneficiaries:*** *Such beneficiaries should apply for special dispensation to the authority issuing ration cards along with details and Aadhaar number of their nominee for receiving the entitled foodgrains on their behalf. Such nominee must fulfil following conditions:*

- *The nominee must be a NFSA beneficiary tagged to the same FPS.*
- *Foodgrains should be issued to the nominee only after proper authentication/ identification as in case of any other NFSA beneficiary.*
- *FPS dealer or his/her family members cannot be authorized as a nominee.*

(iii) After approval, the nominee may be added in the ration card of such beneficiary and would be entitled to receive the ration of such beneficiary on his/her behalf.

(iv) Vigilance Committee(s) may also be advised to identify and recommend such beneficiaries to be covered under special dispensation to the concerned District Supply Officer"

94. Dr. Singhvi submits that vide the letter dated 10.03.2018, the approval given by the Council of Ministers of GNCTD to the '*proposal for Home Delivery of Ration Under Targeted Public Distribution system*', in the Cabinet Decision no. 2561 dated 06.03.2018 was communicated to the Lieutenant Governor. The Lieutenant Governor vide noting dated 20.03.2018, advised the GNCTD to refer the said proposal to Central Government before taking any final decision.

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95. Dr. Singhvi further referred to the letter dated 04.02.2019 issued by the GNCTD, addressing the loopholes in the *e-PoS* distribution system experienced during the trial run of the *e-PoS* system from the month of January 2018 to March 2018. The letter recorded the shortcomings/irregularities identified, viz. multiple OTPs being generated on single mobile number, fake ration cards issued, biometric authentication failure, poor internet connection, etc. Due to these shortcomings of the *e-PoS* distribution system, the GNCTD set up a plan for Door Step Delivery of Ration.

96. Dr. Singhvi submitted that the impugned Scheme has already been notified on 20.02.2021. The Legislative Assembly of the NCT has the power to make laws on all subjects under List II and List III, except on three subjects i.e. Police, Public Order and Land. The GNCTD is competent to create and implement the Doorstep delivery of ration Scheme, which is not one of the excepted subjects. The Lieutenant Governor is ordinarily required to act on aid and advice of the Council of Ministers, and if the Lieutenant Governor does not act on the aid and advice of the Council of Ministers, then the matter shall be referred to the President. In the present matter, the Lieutenant Governor did not make any reference to the President of India, and merely placed the matter for reconsideration before the Council of Ministers. This power cannot be exercised mechanically, but only in exceptional circumstances and keeping in view the principles of constitutional trust and morality.

97. Dr. Singhvi submits that the ***GNCTD (Amendment) Act, 2021*** came to be notified on 27.04.2021. The provisions of the GNCT (Amendment)

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Act, 2021 cannot be applied to the Scheme retrospectively. Dr. Singhvi relied upon the following extract from the judgment of the Supreme Court in ***State (NCT of Delhi)*** (supra):

> ***284.11***. *In the light of the contemporary issues, the purposive method has gained importance over the literal approach and the constitutional courts, with the vision to realise the true and ultimate purpose of the Constitution not only in letter but also in spirit and armed with the tools of ingenuity and creativity, must not shy away from performing this foremost duty to achieve constitutional functionalism by adopting a pragmatic approach. It is, in a way, exposition of judicial sensibility to the functionalism of the Constitution which we call constitutional pragmatism. The spirit and conscience of the Constitution should not be lost in grammar and the popular will of the people which has its legitimacy in a democratic set-up cannot be allowed to lose its purpose in simple semantics.*
>
> *x x x x x*
>
> ***284.13.*** *With the insertion of Article 239-AA by virtue of the Sixty-ninth Amendment, Parliament envisaged a representative form of Government for NCT of Delhi. The said provision intends to provide for the Capital a directly elected Legislative Assembly which shall have legislative powers over matters falling within the State List and the Concurrent List, barring those excepted, and a mandate upon the Lieutenant Governor to act on the aid and advice of the Council of Ministers except when he decides to refer the matter to the President for final decision.*
>
> ***284.14.*** *The interpretative dissection of Article 239-AA(3)(a) reveals that Parliament has the power to make laws for the National Capital Territory of Delhi with respect to any matters enumerated in the State List and the Concurrent List. At the same time, the Legislative Assembly of Delhi also has the power to make laws over all those subjects which figure in the Concurrent List and all, but three excluded subjects, in the State List.*

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x x x x x

284.17. The meaning of "aid and advise" employed in Article 239-AA(4) has to be construed to mean that the Lieutenant Governor of NCT of Delhi is bound by the aid and advice of the Council of Ministers and this position holds true so long as the Lieutenant Governor does not exercise his power under the proviso to clause (4) of Article 239-AA. The Lieutenant Governor has not been entrusted with any independent decision-making power. He has to either act on the "aid and advice" of Council of Ministers or he is bound to implement the decision taken by the President on a reference being made by him.

284.18. The words "any matter" employed in the proviso to clause (4) of Article 239-AA cannot be inferred to mean "every matter". The power of the Lieutenant Governor under the said proviso represents the exception and not the general rule which has to be exercised in exceptional circumstances by the Lieutenant Governor keeping in mind the standards of constitutional trust and morality, the principle of collaborative federalism and constitutional balance, the concept of constitutional governance and objectivity and the nurtured and cultivated idea of respect for a representative Government. The Lieutenant Governor should not act in a mechanical manner without due application of mind so as to refer every decision of the Council of Ministers to the President.

284.19. *The difference of opinion between the Lieutenant Governor and the Council of Ministers should have a sound rationale and there should not be exposition of the phenomenon of an obstructionist but reflection of the philosophy of affirmative constructionism and profound sagacity and judiciousness.*

x x x x x

428. *A significant aspect of the Rules is that on matters which fall within the ambit of the executive functions of the Government of NCT, decision-making is by the Government comprised of the Council of Ministers with the Chief Minister at*

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its head. The role of the Lieutenant Governor is evinced by the duty which is cast upon the Government to keep him duly apprised on matters relating to the administration of the Union Territory. ***On matters of executive business which lie within the constitutional functions assigned to the executive Government of the NCT, such a role is elaborated in the functions assigned to the Lieutenant Governor under Rule 24. Rule 24 deals with an eventuality when the Lieutenant Governor may be of the opinion that any further action should be taken or that action should be taken otherwise than in accordance with an order which has been passed by a Minister. In such a case, the Lieutenant Governor does not take his own decision. He has to refer the proposal or matter to the Council of Minister for consideration. Under Rule 25, the Lieutenant Governor may require the Council to consider a matter on which a decision has been taken by a Minister but which has not been considered by the Council. Rule 23 enunciates matters which have to be submitted to the Lieutenant Governor before issuing any orders thereon. If the Lieutenant Governor disagrees with a decision or proposal, recourse has to be taken to the procedure which has been enunciated in Rules 49, 50 and 51. If there is a difference of opinion, the Lieutenant Governor must refer it to the Union Government after following the procedure which has been laid down.*** *After the decision of the President has been communicated, the Lieutenant Governor must follow that decision and implement it. In other words, the Lieutenant Governor has not been conferred with the authority to take a decision independent of and at variance with the aid and advice which is tendered to him by the Council of Ministers. If he differs with the aid and advice, the Lieutenant Governor must refer the matter to the Union Government (after attempts at resolution with the Minister or Council of Ministers have not yielded a solution). After a decision of the President on a matter in difference is communicated, the Lieutenant Governor must abide by that decision.* ***This principle governs those areas which properly lie within the ambit and purview of the executive functions assigned to the Government of the***

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National Capital Territory. *Matters under Section 41 which fall under the discretion of the Lieutenant Governor stand at a different footing. The Lieutenant Governor may be required to act in his discretion where a matter falls outside the powers conferred on the Legislative Assembly but in respect of which powers or functions have been delegated to him by the President. The Lieutenant Governor may also be required to act in his discretion under a specific provision of law or where he exercises judicial or quasi-judicial functions. Matters pertaining to public order, police and land lie outside the ambit of the legislative powers of the Assembly and hence are outside the executive functions of the Government of NCT. These are matters where the Lieutenant Governor would act in the exercise of his functions at his discretion if and to the extent to which there has been a delegation or entrustment by the President to him under Article 239 of the Constitution. Hence, a distinction exists between matters which lie within the domain of the legislative powers of the Assembly and of the executive powers of the NCT Government, and those which lie outside. On the former, the Lieutenant Governor must abide by the aid and advice tendered by the Council of Ministers and, in the event of a difference of opinion, refer the matter to the President for decision. In matters which lie outside the legislative powers of the Legislative Assembly, the Lieutenant Governor has to act in accordance with the entrustment or delegation that has been made to him by the President under Article 239.*

x x x x x

475.18. *While it may not be possible to make an exhaustive catalogue of those differences which may be referred to the President by the Lieutenant Governor, it must be emphasised that a difference within the meaning of the proviso cannot be a contrived difference. If the expression "any matter" were to be read as "every matter", it would lead to the President assuming administration of every aspect of the affairs of the Union Territory, thereby resulting in the negation of the constitutional structure adopted for the governance of Delhi.*

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475.19**. **Before the Lieutenant Governor decides to make a reference to the President under the proviso to Article 239-AA(4), the course of action mandated in the Transaction of Business Rules must be followed. The Lieutenant Governor must, by a process of dialogue and discussion, seek to resolve any difference of opinion with a Minister and if it is not possible to have it so resolved to attempt it through the Council of Ministers. A reference to the President is contemplated by the Rules only when the above modalities fail to yield a solution, when the matter may be escalated to the President.

475.20. *In a Cabinet form of Government, the substantive power of decision-making vests in the Council of Ministers with the Chief Minister as its head. The aid and advice provision contained in the substantive part of Article 239-AA(4) recognises this principle. When the Lieutenant Governor acts on the basis of the aid and advice of the Council of Ministers, this recognises that real decision-making authority in a democratic form of Government vests in the executive. Even when the Lieutenant Governor makes a reference to the President under the terms of the proviso, he has to abide by the decision which is arrived at by the President. The Lieutenant Governor has, however, been authorised to take immediate action in the meantime where emergent circumstances so require. The provisions of Article 239-AA(4) indicate that the Lieutenant Governor must either act on the basis of aid and advice or, where he has reason to refer the matter to the President, abide by the decision communicated by the President. There is no independent authority vested in the Lieutenant Governor to take decisions (save and except on matters where he exercises his discretion as a judicial or quasi-judicial authority under any law or has been entrusted with powers by the President under Article 239 on matters which lie outside the competence of the Government of NCT); and……..”* (emphasis supplied)

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98. Pursuant to notification of the impugned Scheme, the Central Government raised objections to the same vide letter dated 19.03.2021 as taken note of hereinabove. Dr. Singhvi submitted that the objections were limited to nomenclature of the impugned scheme. Dr. Singhvi further submitted that the objection to nomenclature of Scheme was rectified by the Cabinet Decision No. 2987 dated 24.03.2021, issued by the GNCTD, and it deleted the name as MMMGRY, while maintaining the essential features of the scheme.

99. Vide communication dated 15.06.2021, addressed to the Central Government, the GNCTD responded to the letter dated 19.03.2021 issued by the Central Government, and stated that the nomenclature for the scheme is withdrawn. It further recorded that, with the approval of the Council of Ministers, it will continue with the implementation of the impugned scheme for home delivery of NFSA commodities, in accordance with the provisions of NFSA 2013 and TPDS. GNCTD further clarified that the existing FSPs will not be closed after implementation of impugned home delivery scheme. The Door Step Delivery scheme is in pursuance of the spirit of letter dated 01.02.2018 issued by the Central Government. The scheme is optional in nature, and the people may opt for either home delivery of ration, or they may take ration from FPS. He submits that both systems would continue to work. He submits that ONORC will be implemented in all circles through the existing FPSs. The implementation of ONORC on a pilot basis has already been commenced. The relevant extract of the said communication is reproduced hereinbelow:

> *"2. The Department of Food & Public Distribution had informed that the subsidized food grains being allocated by the*

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GoI for distribution under the National Food Security Act (NFSA) cannot be used for the operationalisation of any State specific/ other scheme under a different name / nomenclature other than NFSA, as the same is not permissible under the Act. In this regard, I am directed to inform that the Council of Ministers of Government of NCT of Delhi had earlier approved this scheme for home delivery of NFSA ration under the nomenclature "Mukhya Mantri Ghar Ghar Ration Yojana". The Department was informed about this scheme vide the notification dated 20.2.2021 (cop enclosed). In view of the Department's letter, the Council of Ministers, vide the decision no. 2987 dated 24th March 2021, has approved to rescind/ withdraw this nomenclature for the scheme viz."Mukhya Mantri Ghar Ghar Ration Yojana" and to continue the implementation process of home delivery of NFSA commodities in accordance with the provisions of NFS Act 2013 and TPDS.

3. It is clarified that the Fair Price Shops (FPS) will not be closed after implementation of home delivery scheme. Home delivery scheme is in pursuance of the spirit of letter dated 1st Feb, 2018 of Department of Food & Public Distribution GOI for Home Delivery of SFAs to certain category of beneficiaries. It is optional and the people may opt for either home delivery of ration or they may take ration from FPS. Therefore, both the systems would continue to work on ground. For ensuring full coverage of migrant beneficiaries of NFSA, ONORC will be implemented in all circles through the existing FPSs. Pilot implementation of ONORC has already started in FPSs of Seemapuri circle in Delhi."

100. Dr. Singhvi submits that the Lieutenant Governor directed the GNCTD to address the concerns raised by the Central Government vide his communication dated 24.06.2021. The Chief Minister vide letter 01.07.2021 clarified that the issues raised by the Central Government are being examined. The Chief Minister further clarified that the Lieutenant Governor did not have powers to give directions to the GNCTD on transferred

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subjects, and could only refer the matter to the President. The Lieutenant Governor vide noting dated 26.07.2021, referred the matter for reconsideration by the Council of Ministers.

101. Dr. Singhvi submits that vide first noting dated 24.05.2021, the Chief Minister directed to place the approval given by the Council of Minister before the Lieutenant Governor, to decide whether Lieutenant Governor intends to invoke his powers under Article 239AA(4) of the Constitution, or not. The Lieutenant Governor vide noting dated 02.06.2021, referred to his earlier letter dated 20.03.2018, wherein the GNCTD was directed to refer the matter to Central Government. The Lieutenant Governor noted that no approval from the Central Government is placed on record with regard to the impugned scheme. The Lieutenant Governor further noted the pendency of the present Writ Petition before this Court, challenging the scheme of GNCTD, and returned the file to the Chief Minister for reconsideration. Dr. Singhvi submits that there was no stay granted by this Court to the implementation of the impugned Scheme, and the GNCTD is, therefore, entitled to enforce the impugned Door Step delivery Scheme.

102. Dr. Singhvi submits that Section 36 of the NFSA, inter alia, states that provisions of the Act or the Schemes made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument having effect by virtue of such law. It provides overriding effect to the Act or schemes made thereunder. There is no prohibition against doorstep delivery of ration under the NFSA. In view of the Section 36, the doorstep delivery scheme of GNCTD will prevail over all other instruments such as the TPDS Order,

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2015 which was passed under section 3 of the ECA, Clauses 8(3) and 10(1) whereof were relied upon by the Petitioner.

103. Dr. Singhvi submits that NFSA – which is a later special law, in so far as the right to food is concerned, will prevail over the TPDS Order, 2015 which has been issued under Section 3 of the Essential Commodities Act, 1955 – a general law to control production and supply of certain commodities, including food items. He submitted that in case of inconsistency between the provisions of two enactments, the same can be resolved by referring to the underlying nature and purpose and policy of the two enactments. To substantiate his submission, Dr. Singhvi placed reliance on ***Ashoka Marketing Ltd. v. Punjab National Bank***, (1990) 4 SCC 406, the relevant extract of the judgment is produced hereinbelow:

> *"**50.** One such principle of statutory interpretation which is applied is contained in the latin maxim: leges posteriors priores conterarias abrogant (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: generalia specialibusnon derogant (a general provision does not derogate from a special one.) This means that* ***where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Bennion, Statutory Interpretation pp. 433-34).***
>
> ***X X X X***
>
> ***61. The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant***

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> ***provisions therein. We propose to consider this matter in the light of this principle****."* (emphasis supplied)

104. Dr. Singhvi submits that the NFSA mandates that the ration has to be distributed under the TPDS through FPS. The Act envisages actual delivery of the ration. The interpretation of the provision of the NFSA, in no manner, prohibits the actual delivery, or delivery at the doorstep of the beneficiaries. The impugned scheme furthers the TPDS by ensuring home delivery of ration to the targeted beneficiaries. The GNCTD is taking steps to ensure progressive reforms, by enabling the actual delivery of ration at the doorstep, which are in consonance with Section 24(2)b and 24(3) of the Act. Section 24 casts an obligation on the State Government to take delivery of foodgrains from the depots designated by the Central Government, and ensure actual delivery of the entitled benefits to the beneficiaries as identified under section 10 of the Act. Dr. Singhvi further submits that neither the Act stipulates the number of FPSs which may be licensed, nor the Central Government has capped the number of FPSs in the Rules. The impugned scheme is not by-passing the FPSs. There are around 2000 existing FPSs in the NCT of Delhi. The impugned scheme proposes to retain only 70 FPS in Delhi. This is done to have a cleaner, transparent and efficient system of distribution of foodgrains etc. The Ration Scheme/TPDS is ultimately for the end users. The Ration Scheme/TPDS is not framed to provide a source of livelihood to the FPS licensees. It has no concern with the sustainability and viability of the FPSs. He has sought to place reliance on the consent given by people of Delhi through SMSs sent by the GNCTD, to opt out for the home delivery of rations. He submitted that out of 70

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lakhs, 69 lakhs people have given their consent to the doorstep delivery of ration. Dr. Singhvi argued that the scheme has not been challenged by even a single beneficiary under the TPDS.

105. Dr. Singhvi referred to the objective of the NFS Act which, inter alia, reads "*An Act to provide for food and nutritional security in human life cycle approach, by* ***ensuring access to*** *adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto".* The use of foodgrains from the Central Pool for welfare schemes such as the TPDS is allowed by the NFSA. He submitted that the Central Government is not expected to create hurdles in the performance by a State Government of its obligations under the Act, by directing that the delivery to the doorstep of beneficiaries cannot be done in respect of the Central Pool foodgrains, and the State Governments can only do so by procuring other foodgrains on their own. The scope of the Act leaves room for innovative measures be taken by the State Governments to improve and improvise the delivery system of foodgrains under the TPDS.

106. Dr. Singhvi submits that the other states have also introduced doorstep delivery of rations. The Government of Andhra Pradesh vide letter dated 14.01.2021 notified its proposed scheme, after evaluating the performance of distribution of scheduled commodities at the doorstep of the beneficiaries on a pilot basis in Srikakulam District from September, 2019. Based on the feedback of the pilot programme, the Government of Andhra Pradesh proposed a model to deliver essential commodities at doorstep of the cardholders under PDS through well-equipped custom-built Mobile Dispensing Units (MDU). It proposed that the existing FPS will continue to

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operate and MDU – a new layer of last mile connectivity is added to ensure door delivery of scheduled commodities. The State of Madhya Pradesh in November 2021, proposed to begin with the doorstep delivery of ration in 89 tribal blocks. The State Government will facilitate tribals in availing loan for buying vehicles, which will be used for distribution of ration to the said 89 tribal blocks. In the State of West Bengal, the scheme namely '*Duare Ration Scheme*' introduced on a pilot basis by the State Government was challenged by the similarly placed petitioners – Fair Price Shop Owners. A learned Single Judge of the High Court of Calcutta vide judgment dated 15.09.2021 dismissed the Writ Petition bearing no. W.P.A. 14013 of 2021 titled as ***Mrityunjoy Garang & Ors. v. State of West Bengal & Ors.,*** by holding that the scheme is not in violation of the statutory provisions, and is in consonance with the welfare measures required to be taken in an overall pandemic environment. It was held that the previous practice of ration being sold from the ration shop has not been done away with in the Scheme. The scheme ensures that the FPS owners supply the ration articles at the doorstep of the consumers. The entire ration for the one-month period, proposed to be delivered to the beneficiary at one go, was without any additional financial burden of the beneficiary. The Division Bench of the High Court of Calcutta in MAT No.1033 of 2021 titled as ***Gokul Chandra Das & Anr. v. The State of West Bengal & Ors.***, *prima facie,* held that the Scheme is not a statute itself, and the matter requires consideration on merits. The Court further held that the scheme, being in nature of a State-run project, must not be repugnant to the Central legislation and the State is required to discharge the onus of ultimately proving compatibility of the former with the latter. The said order was challenged before the Supreme Court, wherein, vide order

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08.10.2021, the Supreme Court granted liberty to the parties to move before the High Court for an early hearing of the pending appeals. Dr. Singhvi further referred to announcement made by the Chief Minister of Karnataka to launch ration delivery at doorstep in Bengaluru from 1st November 2021.

107. Dr, Singhvi placed reliance on the judgment of the Supreme Court in ***Kerela State Beverages (M AND M) Corporation Limited. v P.P. Suresh And Ors***. (2019) 9 SCC 710, and relied on the following extract, to submit that the legitimate expectations of the petitioners have to make way in the larger public interest:

> ***"Substantive Legitimate Expectation***
>
> ***19.*** *An expectation entertained by a person may not be found to be legitimate due to the existence of some countervailing consideration of policy or law. [H.W.R. Wade & C.F. Forsyth, Administrative Law (Eleventh Edn., Oxford University Press, 2014).] Administrative policies may change with changing circumstances, including changes in the political complexion of Governments. The liberty to make such changes is something that is inherent in our constitutional form of Government. [Hughes v. Department of Health and Social Security, 1985 AC 776, 788: (1985) 2 WLR 866 (HL)]*
>
> ***20. The decision-makers' freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation.*** *[Findlay, In re, 1985 AC 318: (1984) 3 WLR 1159 : (1984) 3 All ER 801 (HL)]* ***So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated****.*
>
> ***21.*** *The assurance given to the respondents that they would be considered for appointment in the future vacancies of daily wage workers, according to the respondents, gives rise to a*

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> *claim of legitimate expectation. The respondents contend that there is no valid reason for the Government to resile from the promise made to them. We are in agreement with the explanation given by the State Government that the change in policy due was to the difficulty in implementation of the Government Order dated 20-2-2002. Due deference has to be given to the discretion exercised by the State Government.* ***As the decision of the Government to change the policy was to balance the interests of the displaced abkari workers and a large number of unemployed youth in the State of Kerala, the decision taken on 7-8-2004 cannot be said to be contrary to public interest. We are convinced that the overriding public interest which was the reason for change in policy has to be given due weight while considering the claim of the respondents regarding legitimate expectation. We hold that the expectation of the respondents for consideration against the 25% of the future vacancies in daily wage workers in the Corporation is not legitimate****."* (emphasis supplied)

108. Dr. Singhvi further argued that the impugned scheme is a step towards the progressive reforms to be brought in a modern progressive society. In support of his submission Dr. Singhvi placed reliance on ***Senior Electric Inspector v. Laxminarayan Chopra***, (1962) 3 SCR 146l, wherein it was observed by the Supreme Court as follows:

> *"7. ……* ***It is perhaps difficult to attribute to a legislative body functioning in a static society that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of***

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> ***an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them***." (Emphasis supplied)

109. Reliance in placed on ***State v. S.J. Choudhary***, (1996) 2 SCC 428, to submit that a statutory interpretation, that is in keeping with the current times, must be adopted. Dr. Singhvi argued that the impugned scheme is an innovative and evolved step, taken to meet the prevailing circumstances. The relevant extract of the judgment relied upon by Dr. Singhvi is reproduced hereinbelow:

> *"10. Statutory Interpretation by Francis Bennion, 2nd Edn., Section 288 with the heading "Presumption that updating construction to be given" states one of the rules thus: (p. 617)*
>
> *"* * **
>
> > *(2) It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.*
>
> ** * *"*
>
> *In the comments that follow it is pointed out that an ongoing Act is taken to be always speaking. It is also, further, stated thus: (pp. 618-19)*

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> *"**In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters**. Just as the US Constitution is regarded as 'a living Constitution', so an ongoing British Act is regarded as 'a living Act'. That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will try to foresee the future, and allow for it in the wording.*
>
> * * *
>
> *An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials."*

110. Dr. Singhvi further placed reliance on ***All Kerala Online Lottery Dealers Association. v. State of Kerala and Ors.***, (2016) 2 SCC 161, to submit that the Supreme Court held that an interpretation, which advances the object of the NFSA, should be favoured. Dr. Singhvi placed reliance of the following extract reproduced herein below:

> *"**50**. With the ongoing development in the field of science and technology, even though the online lotteries were not in vogue in 1998 when Parliament had passed the Act, it came into*

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> *existence at a later point of time. The principles laid down by this Court in B.R. Enterprises [B.R. Enterprises v. State of U.P., (1999) 9 SCC 700] would apply to the paper lotteries which were in existence at that point of time. The principles laid down therein would also apply to online lotteries or internet lotteries by treating them as a separate class….*"

111. Dr. Singhvi further argued that the NFSA does not prohibit alternative mode of delivery of foodgrains, with march of time. He placed reliance on ***Rajeev Suri v. Delhi Development Authority & Ors***., (2021) SCC OnLine SC 7, wherein Construction of the Central vista project was challenged. The State has the power and competence to change the policy. To substantiate his argument, Dr. Singhvi placed reliance on the following extracts of the judgment:

> *"**191.** As noted earlier, the Courts do not sit in appeal over the decisions of the Government to do merit review of the subjective decision as such. In **Natural Resources Allocation**, this Court noted that Government decisions concerning public resources have an "intricate economic value" attached with them and to elevate the standard of review on the basis of a subjective understanding of the subject matter being extraordinary would be dehors the review jurisdiction. In **Narmada Bachao Andolan v. Union of India**, this Court observed that:*
>
> > *"229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. **Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken**. The court, no doubt, has a duty to see that in the undertaking of*

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> *a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken.* ***Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time****. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them."(emphasis supplied).*

192. The Government may examine advantages or disadvantages of a policy at its own end, it may or may not achieve the desired objective. The Government is entitled to commit errors or achieve successes in policy matters as long as constitutional principles are not violated in the process*. It is not the Court's concern to enquire into the priorities of an elected Government. Judicial review is never meant to venture into the mind of the Government and thereby examine validity of a decision. In* ***Shimnit Utsch India****, this Court, in para 52, observed thus:*

> *"****52. … The courts have repeatedly held that the government policy can be changed with changing circumstances and only on the ground of change, such policy will not be vitiated.*** *The Government has a discretion to adopt a different policy or alter or change its policy calculated to serve public interest and make it more effective. Choice in the balancing of the pros and cons relevant to the change in policy lies with the authority. But like any discretion exercisable by the Government or public authority, change in policy must be in conformity with Wednesbury [Associated*

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> *Provincial Picture Houses Ltd. v. Wednesbury Corpn., [1948] 1 K.B. 223 : (1947) 2 All ER 680 (CA)] reasonableness and free from arbitrariness, irrationality, bias and malice."(emphasis supplied)*

***193**. In **State of Madhya Pradesh v. Narmada Bachao Andolan**, the Court was dealing with an issue of rehabilitation of persons displaced due to the construction of the dam. It went on to observe that judicial interference in a policy matter is circumscribed, in the following words:*

> ***"36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power.** (See Ram Singh Vijay Pal Singh v. State of U.P. [(2007) 6 SCC 44], Villianur Iyarkkai Padukappu Maiyam v. Union of India [(2009) 7 SCC 561] and State of Kerala v. Peoples Union for Civil Liberties [(2009) 8 SCC 46].)*
>
> ***37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities.** A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions."(emphasis supplied)*

***194.** In **Tata Iron & Steel**, in paragraph 68, the Court noted that whenever the issues brought before the Court are intertwined with those involving determination of policy and a*

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plethora of technical issues, the Courts are very wary and must exercise restraint and not trespass into policy-making. Similarly, in ***Narmada Bachao Andolan v. Union of India****, in paragraph 228, the Court noted that a project may be executed departmentally or by an outside agency as per the choice of the Government, whilst ensuring that it is done according to some procedure or set manner. Further, the Court should be loath to assume that the authorities will not function properly and that the Court should have no role to play. Later in 2007, the Court restated the position in* ***Directorate of Film Festivals****, as follows:*

> *16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review (vide Asif Hameed v. State of J&K [1989 Supp (2) SCC 364], Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223], Khoday Distilleries Ltd. v. State of Karnataka [(1996) 10 SCC 304], BALCO Employees' Union v. Union of India [(2002) 2 SCC 333], State of Orissa v. Gopinath Dash [(2005) 13 SCC 495] and Akhil Bharat Goseva Sangh (3) v. State of A.P. [(2006) 4 SCC 162)].(emphasis supplied)*

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195. *To sum up the above discussion, it may be noted that judicial review primarily involves a review of State action - legislative, executive, administrative and policy. The primary examination in a review of a legislative action is the existence of power with the legislature to legislate on a particular subject matter. For this purpose, we often resort to doctrines of pith and substance, harmonious construction, territorial nexus etc. Once the existence of power is not in dispute, it is essentially an enquiry under Article 13 of the Constitution which enjoins the State to not violate any of the provisions of Part-III in a law-making function. The review of executive action would depend upon the precise nature of the action. For, the domain of executive is wide and is generally understood to take within its sweep all residuary functions of the State. Thus, the precise scope of review would depend on the decision and the subject matter. For instance, an action taken under a statute must be in accordance with the statute and would be checked on the anvil of ultra vires the statutory or constitutional parameters. The enquiry must also ensure that the executive action is within the scope of executive powers earmarked for State Governments and Union Government respectively in the constitutional scheme. The scope of review of a pure administrative action is well settled. Since generally individuals are directly involved in such action, the Court concerns itself with the sacred principles of natural justice – audi altrem partem, speaking orders, absence of bias etc. The enquiry is also informed by the Wednesbury principles of unreasonableness.* ***The review of a policy decision entails a limited enquiry. As noted above, second guessing by the Court or substitution of judicial opinion on what would constitute a better policy is strictly excluded from the purview of this enquiry. Under the constitutional scheme, the government/executive is vested with the resources to undertake necessary research, studies, dialogue and expert consultation and accordingly, a pure policy decision is not interfered with in an ordinary manner****. The burden is heavy to demonstrate a manifest illegality or arbitrariness or procedural lapses in the culmination of the policy decision. However, the underlying feature of protection*

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> *of fundamental rights guaranteed by the Constitution must inform all enquiries of State action by the constitutional Court.*
>
> (emphasis supplied)

112. Dr. Singhvi submits that vide notification dated 03.11.2014, the Central Government capped the conversion charges of wheat into wheat flour (atta), and the State Governments may raise the end retail price of wheat flour (atta) from Rs. 2/kg (stipulated for wheat under the NFSA) so as to cover the conversion charges of wheat grains to wheat flour (atta) and recover the same from the beneficiaries, at the option of the beneficiaries. Dr. Singhvi further submits that even though Sugar is not part of the NFSA as an essential commodity, Section 32(2) of the NFSA permits the State Governments to distribute benefits higher than those provided by the Act from their own resources. Through the impugned scheme, the State Government would be rendering an additional service, from their own resources, to distribute the subsidized foodgrains received from the Central Pool under the NFSA. With regard to ONORC, it was submitted by Dr. Singhvi that the GNCTD has already implemented the ONORC scheme from July, 2021. The *ePoS* services are being used, and will continue to be in use, for home-delivery under the impugned scheme as well as for beneficiaries those who opt to pick the foodgrains from the Circle level FPS. This is to ensure portability amongst the Circle level FPS and a migrant labour/beneficiary. Dr. Singhvi further submitted that the proposed scheme is in compliance of the two directions issued by the Central Government vide letters 03.11.2014 and 01.02.2018, taken note of hereinabove. However, the GNCTD is not under obligation to comply with the objections

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raised by the Central Government vide letters dated 22.06.2021 and 08.10.2021, which are without any basis.

113. Dr. Singhvi submitted that the architect of the NFSA envisages that the entitlements should reach the beneficiaries, and the State authorities – both the Central as well as State, should endeavour to bring about progressive reforms in consonance with the provisions of the Act. Section 12 enlists such reforms –clause (a) of sub section (2) of Section 12 talks about doorstep delivery of foodgrains to TPDS outlets; sub clause (g) refers to support to local public models and grains bank; sub clause (h) deals with introduction of schemes such as cash transfer, food coupons, or other schemes, to the beneficiaries in order to ensure delivery of their foodgrains entitlement as may be prescribed by the Central Government. Section 24(2)(a) further casts a responsibility on the State Government to take delivery from the designated depots of the Central Government and ensure delivery at the door-step of each FPS. It was submitted that the delivery of ration at the doorstep of the beneficiary is a reform. The general mandate of the Act is to ensure that the entitlements reach to the beneficiaries. The FPS is merely a means to meet this end, and in no manner is an end in itself. Dr. Singhvi submitted that there is no prohibition of delivery to doorstep of the beneficiary under the Act. In view of the absence of any prohibitionary provision, the State Government may take reformative steps to ensure the delivery of entitlements to the real and ultimate beneficiary. Dr. Singhvi referred to the definition of FPS (*under section 2(4)*) and TPDS (*under section 2(23)*), in the NFSA to advance his argument that there is no

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prohibition carved out under the Act against the doorstep delivery of ration, at the doorstep of a beneficiary.

114. Dr. Singhvi further submitted that the State Government is entrusted with the responsibility of intra-state movement of the foodgrains. It is the obligation of the State Government to deliver the foodgrains, after having picked them up from the designated depots of the Central Government. Section 10 of the Act requires the State Government to identify the eligible households/ beneficiaries in accordance with guidelines. Dr. Singhvi sought to argue that a conjoint reading of Section 10 with section 24(2)(b) and 24(3) makes it clear that the State Government may take steps to ensure delivery of foodgrains at doorstep of the beneficiary.

115. Dr. Singhvi submitted that NFSA is a welfare legislation. The interpretation of the Act has to be dynamic, and an expansive interpretation should be adopted. Dr. Singhvi further submitted that the Act should not be interpreted with a pedantic approach. He sought to place reliance on Section 32(2) which, inter alia, provides that, notwithstanding anything contained in the Act, the State Government may continue with or formulate food or nutrition based plans or schemes, providing for benefits higher than the benefits provided under the Act, from its own resources. The GNCTD is providing Sugar, which is a benefit over and above in the existing scheme, which is not provided under the Act. The mandate of the Act is to maximize the benefits, and not to minimize the same.

116. Dr. Singhvi submitted that judicial review does not lie in matter of economic policy, as held in ***BALCO Employees' Union (Regd.) v Union of India & Ors***., (2002) 2 SCC 333. The existing ration distribution system is

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riddled with rampant corruption, diversion and leakages to the black market. The GNCTD, with the view to curb the maladies, has introduced the Scheme. The Petitioners are ration shop owners, who are licensees and, therefore, can have no vested right in perpetuation of the existing system. The right to challenge the scheme/ policy, and seek injunction against the same is very limited. A policy measure, which is being undertaken in the larger interest cannot be questioned at the behest of the petitioners', who have narrow commercial interest. The petitioners – FPS Owners were never promised with continuation of their licences for eternity by the State. Therefore, the petitioners cannot invoke the principles of promissory estoppel or legitimate expectations, at the cost of public interest. To substantiate his argument, Dr. Singhvi place reliance on ***Kerela State Beverages (M AND M) Corporation Limited*** (supra) and ***Punjab State Power Corporation Limited and Another v. Emta Coal Limited***, (2021) SCC OnLine SC 766. The relevant extract of the ***Punjab State*** (supra) is reproduced hereinbelow:

> ***25.*** *We find that the High Court has also clearly understood the said legal position with regard to language used in Section 11 of the said Act. When considering Section 62 of the Contract Act, 1872 read with Section 11 of the said Act, it has observed that the parties to a contract may willingly agree to substitute a new contract or to rescind it or alter it. Having observed this, the High Court has, however, erred in observing that EMTA had a legitimate expectation. The High Court has observed thus:—*
>
> > *"It could not therefore, have been left in the lurch particularly when the same mine was re allocated to the Corporation suggestive of continuity. Indeed, the respondents were very well within their rights to reject the arrangement while granting a*

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consideration under Section 11 if the performance of the petitioner was unsatisfactory or if there was any other factor which the Corporation found relevant enough to discard the arrangement altogether."

26. *We find that the reasoning adopted by the High Court is totally wrong. Merely because the Coal Mine Block was allotted to PSPCL, the same could not give any vested right in favour of EMTA, particularly in view of the language used in Section 11 of the said Act. The reasoning given by the High Court that PSPCL was within its right to reject the arrangement if the performance of EMTA was unsatisfactory or if there was any other factor which the Corporation found relevant enough to discard the arrangement altogether, in our view, are totally erroneous.*

X XXXX

28. *The issue with regard to legitimate expectation has been recently considered by a bench of this Court to which one of us (L. Nageswara Rao, J.) was a member. After considering various authorities on the issue, in the case of Kerala State Beverages (M and M) Corporation Limtied (supra), it was observed thus :—*

"20. *The decision-makers' freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. [Findlay, In re, [1985] A.C. 318 : [1984] 3 WLR 1159 : (1984) 3 All ER 801 (HL)] So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated."*

117. Dr. Singhvi further argued that public interest has been accepted as an exception to the principles of legitimate expectation and, therefore, the challenge by the petitioners on the ground of legitimate expectation does not hold good. He sought to place reliance on ***Union of India and Anr. v.***

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International Trading Co. and Anr. (2003) 5 SCC 437, the relevant extract is reproduced hereinbelow:

> ***"12****. Doctrines of promissory estoppel and legitimate expectation cannot come in the way of public interest. Indisputably, public interest has to prevail over private interest. The case at hand shows that a conscious policy decision has been taken and there is no statutory compulsion to act contrary. In that context, it cannot be said that the respondents have acquired any right for renewal. The High Court was not justified in observing that the policy decision was contrary to statute and for that reason direction for consideration of the application for renewal was necessary. Had the High Court not recorded any finding on the merits of respective stands, direction for consideration in accordance with law would have been proper and there would not have been any difficulty in accepting the plea of the learned counsel for the respondents. But having practically foreclosed any consideration by the findings recorded, consideration of the application would have been a mere formality and grant of renewal would have been the inevitable result, though it may be against the policy decision. That renders the High Court judgment indefensible."*

118. Dr. Singhvi argued that judicial review in matters of policy decisions of the Government is confined to a narrow sphere. The GNCTD is empowered to notify the Scheme which pertains to a transferred subject. He sought to place reliance on para 165 of ***Rajeev Suri*** (supra) and para(s) 92 & 93 ***BALCO*** (supra) as taken in note hereinabove. It was argued that the NFSA does not envisage that the existing model of distribution of foodgrains must continue in perpetuity. It was submitted the mandate of the Act is to ensure right to food and actual access of the entitlements to the beneficiaries under the TPDS. Dr. Singhvi referred observations made in

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Swaraj Abhiyan (supra) to argue that it is the obligation of the State to ensure that adequate foodgrains are available to all the beneficiaries. The relevant extract of the same is reproduced hereinbelow:

> *"**123.** Finally, in Paschim Banga Khet Mazdoor Samity v. State of W.B. [Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37] this Court referred to another constitutional obligation of providing adequate medical services to the people and held in para 16 of the Report as follows: (SCC p. 48)*
>
> > *"16. It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. [See Khatri (2) v. State of Bihar [Khatri (2) v. State of Bihar, (1981) 1 SCC 627: 1981 SCC (Cri) 228], SCC at p. 631.] The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view."*
>
> *There is undoubtedly a distinction between a statutory obligation and a constitutional obligation but there can be no doubt that the right to food is actually a constitutional right and not merely a statutory right. (See for example: Shantistar Builders v. Narayan KhimalalTotame [Shantistar Builders v. Narayan KhimalalTotame, (1990) 1 SCC 520]). In any event, even if the right to food is a statutory right, it would be the obligation of the State to make all possible efforts and some*

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> *more to ensure that to the extent possible, adequate foodgrains are available to all and particularly to those in drought-affected areas. There can hardly be any dispute on this. In this context, it would be worth recalling the Preamble to the NFS Act which states that it is*
>
> > *"An Act to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto."*

119. Dr. Singhvi, lastly, referred to the order dated 28.11.2001 passed in ***Peoples Union for Civil Liberties (PDS matters) v Union of India & Ors.***; the order dated 08.05.2002 passed in ***Peoples Union for Civil Liberties (PDS matters) v Union of India & Ors.,*** (2011) 12 SCC 673 and; the order dated 02.05.2003 passed in ***Peoples Union for Civil Liberties (PDS matters) v Union of India & Ors.,*** (2013) 2 SCC 688, to lay emphasis on the foodgrains distribution regime. Dr. Singhvi further referred to ***Swaraj Abhiyan*** (supra) and the order dated 27.04.2020 passed by the Division Bench of this court in W.P.(C) 2161 of 2017 ***Delhi Rozi-Roti Adhikar Abhiyan v. Union Of India And Ors,*** in the backdrop of the Covid-19 pandemic, directing the GNCTD to ensure that FPS shops shall remain operational, and that the foodgrains to be further delivered from the ration shops on a regular basis.

120. Dr. Singhvi concluded by submitting that the GNCTD has sufficiently addressed all the objections and queries with regard to the Scheme, time and again raised by the Central Government. The impugned scheme is completely in accordance with the constitutional and statutory framework.

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There is no basis to stall the implementation of the Scheme in view of the Judgment ***State of (NCT of Delhi)*** (supra). To summarise his submissions are:

(a) TPDS Order, 2015 passed under the ECA is superseded by the enactment of the NFSA.

(b) The GNCTD have fairly responded to the letters dated 22.06.2021 and 08.10.2021 issued by the Central Government.

(c) At the root, the endeavour of the GNCTD is to improve the process of delivery of rations to the beneficiaries.

(d) The existing grievance redressal mechanism under the NFSA will be applicable to the new system proposed by the GNCTD.

(e) In view of the file noting of the Lieutenant Governor, in case of difference with a minister, and not with the Council of Minister, the Lieutenant Governor can refer a matter for consideration by the Council under Rule 49 of the TBR Rules. However, Rule 49 and Section 45(c) of the GNCTD Act do not empower the Lieutenant Governor to refer a matter for reconsideration to Council of Ministers.

DISCUSSION

WHETHER THE PETITIONERS HAVE THE LOCUS STANDI TO PREFER THESE PETITIONS

121. Dr. Singhvi has challenged the locus standi of the petitioners to prefer these writ petitions. We may deal with this challenge first. The present writ

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petitions have been preferred by the Association/ Registered Society of Fair Price Shops Owners/ Dealers appointed under the ECA. Similarly, W.P.(C.) No. 13104/2021 has been preferred by Delhi Ration Dealers Union through its President and six individual ration dealers in Delhi. The case of the petitioners is that their rights are vitally affected by the aforesaid scheme of the GNCTD, and the tenders floated by the GNCTD. The admitted position is, and this is also stated by the GNCTD and their learned senior counsels, that if the impugned scheme is implemented and the tenders – as called, are awarded, a large number of existing fair price shops in the NCT of Delhi would be very severally affected, as their business would dwindle. Under the impugned scheme and the tenders issued by the GNCTD, what is proposed to be done is to invite tenders, *inter alia*, for the purpose of appointing agencies who would take the grains provided by the Central Government under the NFSA; clean/ process them; convert Wheat into Atta; pack them and; deliver the packets at the door step of the beneficiaries. The newly engaged agencies are proposed to be granted the licenses under the ECA, appointing them as FPS owners/ dealers. It is also the claim of GNCTD that a very large number of beneficiaries (98.57%) have "opted" for the door-step delivery scheme. This scheme and the tenders issued by the GNCTD, if awarded and implemented, would, admittedly, put many of the existing ration shop dealers/ owners out of business. The petitioners also assert that the impugned scheme is justified by the GNCTD on the basis of their unfounded and biased allegation of wrong doings by all the FPS owners/ dealers, and their name and reputation are at stake. Thus, there is no doubt in our mind that the petitioners have the locus standi to prefer the present petitions. We, therefore, reject this objection of Dr. Singhvi.

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122. At this stage, we may take note of the history of the Public Distribution System in India, with focus on the NCT of Delhi, to understand how it has evolved and worked over the decades.

BACKGROUND AND SOME SIGNIFICANT LEGISLATIVE DEVELOPMENTS

123. India has witnessed the evolution of the system of public distribution of grains over the decades. This had its origin in the 'rationing system' introduced by the colonial government – as a war time rationing measure, around World War II, back in 1939**.** As a response to the food shortages of the time, the first structured public distribution system – through the rationing system, for sale of a fixed quantity of ration to entitled families in specified cities/towns, was then introduced. Post-independence, India retained the Public distribution of foodgrains as a deliberate social policy[1].

124. On 1st April, 1955, ECA was enacted by the Parliament with the object *"to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce, in certain commodities."*

125. The Act was introduced to achieve two objectives: - a) to maintain supply of the essential commodities to consumers, and; b) To secure equitable distribution and availability of these essential commodities. The Act provides for framing of Rules to regulate and control the production, pricing, and distribution of the essential commodities. Section 2A defines

[1] "*Chapter-6. Public distribution system in India-evolution, efficacy and need for reforms" Indian experience on household food and nutrition security, https://www.fao.org/3/x0172e/x0172e06.htm#P1406_137724*

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"*Essential Commodity*" to mean a commodity specified in the Schedule to the Act. The Schedule to the ECA enlists essential commodities and at serial No. (3), "*food stuffs*, *including edible oil seeds and oils"* have been scheduled. Section 3 of the Act empowers the Central Government, for the purpose of maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, to issue orders providing for regulating or prohibiting the production, supply and distribution thereof, and trade and commerce therein.

126. Section 3(2) of the ECA enumerates some of the aspects on which an order may be issued by the Central Government, which include aspects of grant of licenses and permits for production or manufacture of essential commodities; for controlling the prices on which any essential commodity may be bought or sold; for regulating – by licenses, permits, or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity; for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale etc.

127. Till the 1970s, PDS was a general entitlement scheme as a component of the strategy to alleviate poverty for all consumers without any specific target, and was introduced as a universal scheme for the distribution of food at reasonable prices. The PDS was subsequently modified, and was launched in June, 1992 as the *Revamped Public Distribution System (RPDS)* in view of the economic liberalization measures adopted by the nation. It aimed to strengthen and streamline the PDS, as well as to improve its reach in the far-flung, hilly, remote and inaccessible areas, where a substantial section of the underprivileged classes live.

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128. Pursuant to the *World Food Summit in 1996*, of which India was also a signatory – committing to ensure food security for all, in June, 1997, the Public distribution system was renamed and launched as the *Targeted Public Distribution System (TPDS*) by the Government of India, with focus on the poor. Under TPDS, beneficiaries were divided into two categories: Households below the poverty line or BPL; and Households above the poverty line, or APL.

129. In December, 2000**,** "*Antyodaya Anna Yojana" (AAY*) was launched for one crore poorest of the poor families. AAY was launched with the aim to reduce hunger among the poorest segments of the BPL population[2].

130. The implementation of the distribution schemes was achieved through the licensed ration shops/ outlets, wherefrom the beneficiaries would collect the foodgrains. Insofar as Delhi is concerned, from time to time, several orders have been issued by the Government under the Essential Commodities Act (ECA). We may notice only some of them. The ***Delhi Rationing Order, 1966*** was one such order, which made provision for appointment of, *inter alia*, authorized wholesalers and authorized retail distributors in respect of rationed items. This order regulated the procurement and distribution of the rationed items through the authorized retail distributors.

131. On 27.08.1968, the ***Delhi Specified Food Articles (Regulation & Distribution) Order, 1968*** was issued by the Administrator of the Union Territory of Delhi with the concurrence of the Central Government under Section 3 of the ECA. Clause 2(7) of this order defined a "*Fair price shop*

[2] *International Journal of Management and Social Science Research (IJMSSR) Volume3, No. 11, November 2014.*

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holder" to mean a retail dealer authorized under the provisions of Clause 3 in respect of any specified food article. It further explained that every authorized retail distributor appointed, or authorized, under the Delhi Rationing Order, 1966 and whose appointment, or authorization was in force immediately before such commencement, shall be deemed to be a fair price shop holder for the purposes of the said order.

132. Under Clause 3 of this order, the Administrator or his authorized officer could appoint any person, or body of persons to be, *inter alia*, a fair price shop holder in respect of such specified food articles for the purpose of this order, and thereupon the fair price shop holder could obtain and supply specified food articles in accordance with the provisions of the order.

133. Clause 5, *inter alia*, provided that no fair price shop holder shall sell, or supply specified food article to any person, except the food card registered with him, or a special food card issued by the Food & Supply Officer and only at such prices as may be specified by the Central Government, or the Administrator.

134. Next, the Administrator of the Union Territory of Delhi issued an order dated 12.01.1981 in exercise of powers conferred by sub Section (2)(d) of Section 3 of the ECA, called ***The Delhi Specified Articles (Regulation of Distribution) Order, 1981***, which extended to the whole of the Union Territory of Delhi, as it then existed. Clause 2(9) of the said Order defined "*Fair Price Shop Holders*" to mean a retail dealer authorised under the provisions of Clause 3 in respect of any specified articles. On the commencement of the said Order, the appointment of every Fair Price Shop holder made under *The Delhi Specified Food Articles (Regulation of*

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Distribution) Order, 1968 was continued, unless such appointment or authorisation was, or was deemed to be rescinded under the said Order. Clause 3(1) enabled the Administrator, or his authorised officer by him in writing in this behalf, by order, to appoint any person or body of persons to be, *inter alia*, a fair price shop holder in respect specified articles, and there upon such fair price shops holder was entitled to obtain and supply specified articles in accordance with the provisions of the said Order. The authorisations issued under the erstwhile *Delhi Specified Food Articles (Regulation of Distribution) Order, 1968* were deemed to be authorisations under Clause 3(1) of the 1981 Order.

135. In 2001, the ***Public Distribution System (Control) Order 2001*** was issued by the Central Government under Section 3 of the ECA, for maintaining supplies and securing availability and distribution of essential commodities under the Public Distribution System. This Order extended to the whole of India. This Order defined "*Fair Price Shop*" to mean a shop which has been licensed to distribute essential commodity by an Order issued under Section 3 of the ECA, to the ration card holders under the Public Distribution System.

136. The expression "*Public Distribution System*" was defined to mean the system for distribution of essential commodities to the ration card holders through the fair price shops, such as rice, wheat, sugar, edible oils, kerosene and such other commodities as are notified by the Central Government under Clause(a) of Section 2 of the ECA. While the obligation to issue ration cards to Above Poverty Line, Below Poverty Line and Antyodaya families, and to conduct periodical review and checking of ration cards was

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cast on the State Government, the Central Government was charged with the responsibility of making available to the State Governments, foodgrains for distribution under the TPDS at such scales and prices, as provided in para 3 of the Annexure to this Order. Clause 6 of this Order deals with the aspect of distribution. Clause 6(1) states that the procedure for distribution of foodgrains by the Food Corporation of India to the State Governments or their nominated agencies shall be as per paragraph 4 of the Annexe to the said order. Clauses 6(2) and 6(3) are relevant, and are reproduced as under:

> *"(2) Fair price shop owners shall take delivery of stocks from authorised nominees of the State Governments to ensure that essential commodities are available at the fair price shop within first week of the month for which the allotment is made.*
>
> *(3) The district authority entrusted with the responsibility of implementing the Public Distribution System shall ensure that the stocks allocated to the fair price shops are physically delivered to them by the authorised nominee within the stipulated time."*

137. Clause 14 of this Order provided that the provisions thereof shall have effect, notwithstanding anything to the contrary contained in any order made by a State Government, or by any officer of such State Government before the commencement of the said Order, except as regards anything done or omitted to be done there under before such commencement.

138. The above orders issued from time to time, thus, envisaged the system of distribution of foodgrains and other specified essential commodities to the beneficiaries through the agency/ institution of Fair Price Shops, which were licensed by the State Government, while adhering to the terms and conditions laid down under the Orders and the ECA.

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139. In 2013, the President first promulgated the National Food Security Ordinance, 2013 on 05.07.2013. In the same year, the Parliament enacted ***The National Food Security Act, 2013***. The Act relies largely on the existing TPDS to deliver food. The act came into force on 10th September, 2013.

140. The introduction to the NFSA notices that eradicating extreme poverty and hunger is one of the goals under the Millennium Development Goals of the United Nations. It casts responsibilities on all State actors to recognise the right of everyone to adequate food. Food security is defined to mean availability of sufficient foodgrains to meet the domestic demand as well as access, at the individual level, to adequate quantities of food at affordable prices.

141. The NFSA makes a paradigm shift in addressing the problem of food security from a welfare approach, to a right based approach. The eligible beneficiaries under the NFSA are entitled to receive foodgrains as per their entitlement, at highly subsidized prices. Women and children and other special groups – such as destitute, homeless, disaster and emergency affected persons, and persons living in starvation, have been conferred with rights to receive free meals, or at affordable prices. We may extract herein below, the relevant portions of the Statement of Object and Reasons of the NFSA, which reads as follows:

> "*Article 47 of the Constitution, inter alia, provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights, to which India is a signatory, also*

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cast responsibilities on all State parties to recognise the right of everyone to adequate food. Eradicating extreme poverty and hunger is one of the goals under the Millennium Development Goals of the United Nations.

2. In pursuance of the constitutional and the international conventions obligations, providing food security has been focus of the Government's planning and policy. Food security means availability of sufficient foodgrains to meet the domestic demand as well as access, at the individual level, to adequate quantities of food at affordable prices. Attainment of self-sufficiency in foodgrains production at the national level has been one of the major achievements of the country. In order to address the issue of food security at the household level, the Government is implementing the Targeted Public Distribution System under which subsidised foodgrains are provided to the Below Poverty Line, including Antyodaya Anna Yojana, and Above Poverty Line households. While the Below Poverty Line households under the Targeted Public Distribution System receive thirty-five kilograms foodgrains per family per month, the allocation to Above Poverty Line households depends upon availability of foodgrains in the Central pool. Allocations for other food based welfare schemes for women and children, natural disasters, etc., are also being made at subsidised rates.

3. Ensuring food security of the people, however, continues to be a challenge. The nutritional status of the population, and especially of women and children, also needs to be improved to enhance the quality of human resource of the country. The proposed legislation marks a paradigm shift in addressing the problem of food security–from the current welfare approach to a right based approach. Besides expanding coverage of the Targeted Public Distribution System, the proposed legislation would confer legal rights on eligible beneficiaries to receive entitled quantities of foodgrains at highly subsidised prices. It will also confer legal rights on women and children to receive meal free of charge."

142. The NFSA was enacted to, *inter alia*,

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(a) *provide for food and nutritional security, in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity;*

(b) *entitle every person belonging to priority households, to receive every month from the State Government, under the Targeted Public Distribution System, five kilograms of foodgrains per person per month, at subsidised prices specified in Schedule I to the proposed legislation. The households covered under Antyodaya Anna Yojana shall be entitled to receive thirty-five kilograms of foodgrains per household per month at the prices specified in Schedule I. The said entitlements at subsidised prices shall extend up to seventy-five per cent. of the rural population and up to fifty per cent. of the urban population;*

(c) *entitle every pregnant woman and lactating mother to meal, free of charge, during pregnancy and six months alter child birth, through the local anganwadi, so as to meet the nutritional standards specified in Schedule II; and to provide to such women maternity benefit of not less than rupees six thousand in such instalments as may be prescribed by the Central Government;*

(d) *entitle every child up to the age of fourteen years- -(i) age appropriate meal, free of charge, through the local anganwadi so as to meet the nutritional standards specified in Schedule II in the case of children in the age group of six months to six years; and (ii) one mid day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies. Government and Government aided schools, to children up to class VIII or within the age group of six to fourteen years, whichever is applicable, so as to meet the nutritional standards specified in Schedule II;*

(e) *require the State Government to identify and provide meals through the local anganwadi, free of charge, to children who suffer from malnutrition, so as to meet the*

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nutritional standards specified in Schedule II: and implement schemes covering entitlements of women and children in accordance with the guidelines, including cost sharing, between the Central Government and the State Governments in such manner as may be prescribed by the Central Government;

(f) x x x x x x x

(g) provide subsidised foodgrains under the Targeted Public Distribution System to specified percentage of rural and urban population, at the all India level and empower the Central Government to determine the State-wise percentage coverage;

(h) x x x x x x x x

(i) progressively undertake necessary reforms by the Central and State Governments in the Targeted Public Distribution System in consonance with the role envisaged for them in the proposed legislation;

(j) x x x x x x x x

(k) impose obligation upon the State Governments to put in place an internal grievance redressal mechanism which may include call centres, help lines, designation of nodal officers, or such other mechanism as may be prescribed by the respective Governments; and for expeditious and effective redressal of grievances of the aggrieved persons in matters relating to distribution of entitled foodgrains or meals under Chapter Il of the proposed legislation, a District Grievance Redressal Officer, with requisite staff, to be appointed by the State Government for each District, to enforce these entitlements and investigate and redress grievances; ……"

143. To be able to deal with the challenge raised by the petitioners, it is necessary to closely look into and understand the provisions of the NFSA.

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143 (i) Section 2(4) of the NFSA defines "*Fair Price Shop*" to mean "*a shop which has been licensed* ***to distribute essential commodities*** *by an order issued under section 3 of the Essential Commodities Act, 1955 (10 of 1955),* ***to the ration card holders under the Targeted Public Distribution System***." (emphasis supplied)

143 (ii) Section 2(16) defines "*Ration Card*" to mean "*a document issued under an order or authority of the State Government for the purchase of essential commodities* ***from the fair price shops*** *under the Targeted Public Distribution System.*" (emphasis supplied)

143 (iii) Section 2(23) defines "*Targeted Public Distribution System" to mean "the system for distribution of essential commodities to the ration card holders* ***through fair price shops.****"* (emphasis supplied)

143 (iv) Section 3 of the NFSA vests the right in every person belonging to eligible households identified under Section 10(1), to receive five kilograms of foodgrains per person per month at subsidised prices specified in Schedule I from the State Government under the TPDS.

143 (v) Section 3(3) provides that, subject to Sub Section (1), the State Government may provide to the persons belonging to eligible households, wheat flour in lieu of the entitled quantity of foodgrains in accordance with such guidelines as may be specified by the Central Government

143 (vi) While placing the responsibility on the State Government to identify households covered under the *Antyodaya Anna Yojana*, and the remaining households as priority households to be covered under the TPDS, Section 10 protects the right of the beneficiaries in the State by providing

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that the State Government shall continue to receive the allocation of foodgrains from the Central Government under the existing TPDS.

143 (vii) Section 12 further mandates that the Central Government and the State Governments shall endeavour to progressively undertake necessary reforms in the TPDS in consonance with the role envisaged for them in the said Act. The reforms shall, *inter alia*, include "*doorstep delivery of foodgrains* ***to the Targeted Public Distribution System outlets***". (emphasis supplied). The reforms shall also include, "*Preference to public institutions or public bodies such as Panchayats, self help groups, co-operatives, in licensing of fair price shops and management of fair price shops by women or their collectives;*".

143 (viii) Section 22 of the NFSA places statutory responsibility on the Central Government to allocate from the Central pool, the required quantity of foodgrains to the State Government under the TPDS as per entitlement under Section 3, and at prices specified in Schedule I, so as to ensure regular supply of foodgrains to persons belonging to eligible households. In fulfillment of this statutory obligation, the Central Government is, *inter alia*, obliged to "*provide for transportation of food grains, as per allocation, to the depots designated by the Central Government in each State*" and to "*provide assistance to the State Government in meeting the expenditure incurred by it towards intra-State movement, handling of food grains and margins paid to fair price shop dealers, in accordance with such norms and manner as may be prescribed by the Central Government.*"

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143 (ix) Section 24 enlists the obligations of State Government to ensure food security to the targeted beneficiaries in their State. The said Section reads as follows:

> ***"24. Implementation and monitoring of schemes for ensuring food security.*** *—(1) The State Government shall be responsible for implementation and monitoring of the schemes of various Ministries and Departments of the Central Government in accordance with guidelines issued by the Central Government for each scheme,* ***and their own schemes, for ensuring food security to the targeted beneficiaries in their State****.*
>
> ***(2) Under the Targeted Public Distribution System, it shall be the duty of the State Government to—***
>
> *a)* ***take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I, organise intra-State allocations for delivery of the allocated foodgrains through their authorised agencies at the door-step of each fair price shop; and***
>
> ***b) ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule I.***
>
> *(3) For foodgrain requirements in respect of entitlements under sections 4, 5 and section 6, it shall be the responsibility of the State Government to take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I for persons belonging to eligible households and ensure actual delivery of entitled benefits, as specified in the aforesaid sections.*
>
> *(4) In case of non-supply of the entitled quantities of foodgrains or meals to entitled persons under Chapter II, the State Government shall be responsible for payment of food security allowance specified in section 8.*
>
> *(5) For efficient operations of the Targeted Public Distribution System, every State Government shall,—*

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(a) create and maintain scientific storage facilities at the State, District and Block levels, being sufficient to accommodate foodgrains required under the Targeted Public Distribution System and other food based welfare schemes;

(b) suitably strengthen capacities of their Food and Civil Supplies Corporations and other designated agencies;

(c) establish institutionalised licensing arrangements for fair price shops in accordance with the relevant provisions of the Public Distribution System (Control) Order, 2001 made under the Essential Commodities Act, 1955 (10 of 1955), as amended from time." (emphasis supplied)

143 (x) To maintain transparency and accountability in the matter of implementation of the TDPS, Chapter XI of the NFSA (Sections 27 to 29) provides for TPDS related accounts to be placed in public domain and to be kept open for inspection to the public; for conduct of social audit by the local authority, or any other authority, or body authorized by the State Government, *inter alia*, on the functioning of Fair Price Shops; the conduct of a social audit by the Central Government or through an independent agency having experience in conduct of such audits and; to set up vigilance committees for ensuring transparency and proper functioning of TPDS and accountability of functionaries in such system, by the State Government.

143 (xi) Section 32 of the NFSA clarifies that the provisions of the said Act shall not preclude the Central Government, or the State Government, from continuing or formulating other food based welfare schemes. It further provides that notwithstanding anything contained in this Act, the State Government may, continue with or formulate food or nutrition based plans or schemes providing for benefits higher than the benefits provided under this Act, from its own resources.

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143 (xii) Section 36 of the NFSA provides that the provisions of NFSA, or the schemes made there under, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law.

143 (xiii) Section 38 empowers the Central Government to, from time to time, give such directions, as it may consider necessary, to the State Governments for the effective implementation of the provisions of this Act, and the State Governments shall comply with such directions.

143 (xiv) Section 39 empowers the Central Government to make Rules in consultation with the State Governments to carry out the provisions of the Act. Rules have been framed in exercise of power conferred by Section 39 of the NFSA on various aspects taken note of in Section 39(2).

143 (xv) Section 40 empowers the State Government to make Rules which are consistent with the NFSA, and the Rules made by the Central Government, to carry out the provisions of the Act.

144. "***The Food Security Allowance Rules, 2015***" were framed under Section 39(2)(c) read with Section 8 of the NFSA by the Central Government, which, *inter alia*, place the responsibility on the Central Government and State Governments to adhere to the time limits provided in the Public Distribution System (Control) Order, 2001, or any other orders issued from time to time by Central Government, for allocation of foodgrains and making them available for distribution to the persons entitled under the Act.

144 (i) Rule 4 obliges the Nodal Officer (an officer designated, as such, under Section 14 of the NFSA), to verify, at the end of every month and at

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each fair price shop, the status of supply of foodgrains to the entitled persons covered under each fair price shop, as per their entitlement under the Act. It, inter alia, provides for the payment of Food Security allowance in case of non-supply of foodgrains.

144 (ii) Rule 5 requires the State Government to use electronic methods, subject to availability of adequate infrastructure, for carrying out and recording the monthly distribution of foodgrains only, *inter alia*, reasons for non-distribution, if any, in respect of each fair price shop and place such details in the public domain.

144 (iii) Rule 9 is important, and states that "*the Food security allowance shall not be payable to an entitled person* ***who does not visit the fair price shop to claim his entitlement during the month*****"**. (emphasis supplied)

145. The Central Government also framed the "***Food Security (Assistance to State Governments) Rules, 2015***" under Section 39(2)(e) read with Section 22(4)(d) of the NFSA (after consultation with the State Governments).

145 (i) Rule 2(f) defines "*intra state movement*" to mean "*movement of food grains within a State from the designated depots and delivering it* ***at the door-step of fair price shops*** *and shall include all stages in this process*". (emphasis supplied)

145 (ii) Rule 2(g) defines "*point of sale device*" to mean "*device to be* ***installed and operated at fair price shops*** *for identification of entitled persons and households for delivery of food grains, based on 'Aadhaar*

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number' or other authentication tools, specified by the Central Government from time to time". (emphasis supplied)

145 (iii) Rule 3 obliges the Central Government and the State Government to "*adhere to the time limits provided in the Public Distribution System (Control) Order, 2015, as amended from time to time, or any other order issued by the Central Government in this regard, for allocation of food grains and* ***delivery up to the fair price shops***". (emphasis supplied)

145 (iv) Rule 5 casts a duty on the State Government "*to take delivery of food grains under Targeted Public Distribution System from the designated depots, ensure its delivery through their authorised agencies up to* ***the door-step of fair price shops*** *and to ensure its supply to entitled persons and households at prices specified in Schedule I of the Act*". (emphasis supplied)

145 (v) Rule 6 states that "*the Central Government shall assist the State Government to meet the expenditure incurred by it on intra-State movement, handling of foodgrains and margins paid to fair price shop dealers, for distribution of foodgrains allocated for the entitled persons and households.*"

145 (vi) Rule 7 lays down the norms for grant of Central assistance to State Governments and Union Territories. The said Rule incentivizes sale by Fair Price Shop dealers through a point of sale (PoS) device. Sub Rule 5, 6 and 7 of Rule 7 are relevant and read as follows:

> *"(5) The State Government shall furnish the details of all transactions made through the point of sale devices in public domain.*

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(6) The State Government shall have the flexibility in choosing any of the following models for the installation of point of sale device, namely:—

a) the State Government may purchase, install and maintain the point of sale device;

b) the State Government may select a system integrator to purchase, install and maintain the point of sale device;

c) the fair price shop dealer may purchase, install and maintain the point of sale device.

(7) The State Government shall determine the basis for apportioning the additional margin for sale through point of sale device among different stakeholders, depending upon the model chosen."

145 (vii) Rule 8 obliges the State Government to ensure payment of fair price shop dealers' margin in advance by way of adjusting the same in prices of foodgrains to be paid by fair price shop dealers, or through other appropriate mechanism. It further provides in sub-Rule (2) that "*If the price of food grains payable by fair price shop dealers in any State or Union Territory is lower than the fair price shop dealers' margin, the State Government shall ensure upfront payment of margin, in full, to fair price shop dealers.*"

146. We may now notice the provisions of "***The Targeted Public Distribution System (Control) Order, 2015***" issued by the Central Government under Section 3 of the ECA, in supersession of the PDS (Control) Order, 2001.

146 (i) Clause 2(j) defines "*fair price shop owner*" to mean a person and includes a cooperative society or a body corporate or a company of a State Government or a Gram Panchayat or any other body in whose name a

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shop has been licensed to distribute essential commodities under the TPDS. "*Food Security Act*", means the NFSA.

146 (ii) Clause 4 of the Order states that the State Government shall issue ration cards to the eligible households.

146 (iii) Clause 7 of the Order obliges the State Government to lift foodgrains from designated depots of the Food Corporation of India through its authorized agency.

146 (iv) The State Government, on getting allocation of foodgrains from the Central Government shall issue allocation orders authorizing their agencies to lift foodgrains from the Corporation, and such order, among other things, shall specify the "*allocation made for each month in respect of a fair price shop*". While making allocation to a fair price shop, the designated authority shall take into account the balance stock, if any, lying undistributed with the fair price shop owner for the subsequent allocations. The designated authority shall ensure that one copy of the allocation order made to the fair price shop is delivered to the local authority, vigilance committees, and any other body nominated by the State Government for monitoring the functioning of the fair price shop. The State Government shall ensure that the allocation order depicting the stocks of foodgrains allotted during the month to the fair price shops is displayed on the public domain, including on the State web portal.

146 (v) Clause 7(11) obliges the State Government to "*devise suitable mechanism for transportation of foodgrains from the Corporation godown to the intermediate godown* ***and the door-step delivery of the food grains to the fair price shop***" (emphasis supplied), provided that the State

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Government "*may also transport foodgrains directly to the fair price shop from the Corporation godown* ***and ensure its door-step delivery to the fair price shop***". (emphasis supplied)

146 (vi) Clause 7(12) obliges the State Government to furnish a report on quarterly basis to the Central Government, regarding door-step delivery in the format at Annex-III. At this stage itself, we may reproduce the Format of Annex-III, which reads as follows:

> "***Statement on doorstep delivery to the fair price shops for the quarter ending June/Sept/Dec/March [see sub-clause (12) of clause 7]***
>
> *Total number of districts in the State/UT: _____*
>
> *Total number of FPSs in the State/UT: _____*

Sl. No.	*Name of Agency*	*Type of Agency**	*Nos. of districts covered under doorstep delivery by the Agencies*	*Total numbers of FPSs covered by the Agency under doorstep delivery*
1				
2				
3				
4				
Total				

> **As regards the type of agency, please indicate whether State Civil Supplies Corporation or other apex body, Cooperative Societies, Private Agency e.g. wholesalers, LAMPS, PACS etc.,*

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> *or any other agency. In case more than one agency is making door-step delivery in a one district, same may be indicated.*
>
> ***Note: The information shall be furnished within two weeks after the end of every quarter."*** *(underlining provided)*

146 (vii) Clause 8 mandates that the allocation of foodgrains made by the Central Government under the TPDS to the State Government "*shall be used for distribution as per the provisions of the Food Security Act and not for any other purpose*". The State Government is obliged to furnish a utilization certificate every year in the format as at Annex-IV.

146 (viii) Clause 8(3) is relevant, and the same reads as follows:

> *"The State Government shall ensure, through the authorized agency,* ***physical delivery of food grains to the fair price shop by end of the month preceding the allocation month and in any case not later than the first week of the allocation month.****"* (emphasis supplied)

146 (ix) Clause 8(4) obliges the State Government to obtain "*a monthly certificate, including through electronic platform,* ***confirming delivery of allocated foodgrains to the fair price shop*** *and their distribution to eligible households during the allocation month*". (emphasis supplied)

146 (x) Clause 9 of this Order deals with the aspect of Licensing and regulation of fair price shops.

146 (xi) Sub-Clauses 5, 6, 7, 8 and 9 of Clause 9 are pertinent, and read as follows:

> *"(5) The licences to the fair price shop owners shall be issued* ***keeping in view the viability of the fair price shop.***
>
> *(6) The State Government* ***shall ensure that the number of ration card holders attached to a fair price shop are***

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reasonable, the fair price shop is so located that the consumer or ration card holder does not have to face difficulty to reach the fair price shop and that proper coverage is ensured in hilly, desert, tribal and such other areas difficult to access.

(7) The State Government shall fix an amount as the fair price shop owner's margin, which shall be periodically reviewed for ensuring sustained viability of the fair price shop operations.

(8) The State Government shall put in place a mechanism to ensure the release of fair price shop owner's margin without any delay.

(9) The State Government shall allow sale of commodities other than the food grains distributed under the Targeted Public Distribution System at the fair price shop ***to improve the viability of the fair price shop operations.****"* (emphasis supplied)

146 (xii) Clause 10 of the aforesaid order deals with the aspect of operation of fair price shops. The said clause is relevant, and reads as follows:

"10. Operation of fair price shops.-(l) ***The fair price shop owner shall disburse food grains to the ration card holder*** *as per his entitlement under the Targeted Public Distribution System.*

(2) ***The ration card holder may draw his full entitlement of food grains in more than one installment.***

(3) The fair price shop owner shall not retain the ration cards after the supply of the food grains.

(4) The licence issued by the State Government to the fair price shop owner shall lay down the duties and responsibilities of the fair price shop owner, which shall include, inter alia,-

(i) sale of food grains as per the entitlement of ration card holders under the Targeted Public Distribution System at the prescribed retail issue price;

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(ii) display of information on a notice board at a prominent place in the shop on daily basis regarding (a) entitlement of food grains, (b) scale of issue, (c) retail issue prices, (d) timings of opening and closing of the fair price shop including lunch break, if any, (e) stock of food grains received during the month, (f) opening and closing stock of food grains, (g) the mechanism including authority for redressal of grievances with respect to quality and quantity of food grains under the Targeted Public Distribution System and (h) toll-free helpline number;

(iii) maintenance of the records of ration card holders, e.g. stock register, issue or sale register shall be in the form prescribed by the State Government including in the electronic format in a progressive manner;

(iv) display of samples of food grains being supplied through the fair price shop;

(v) production of books and records relating to the allotment and distribution of food grains to the inspecting agency and furnishing of such information as may be called for by the designated authority;

(vi) accounts of the actual distribution of food grains and the balance stock at the end of the month, at the fair price shop, shall be sent to the designated authority of the State Government with a copy to the local authority;

(vii) opening and closing of the fair price shop as per the prescribed timings displayed on the notice board." (emphasis supplied)

146 (xiii) Clause 11 deals with the aspect of monitoring of fair price shops by the State Governments by conducting regular inspections.

146 (xiv) Clause 12 deals with the aspect of transparency and accountability to be maintained in respect of records of the TPDS.

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146 (xv) Clause 14 vests the authorized officer by the State Government to undertake search and seizure operations at fair price shops, or any premises relevant to transactions of business of the fair price shop.

147. In the light of the above study and analysis of the Public Distribution System, which has existed for a long time now, and the statutory framework for creation and working of the Public Distribution System, we may now examine the plea of Dr. Singhvi whether there is any bar or prohibition under the NFSA, and the Rules and statutory Orders framed, to the formulation of a scheme for distribution of foodgrains under the NFSA to the targeted beneficiaries at their door step.

148. We have taken note of, hereinabove, the statutory structure which has existed for decades for distribution of foodgrains – both before the enactment of the NFSA, and after its enactment. The first thing that is worthy of taking a note of, is that the fair price shops have always been considered as, and continue to be considered as, the nodal interface between the State Government on the one hand, and the beneficiaries on the other hand. Under the statutory framework, while the foodgrains are made available for distribution by the Central Government, the responsibility of receiving the foodgrains and ensuring their distribution through the institution of the fair price shops, is that of the State Governments. The statutory framework – both in the pre NFSA, and post NFSA regime has been, and continuous to be, that the foodgrains, which are delivered at the door step of the allocated fair price shops, are collected by the beneficiaries from the fair price shops. Under the existing regime – with regard to distribution of foodgrains under the NFSA, the only exception to the

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aforesaid manner of distribution of foodgrains is in respect of a limited category of beneficiaries, namely, those who are above sixty five years of age, or who are differently-abled, and have no other adult family member (16 to 65 years) listed in the Ration Card, and are not in a position to visit the Fair Price Shop themselves, as permitted by the Central Government vide its circular/ communication dated 01.02.2018. Such beneficiaries are entitled to home delivery of foodgrains, and the States/ UTs have been authorized to device the procedure for supply of foodgrains to such beneficiaries at their homes, or through authorized nominees.

149. We have consciously, while taking note of the provisions of the NFSA and the Rules framed thereunder, as well as the TPDS (Control) Order, 2015, highlighted the several provisions contained in the Act, the Rules and the aforesaid Order, which time and again, mandate delivery of foodgrains at the door step of the fair price shops, and not beyond.

150. In this regard, we may only recall some of the provisions without reproducing them, since they have already been reproduced to the extent necessary in the earlier part of this discussion. The fair price shop itself is defined in Section 2(4) of the NFSA to mean a shop which is licensed to distribute essential commodities to the Ration Card holder under the TPDS. Ration Card is defined in Section 2(16) to mean a document issued by the State Government for purchase of essential commodities from the fair price shops under the TPDS. TPDS itself is defined in Section 2(23) to mean the system for distribution of essential commodities to the Ration Card holders through the fair price shops. Section 12 mandates, *inter alia*, the State Governments to endeavour to progressively undertaken necessary reforms in

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the TPDS, which include door step delivery of foodgrains to the Targeted Public Distribution System outlets, which would obviously include fair price shops. Section 24 places the responsibility on the State Government for implementation and monitoring of the scheme of various Ministries and Departments of the Central Government in accordance with guidelines issued by Central Government for each scheme, and their own schemes, for ensuring food security to the targeted beneficiaries in their State. Even Section 24(2) places responsibility on the State Government to take delivery of foodgrains from the Central Government Depots, and to deliver the same at the door step of each fair price shop. Further, the Food Security Allowances Rules, 2015 envisage that the foodgrains delivered by the State Government to the fair price shops would be collected by the beneficiaries from the fair price shops. This is evident from reading of Rule 9, which specifically talks of the visit by the entitled person to the fair price shop to claim his entitlement during the month. ***The Food Security (Assistance to State Governments) Rules, 2015*** defined "*intra state movement*" in Rule 2(f) to mean the movement of foodgrains within a State from a designated depot to the door-step of the fair price shop. Even the *"point of sale device*" under Rule 2(g) is required to be installed and operated at fair price shops. Rule 3 obliges both – the Central Government and the State Government, to adhere to the time limits prescribed in the Public Distribution System (Control) Order, 2015 for the allocation of foodgrains and delivery up to the fair price shops. Rule 5 casts a duty on the State Government to ensure delivery through its authorized agencies up to the door step of fair price shops. Even the ***Targeted Public Distribution System (Control) Order, 2015***, framed by the Central Government under Section 3 of the ECA, under

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Clause 7(11) obliges the State Government to devise suitable mechanism for transportation of foodgrains from the Corporation godowns to the intermediate godowns and the door step of fair price shops. The report required to be furnished by the State Government to the Central Government on quarterly basis under Clause 7(12) in Annexure-III, requires the State Government to furnish the statement of door step delivery to fair price shops. Clause 8(4) requires the State Government to obtain a monthly certificate confirming delivery of allocated foodgrains to the fair price shops. Clause 10 obliges the owner to distribute foodgrains to the Ration Card holders.

ANALYSIS

151. Thus, what emerges from the aforesaid provisions is that, under the NFSA; the Rules framed thereunder, and; the statutory Orders issued under the ECA, the distribution of foodgrains is envisaged to the beneficiaries through the fair price shops, and at the fair price shops. Neither the Act, nor the Rules framed thereunder, nor the Orders issued by the Central Government under the ECA, contemplate actual delivery of foodgrains at the door step of the beneficiary, except in certain exceptional cases taken note of hereinabove.

152. However, the question is, whether the statutory scheme contained in the NFSA, the Rules framed thereunder, and the Orders issued by the Central Government under the ECA, there is any bar or prohibition, in case of State Government wishes to provide an additional benefit or facility to the beneficiaries for delivery of foodgrains/atta at the door step of the beneficiaries, so that the beneficiaries are not required to visit the fair price

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shop to collect their entitlement of foodgrains. The answer to this question is plainly 'No'. On reading of the NFSA, the Rules framed thereunder, as well as the statutory Orders issued under Section 3 of the ECA, we do not find anything to indicate that the State Government is not entitled to extend this benefit to the beneficiaries under the NFSA. To this extent, we agree with the submission of Dr. Singhvi. We may note that Section 24(2)(b) of the Act obliges the State Governments to "*ensure actual delivery or supply of the food grains to the entitled persons at the prices specified in Schedule-I*". Therefore, if, in a given State, the State Government wishes to travel that extra mile to deliver the foodgrains at the door step of the beneficiaries, such an endeavour cannot be said to fall foul of any provision of the NFSA; the Rules framed thereunder, or; the Orders issued thereunder under the ECA. Even Section 32 of the NFSA enables the Central Government or the State Government, inter alia, formulate other food based welfare schemes. At the same time, a reading of Section 32 of the NFSA shows that any such additional plan or scheme – that the State Government may formulate to provide higher benefits than those provided under the Act, has to be out of the own resources of the State Government. Actual delivery of the ration at the door step of the beneficiary, in our view is covered within the scope of authority and responsibility vested in the State Government under Section 24(2)(b) and Section 32 of the NFSA. NFSA being a welfare legislation, its provisions should be liberally construed and such a scheme would be covered by the expression "*other food based welfare scheme*" under Section 32(1), and "*food and nutrition based plans or schemes providing for benefits*" under Section 32(2) of the Act.

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153. The next issue that arises for consideration is whether the GNCTD, in their endeavour to implement their scheme of delivering ration/ food grain at the door step of the beneficiary, can proceed to appoint new fair price shop owners/ dealers by inviting tenders, so as to by-pass the existing framework of fair price shops dealers/ owners. "*Fair Price Shop*" is defined in Section 2(4) of the NFSA to mean a shop which has been licensed to distribute essential commodities by an Order issued under Section 3 of the ECA. Section 3(2)(d) empowers the Central Government to issue an Order which may provide, inter alia, "*for regulating by licenses, permits, or otherwise the storage, transportation, distribution, disposal, acquisition, use or consumption of any essential commodity*;" The TPDS Order, 2015 has been issued by the Central Government under Section 3 of the ECA, which provides in Clause 9 that the State Government shall issue an Order under Section 3 of the ECA for regulating the sale and distribution of the essential commodities. The licenses to the Fair Price Shop owners shall be issued under the said Order, and the Order issued by the State Government shall be notified and displayed on the web portal. Thus, there can be no doubt, that it is the right and prerogative of the State Government to grant and rescind licenses issued for the purpose of establishment of fair price shops. In this regard, the submission of Dr. Singhvi is that Section 36 of the NFSA states that the provisions of the said Act, or the schemes made thereunder, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument having effect by virtue of such law. The submission is that the existing fair price shop owners/ dealers – who have been appointed/ licensed under the ECA, have no vested right to continue to be provided the foodgrains under the NFSA

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for distribution to the beneficiaries at their fair price shops, and it is open to the GNCTD to frame schemes in the interest of the public at large, with a view to provide them foodgrains in the right measure; of good quality; at their door step. The submission is that the GNCTD is not obliged to ensure the financial viability of the fair price shops and, if the same is impacted, that cannot be a reason to intervene, and to injunct the implementation of the scheme framed in larger public interest for delivery of foodgrains at the door step of the beneficiary. Thus, the submission of Dr. Singhvi is that the door step delivery scheme of the GNCTD would prevail over the TPDS Order, 2015 – to the extent the said Control Order is inconsistent with the scheme of the GNCTD. He submits that the NFSA is a special later law, insofar as it concerns the right to food, and would prevail over the TPDS Order, 2015, which has been issued under Section 3 of the ECA. He submits that the ECA is a general law to control production and supply of certain essential commodities, including food items, whereas the NFSA is a special law dealing with *inter alia* distribution of foodgrains to the targeted beneficiaries. Thus, the later NFSA, which is a specialized law, would prevail over the ECA which is an older general law. He has placed reliance on ***Ashoka Marketing Ltd***. (Supra) in support of the aforesaid submissions.

154. We have already taken note of the decision relied upon by him in ***Ashoka Marketing Ltd.*** (supra), while recording Dr. Singhvi's submissions. We now proceed to consider the merit of this submission of Dr. Singhvi.

155. The NFSA was enacted by the Parliament and enforced on 10.09.2013. Section 22 of the NFSA, *inter alia,* places the obligation on the Central Government to provide assistance to the State Government in

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meeting the expenditure incurred by it towards intra-State movement, handling of foodgrains, and margins to be paid to the fair price shop dealers in accordance with norms that may be prescribed by the Central Government. Thus, the Parliament was conscious of the aspect of remuneration to be paid to the fair price shops dealers for the services rendered by them, namely, of receiving, storing and distributing the foodgrains under the NFSA to the beneficiaries from their shops. Pertinently, under the statutory scheme contained in the NFSA, the foodgrains are required to be offered by the fair price shops to the beneficiaries, at fixed prices. Thus, it is not open to the fair price shops to sell the foodgrains at any other higher price. For the structure created under the NFSA – of which the fair price shops are an integral and essential part, to stand and to function efficiently, it is essential that the financial viability of the fair price shop is maintained. This is also essential to discourage use of illegal and unfair means of fair price shop owners, such as adulteration or diversion of foodgrains from the real beneficiaries to the black market. It is in keeping with this objective that the Central Government issued the TPDS Order, 2015 under Section 3 of the ECA in suppression of the earlier PDS Order, 2001. Pertinently, the Central Government framed this Order in the year 2015, i.e. after coming into force of the NFSA. Therefore, the submission of Dr. Singhvi that this Order issued by the Central Government – under Section 3 of the ECA, stands overridden by any provision, or scheme framed under the NFSA, cannot be accepted. This Order is a statutory order which is applicable throughout India, and no State Government can frame a scheme which goes contrary to, or violates any provision of either the ECA, or NFSA, or any Orders issued under the ECA,

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or Rules framed under the NFSA. Dr. Singhvi has not pointed out any relevant entry in List-II of the Seventh Schedule of the Constitution of India, to state that the aspect of distribution of food falls in the exclusive domain of the State Government. In fact, he seeks to derive legitimacy and authority for framing the scheme in question from the provisions of the NFSA, which itself is a Central legislation. Entry 33 of List-III – Concurrent List of the Seventh Schedule talks of, *inter alia, "trade and commerce in, and the production, supply and distribution of – food stuffs, including edible oilseeds and oils"*. Thus, no scheme framed by the GNCTD to implement to provisions of the NFSA, and to achieve public distribution of foodgrains, can violate or go contrary to either the provisions of the ECA, the provisions of the NFSA; the Orders framed under the ECA, or; the Rules framed under NFSA.

156. The TPDS Order, 2015 gives statutory recognition to the protection of the financial viability of the fair price shop dealers/ owners. Clauses 9(5), (6), (7), (8) & (9) are relevant, and we have set out the same hereinabove. The State Government is, therefore, obliged to issue fair price shop licenses keeping in view the viability of the fair price shop. The State Government is obliged to ensure that the number of Ration Card holders attached to the fair price shops, are reasonable. The State Government is also obliged to fix an amount – as the fair price shops margin, which shall be periodically reviewed for ensuring sustained viability of the fair price shop operations. With a view to preserve the viability of the fair price shop operations, the State Government is obliged to allow such shops to sell commodities other than the foodgrains distributed under the TPDS.

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157. Thus, the submission of Dr. Singhvi that the State Government is not concerned with the fact that the appointment of fresh fair price shop dealers under the impugned scheme and tendering process – who would by-pass the existing fair price shops, and would obviously impact their financial viability, calls for rejection. We may, at this stage, notice that the claim of the GNCTD is that an overwhelming majority of beneficiaries have opted for the MMGGRY Scheme (about 69 lakhs out of 70 lakhs). Even if this is true, this itself would lead to driving out a large number of Fair Price Shop owners out of the business. Thus, without addressing the concerns of the existing FPS owners with regard to their financial viability – which is statutorily protected, the GNCTD cannot proceed to implement the impugned Scheme – as presently framed and envisaged.

158. We may now proceed to examine the grievance of the petitioners that the actions of the respondent GNCTD are actuated by unfounded prejudice and bias. The submission of Mr. Shrivastav in this regard has been that the GNCTD is seeking to by-pass and eliminate the existing fair price shops on the premise that, generally, such fair price shops resort to unfair means and are responsible for leakages of foodgrains, which are meant for the TPDS beneficiaries, into the black market. In this regard, he has drawn our attention to paragraph 1.2 of the NIB bearing reference No. Bid I.D. No. 2021_DSCSC_198916_1.

159. In the said NIB, the GNCTD states in paragraph 1.2 that over the years, post implementation of TPDS Scheme in Delhi, feedback has been received from citizens regarding deficiencies in the existing TPDS system, which are the following:-

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(a) "Non-issuance of commodity to the end user beneficiary.

(b) Non-issuance of commodity as per the entitlement.

(c) Commodity supplied by Delhi State Civil Supplies Corporation is replaced with substandard/expired commodity.

(d) Beneficiaries are misled by FPS.

(e) FPS have been found to be closed during official operating hours. "

160. The NIB further states that with the aim to reform the TPDS, the GNCTD has planned to launch the new scheme, namely, MMGGRY. (As we have already noticed, the nomenclature of the impugned Scheme has been changed by substituting it with another similar Scheme on 24.03.2021.)

161. During the course of arguments, neither Dr. Singhvi, nor Mr. Mehra has drawn our attention to any material or data to substantiate the aforesaid findings. At the same time, we may observe that though Dr. Singhvi and Mr. Mehra have not drawn our attention to the documents filed on behalf of the GNCTD, we have, on examination of the record, found the analysis report of the NIC Central Team in respect of OTP transactions undertaken in the month of March 2018 of various fair price shops in Delhi, as well as the file notings regarding the survey report, which led to suspension of the license of several FPS owners on account of black marketing of foodgrains by such identified FPS owners.

162. When there are above 2000 FPS owners spread across the NCT of Delhi, there are bound to be malpractices resorted to by some of them. In such individual cases, strict actions are called for and should be taken, and appear to have been taken, at least, in some of them. However, the issue is whether the GNCTD can paint all FPS owners with the same brush, unless

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there is germane and relevant material available and considered, and reach the general conclusion that all of them are indulging in corrupt practices and black marketing, and cite that as the reason for introduction of the impugned Scheme?

163. In our view, it was incumbent for the respondent GNCTD to collect and collate data – including in the form of substantiated and investigated complaints from the beneficiaries, to establish the generalized allegations of:

> *a) "Non-issuance of commodity to the end user beneficiary.*
> *b) Non-issuance of commodity as per the entitlement.*
> *c) Commodity supplied by Delhi State Civil Supplies Corporation is replaced with substandard/expired commodity.*
> *d) Beneficiaries are misled by FPS.*
> *e) FPS have been found to be closed during official operating hours. "*

164. However, none has been placed before us, and relied upon either by Dr. Singhvi or Mr. Mehra.

165. Thus, we find merit in the grievance of the petitioners that the actions of the respondent GNCTD were actuated by unfounded prejudice and bias.

166. We, however, make it clear that we are not here to give a clean chit to any, or all of the fair price shop owners with regard to their business dealings, and our aforesaid observations have been made in the context of the petitioners' grievance that the generalized allegations made by the GNCTD – as aforesaid, have not been substantiated, and, before us, the GNCTD has not placed materials, and has not drawn our attention to such

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materials which could lead to such generalized inferences establishing the aforesaid allegations against all the FPS owners.

167. At the same time, we may observe, that even if the exiting TPDS were to work flawlessly, that would not debar the GNCTD from introducing the door-to-door delivery foodgrains to the beneficiaries, as we have already discussed hereinabove. The GNCTD can do it out of its own resources, while adequately addressing the concerns with regard to financial viability of the existing FPS owners/ dealers.

168. At this stage, we may notice that on the one hand, the GNCTD has made the aforesaid allegations, while, on the other hand, it appears from the correspondences addressed by the Central Government to the GNCTD – that the GNCTD has not discharged its statutory obligations of maintaining vigilance over the functioning of the FPS System.

169. We have already noticed the correspondence undertaken by the Central Government, *inter alia*, on 17.06.2021, wherein the Central Government stated that the GNCTD was in non-compliance of *inter alia* Sections 28, 29 & 30 of the NFSA. Section 28 obliges every local authority, or any other authority or body authorized by the State Government to conduct or cause to be conducted, periodic social audits of the functioning of fair price shops, Targeted Public Distribution System and other welfare schemes, and cause to publicise its findings and take necessary action. Section 29 obliges the State Government to set up Vigilance Committee as specified in the PDS (Control) Order, 2001 for ensuring transparency and proper functioning of the Targeted Public Distributed System and accountability of the functionaries in such system. The Vigilance

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Committees have to be set up at the State, District, Block and fair price shop levels. We have already noticed hereinabove in paragraph 49, the responsibilities and functions to be discharged by the Vigilance Committees. In the aforesaid communication, the Central Government stated that the GNCTD had not set up the Vigilance Committees at the FPS level, which was stated to be "*the most important level for monitoring implementation of NFSA at the grass root level*".

170. We have consciously taken note of the relevant provisions under the NFSA and the other subordinate legislations noted hereinabove, which deal with the obligations of the State Government to maintain vigilance and accountability, and also to deal with the grievances of the beneficiaries in the matter of distribution of foodgrains made available under the NFSA, through the TPDS. It appears that there is merit in the submission of Mr. Shrivastav, that rather than discharging its duties of maintaining vigilance in terms of the provisions of the NFSA and redressing grievances of the beneficiaries under the NFSA – which itself would make the current TPDS system piloted by the FPS owners more efficient and transparent, the respondent GNCTD has chosen to introduce the impugned scheme with a view to bypass the existing FPS network, and replace the same with another set of persons, who would be appointed as FPS owners, and who would have much deeper pockets.

171. At this stage, we may also take note of the observations made by the Lieutenant Governor in his notings dated 20.03.2018 (at page 29/N of the noting file), wherein he observed at paragraph 105 as follows:-

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> *"105. In this context, I note that the Finance Department has observed that the proposed system of home delivery of ration* ***will only replace one set of human intervention with the other i.e. service providers and their agents.*** *Hence, diversion of ration materials and corruption may not be eliminated under the proposed scheme. The best option would be adoption of the Direct Benefit Transfer (DBT), where the money would be directly transferred to the bank account of the beneficiary, thus totally eliminating middlemen. The Finance Department has also noted that an expenditure of about Rs. 250 Crores per annum is likely to be incurred on the home delivery scheme, and if DBT is adopted, the beneficiaries can procure an additional 5 kg of Atta per family per month, with the money so saved. For the poor marginalized sections of society, this additional 5 kg of Atta per family per month would be a huge welfare measure resulting from adoption of DBT. Therefore, in my view, suggestion of Finance Department is worth considering."* (emphasis supplied)

172. This aspect, raised by the Lieutenant Governor. has not been addressed by Dr. Singhvi. It is not disclosed, how the impugned scheme would plug the loop holes, reduce pilferage and diversion of foodgrains/atta into the black market.

173. Dr. Singhvi, in support of the impugned scheme, has sought to place reliance on the door step delivery scheme introduced by the Government of Andhra Pradesh. He has also placed reliance on the decision of the Calcutta High Court dated 15.09.2021 in ***Mrityunjoy Garang*** (supra). In our view, these reliances are misplaced, for the reason, that both – in the State of Andhra Pradesh, and in the State of West Bengal, the schemes introduced by the State Governments envisaged the delivery of the ration articles by the FPS owners, and not through systems which bypass the existing FPS network – which is the precise issue we are confronted with.

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174. The submission of Dr. Singhvi, premised upon ***P.P. Suresh*** (supra), appears to be misplaced. There can be no quarrel with the proposition that the Government has freedom to change its policy in public interest with passage of time, and overriding public interest would be a good reason to justify change in policy which overrides the claim of legitimate expectations of those affected by such change in policy. However, the same judgment also contains the Caveat, while observing, "*so long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of the legitimate expectations of an individual or a group of individuals being defeated*".

175. In the present cases, we are concerned with the issue whether the impugned policy sought to be introduced by the GNCTD is arbitrary, unreasonable, or unconstitutional, or illegal. We have already found that the impugned Scheme is in breach of the statutory protection afforded to the existing Fair Price Shop owners/ licencees, and it is founded upon unsubstantiated generalized conclusion, that all Fair Price Shop owners/ licencees are indulging in malpractices taken note of hereinabove. The petitioners have not founded their claim in these petitions on the plea of legitimate expectations alone and, therefore, the decision in ***P.P. Suresh*** (supra) is of no avail to the respondent GNCTD. The decision in ***Laxminarayan Chopra*** (supra) is also of no avail, for the reason that we have come to the conclusion that it is open to the respondent GNCTD to introduce a scheme for door step delivery for ration to the beneficiaries under the TPDS. The question, however, is whether the manner in which

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the respondent GNCTD has sought to introduce the said door step delivery scheme of ration to beneficiaries stands the scrutiny of law. We have found that it does not. For the same reason, ***International Trading Co.*** (supra) is of no avail. For the same reason, we are of the view that the decisions relied upon by Dr. Singhvi in ***All Kerala Online Lottery Dealers Association*** (supra); ***Rajeev Suri*** (supra); ***BALCO Employees' Union (Regd.)*** (supra) and; ***Punjab State*** (supra) are of no avail.

176. No doubt, judicial review in matters of policy decisions of the Government is confined to a narrow sphere – as urged by Dr. Singhvi. It is not for the Courts to either frame the policy for the Government, or to evaluate its efficacy, or question the wisdom of the Government in not coming out with one, or the other, policy. However, that does not preclude the Court from examining issues with regard to competence, legality and constitutionality of the policy, or of any part thereof, if a challenge is raised to the same before the Court. Reliance placed by Dr. Singhvi on several orders taken note of in paragraph 119 hereinabove, are also of no avail for the aforesaid reason.

177. We may now proceed to consider the issue whether the impugned Scheme is capable of being put into execution/ implementation, when the same has been objected to by the Lieutenant Governor, and the Central Government has not been required to examine the difference of opinion between the Council of Ministers – headed by the Chief Minister on the one hand, and the Lieutenant Governor on the another hand.

178. India, i.e. Bharat, is a Union of States. The States and the territories thereof are specified in the First Schedule to the Constitution. The territory

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of India comprises of the territories of the States; the Union Territories specified in the First Schedule; and such other territories as may be acquired (See Article 1 of the Constitution of India). The First Schedule to the Constitution enlists, inter alia, "II. The Union Territories". Delhi is enlisted under the list of Union Territories. Thus, Delhi is a Union Territory. Part VIII of the Constitution of India deals with "The Union Territories". It begins with Article 239. Article 239 of the Constitution of India deals with the aspect of administration of Union Territories, and states that every Union Territory shall be administered by the President acting to such extent as he thinks fit, through an Administrator to be appointed by him, with such designation as he may specify.

179. In relation to the Union Territory of Delhi, Article 239AA makes a special provision and states that – as from the date of commencement of the Constitution 69th (Amendment) Act, 1991 (the date of commencement being 01.02.1992), the Union Territory of Delhi shall be called the National Capital Territory of Delhi, and the Administrator thereof appointed under Article 239 shall be designated as the Lieutenant Governor. The GNCTD of Delhi has a Legislative Assembly and seats in the Assembly are filled by the members chosen by direct election from territorial constituencies in the NCT of Delhi by virtue of Article 239AA(2).

180. While sub-Article (3)(a) of Article 239AA empowers the Legislative Assembly of the NCT of Delhi to make laws for the whole, or any part of the NCT in respect of matters enumerated in the State list or in the Concurrent List (Insofar as any such matter is applicable to Union Territories, except matters with respect to Entries 1, 2 and 18 of the State list

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and Entries 64, 65 & 66 of that list insofar as they relate to the said Entries 1, 2 & 18), Clause (b) of the same sub-Article states that "*nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union Territory or any part thereof*". Thus, it appears to us, that Clause (b) seeks to make it clear that the powers of the Parliament to make laws on any matter – even those enumerated in the State List is recognized, in respect of the Union Territory of the NCT of Delhi, or any part thereof, in the same way as the Parliament exercises the legislative power in respect of any other Union Territory. The effect of Clause (b) aforesaid is that though the Legislative Assembly of the NCT of Delhi may make laws in respect of matters taken note of hereinabove, there is no matter over which the powers of the Legislative Assembly are exclusive. The Parliament can make laws in respect of the Union Territory of the NCT of Delhi, or any part thereof, in respect of all matters.

181. Clause (c) of sub-Article (3) of Article 239AA, maintains the supremacy of Parliament over the Legislative Assembly of the NCT of Delhi, by providing that in case of repugnancy of any law made by the Legislative Assembly with the law made by Parliament on the same matter – whether passed before or after the law made by the Legislative Assembly, the law made by Parliament shall prevail, and the law made by the Legislative Assembly shall, to the extent of repugnancy, be void. We are not concerned with the two provisos to Clause (c) of sub-Article 3 of Article 239AA and we are, therefore, not taking note of them.

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182. Before proceeding further, we may observe that while sub-Article (3) deals with the aspect of legislative competence, scope of authority of the Legislative Assembly to make laws, and the limitation on the legislative powers of the Legislative Assembly, sub-Article (4) of Article 239AA deals with the aspect of the executive power of the Council of Ministers headed by the Chief Minister – on whose aid and advice, the Lieutenant Governor functions, in relation to the matters with respect to which the Legislative Assembly has power to make laws.

183. Sub Article (4) of Article 239AA, inter alia, states that there shall be a Council of Ministers – with the Chief Minister at the head, to aid and advice the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except insofar as he is, by or under any law, required to act in his discretion.

184. Article 73 and Article 162 lay down the extent of executive power of the Union, and the executive power of a State respectively. In their material part, they are similar inasmuch, as, they state that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws and, similarly, the executive power of a State shall extend to matters with respect to which the Legislature of the State has power to make laws. So far as the Concurrent List is concerned, i.e. matters with respect to which the Legislature of the State and Parliament both have power to make laws, the executive power of the State is subject to, and limited by the executive power expressly conferred by the Constitution, or by any law made by Parliament upon the Union, or authorities thereof.

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However, it appears that sub-Article (4) of Article 239AA seeks to tweak the aforesaid general norm *qua* the executive power of the Council of Ministers headed by the Chief Minister, when it comes to the Union Territory of Delhi, since the NCT of Delhi is not a State.

185. In this regard, we may take note of the proviso to Article 239AA(4), which is pertinent. It reads: "*Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.*"

186. Thus, even in respect of matters over which the Legislative Assembly has power to make laws for the NCT of Delhi, the executive powers of the Council of Ministers – headed by the Chief Minister, is not unfettered. In cases where differences arise between the Council of Ministers on the one hand, and the Lieutenant Governor on the another hand, the Executive Decision of the Council of Ministers is liable to be referred to the President for his decision. The Lieutenant Governor shall then act according to that decision of the President. Pending such decision, in case urgency requires the Lieutenant Governor to act, he may act, and give directions in the matter, as he deems necessary.

187. The Constitution Bench of the Supreme Court in ***State (NCT of Delhi)*** (supra) has extensively considered the aforesaid provisions in relation

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to the NCT of Delhi. We have extracted some of the conclusions drawn in the said decision hereinabove, which were relied upon by Dr. Singhvi. The conclusions drawn in paragraphs 284.13 to 284.23 of the majority judgment rendered by the Hon'ble Chief Justice of India – for himself, *A.K. Sikri & A.M. Khanwilkar, JJ.*, are most relevant, and may be referred to at this stage. At the cost of some repetition, we reproduce the same hereinbelow.

> *"284.13. With the insertion of Article 239-AA by virtue of the Sixty-ninth Amendment, Parliament envisaged a representative form of Government for NCT of Delhi. The said provision intends to provide for the Capital a directly elected Legislative Assembly which shall have legislative powers over matters falling within the State List and the Concurrent List, barring those excepted, and a mandate upon the Lieutenant Governor to act on the aid and advice of the Council of Ministers except when he decides to refer the matter to the President for final decision.*
>
> *284.14. The interpretative dissection of Article 239-AA(3)(a) reveals that Parliament has the power to make laws for the National Capital Territory of Delhi with respect to any matters enumerated in the State List and the Concurrent List. At the same time, the Legislative Assembly of Delhi also has the power to make laws over all those subjects which figure in the Concurrent List and all, but three excluded subjects, in the State List.*
>
> ***284.15. A conjoint reading of clauses (3)(a) and (4) of Article 239-AA divulges that the executive power of the Government of NCTD is coextensive with the legislative power of the Delhi Legislative Assembly and, accordingly, the executive power of the Council of Ministers of Delhi spans over all subjects in the Concurrent List and all, but three excluded subjects, in the State List. However, if Parliament makes law in respect of certain subjects falling in the State List or the Concurrent List, the executive***

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action of the State must conform to the law made by Parliament.

284.16. As a natural corollary, the Union of India has exclusive executive power with respect to NCT of Delhi relating to the three matters in the State List in respect of which the power of the Delhi Legislative Assembly has been excluded. In respect of other matters, the executive power is to be exercised by the Government of NCT of Delhi. This, however, is subject to the proviso to Article 239-AA(4) of the Constitution. Such an interpretation would be in consonance with the concepts of pragmatic federalism and federal balance by giving the Government of NCT of Delhi some required degree of independence subject to the limitations imposed by the Constitution.

284.17. The meaning of "aid and advise" employed in Article 239-AA(4) has to be construed to mean that the Lieutenant Governor of NCT of Delhi is bound by the aid and advice of the Council of Ministers and this position holds true so long as the Lieutenant Governor does not exercise his power under the proviso to clause (4) of Article 239-AA. The Lieutenant Governor has not been entrusted with any independent decision-making power. He has to either act on the "aid and advice" of Council of Ministers or he is bound to implement the decision taken by the President on a reference being made by him.

284.18. The words "any matter" employed in the proviso to clause (4) of Article 239-AA cannot be inferred to mean "every matter". The power of the Lieutenant Governor under the said proviso represents the exception and not the general rule which has to be exercised in exceptional circumstances by the Lieutenant Governor keeping in mind the standards of constitutional trust and morality, the principle of collaborative federalism and constitutional balance, the concept of constitutional governance and objectivity and the nurtured and cultivated idea of respect for a representative Government. The Lieutenant Governor should not act in a mechanical manner without due

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application of mind so as to refer every decision of the Council of Ministers to the President.

284.19. The difference of opinion between the Lieutenant Governor and the Council of Ministers should have a sound rationale and there should not be exposition of the phenomenon of an obstructionist but reflection of the philosophy of affirmative constructionism and profound sagacity and judiciousness.

284.20 [Ed. : Para 284.20 corrected vide Official Corrigendum No. F-3/Ed.B.J./56/2018 dated 19-11-2018.] . The Transaction of Business Rules, 1993 stipulate the procedure to be followed by the Lieutenant Governor in case of difference between him and his Ministers. The Lieutenant Governor and the Council of Ministers must attempt to settle any point of difference by way of discussion and dialogue. By contemplating such a procedure, the 1993 TBR suggest that the Lieutenant Governor must work harmoniously with his Ministers and must not seek to resist them at every step of the way. The need for harmonious resolution by discussion is recognised especially to sustain the representative form of governance as has been contemplated by the insertion of Article 239-AA.

284.21. The scheme that has been conceptualised by the insertion of Articles 239-AA and 239-AB read with the provisions of the GNCTD Act, 1991 and the corresponding the 1993 TBR indicates that the Lieutenant Governor, being the administrative head, shall be kept informed with respect to all the decisions taken by the Council of Ministers. The terminology "send a copy thereof to the Lieutenant Governor", "forwarded to the Lieutenant Governor", "submitted to the Lieutenant Governor" and "cause to be furnished to the Lieutenant Governor" employed in the said Rules leads to the only possible conclusion that ***the decisions of the Council of Ministers must be communicated to the Lieutenant Governor but this does not mean that the concurrence of the Lieutenant Governor is required. The said communication is imperative so as to keep him***

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apprised in order to enable him to exercise the power conferred upon him under Article 239-AA(4) and the proviso thereof.

284.22. The authorities in power should constantly remind themselves that they are constitutional functionaries and they have the responsibility to ensure that the fundamental purpose of administration is the welfare of the people in an ethical manner. There is requirement of discussion and deliberation. The fine nuances are to be dwelled upon with mutual respect. Neither of the authorities should feel that they have been lionised. They should feel that they are serving the constitutional norms, values and concepts.

284.23. Fulfilment of constitutional idealism ostracising anything that is not permissible by the language of the provisions of the Constitution and showing veneration to its sense, spirit and silence is constitutional renaissance. It has to be remembered that our Constitution is a constructive one. There is no room for absolutism. There is no space for anarchy. Sometimes it is argued, though in a different context, that one can be a "rational anarchist", but the said term has no entry in the field of constitutional governance and rule of law. The constitutional functionaries are expected to cultivate the understanding of constitutional renaissance by realisation of their constitutional responsibility and sincere acceptance of the summon to be obeisant to the constitutional conscience with a sense of reawakening to the vision of the great living document so as to enable true blossoming of the constitutional ideals. The Lieutenant Governor and the Council of Ministers headed by the Chief Minister are to constantly remain alive to this idealism." (emphasis and underlining supplied)

188. Thus, the Lieutenant Governor would be expected to normally act on the aid and advice of his Council of Ministers in respect of matters on which the Legislative Assembly may legislate. The difference of opinion between the Council of Ministers and the Lieutenant Governor is expected to be the

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exception, and not the norm. The Lieutenant Governor should not act in a mechanical manner, without due application of mind, thereby referring every decision of the Council of Ministers to the President. The difference of opinion between the Council of Ministers and the Lieutenant Governor should have a sound rationale, and it should not be resorted to only to obstruct the implementation of the decisions of the Council of Ministers, but should be founded upon affirmative constructionism, and profound sagacity and judiciousness. At the same time, it is obligatory on the Council of Ministers to keep the Lieutenant Governor abreast with all their decisions, to enable him to exercise the power conferred upon him under Article 239AA(4) and the proviso thereof.

189. We may now proceed to examine whether, in the facts of the present case, the conduct of the Lieutenant Governor satisfies the standards of Constitutional trust and morality, and the principle of collaborative federalism, and Constitutional balance so eloquently explained in the aforesaid judgment. We will examine, whether the conduct of the Lieutenant Governor satisfies the concept of Constitutional governance and objectivity, and displays adherence to respect for a representative Government. We will examine whether the Lieutenant Governor could be said to have acted in a mechanical manner, without due application of mind, while requiring his Council of Ministers to refer the matter in relation to the formulation of the impugned scheme to the President, or whether his action can be described as that of an obstructionist. We will examine whether the difference of opinion has a sound rationale, and whether it reflects the

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philosophy of affirmative constructionism, and profound sagacity and judiciousness.

190. The record shows that on 10.03.2018, the Lieutenant Governor was communicated the Cabinet decision Number 2561, dated 06.03.2018. This decision was to implement the proposal for home delivery of ration. The Council of Ministers approved the proposal contained in the Cabinet Note to implement the home delivery of ration under the TPDS in the NCT of Delhi.

191. The aforesaid Cabinet decision was placed before the Lieutenant Governor, and on 20.03.2018, he expressed the view, as already taken note of in paragraph 70 hereinabove. We may, however, quote paragraph 104 to 111 of the file noting approved by the Lieutenant Governor, which has been placed on record before us:

> *"104. An efficient public distribution system would ensure that while no eligible beneficiary is denied his/her quota of ration, at the same time, no ineligible person could misuse the facility. There should not be any diversion of foodgrains meant for the needy & the poor. The entire system should, function in the most efficient, cost- effective and transparent manner.*
>
> ***105. In this context, I note that the Finance Department has observed that the proposed system of home delivery of ration will only replace one set of human intervention with the other i.e. service providers and their agents. Hence, diversion of ration materials and corruption may not be eliminated under the proposed scheme. The best option would be adoption of the Direct Benefit Transfer (DBT), where the money would be directly transferred to the bank account of the beneficiary, thus totally eliminating middlemen. The Finance Department has also noted that an expenditure of about Rs. 250 Crores per annum is likely to be incurred on the home delivery scheme, and if DBT is adopted, the beneficiaries can procure an additional 5 kg of Atta per family per month, with the***

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money so saved. For the poor marginalised sections of society, this additional 5 kg of Atta per family per month would be a huge welfare measure resulting from adoption of DBT. Therefore, in my view, suggestion of Finance Department is worth considering.

106. The Finance Department has also raised the issue of managing the existing contract with BEL and the financial implications on this account, because there are commitments on account of rental charges payable in respect of PoS machines, weighing scales and iris devices.

107. The Cabinet Note mentions that GNCTD and some States had distributed fortified whole wheat atta during 2012-13 (249/C), but results were not encouraging. No reasons for failure of the earlier scheme or lessons learnt have been placed on record. As such, ***it is not clear how the present proposal would improve upon the previous experiment. While making such a big change in a critical sector that directly impacts the weakest sections of society, I would expect that all due diligence is carried out.***

108. The Cabinet Note, in its SWOT analysis of the proposal, brings out several potential threats and weaknesses. The department has also noted (para 74) that the introduction of scheme has potential operational and implementation risks and it should be implemented initially on pilot basis.

109. Further, the letter dated 01.02.2018 (114/C) of Government of India provides for 'home delivery' as one of the two options, only as a special dispensation for a category of beneficiaries who are above 65 years of age or are differently-abled, have no other adult family member listed in the ration card and are not in a position to visit the Fair Price Shop themselves.

110. In Targeted Public Distribution Scheme (TPDS), the Central Government plays a major role in implementation including procurement, storage, distribution and bulk allocation of foodgrains. The entire TPDS is being implemented under the National Food Security Act, 2013. ***The Law Department in its note (21/N) has pointed out that***

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> ***introduction of proposed scheme would require prior approval of Central Government under Section 12(2)(h) of the said Act.*** *The department has already made a reference on 12.01.2018 to Central Government (42/C). It is learnt that Government of India has requested GNCT of Delhi to forward a copy of proposed scheme and circulars/ guidelines issued in this regard, for proper examination and furnishing of comments.*
>
> ***111. Therefore, I would advise that the proposal of home delivery of ration under TPDS may be referred to Government of India with full details including all implementation issues, before a final decision is taken."*** (emphasis supplied)

192. The gist of the view expressed by the Lieutenant Governor was that the proposed system of home delivery of ration will only replace one set of human intervention with another i.e. the service providers and their agents. Hence, diversion of ration materials and corruption may not be eliminated under the proposed scheme. He was of the view that the suggestion of the Finance Department to resort to the Direct Benefit Transfer (DBT) was worth considering, as that would save additional expenditure of about Rs. 250 Crores per annum, and if the said amount is distributed through DBT, the beneficiaries would be able to procure additional 5kg of atta per family per month. The Lieutenant Governor also expressed his concern, *inter alia,* that the proposed change was a big change in a critical sector that directly impacts the weakest section of the society, and that called for the carrying out of all due diligence. He also notices the view of the Department of Law of the GNCT of Delhi that the Scheme would require prior approval of the Central Government, under Section 12(2)(h) of the Act. In paragraph 111 of the file noting, he advised that "*that the proposal of home delivery of ration*

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under the TPDS may be referred to Government of India with full details including all implementation issues, before a final decision is taken."

193. The record shows that on 22.05.2021, the FSO (Policy) placed the proposal for door step delivery of ration at the door step of the beneficiaries after rescinding the earlier MMGGRY Scheme notified on 20.02.2021, and by seeking to extend the spirit of the letters dated 03.11.2014 and 01.02.2018, to not just a few limited classes of beneficiaries, but to all beneficiaries under the TPDS. The GNCTD sought to place reliance on similar steps taken by the Government of Andhra Pradesh and the Government of Haryana. It provided the draft notification on home delivery of processed and packed NFSA rations under TPDS. The record shows that the said proposal was cleared by the Council of Ministers, and on 24.05.2021, the Chief Minister placed the matter before the Lieutenant Governor "*to kindly decide whether he would like to invoke his powers under the proviso to Article 239AA(4) of the Constitution*." The Lieutenant Governor then, on 02.06.2021, recorded his decision on the said proposal as follows:

> *"14. I have perused the proposal and observed that in an earlier proposal of the scheme of doorstep delivery of ration, I had advised vide note dated 20.03.2018 in file no.2 (172) F&S/IT/2017-18 (CD no. 000470456), that the proposal of home delivery of ration may be referred to Government of India as per section 12(2)(h) of National Food Security Act, 2013 will full details, before a final decision is taken (copy placed at C/ 54-55).* ***However no approval of GOI is placed on record. Hence, it is again advised that the above proposal of home delivery of ration may kindly be referred to the Government of India for approval in accordance with the above provision of the NFSA, 2013.***

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> *15. Incidentally I may also mention that a Writ petition WP(C) 2037/2021 in the above matter has been filed by the Delhi Sarkari Ration Sangh in the Hon'ble High Court of Delhi challenging the proposed arrangement of doorstep delivery of ration by the GNCTD wherein Union of India is also a party. The next date of hearing in the matter is 20.08.2021.*
>
> *16. The file is accordingly returned for reconsideration to the Hon'ble Chief Minister."* (emphasis supplied)

194. From the aforesaid, it is seen that the Lieutenant Governor reiterated his earlier decision, requiring his Council of Ministers to seek the approval of the Government of India on the difference of opinion between him and his Council of Ministers with regard to the implementation of the door step delivery of ration to the TPDS beneficiaries. This time, he also took note of the pendency of the present writ petition being W. P. (C) 2037/2021.

195. The file noting shows that the Chief Minister, on 16.06.2021, recorded in paragraphs 17 and 18 at Page 6/N as follows:

> ***"17. I have perused the note of Hon'ble LG.***
>
> ***18. There appears to be a serious misunderstanding. The instant matter before Hon'ble LG is not "approval" of the scheme of doorstep delivery of ration. The scheme has already attained finality."***

196. Thus, the stand of the Chief Minister now was that the door step delivery of ration scheme had "*already attained finality*", and the matter was not referred to the Lieutenant Governor for his approval of the scheme. In the same office noting, in paragraph 26, the Chief Minister, inter alia, recorded "*Hon'ble LG's insistence on referring the matter to the Central Government for its approval does not appear correct. The approval of the*

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Central Government is neither mandated nor necessary. As explained above, we have merely implemented Central Government's orders. Further, Delhi Government, through several communications, has been informing and seeking assistance of the Central Government, from time to time for the implementation of this doorstep delivery scheme."

197. On the heels of the aforesaid noting dated 16.06.2021 made by the Chief Minister of Delhi, the Government of India shot out two communications dated 17.06.2021 and 22.06.2021, of which we have already taken notice in the earlier part of the judgment. By these communications, the Government of India pointed out several non-compliances of the Act by the GNCTD, and also commented on the proposed home delivery scheme.

198. Post the issuance of the aforesaid two communications, the matter was again considered by the Lieutenant Governor on 24.06.2021. He made reference to the letter dated 22.06.2021 of the Department of Food & Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, and observed that the proposed scheme has not been accepted by the Ministry, as it did not meet the statutory and functional requirements of the NFSA. He advised that the directions issued by the Government of India with regard to the implementation of the NFSA may be complied with by the Food and Supply Department, GNCTD.

199. The Chief Minister, yet again, made his noting on 01.07.2021. The Chief Minister again sought the view of the Lieutenant Governor on whether he differs with the draft notification of the scheme for doorstep delivery of

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ration, or not. We may extract the notings found at Page 13/N of the file, which reads as follows:

> *"45. With respect to the advice of Hon'ble LG, I again humbly submit that the instant matter relates to the draft notification at 49-53/C on the scheme of doorstep delivery of ration.* ***Hon'ble LG may kindly indicate whether he differs with the said notification or not.***
>
> *46. Hon'ble LG has given certain directions. It is most humbly submitted that as per the judgment of the Constitution Bench of Hon'ble Supreme Court dated 4 July 2018, Hon'ble LG does not have the powers to give any directions on the transferred subjects, unless Hon'ble LG has referred the matter to the President under the proviso to Art 239 AA (4).*
>
> *47. The letter from the Central Government is being examined and necessary action will be undertaken as per law."* (emphasis supplied)

200. On 02.07.2021, the Assistant Commissioner from the Department of Food, Supplies & Consumer Affairs of GNCTD, sent a communication to the Government of India, with a copy to the Principal Secretary to the Lieutenant Governor stating that the Government has decided to implement distribution of both – NFSA and PMGKAY ration to all NFSA beneficiaries in Delhi, including migrants through ePoS devices. In this communication, it was, inter alia, stated that the Department has complied with both the directions under Section 38 of the NFSA Act, and the other issues raised under Section 28 and 29 are being taken up separately, and the progress report will be shared shortly in due course of time.

201. The aforesaid noting made by the Chief Minister on 01.07.2021 was responded to by the Lieutenant Governor on 26.07.2021 as follows:

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> *"48. Reference observations of Hon'ble Chief Minister, at pre-page.*
>
> *49. In the first instance, it is pointed out that my observation at page 12/ N has been misunderstood as 'direction' though it was only a conciliatory advice in sync with the observations of Hon'ble Supreme Court (Constitution Bench) Judgment dated 04.08.2018, wherein Hon'ble Supreme Court has emphasized that there is requirement of discussion and deliberations and that fine nuances are to be dwelled upon with mutual respect.*
>
> *50. Keeping in view the provisions of the National Food Security Act 2013, the Department of Food and Public Distribution, Ministry of CAF&PD, Govt. of India vide letter dated 22.06.2021 has already conveyed its concerns and decision on the proposed Scheme of Door Step delivery of Ration. This communication of the Central Government appears to be in accordance with the Section 38 of the National Food Security Act, 2013.*
>
> *51.* ***It is noted that the above communication dated 22.06.2021 of Central Government has not yet been considered by the Council of Ministers, GNCTD. Therefore, in case the Hon'ble Chief Minister, GNCTD still differs, I would request the Hon'ble Chief Minister, GNCTD to refer this matter to the Council of Ministers for its consideration and decision in accordance with Rule 49 of the TBR, 1993 read with section 45(c) of the Government of NCT of Delhi Act, 1991.****"* (emphasis supplied)

202. When we examine the aforesaid exchange of views, which have taken place between the Council of Ministers/ Chief Minister, on the one hand and the Lieutenant Governor on the another hand, we find that when the scheme was initially placed for approval of the Lieutenant Governor on 20.03.2018, he made known the reasons for his view as to why he did not agree with the proposed scheme, and what were the reasons for his difference of opinion with regard to the proposed scheme. In our view, in judicial scrutiny, we

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are not called upon to return a finding whether the reasons for difference of opinion expressed by the Lieutenant Governor are correct and sustainable, or not. We are only called upon to see, whether the conduct of the Lieutenant Governor could be said to satisfy the standards of constitutional trust and morality, and the principle of collaborative federalism and constitutional balance. As noticed hereinabove, the Central Government issued yet another communication dated 08.10.2021 reiterating the position of the Central Government, and calling upon the GNCTD to strictly adhere to the mandatory requirements of the NFSA.

203. We may observe that even if the opinion of the Lieutenant Governor for expressing his difference of opinion is eventually not agreed to by the President, and the President decides to go with the decision of the Council of Ministers, that by itself, would not mean that the opinion of the Lieutenant Governor could be described as falling foul of the standards of constitutional trust and morality; the principals of collaborative federalism, and Constitutional balance. This is for the reason that there could be genuine and bona fide difference of opinion, on account of fundamental and serious difference of approach of the Council of Ministers on the one hand and the Lieutenant Governor on the another hand.

204. It is only where it appears to the Court that the expressed reasons are no reasons in the eyes of law, i.e. they are arbitrary, whimsical, unreasonable, suffer from non-application of mind, or are demonstrative of obstructionist attitude and conduct, which do not accord with the standards of constitutional trust and morality, the principals of collaborative federalism, and Constitutional balance, that the Court would draw an

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inference that the difference of opinion expressed by the Lieutenant Governor is an "*exposition of the phenomenon of an obstructionist*" and not reflective of "*the philosophy of affirmative constructionism and profound sagacity and judiciousness*", as expressed by the Supreme Court in ***State (NCT of Delhi)*** (supra).

205. The Council of Ministers does not appear to have answered the issues raised by the Lieutenant Governor in his note/ decision dated 20.03.2018. The Council of Ministers did not answer as to how the replacement of one set of human intervention with another, as proposed under the scheme, would improve upon aspects of diversion of ration materials and corruption and eliminate the same. The issue raised by the Lieutenant Governor, premised upon the observations of the Finance Department, that the best option would be the adoption of Direct Benefit Transfer (DBT), as that would totally eliminate middlemen and also save expenditure of Rs. 250 crores per annum which, in turn, can provide additional 5 kg of atta per family per month with the money saved, have not been addressed by the Council of Ministers in any of the subsequent decisions and notings. The observations that it was not clear as to how the proposed scheme would improve upon the previous experiments, and that a big change in a critical sector that directly impacts the weakest section of the society requires due diligence to be carried out, also do not appear to have been responded to by his Council of Ministers. The Lieutenant Governor also relied upon the noting of the Law Department, that the proposed scheme would require prior approval of the Central Government under Section 12(2)(h) of the Act. To examine whether reliance placed by the Lieutenant Governor on the said

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note of the Law Department is reasonable, or not, we may reproduce hereinbelow Section 12(2)(h) of the Act insofar as it is relevant. The said provision reads as follows:-

> "*12. (1) The Central and State Governments shall endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for them in this Act.*
>
> *(2) The reforms shall, inter alia, include—*
>
> *(a) ……..*
>
> *(b) ……..*
>
> *(c) …….*
>
> *(h) introducing schemes, such as, cash transfer, food coupons, or other schemes, to the targeted beneficiaries in order to ensure their foodgrain entitlements specified in Chapter II,* ***in such area and manner as may be prescribed by the Central Government****."*
>
> (Emphasis supplied)

206. Reading of the aforesaid provision shows that introduction of schemes, such as cash transfer, food coupons or other schemes can be done "*in such area and manner as may be prescribed by the Central Government*". From the point of view of the Lieutenant Governor, firstly, he was entitled to rely upon the file noting made by the Law Department. Secondly, even on a plain reading of the aforesaid provision, it cannot be said that the view expressed by the Law Department was wholly incorrect or unsustainable and, therefore, the Lieutenant Governor acted without due application of his own mind, or that he blindly followed the file noting made by the Law Department. The manner in which the scheme may be introduced to reform the TPDS, appears to require the approval of the

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Central Government as the said manner has to be prescribed by the Central Government. Thus, the Lieutenant Governor appears to be justified in relying upon the note of the Law Department in relation to the understanding of the Law Department of Section 12(2)(h). We may here refer to Article 239AA(3)(b) of the Constitution, which reads:

> *"(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof."*

207. Since the Parliament has enacted the NFSA, which specifically requires that the schemes introduced by the Central or State Government shall be, " *in such area and manner as may be prescribed by the Central Government*.", the GNCTD is bound to implement the proposed Door Step Delivery Scheme only in the manner that the Central Government may prescribe, and not otherwise.

208. The rescindment of the MMGGRY scheme and framing of the new scheme on 24.03.2021 was merely a cosmetic change, as is evident from the Cabinet decision No. 2987 dated 24.03.2021 alongwith the relevant Note for Council of Ministers.

209. The said modified/ new scheme was again placed before the Lieutenant Governor to "*decide whether he would like to invoke his powers under the proviso to Article 239AA(4) of the Constitution"*. Thus, it would be seen that the issues raised by the Lieutenant Governor, while recording his difference of opinion on 20.03.2018 were not specifically addressed and the Lieutenant Governor again advised his Council of Ministers that the "*proposal of home delivery of ration may kindly be referred to the*

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Government of India for approval in accordance with the above provision of the NFSA, 2013".

210. The file noting made by the Chief Minister on 16.06.2021, appears to be discordant with the earlier file notings taken note of hereinabove. When the Chief Minster placed the matter before the Lieutenant Governor on 24.05.2021, the Chief Minister was conscious of the fact that the Lieutenant Governor was entitled to "*invoke his powers under the proviso to Article 239AA(4) of the Constitution*". However, while making his noting on 16.06.2021, the Chief Minister records that "*The instant matter before the Hon'ble LG is not "approval" of the scheme of doorstep delivery of ration. The Scheme has already attained finality."* He expresses the view that there appears to be a serious misunderstanding.

211. To us, it appears, that the misunderstanding was not on the part of the Lieutenant Governor, but on the part of the Chief Minister himself. Every Union Territory is administered by the President, acting through an Administrator. In respect of the NCT of Delhi, the administrator appointed under Article 239 is designated as the Lieutenant Governor. The Lieutenant Governor functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except insofar as he is, by or under any law, required to act in his discretion, on the aid or advice of his Council of Ministers headed by the Chief Minister. By virtue of Section 44(2) of the GNCTD Act, 1991, "*Save as otherwise provided in this Act, all executive action of the Lieutenant Governor whether taken on the advice of his Ministers or otherwise shall be expressed to be taken in the name of the Lieutenant Governor".*

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212. Thus, the impugned scheme framed by the Council of Ministers – headed by the Chief Minister, before its implementation, was required to be communicated by the Chief Ministers to the Lieutenant Governor, since it relates to the administration of the affairs of the Capital. It was in this light that the impugned scheme was initially placed before the Lieutenant Governor, on which he expressed his difference of opinion on 20.03.2018. It was precisely for the same reason that the proposal was again placed by the Chief Minister before the Lieutenant Governor on 24.05.2021 calling upon him "*to kindly decide whether he would like to invoke his powers under the proviso to Article 239AA(4) of the Constitution".* While observing that "*the Scheme has already attained finality",* the Chief Minister in his noting dated 16.06.2021 does not state as to, how, and, when, the scheme could be said to have attained finality when, as a matter of fact, the Lieutenant Governor expressed his difference of opinion on the record on two successive occasions, i.e. on 20.03.2018, and again on 02.06.2021 and required that the proposal of home delivery of ration may be referred to the Government of India for approval in accordance with the provisions of the NFSA, 2013. Though there may be no necessity, under the Constitutional scheme, for the decision of the Council of Ministers requiring the "approval" of the Lieutenant Governor, there is an obligation for the Chief Minister to communicate the decision of the Council of Ministers to the Lieutenant Governor and, in case, there is a difference of opinion, or a disapproval, then the matter must be referred to the President under the proviso to Article 239AA(4). In our view, the Chief Minister was not correct in concluding that the approval of the Central Government is neither mandated, nor necessary, under Section 12(2)(h) of the NFSA, or that the

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matter need not have been referred to the President under proviso to Article 239AA(4), despite the expressed difference of opinion by the Lieutenant Governor.

213. In our view, the Council of Ministers headed by the Chief Minister were obliged to follow the mandate of the proviso to Article 239AA(4), and to refer the matter for the decision of the President.

214. At this stage, we may observe that the language of the proviso to Article 239AA(4) shows that "*the Lieutenant Governor shall refer it to the President for decision……".* Therefore, the Lieutenant Governor could also have referred the matter for the decision of the President directly, if the Council of Ministers headed by the Chief Minister were not doing the same. Even when the Lieutenant Governor requires the Chief Minister to make a reference to the President, it is his reference of the difference of opinion.

215. The aforesaid narration of facts shows that after the Chief Minister made his noting on 16.06.2021, the Government of India sent two communications, including the communication dated 24.06.2021 to the GNCTD, pointing out several non-compliances of the Act by the GNCTD and also commenting on the proposed home delivery scheme. On 01.07.2021, the Chief Minister again sought the view of the Lieutenant Governor on whether he differs with the draft notification for the scheme of doorstep delivery of ration, or not. This noting of the Chief Minister was responded to by the Lieutenant Governor on 26.07.2021. He referred to the aforesaid communication dated 22.06.2021 of the Central Government, and observed that the same have not been considered by the Council of Ministers, GNCTD. In this light, he requested the Chief Minister to refer

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the matter to the Council of Ministers for its consideration and decision in accordance with Rule 49 of the TBR, 1993 read with section 45(c) of the GNCTD Act.

216. We find this action of the Lieutenant Governor to be in accord with Rule 49 of the TBR, 1993 read with section 45(c) of the GNCTD Act. The file noting dated 01.07.2021 is that of the Chief Minister, and not the Council of Ministers. The record does not show that the Council of Ministers considered the letter dated 22.06.2021 of the Central Government, and the decision to refer the scheme again to the Lieutenant Governor on 01.07.2021 appears to be that of the Chief Minister alone. Rule 49 of the TBR, 1993 reads as follows:-

> *"49. In case of difference of opinion between the Lieutenant Governor and a Minister in regard to any matter, the Lieutenant Governor shall endeavour by discussion on the matter to settle any point on which such difference of opinion has arisen. Should the difference of opinion persist, the Lieutenant Governor may direct that the matter be referred to the Council*".

217. In the light of the exchanges which took place between the Council of Ministers/ Chief Minister on the one hand, and the Lieutenant Governor on the other hand, which we have taken note of hereinabove, and since the difference of opinion was not settled despite discussions on the matter, the Lieutenant Governor was justified in directing that the matter be referred to the Council of Ministers for consideration of the letter dated 22.06.2021 of the Central Government. Section 45(c) of the GNCTD Act, insofar as it is relevant reads "*it shall be the duty of the Chief Minister – if the Lieutenant Governor so requires, to submit for the consideration of the Council of*

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Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council."

218. Thus, we are of the view that the Lieutenant Governor was justified in requiring the Chief Minister to take the matter to the Council of Ministers alongwith the communication of the Central Government dated 22.06.2021 for its consideration, if the Chief Minister still differed with the opinion already addressed by the Lieutenant Governor.

219. We are, therefore, of the view that the impugned scheme cannot be implemented and rolled out by the GNCTD since the Lieutenant Governor has expressed his difference of opinion and required that the same be referred for his decision to the President. The said scheme would necessarily have to be rolled out in the name of the Lieutenant Governor, while recording his approval thereof. That has not been done in the facts and circumstances taken note of hereinabove. The Chief Minister should, therefore, place the matter before the Council of Ministers and consider the proposed scheme in the light of the letter of the Central Government dated 17.06.2021 and 22.06.2021, and observations made by us hereinabove. Even if the Council of Ministers resolves to reiterate the proposed scheme, the same would require to be placed again before the Lieutenant Governor, who would be entitled to again examine the issues and in case he still has a difference of opinion with his Council of Ministers, he may require the Chief Minister to place the difference of opinion for the decision of the President of India, or he may, on his own, place the matter before the President of India for his decision. The GNCTD shall be bound by whatever decision is taken by the President of India in the matter.

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220. Thus, we find that the action of the Council of Ministers headed by the Chief Minister to roll out the impugned Scheme to be still borne, and not in accordance with either Article 239AA(4), or even with Section 44(2) of the GNCTD Act. We are consciously using the expression "Council of Ministers headed by the Chief Minister" in relation to the action of rolling out the impugned scheme, since the same cannot be described as an action of the GNCTD. For the same to be an action of the GNCTD, the action has to, necessarily be in the name of the Lieutenant Governor. In the present case, as noticed above, the decision of the Council of Ministers headed by the Chief Minister to roll out the impugned Scheme is not, and cannot be described as an Executive action taken by, or in the name of the Lieutenant Governor, since he has expressed his disagreement, which stands unresolved, as it has not been placed before the President.

221. We may also deal with the submissions advanced by the Bandhua Mukti Morcha – the applicant in C.M. No. 21333/2021 in W.P.(C.) No. 2037/2021. The decisions in ***People's Union for Civil Liberties (PDS matters)*** (supra) and ***Swaraj Abhiyan*** (supra) relied upon by Mr. Rahman, do not direct the State to necessarily provide the rations under the TPDS to the beneficiaries at their door-step. As we have already observed, there is nothing wrong in the GNCTD entertaining the desire and intention to deliver packaged atta and rice to the beneficiaries under the TPDS at their doorstep. However, that can be done only in accordance with the scheme of the NFSA, and the statutory Orders under the ECA, and not otherwise. We do not agree with Mr. Rahman that the delivery of food to the beneficiaries under the TPDS at the doorstep of the Fair Price Shops does not amount to a

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guarantee of adequate food and nutrition to the beneficiaries under Article 21 and 47 of the Constitution of India. We also do not find any merit in the plea of Mr. Rahman, that it is against the right to dignity and privacy to compel beneficiaries under the TPDS to queue up to collect their allocated rations from the Fair Price Shops. In our view, it is only civil that persons – who desire to obtain/ buy anything from an outlet, should queue up, if such a queue is necessary looking to the number of persons, who may land up at the outlet at the same time. It does not offend the right to dignity and privacy of any person, merely because the person may be required to queue up at the outlet. The outlet could be for anything, or for any service. People queue up to buy medicines from a medical store; to buy milk at the milk booth; bus, train and airline tickets at bus stations, railway stations and airports; to buy cinema tickets at cinema houses; to buy tickets for sporting and other entertainment events at the venues, so on and so forth. If the submission of Mr. Rahman in this regard is accepted, it would mean that the right to dignity of such persons – who queue up, is violated. Acceptance of the submission would also mean that such persons have a right not to stand in a queue, or break of queue. Such a thought would destroy civility and orderly conduct and respect for others' rights in the society, which cannot be accepted. Reliance placed at ***K.S. Puttaswamy (Aadhaar-5J.)*** (supra) is also of no avail.

CONCLUSION

222. For all our aforesaid reasons, we dispose of this petition with the following findings and directions:-

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222.1. The GNCTD is entitled to frame a scheme for doorstep delivery of foodgrains/ rations to the beneficiaries under the TPDS at the doorsteps of the TPDS beneficiaries. However, the same has to be done by the GNCTD from its own resources in compliance with the prevailing laws.

222.2. Any such scheme framed by the GNCTD should comply with all the requirements of the NFSA and the Orders issued under the ECA. The impugned scheme as presently framed by the Cabinet Decision No. 2987 on 24.03.2021, does not comply with the provisions of the NFSA and TPDS Order, 2015.

222.3. The TPDS Order, 2015 has to be read with the NFSA and they are both enforceable. The submission of the GNCTD that the TPDS Order, 2015 stands overridden by Section 36 of the NFSA is rejected.

222.4. The Council of Ministers headed by the Chief Minister is bound to communicate its decisions/ resolutions, including any such scheme or proposal to the Lieutenant Governor, so as to enable him to examine the same and to take a call on whether, or not, he has a difference of opinion with any such scheme.

222.5. When any decision of the Council of Ministers headed by the Chief Minister is placed before the Lieutenant Governor for his approval, he shall be mindful of the decision of the Supreme Court in ***State of (NCT of Delhi)*** (supra), and shall take his decision to express his difference of opinion, if any, in the light of the aforesaid Judgment.

222.6. In case the Lieutenant Governor expresses his disagreement with his Council of Ministers headed by the Chief Minister, he may either

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require the Chief Minister to refer the matter to the President for his decision, or he may, on his own, refer the matter to the President for his decision. Even when the Lieutenant Governor requires the Chief Minister to refer the matter for his decision to the President, it is reference by the Lieutenant Governor and would, therefore, meet the requirement of the proviso to Article 239AA(4) of the Constitution.

222.7. The final decision shall rest with the President on the difference of opinion and the said decision shall prevail and bind the Council of Ministers headed by the Chief Minister and the Lieutenant Governor, who shall act in accordance with the said final decision.

222.8. In the facts of the present case, the impugned scheme for doorstep delivery of rations to the beneficiaries under the TPDS framed by the Cabinet Decision no. 2987 on 24.03.2021 has not been approved/ consented to by the Lieutenant Governor and, therefore, in any event of the matter, the same cannot be implemented in its present form.

223. Consequently, we allow these writ petitions and quash the following 3 tenders/ NIB's issued by the respondents, and actions taken in furtherance thereof:

i. Bid I.D. No. 2021_DCCWS_198395_TENDER Issuing Date: 06/01/2021

ii. Bid I.D. No.2021 DSCSC198921_1 TENDER Issuing Date: 19/01/2021,

iii. Bid I.D. No.2021 DSCSC198916_1 TENDER Issuing Date : 19/01/2021

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224. The petitions stand disposed of in the aforesaid terms.

225. The parties are left to bear their respective costs.

VIPIN SANGHI
(ACTING CHIEF JUSTICE)

JASMEET SINGH
(JUDGE)

MAY 19, 2022

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