IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.A. No. 26 of 2018

M/S R.K. & Co.Through its proprietor R.K. Rameshwar Singh, aged about 48 years, S/o (L) B.K. Balaram Singh of Changanggei, Opposite Airport, P.O. Tulihal& P.S. Lamphel, Imphal West District, Manipur.

....Appellant.

-Versus -

1. The State of Manipur through the Principal Secretary/Commissioner/Secretary, (Social Welfare), Government of Manipur, Manipur Secretariat, P.O. & P.S. Imphal-795001.
2. The Director of Social Welfare, Government of Manipur, P.O. & P.S. Porompat, Imphal East-795001.
3. M/S B.L.L. Agency through its proprietor, Babupara, Imphal West, Manipur.
4. M/S BLL Enterprises Pvt. Ltd. Through its Director, Babupara, Imphal West, Manipur.

.....Respondents.

5. The Area Manager, Food Corporation of India, Imphal.

...Proforma Respondent.

W.A. No. 27 of 2018

M/S R.K. & Co through its proprietor R.K. Rameshwar Singh, aged about 48 years, S/o (L) R.K. Balaram Singh of Changanggei, Opposite Airport, P.O. Tulihal& P.S. Lamphel, Imphal West District, Manipur.

…Appellant.

-Versus-

1. M/S Ningthouja Agency, a Proprietorship Firm, through its Proprietor, Shri R.K. Gourakumar Singh, aged about 38 years, S/o R.K. Shantikishore Singh, a resident of Khurai Chingangbam Leikai Tinsid Road, P.S. Porompat, Imphal East, Manipur.
2. The State of Manipur represented by the Commissioner/Secretary, Social Welfare, Government of Manipur, P.O. & P.S. Imphal.

3. The Principal Secretary (Finance) Government of Manipur, P.O. & P.S. Imphal.
4. The Director, Social Welfare Department, Government of Manipur, P.O. & P.S. Imphal.
5. The Joint Secretary (Finance), Government of Manipur, P.O. & P.S. Imphal.

…. Respondents.

W.A. No. 28 of 2018

M/S BK. Enterprises through its proprietor G. Bimalkumar Sharma, aged about 61 years, S/o Checkon Bazar Near Citizen Club, P.O. & P.S. Porompat, Imphal East District, Manipur.

…Appellant.

-Versus-

1. The State of Manipur through the Principal Secretary/ Commissioner/ Secretary, (Social Welfare), Government of Manipur, Imphal Secretariat, North Block, P.O. & P.S. Imphal-795001.
2. The Director of Social Welfare, Government of Manipur, North AOC, P.O. & P.S. Porompat, Imphal East-795001.

…..Respondents.

W.A. No. 44 of 2018

M/S R.K. & Co through its proprietor R.K. Rameshwar Singh, aged about 48 years, S/o (L) R.K. Balaram Singh of Changanggei, Opposite Airport, P.O. Tulihal& P.S. Lamphel, Imphal West District, Manipur.

…Appellant.

-Versus-

1. The State of Manipur through the Principal Secretary/Commissioner/Secretary, (Social Welfare), Government of Manipur, Imphal Secretariat, North Block, P.O. & P.S Imphal-795001.
2. The Director of Social Welfare, Government of Manipur, North AOC, P.O Porompat, Imphal East-795005.

3. The Director, Vigilance and Anti Corruption Department, Government of Manipur, P.O. Porompat, Imphal East-795005.

……Respondents.

W.P. (C) No. 995 of 2018

M/S R.K & Brothers represented by its proprietor, namely; Mr. RamthingKasar, aged about 48 years a resident of Chadong Village, P.O. & P.S. Litan, Ukhrul District, Manipur-795142.

….Petitioner.

-Versus -

1. The State of Manipur through the Principal Secretary/Commissioner/Secretary, (Social Welfare), Government of Manipur, Manipur Secretariat, P.O. & P.S. Imphal-795001.
2. The Director of Social Welfare, Government of Manipur, North AOC, P.O. & P.S. Porompat, Imphal East-795001.

.....Respondents.

W.P. (C) No. 1062 of 2018

M/S R.K. & Co through its proprietor R.K. Rameshwar Singh, aged about 48 years, S/o (L) R.K. Balaram Singh of Changanggei, Opposite Airport, P.O. Tulihal& P.S. Lamphel, Imphal West District, Manipur.

….Petitioner.

-Versus -

1. The State of Manipur through the Principal Secretary/Commissioner/Secretary, (Social Welfare), Government of Manipur, Imphal Secretariat, North Block, P.O. & P.S. Imphal-795001.
2. The Director of Social Welfare, Government of Manipur, North AOC, P.O. & P.S. Porompat, Imphal East-795005.

… Respondents.

B E F O R E
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the Appellant	:	Mr. HS. Paonam, Sr. Adv.& Mr. A. Arunkumar Singh, Adv.
For the respondents	:	Mr. S. Nepolean, GA, Mr. Kh. Tarunkumar, Pvt. respondent, Mr. W. Darakishwor, Sr. PCCG.
Date of Hearing	:	**25.08.2020.**
Date of Order	:	**04.11.2020**

JUDGMENT AND ORDER
(CAV)

(A. Bimol Singh, J)

[1] Heard Mr. HS. Paonam, learned senior advocate assisted by Mr. A. Arunkumar Singh, Advocate, appearing for the writ appellants and writ petitioners, Mr. S. Nepolean, learned GA, appearing for the State respondents, Mr. Kh. Tarunkumar, learned counsel appearing for the private respondents No. 3&4 and Mr. W. Darakishwor, learned senior PCCG appearing for the Food Corporation of India.

[2] The facts of the above 4(four) Writ Appeals and 2(two) writ petitions are common and accordingly, all the above noted 6(six) cases are being disposed of by this common judgment and order.

[3] The undisputed and common facts leading to the filing of the above noted cases are that the Director(Social Welfare), Government of Manipur issued a Notice Inviting Tender (NIT) dated 22.06.2017 inviting tenders for appointment of contractors for transport of rice from Food Corporation of India (FCI) depots (Imphal, Ukhrul, Jiribam and Senapati) to

various offices of the Child Development Project Officer as well as for transportation of WBNP(Rice) from various FCI, godown and Micronutrients from department godown at Takyelpat to the offices of the District Program Officer/ the Child Development Project Officers in the State for a period of 1(one) year with option for extension for further period of 1(one) year at the sole discretion of the department without any escalation in rate.

[4] Pursuant to the said NIT, a number of eligible contractors including M/S R.K. & Co (hereinafter referred to as appellant/writ petitioner) submitted their bids. The appellant/writ petitioner submitted its bids for 5(five) routes, namely:

(i) Imphal West and Imphal East (Route-ii),

(ii) Churachandpur (Route-IV),

(iii) Chandel (Route-VI),

(iv) Senapati (Route-VII) and

(V) Kangpokpi (Route-VIII).

[5] The technical bids of the tender process were opened in the presence of the bidders or their nominees on 07.09.2017 and the appellants/writ petitioners were found to be qualified in all the tender bids submitted by them. Thereafter, on the same day, the financial bids were also opened with the consent of all the bidders. The result or outcome of the said financial bids are as under:-

Sl. No	Name of Routes	Name of Firm	Rate quoted (in Rs. Per MT per Km)
(1)	(2)	(3)	(4)
1.	Route I(Bishnupur District)	(i) M/SB.K. Enterprise (ii) M/S BLL Enterprise (iii) M/SNingthoujaEnterprise	6.30 (L2) 4.10 (L1) 12.70 (L3)
2.	Route II (Imphal West District and Imphal East District)	(i) M/S BLL Enterprise (ii) M/S Ningthouja Enterprise (iii) M/S Shiva Transport Co. (iv) M/S R.K. & Co.	4.10(L1) 12.60(L4) 4.11(L2) 8.10(L3)
3.	Route III(Thoubal, Kamjong&Kakching District)	(i) M/S Shiva Transport Co. (ii) M/S Ningthouja Agency (iii) M/S BLL Enterprise (iv) M/S B.K. Enterprise	4.11(L1) 4.51(L2) 7.50(L3) 7.50(L3)
4.	Route IV (Churachandpur&Pherzawl District)	(i) M/S Shiva Transport Co. (ii) M/S Ningthouja Agency (iii) M/S R.K. & Co. (iv) M/S S.P. Const & Supplies	5.11(L1) 13.05(L4) 7.20(L2) 8.00(L3)
5.	Route V (Jiribam, Tamenglong&Noney District)	(i) M/S BLL Enterprise (ii) M/S B.K. Enterprise (iii) M/SNingthouja Enterprise (iv) M/S S.P. Enterprises	4.52(L1) 7.50(L2) 12.58(L4) 10.00(L3)
6.	Route VI (Senapati District)	(i) M/S Shiva Transport Co. (ii) M/S. B.K. Enterprise (iii) M/S Ningthouja Agency (iv) M/S R.K. & Co. (v) M/S BLL Agency	5.11(L2) 7.20(L4) 13.11(L5) 7.11(L3) 4.52(L1)
7.	Route VII (Senapati District)	(i) M/S R.K. & Bro (ii) M/S Ningthouja Agency (iii) M/S R.K. & Co (iv) M/S BLL Agency	10.50(L3) 13.12(L4) 6.80(L2) 4.20(L1)
8.	Route VIII (Kangpokpi District)	(i) M/S R.K. & Co (ii) M/S Ningthouja Agency	7.00(L1) 13.20(L2)
9.	Route IX	(i) M/S R.K. & Bro (ii) M/S Ningthouja Agency (iii) M/S B.K. Enterprise (iv) M/S BLL Agency	10.98(L3) 13.20(L4) 7.20(L2) 4.53(L1)

[6] The financial bids submitted by the bidders were considered by the Higher Tender Committee(HTC) in its meeting held on 16.09.2017 in the office room of the Additional Chief Secretary/Links Secretary, Finance. During the said meeting, it was noted that L1 quoted rates across all routes

were unreasonably low and accordingly, the HTC advised the administrative department to carry out a detailed analysis of rates based on the costs of vehicle, fuel costs, distance, quantity, misc. charge etc., and also to compare rates quoted with FCI, FCS and election rates.

[7] In terms of the advised given by the HTC, the Director(Social Welfare), Manipur, requested all the Contractors/Bidders to submit justification for the price bids tendered by them on or before 29.09.2017. In terms of the letter of the Director(Social Welfare), Manipur, dated 23.09.2017, all the Contractors/Bidders including the appellant/writ petitioner submitted their respective justification for the price bids tendered by them.

[8] After receiving the justifications of the respective price bids submitted by all the bidders, the HTC re-examined the rates quoted in the financial bids in the light of the analysis done by the Social Welfare Department in its meeting held on 16.12.2017. The HTC was of the view that the lowest quoted rate among the existing contract in FCI which is Rs. 8.95 Per Metric Tone Per Kilometre could be considered as bench marked and 30% variation from the bench marked rate i.e., Rs. 6.265 Per MT Per KM to Rs. 11.635 Per MT Per KM could be an acceptable band of rate and that within this acceptable band of rate, only the L1 quoted rate for route VIII was found to be within the acceptable band of rate. Thereafter, the Higher Tender Committee(HTC) after detailed deliberation recommended the following :-

(i) in respect of route VIII(Kangpokpi District), L1 firm M/S R.K. & Co (Rs. 7.00 Per MT Per KM) may be selected for transportation of WBNP(Rice) from FCI depot located in Imphal to various offices of the District Program Officers/Child Development Project Officers in Kangpokpi District as well as transportation of Micronutrients from department godown at Takyelpat to the offices of the District Program Officers/ CDPO in Kangpokpi District.

(ii) in respect of other routes, administrative department may conduct new tender to discover a reasonable rates of transportation.

It will be pertinent to mention herein that the appellants/writ petitioners never challenged the above recommendations made by the Higher Tender Committee(HTC) in its meeting held on 16.02.2017.

[9] The above recommendation made by the HTC in its meeting held on 16.12.2018 was approved by the Government and on the basis of such approval, the Director(Social Welfare), Manipur, by a letter dated 22.12.2017 informed M/S R.K. & Co. (appellant/writ petitioner) to sign the Memorandum of Understanding(MoU) for transporting WBNP(Rice) and Micronutrients for route No. VIII. Thereafter, the agreement between the Government of Manipur represented by the Director(Social Welfare) and the appellant/writ petitioner was signed on 22.12.2017 for executing the

contract works for transporting WBNP(Rice) and Micronutrients for route No. VIII on the terms and condition mentioned in the said agreement.

[10] On the date of signing the above agreement, the appellant/writ petitioner also submitted a representation to the Director(Social Welfare), Manipur requesting for allowing the appellant/writ petitioner to transport WBNP(Rice) and Micronutrients for all the remaining 8 (eight)routes at the rate of Rs. 7 as approved by the HTC.

[11] On consideration of the said representation and after obtaining approval from the Government, the Director(Social Welfare), Manipur by letter dated 23.12.2017 informed the appellant/writ petitioner to sign the Memorandum of Understanding(MoU) for transportation of WBNP(Rice) and Micronutrients for routes No. I – VII & IX till the finalisation of the retender for the said routes.

[12] Pursuant to the above letter of the Director(Social Welfare), Manipur, and in order to avoid disturbance to the continuous supply of WBNP(Rice) and Micronutrients under SLP of ICDS Schemes to the malnourished children and lactating mother, an agreement dated 23.12.2017 was executed between the appellant/writ petitioner and Government of Manipur represented by the Director(Social Welfare) for transporting WBNP(Rice) and Micronutrients for routes No. I – VII & IX purely on temporary basis till completion of retender process for the said routes.

[13] Subsequently, by a letter dated 16.01.2018, the Under Secretary (Social Welfare), Government of Manipur informed the Director(Social Welfare), Manipur, that the Government had reviewed its earlier decision for allowing the appellant/writ petitioner to execute the contract work of transporting WBNP(Rice) and Micronutrients for routes No. I – VII & IX with a view to ensure a more transparent and smooth arrangement. The Government further advised the Director(Social Welfare) that lifting of WBNP(Rice) should be carried out in respect of all the routes other than route number VIII as per existing valid contracts/agreements until the retender is finalised in public interest.

Being aggrieved, the appellant/writ petitioner assailed the said letter of the Government dated 16.01.2018 by filing WP(C) No. 41 of 2018 before this Court.

[14] By a letter dated 18.01.2018, the Director(Social Welfare), Manipur, formally informed the appellant/writ petitioner about the Government's decision reviewing its earlier decision for allowing the appellant/writ petitioner to execute the said contract work as contained in the aforesaid letter dated 16.01.2018. Feeling aggrieved, the appellant/writ petitioner assailed the said letter dated 18.01.2018 by filing WP(C) No. 49 of 2018 before this Court. It will also be pertinent to mention here that M/S B.K. Enterprises, the appellant in W.A. No. 28 of 2018, also filed WP(C) No. 63 of 2018 before this Court praying for issuing a writ of mandamus for awarding the transport contract work in respect of route Nos. I, III, V & IX

on the basis that the said appellant/writ petitioner was the lowest bidders within the acceptable band of rate identified by the HTC in its meeting held on 16.12.2017. In the said writ petition also, the proceedings of the meeting of the HTC held on 16.12.2017 recommending for retendering of the contract work in respect of routes No. I to VII and IX was not challenged.

[15] One of the contractors, viz., M/S Ningthoucha Agency filed WP(C) No. 121 of 2018 before this Court praying for quashing the proceeding of the HTC meeting held on 16.12.2016 in so far as recommending M/S R.K. & Co. (appellant in W.A. No. 26/2018, 27/2017 & 44/2018) to transport WBNP(Rice) for route No. VIII, letter of the Director(Social Welfare) dated 22.12.2017 informing the said appellant/writ petitioner to sign Memorandum of Understanding(MoU) for execution of the contract work for route No. VIII and the agreement dated 22.12.2017 entered into between the appellant/writ petitioner and the Government of Manipur, coupled with a prayer for issuing a writ of mandamus directing the Government to allow the said writ petitioner to transport WBNP(Rice) for route No. VIII.

[16] During the pendency of the above mentioned writ petitions, the Vigilance Commission took up a case being case No. 3/PE/SP-V&AC/2018 for enquiring into the matter relating to the award of contract to the appellant/writ petitioner and after making necessary enquiries the Director, Vigilance & Anti-Corruption Department, Manipur made a recommendation for cancelling the contract work awarded by the HTC to

the appellant/writ petitioner for route No. VIII. On the basis of the recommendation made by the State Vigilance Commission, the Commissioner(Social Welfare), Government of Manipur, issued an order dated 30.04.2018, cancelling the proceeding of the HTC meeting held on 16.12.2017 as well as the appointment of the appellant/writ petitioner as the transporter of WBNP(rice) and Micronutrients for route No. VIII.

Being further aggrieved, the appellant/writ petitioner filed WP(C) No. 391 of 2018 before this Court challenging the said recommendation of the State Vigilance Commission dated 30.04.2018 as well as the order dated 30.04.2018 issued by the Commissioner(Social Welfare), Manipur.

[17] The above mentioned 5(five) writ petitions, i.e., WP(C) No. 41 of 2018, WP(C) No. 49 of 2018, WP(C) No. 63 of 2018, WP (C) No. 121 of 2018 & WP(C) No. 391 of 2018 along with 4 (four) other writ petitions were heard jointly by the learned Single Judge and disposed of by a common judgment and order dated 20.06.2018. The relevant portions of the said judgment and order are as under:-

> "*In view of the above and for the reasons stated hereinabove, all the writ petitions are disposed of with the following directions:-*
>
> *"(a) The State Government and in particular, the Department of Social Welfare, Government of Manipur shall constitute a High Power Committee, within a week from today, consisting of persons who are well versed with the matter relating to tender;*
>
> *"(b) The High Power Committee, constituted as per direction (a) above and before it proceeds further with the tender process, shall get itself familiar with the terms and conditions mentioned in the NIT and also the law laid down by the Hon'ble Supreme Court in*

its various decisions relating to award of contracts in consultation with the Law Department or the learned Advocate General, Manipur;

"(c) The State Government and in particular, the Department of Social Welfare shall take a decision as to whether the condition as prescribed in para 3(D) is an essential condition of eligibility as regards furnishing of bank guarantee with reference to the purpose for which the said condition has been incorporated therein and the reasons thereof be assigned by it;

"(d) The High Power Committee shall examine and consider minutely the relative merits of the rates quoted by all the qualified bidders, with their respective justification, taking into account all relevant factors as mentioned hereinabove and take a final decision thereafter on merits, for which cogent reasons shall be assigned by it;

"(e) The High Power Committee is free to take any decision, on merits with cogent reasons, on issues arising out of the NIT without being influenced by any of the observations made by this Court;

"(f) The High Power Committee must supply its mind and must sincerely endeavour, at its best level, to ensure that the tender process is completed in time as directed by this Court and to see that there is no room left for any of the parties to approach this Court again questioning the tender process;

"(g) The whole exercise as per directions (a) to (f) above shall be completed within three weeks after the expiry of a week as aforesaid without fail and all formalities including signing of agreements shall be completed on or before 21-07-2018;

"(h) The period of contract shall be for one year as stipulated in the terms and conditions of NIT with effect from the date of signing the agreements or 21-07-2018 whichever is earlier;

"(i) On the expiry of six months from the date of signing the agreements or from 21-07-2018 whichever is earlier, the Department of Social Welfare shall take a decision as to whether the contract be extended for another year and if yes, it shall start taking appropriate steps towards it and if not, it shall get ready for issuing NIT for the next year and on the expiry of nine months therefrom, NIT shall immediately be issued by the Department of Social Welfare, Government of Manipur so as to keep a continuity as regards the transportation of WBNP(rice) and Micronutrients."

[18] Aggrieved with the judgment and order of the learned Single Judge, M/S R.K. & Co preferred 3(three) writ appeals, viz., W.A. No. 26 of 2018(Ref:- WP(C) No. 49 of 2018), W.A. No. 27 of 2018 (Ref:- WP(C) No.

121 of 2018)& W.A. No. 44 of 2018(Ref:- WP(C) No. 391 of 2018). M/S B.K Enterprises also preferred W.A. No. 28 of 2018(Ref:- WP(C) No. 63 of 2018).

[19] During the pendency of the aforesaid 4(four) writ appeals, the State Government, acting on the directions given by the learned Single Judge, issued an order dated 19.07.2018 declaring that all the eligibility criteria/qualification conditions for bid laid out in the NIT dated 22.06.2017 shall be treated as "Essential Conditions" to be fulfilled by the bidders without fail.

Subsequently, the Deputy Secretary(Social Welfare) wrote a letter dated 31.07.2018 to the Director(Social Welfare) requesting the latter to cancel the Memorandum of Understanding(MoU) signed with M/S R.K. & Co. due to non-fulfilment of the conditions prescribed in Para No. 3(D) of the NIT dated 22.06.2017. Thereafter, in pursuance of the said Government letter dated 31.07.2018, the Director(Social Welfare) by a letter dated 06.08.2018, informed M/S. R.K. & Co that the Memorandum of Understanding(MoU) signed between M/S R.K. & Co and the Social Welfare Department for route No. VIII stands cancelled.

[20] Having been aggrieved, M/S R.K. & Co. filed WP(C) No. 1062 of 2018 before this Court, challenging the aforesaid order dated 19.07.2018, letter dated 31.07.2018 and 06.08.2018.

M/S. R.K. & Co. also filed another writ petition being WP(C) No. 995 of 2018 praying for directing the State respondents to award the

contract works to the petitioners in respect of route No. VII & IX for transportation of food grains as notified in the NIT dated 22.06.2017.

[21] On the consensus among the parties in the pending writ appeals, this Court passed an interim order on 19.12.2018 in W.A. No. 27 of 2018, W.A. No. 26 of 2018, W.A. No. 28 of 2018 and MC(W.A.) No. 54 of 2018. The relevant portions of the said interim order are as under:-

> *"After hearing learned Advocate General for the State and the official respondents, Mr. H.S. Paonam, learned senior counsel for the appellant and Mr. Kh. Tarunkumar, learned counsel for the private respondents and keeping in mind the perishable nature of the rice, a suggestion was put forward that without prejudice to the rights of the appellant, State and the private respondents, an equitable order should be passed so that on or before the end of December, 2018, all the WBNP(Rice) of the 3rd quarter is lifted and distributed to the beneficiaries.*
>
> *In this regard, it was suggested that the total quantity of WBNP(Rice) will be given equally to the appellant and the two private respondents for transportation to Nine districts. This suggestion made is accepted by all concerned, as a temporary measure pending future adjudication of the appeal.*
>
> *In the light of the above, the official respondents are permitted to allot the WBNP(Rice) meant for distribution in the 3rd quarter ending 2018-19 for transportation by appellant and the two private respondents. The allotment to transport rice shall be in near equal proportion to all three and each will get three routes. M/s R.K. & Co., M/s B.L.L. Enterprises Pvt. Ltd. and M/s B.L.L. Agency parties to allotted 3 routes to transport WBNP(Rice) in near equal proportion.*
>
> *It is also further stated by the learned AG that in respect of the second quarter, a substantial quantity of WBNP(Rice) is available in various godowns. It has also to be distributed to the beneficiaries.*
>
> *The quantity allotted to the appellant for the 2nd quarter is in respect of the district Chandel. The quantity given to the appellant was 4500 kgs. It is pleaded by the learned AG that the all of 2nd quarter rice pending distribution should also be distributed. The interim order of this Court should be suitably modified so that the perishable rice is distributed to the beneficiaries.*
>
> *Having heard the learned AG, the appellant's counsel Shri H.S. Paonam and Mr. Kh. Tarunkumar, learned counsel for the private respondents and keeping in mind the consensus arrived between the parties for the 3rd quarter 2018-19 ending December, 2018 this Court is inclined to consider equitable order for the 2nd quarter also. The same methodology is suggested and agree. Therefore, the following direction is issued by consent of parties.*

The quantity available at annexure-X/4 and X/5 of the affidavit-in-opposition of the respondent Nos. 1 and 2 shall be distributed in the following manner i.e. in Chandel district the quantity of 4500 kg already granted to the appellant, can be lifted by appellant from FCI godown to the final destination as indicated by the authorities.

In view of the consensus as in the case of 3rd quarter, the appellant will be given two more districts and balance 6 districts will be distributed to M/s B.L.L Agency and /s B.L.L. Enterprises Pvt. Ltd. equally. The quantity of rice allotted for the three transporters, namely, the appellant (M/s R.K.&Co.) and M/s B.L.L. Agency and M/s B.L.L. Enterprises Pvt. Ltd. will be allotted on almost co-equal proportion less 4500 kg allotted to appellant so that there is even distribution of the quantity of rice contained in Annexure-X/5(Page 39 and 40 of the reply affidavit filed on 6.12.2018).

This is a purely a temporary arrangement for the purpose of distribution of the perishable WBNP(Rice) pending final adjudication of the appeals which are to be taken up on 04.02.2019.

This modification of the earlier interim order is based on consensus between the parties."

[22] In compliance with the interim order of this Court dated 19.12.2018 passed in the present writ appeals and pursuant to the Government's letter dated 11.01.2019, conveying approval to appoint the 3(three) contractors including the appellant/writ petitioner herein as temporary transport contractors, 3(three) agreements were signed between the Government and the said 3(three) transport contractors on 17.01.2019 and 14.01.2019. In Para No. 12 of the said agreement, it is clearly mentioned that the validity of the said agreements shall be purely a temporary measures till the completion of the retender.

On the basis of the interim order dated 19.12.2018 passed by this Court in the present writ appeals, acceptance letter of the Government dated 11.01.2019 and agreements dated 17.01.2019 and 14.01.2019, the appellant/writ petitioner and the 2(two) private respondents have been carrying out the contract work of transporting WBNP(Rice) and

Micronutrients in all the 9(nine) routes as notified in the NIT dated 22.06.2017 till today, for the last about 2(two) years.

[23] During the pendency of the present writ appeals and while the appellant/writ petitioner and 2(two) private respondents were executing the contract works, the State Government and Director(Social Welfare), Manipur, filed MC(W.A.) No. 48 of 2019, praying for allowing the applicants for proceedings with the issuance of fresh NIT for appointment of new and competent transport contractors for transportation of WBNP(Rice) and Micronutrients for the subsequent years as the validity of the contract period of 1(one) years as notified in the NIT dated 22.06.2017 had expired long ago.

[24] During the pendency of the above noted cases and while the contract works of transporting WBNP(Rice) was being carried out by the appellant/writ petitioner and 2(two) private respondents as stated above, news about illegal selling of bags of rice meant for Anganwadi Centres by the transport contractors were published in the local news paper. On the basis of such news paper report and on the demand made by the opposition MLAs in the Manipur Legislative Assembly meeting held on 19.02.2020 for handing over to the CBI the case of fraudulent selling of rice meant for Anganwadi Centres, the Social Welfare Department wrote a letter to the Department of Vigilance and Anti-Corruption requesting to investigate the alleged siphoning of food grains under WBNP. Pursuant to the request made by the Social Welfare Department, the Vigilance and

Anti-Corruption Department initiated an enquiry to enquire into the alleged irregularities in the implementation of Wheat Based Nutrition Programme(WBNP).

As the transportation of WBNP(Rice) was assigned to the aforesaid 3 (three) transporters including the appellant/writ petitioner and investigation has been initiated by the Vigilance and Anti-Corruption Department into the alleged irregularities committed by the transport contractors, the State Government felt that it may not be appropriate to continue using the service of the aforesaid 3(three) contractors. Accordingly, the State Government and the Director(Social Welfare) filed misc. case being MC(W.A.) No. 25 of 2020 praying for allowing the applicants to make alternative arrangement for transportation of WBNP(Rice) till completion of the investigation by the Vigilance and Anti-Corruption Department or till the disposal of the pending cases.

[25] Mr. S. Nepolean, learned Government Advocate appearing for the State respondents submitted that the main issue involved in the present batch of cases is about awarding of the contract work for transportation of food grains under the Wheat Based Nutrition Programme(WBNP) for a period of 1(one) year as notified in the NIT dated 22.06.2017. The learned Government Advocate also submitted that after passing of the interim order dated 19.12.2018 by this Court in the present batches of writ appeals allowing the appellant/writ petitioner and the private respondents, i.e., M/S B.L.L. Agency and M/S B.L.L. Enterprises, to execute the said contract

work as notified in the NIT, the State Government had issued acceptance letter dated 11.01.2019 and the said 3(three) contractors have entered into an agreement with the State Government on 14.01.2019 and 17.01.2019 for executing the said contract work. The learned Government Advocate further submitted that as required by the terms and conditions of the NIT in Para No. VIII under the heading Security Deposit, the said 3(three) contractors have revalidated the bank guarantee of Rs. 20(Twenty) Lakhs in order to lift and transport the WBNP(Rice) from FCI depot to various offices of the Social Welfare Department. It is also submitted by the learned counsel that the said 3(three) contractors have already lifted the WBNP(Rice) for altogether 6(six) quarters even though the contract work is for lifting of WBNP(Rice) for 4(four) quarters only. It is accordingly submitted by the learned Government Advocate that counting from the date of lifting and transporting of WBNP(Rice) by the appellant/writ petitioner M/S R.K. & Co. and the private respondents M/S B.L.L Agency and M/S B.L.L Enterprises Pvt. Ltd., the one year period of contract provided in the NIT dated 22.06.2017 had already been completed and over.

Mr. S. Nepolean, learned Government Advocate submitted that as the said contract work had been given and allowed to be executed by 3(three) contractors, including the present appellant/writ petitioner and the private respondents, the issue involved in the present cases no longer survives and as such, the present batches of cases have now become infructuous. The learned Government Advocate accordingly prayed that the

State Government may be allowed to issue a fresh NIT for transportation of food grains under the WBNP.

[26] Countering the submissions made by the learned Government Advocate, Mr. HS. Paonam, learned senior counsel, vehemently submitted that under Para No. VII of the terms and conditions governing the contract enclosed in the NIT dated 22.06.2017, it is clearly provided that the contract shall remain in force for a period of 1(one) year with option of extension for a further period of 1(one) year at the sole discretion of the Government without any escalation in rate from the date of the acceptance letter or such latter date as may be decided by the Director or any Officers authorised by the Government. The learned senior counsel accordingly submitted that as provided under Para(VII) of the terms and conditions governing the contract, the period of contract should be for 1(one) year from the date of the acceptance letter and since the process of tender has not yet been completed and no letter of acceptance has been issued, it cannot be contended that the period of contract has already been over and the submissions made by the learned Government Advocate are without any basis. The learned senior counsel accordingly made detailed submissions on the merit of the cases.

Mr. Kh. Tarunkumar, learned counsel appearing for the private respondents also made similar submissions advanced by Mr. HS. Paonam.

[27] It has to be kept in mind that the Ministry of Women and Child Development, Government of India, allocated food grains to the State Governments and Union Territories under the Wheat Based Nutrition Programme(WBNP) periodically in every quarter of a year. The period of 1(one) year is divided into 4(four) quarters comprising of 3(three) months each. As per the guidelines issued by the Government, the lifting and distribution of the food grains allocated for a particular quarter is to be carried out within 3(three) months or within the particular quarter of the year. If for any reasons, the State Government failed to lift and distribute the food grains under the WBNP, the quota of food grains allocated to the State Government for that particular Quarter will lapsed, resulting in depriving the beneficiaries, such as malnourished children and lactating mothers, to get their shares of food grains and other Micronutrients entitled to them.

Keeping in view, such schemes for distribution of food grains under the WBNP, we are of the considered view that the work for lifting of such food grains from the concerned depots and thereafter, distribution to the beneficiaries cannot be delayed or stopped and should be regularly carried out and completed in time.

[28] In the nature of a contract work for construction of buildings, bridges, roads, etc., unless and until the constructions are carried out, then it can validly be said that the contract works have not been executed or carried out. However, in the nature of the contract work for transportation of

food grains under the WBNP as in the present cases, the execution of the transportation and distribution is to be carried out periodically and regularly without any delay or stoppage. Any lapses in carrying out such transportation and distribution will result in denying the beneficiaries, such as malnourished children and lactating mothers, from getting their share of food grains and Micronutrients under the WBNP.

In view of the nature of the contract work involved in the present cases, we cannot agree with the submission made by Mr. H.S. Paonam, learned senior Advocate, that the contract work for transportation of food grains under the WBNP for a period of 1(one) year as notified in the NIT dated 22.06.2017 have not been executed or carried out.

[29] After hearing the rival submissions advanced by the counsels appearing for the parties and after perusal of the records, we find that on the consent of the parties in the present batches of cases, this Court passed an interim order on 19.12.2018 in W.A. No. 26 of 2018, W.A. No. 27 of 2018, W.A. No. 28 of 2018 & MC(W.A.) No. 54 of 2018 allowing the present appellant/writ petitioner and the 2(two) private respondents to execute the contract work for transportation of food grains under the Wheat Based Nutrition Programme(WBNP) notified in the NIT dated 22.06.2017. In compliance with the said consensus interim order dated 19.12.2018 passed by this Court, the State Government issued acceptance letter dated 11.01.2019 conveying approval to appoint the present appellant/writ petitioner and the private respondents as contractors to execute the said

contract work. Thereafter, separate agreements containing the terms and conditions for execution of the said contract work were executed between the Government and the aforesaid 3(three) contractors on 14.01.2019 and 17.01.2019. After completing the necessary formalities, the appellant/writ petitioner and the private respondents have been executing the contract work of transporting food grains under the WBNP for the last about 2(two) years, even though the period of contract is only for 1(one) year. Since the contract work for transportation of good grains under the WBNP as notified in the NIT had already been carried out and executed for the last about 2(two) years, we are of the considered view that issues raised in the present cases no longer survives and all these batches of cases have become infructuous.

Accordingly, we dispose of the present batches of cases with the following directions:-

(a) The State Government and in particular, the Social Welfare Department shall take up immediate steps and issue fresh NIT for transportation of food grains and Micronutrients under the WBNP within a period of 10(ten) days from the date of receipt of a copy of this judgment and order;

(b) The whole tender process including the issuance of work order should be completed within

20(twenty) days from the date of issue of fresh NIT;

(c) Till the completion of the tender process and issuance of the work orders, the present arrangement for transportation of food grains under the WBNP pursuant to the interim order of this Court dated 19.2.2018 shall continue.

With the above directions, the present batches of cases are disposed of and the parties are to bear their own costs.

Copy of this judgment and order shall be furnished to Mr. S. Nepolean, learned Government Advocate through his e-mail/whatsapp for doing the needful.

JUDGE **JUDGE**

FR/NFR

Lhaineichong

Yumkham Rother

Digitally signed by Yumkham Rother
Date: 2020.11.05 10:51:54 +05'30'