

(2018) 08 MAN CK 0009

In the Manipur High Court

Case No : Writ Petition (c) No. 562, 614 Of 2018

M/s R.K.& Co And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 03-08-2018

Acts Referred:

Constitution Of India, 1950 — Article 215

Citation : (2018) 08 MAN CK 0009

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : H.S.Paonam, A.Arunkumar, Mr.N.Kumarjit, P.Tamphamani,
Kh.Tarunkumar

Final Decision : Dismissed

Judgement

N. Kotiswar Singh , J

[1] The scope of these two petitions is confined to the issue of transportation of Wheat Based Nutrition Programme Rice, WBNP (Rice) under the Integrated Child Development Services (ICDS) during the interregnum from the date of passing the common judgment and order rendered on 20.06.2018 in a batch of writ petitions, being WP(C) No. 41 of 2018, WP(C) No. 49 of 2018 etc. directing reconsideration of the tender process for transportation and completion of the process by a High Power Committee on or before 21.7.2018.

[2] The directions issued in the said batch of petitions vide judgment and order dated 20.6.2018 are reproduced herein below.

"In view of the above and for the reason stated hereinabove, all the writ petitions are disposed of with the following directions:

(a) The State 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 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 reason thereof by assigned by it;

(d) The High Power committee shall examine and consider minutely the relative merits of the relative merits of the rates quoted by all the qualified bidders, with their respective justifications, 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 apply its mind and must sincerely endeavor, 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 direction (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 form 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 Micronutrient."

[3] Thus, while disposing of the said batch of petitions, no specific direction was issued by this Court about lifting/transportation of WBNP (Rice) during the aforesaid intervening period.

[4] Therefore, the State Government sensing some urgencies in the matter of transportation of WBNP (Rice) wrote to the Director of Social Welfare on 23.06.2018 for lifting of WBNP (Rice) departmentally. In the said letter, it was stated that the State Government approved lifting of 51760 Qtls. of WBNP (Rice) for the first quarter of 2018-2019 departmentally as the same was going to lapse on 25.06.2018 and the lifting of 51760 Qtls. of WBNP (Rice) for the third and fourth quarter for 2017-2018 had already lapsed due to non-finalization of transport contractors thus adversely affecting all beneficiaries, i.e. children, pregnant and lactating mothers in the State. Under the above circumstances, the Government felt that the 1st Quarter Quota of 2018-2019 of WBNP (Rice) should be lifted at any cost in public interest.

[5] It is this letter dated 23.06.2018 which has been challenged in WP(C) No. 562 of 2018.

[6] When this petition, WP(C) No. 562 of 2018 was moved on 27.06.2018, this Court passed the following order with the observation that in the meantime, if because of urgency of the matter, WBNP (rice) is to be lifted, the authority may first offer to the petitioner to do the same at a rate of Rs. 7 per MT on the condition that the petitioner furnishes bank guarantee of a sum of Rs. 20 lakhs. The said interim order was continued from time to time.

The order passed by this Court on 27.6.2018 reads as follows:

"Heard Mr. H.S. Paonam, learned Sr. Counsel assisted by Mr. A. Arunkumar, learned counsel for the petitioner. Heard also Mr. N. Kumarjit, learned AG assisted by Mr. P. Tamphamani, learned counsel for the State.

Let the matter be listed again on 5th July, 2018 for considering the prayer made by the petitioner for suspension of the impugned order dated 23.06.2018.

This Court by an order dated 20.06.2018 passed in WP(C) No. 41 of 2018, WP(C) No. 63 of 2018, WP(C) No. 120 of 2018, WP(C) No. 121 of 2018, WP(C) No. 255 of 2018 and WP(C) No.394 of 2018 had directed the High power Committee to take necessary decisions within a period of 3 (three) weeks as mentioned in para No. 20 (g) thereof, which exercise was expected to be completed in any event by 21st July, 2018. However, it seems that during this period, the lifting of the quota of WBNP (rice) for 3rd and 4th quarter for 2017-2018 had already lapsed due to non-movement of the transportation which has affected all the beneficiaries. In the circumstance, Government felt that the 1st quarter for 2017-2018 of WBNP (rice) should be lifted at any cost in public interest.

It has been submitted by learned AG that the Department is going to do the lifting, pending finalization of the contract in terms of the order passed by this Court in the aforesaid writ petitions.

On the other hand, Mr. HS Paonam, learned Sr. Counsel for the petitioner submits that contract with the petitioner had been already finalized MOU was also signed as evident from the Annexure-A/6.

Mr. N. Kumarjit, learned AG submits that agreement has been cancelled as evident from the subsequent letter dated 18th January, 2018.

On the other hand, it has been submitted by Mr. HS Paonam, learned Sr. Counsel for the petitioner that the said cancellation has been found to be unreasonable and arbitrary by this Court in the aforesaid batch of writ petitions as mentioned in para no. 18. Accordingly, he submits that cancellation cannot be given effect to. This Court is of the view that all these aspects will require to be considered on the next date on 5th July, 2018.

In the meantime, if because of urgency of the matter, WBNP (rice) is to be lifted, the authorities may first offer to the petitioner to do the same at the rate of Rs. 7 per MT subject to condition that the petitioner furnishes the Bank Guarantee of a sum of Rs. 20 lakhs.

List accordingly on 5th July, 2018 for continuation of this interim order or for passing any other appropriate interim order.

Copies of this order may be furnished to learned counsel for all the parties."

[7] The second writ petition, WP(C) No. 614 of 2018, has been also filed by the same petitioner on the ground that in spite of the aforesaid order passed by this Court in WP(C) No. 562 of 2018, the authorities are continuing to lift the WBNP (rice) departmentally without first offering to the petitioner, as evident from the letters dated 03.07.2018 written by the by the Deputy Secretary (SW) to the Director of Social Welfare as well as the letter written by the Director (SW) to the FCI authority for issuing of release orders (RO) for lifting 25290.10 and 24079.90 quintals of rice under WBNP for the first quarter of the year 2018-2019.

The said letters dated 03.07.2018 written by the Deputy Secretary (SW) and the Director of Social Welfare are challenged in WP(C) No. 614 of 2018.

While issuing notice in the said WP(C) No. 614 of 2018 on 16.07.2018, this Court also passed an interim order suspending the said letter dated 03.07.2018, which reads as follows:\

"Heard Mr. HS Paonam, learned Sr. Counsel assisted by Mr. A. Arunkumar, learned counsel for the petitioner. Heard also Mr. N. Kumarjit, learned AG assisted by Mr. P. Tamphamani and Mr. H. Samarjit, learned GA for the State Respondents.

The grievance of the petitioner is that though this Court had direction on 27.06.2018 in WP(C) No. 562 of 2018 that if because of urgency of the matter, WBNP (rice) is to be lifted, the authorities may first offer to the petitioner to do the same at the rate of Rs. 7 per MT subject to condition that the petitioner furnished the Bank Guarantee of a sum of Rs. 20 lakhs. It is the case of the petitioner that thought the petitioner was willing to furnish the Bank Guarantee of a sum of Rs. 20 lakhs, he was not given the opportunity to do so and lift the same. On the other hand, the Department had proceeded to lift the rice

departmentally vide impugned order dated 03.07.2018 and accordingly prays for stay of the impugned order dated 03.07.2018.

List matter again 18.07.2018.

In the meantime, the order dated 03.07.2018 shall remain suspended. The File No. 3/2/09/-S(SW) dated 23.12.2017 may be produced on the next date."

[8] As these two petitions are closely inter related, these petitions were taken up together for disposal. However, there has been certain delay in hearing these two petitions on account of adjournments and non appearance of counsel for the parties because of bandhs called on 18.07.2018, 20.07.2018, 23.07.2018, 30.07.2018 when these matters were listed.

[9] A brief reference to the background facts would be apposite. The controversies relate to transportation of WBNP (Rice) under the Integrated Child Development Services from the FCI depots located in Imphal, Ukhrul, Jiribam and Senapati to various offices of the District Programme Officers/Child Development Project Officers as well as transportation of Micronutrients from the Department Godown at Takyelpat to the offices of the District Programme Officer/Child Development Project Officers.

[10] These controversies can be traced back to the Notice Inviting Tender (NIT) floated on 22.06.2017 for transportation of rice and micronutrients as mentioned above. The regular appointment of transporters however, remained in a state of uncertainty clogged by indecisiveness and shifting stands on the part of the authorities and lack of will on the part of the Department to finalise the appointment of transporters. As revealed from the pleadings and records produced before this Court, it seems the stranglehold of some of the transport contractors on the Department seems to be quite strong because of which regular transportation contract could not be settled for more than 5 years and the transportation seems to have been continued through ad-hoc arrangements by continuing the services of earlier transporters and uncertainties still continue. Dilly dallying by the Department was also responsible for the impasse and controversy requiring frequent intervention of the Court, which could have been avoided. In fact, the interventions of the Court seem to be mainly because of inconsistent stand taken by the State authorities and inability to finalize the transportation arrangement in a timely manner.

In fact, the Court on the basis of materials on record had observed in para No.19 of the aforesaid common judgment and order that the Department of Social Welfare has not been able to complete successfully any tender for the last more than five years with the result that the temporary arrangement of transportation of WBNP(rice) was being continued for some time. The relevant portions of the aforesaid para No.19 of the common judgment and order dated 20.6.2018 is quoted as below:-

"[19].....the Department sometimes desires not to complete tender

process, so that it can continue with temporary arrangement at a higher rate of charges to the detriment of the public money, when it finds none of its desired bidders likely to be appointed as the transport contractor. Coming to the present cases and on the basis of materials on record, the Department of Social Welfare has not been able to complete successfully any tender for the last more than five years with the result that the temporary arrangement of transportation of WBNP (rice) was being continued for some time. What happened to earlier than last five years needs to be gone into but the problem is that there is no material on record for perusal by this court. It may be noted at this juncture that ICDS is considered to be the biggest welfare scheme in the world. As per the statement given by the Director (Social Welfare), Government of Manipur in a PIL, there are more than ten thousand Anganwadi Centres in Manipur, to which the WBNP (rice) and Micronutrient are to be supplied throughout the year. Transport contractors are to be appointed every year through the tender but the fact remains that the tender process is never completed in the same year. In the present cases also, although the NIT was issued on 22-06-2017, the problems remain still unresolved, leave alone the finalisation of tender process. Even if the NIT is directed to be issued afresh, there is no guarantee that the tender process will successfully come to an end in time....."

[11] The said NIT floated on 22.06.2017 inviting tenders from the transporters for executing the transportation work mentioned therein which are divided into 9 (nine) routes.

[12] As many as 11 (eleven) transporters applied for the tendered works and the bids of the tenderers were examined by a Higher Tender Committee (HTC) in their meeting held on 16.12.2017 chaired by the Principal Secretary (Finance) which found that in many routes, some of the tenderers had quoted rates as low as Rs. 4.10 per MT per Km. The HTC after noting the low rates quoted had advised the administrative department i.e., Social Welfare Department to carry out a detail analysis based on the cost of vehicle, fuel cost, distance, quantity, miscellaneous charges, etc. and also by comparing the rates quoted with FCI, FCS and Election Department rates. Thereafter, the HTC examined the rates quoted in the light of the analysis done by the Social Welfare Department and it was of the opinion that the rates quoted from Rs. 4.10 per MT per Km to Rs. 5.11 per MT per Km were unrealistically low. In fact, the Committee found out from the tenderers that the low rates quoted by them was for the reason that the hiring charges of the truck were not claimed and maintenance cost were sought to be shared from other business interests of the firms which the HTC did not find to be realistic. The HTC accordingly, after considering various relevant factors into consideration took the view that the rate of Rs. 8.95 per MT per Km could be considered as a bench mark which was the existing rate in the FCI and 30% variation from the bench mark rate i.e., Rs. 6.265 per MT per Km and Rs. 11.65 per MT per Km could be the acceptable rate band. While adopting the said band of rate, the rate quoted by the petitioner for the Route No. VIII i.e. Rs.7.00 per MT per Km (Kangpokpi district) was found within the acceptable rate and

accordingly, the petitioner was recommended for selection for transportation of the rice as well as micronutrients in terms of the tender who quoted the rate of Rs. 7.00 per MT per Km in respect of Route No. VIII. As regards the other rates, the HTC advised the administrative department to float the retender to find reasonable rates for transportation.

[13] Accordingly, on the basis of the aforesaid recommendation of the HTC and as approved by the State Government, the petitioner entered into an agreement with the Social Welfare Department for carrying out the transportation work in respect of Route no. VIII at the aforesaid Rs.7.00 per MT per Km. While accepting so, the petitioner also offered the transportation in respect of other routes at the same rate of Rs. 7.00 which was approved by the Government as conveyed by the Director of Social Welfare to the petitioner vide letter dated 23.12.2017 by informing the petitioner that the Government has agreed to accept the petitioner as a transporter for the aforesaid remaining routes also till re-tender is finalised at the rate of Rs. 7.00 per MT per Km as offered by the petitioner. Accordingly, the necessary orders were issued in favour of the petitioner for lifting certain quantities of rice in respect of the allotted quota of the 3rd Quarter 2017-2018 from the Government of India for distribution to the beneficiary by the Special Nutrition Programme in the State. It has been alleged that however, when the petitioner went to the FCI Godown for transportation of rice he was informed that there was an instruction from higher authorities not to allow transportation as the authorities are going to review the contract awarded in favour of the petitioner. Later on, the petitioner came to know that the State Government had written to the Director, Social Welfare on 16.1.2018 that the matter has been reviewed by the Government with a view to ensure a more transparent and smooth arrangement in this regard, with the advice that lifting of rice should be carried out in respect of all routes other than Route no. VIII as per the existing valid contracts/agreements until the tender is finalised in public interest, as can be seen from the letter dated 16.01.2018 addressed to the Director, Social Welfare Department.

[14] Accordingly, being aggrieved, the petitioner challenged the aforesaid Government letter dated 16.01.2018 by filing the petition, being WP(C) No. 41 of 2018 and for a direction to the respondents to allow the petitioner to transport WBNP (Rice) in pursuance of the letters dated 22.12.2017 and 23.12.2017. The petitioner states that after the filing of the writ petition WP(C) No. 41 of 2018 by the petitioner, the petitioner was formally informed by the Director, Social Welfare vide letter dated 18.01.2018 that the Government has reviewed its decision for appointment of transport contractor and has decided to continue with the existing valid contracts/agreements until tender is finalised.

[15] The Court while issuing notice in the said WP(C) No. 41 of 2018 passed an interim order suspending the said letter dated 16.01.2018. The subsequent letter dated 18.01.2018 was also challenged by the petitioner in WP(C) No. 49 of 2018. In the said WP(C) No. 49 of 2018, this Court on 23.01.2018 passed an interim

order observing that in view of the urgency involved in the matter and by way of interim measure, the respondent no. 5 in the said petition (FCI authority) was to extend the period of lifting of WBNP (rice) for quarter ending December, 2017 till 05.02.2018. According to the petitioner, the Department, however, continued to arrange the transportation of rice from certain unsuccessful contractors on the plea of public interest and requirement to supply the same to the beneficiaries due to non finalisation of the tender process. It was further submitted that in view of the interim order passed by this Court suspending the letter dated 16.01.2018, it would have had the effect of reviving the earlier letter dated 23.12.2018 permitting the petitioner to transport rice till re-tender is finalised. Accordingly, the petitioner filed another writ petition, being WP(C) No. 255 of 2018, praying for restraining the official respondents from transporting WBNP (Rice) by any method till the final disposal of the pending WP(C) No. 41 of 2018 and WP(C) No. 49 of 2018. In the said writ petition, WP(C) No. 255 of 2018 the Court passed an interim order directing that the State Government or its officials through any of the contractors/authorities shall not lift the WBNP (rice) in 3rd, 4th Quarter FCI Godown to CDPO office.

[16] In the meantime, the appointment of the petitioner as transport contractor in respect of Route No.VIII was challenged by one of the bidders, namely, M/s Ningthouja Agency by filing writ petition being WP(C) No. 121 of 2018.

The petitioner further claims that during the pendency of the aforesaid writ petitions, a vigilance commission case was taken up by the Department being, Case No. 3/PE-SP-VAC/2018 for enquiring into the matter relating to the award of contract to the petitioner which submitted its recommendation on 30.04.2018 recommending cancellation of contract work in favour of petitioner in respect of Route No. VIII. Thereafter, on the basis of the recommendation of the Vigilance Commission, by an order dated 30.04.2018 issued by the Commissioner (Social Welfare), the proceedings of the HTC meeting held on 16.12.2017 was cancelled including the appointment of the petitioner as transporter of WBNP (Rice) and micronutrients for the Route No.VIII.

[17] Being aggrieved by the aforesaid recommendation of the Vigilance Commission and order passed by the Commissioner (Social Welfare) on 30.04.2018 cancelling the appointment of the petitioner as transporter for Route No. VIII, the petitioner filed another writ petition, being WP(C) No. 391 of 2018, challenging the same and the Court by an interim order dated 09.05.2018 suspended the order dated 30.04.2018, however, making the observation that if Government feels that in view of the urgency of the matter interim arrangement is required to be made as regards the transportation of WBNP (rice) and micronutrients from FCI depots/department godown, it is the bounden duty of the State Government to approach the Court for passing appropriate order but the State Government is expected not to interfere with the proceeding of the Court and such act of passing order is highly contemptuous.

[18] There were other writ petitions filed by others before this Court arising out

of the aforesaid NIT dated 22.06.2017.

Accordingly, all those related writ petitions were heard together and disposed of by the common judgment and order dated 20.06.2018 as quoted earlier.

[19] It is the case of the petitioner that however, before finalising reconsideration of the tender process by the High Power Committee as directed by this Court in the aforesaid common judgment and order, the Government issued an order on 23.06.2018 for lifting of 51670 quintals of WBNP (rice) for the 1st quarter of 2018-2019 departmentally, though such action on the part of the department was not contemplated under the order of this Court. Accordingly, WP(C) No. 562 of 2018 was filed by the petitioner challenging the said order dated 23.06.2018 and this Court in this petition passed an interim order on 27.6.2018 that if because of urgency, WBNP (rice) is to be lifted, the authorities may first offer to the petitioner subject to condition that the petitioner furnishes bank guarantee of a sum of Rs. 20 lakhs. It has been contended by the petitioner that however, in spite of the said interim order dated 27.06.2018, the respondents authority issued another letter dated 03.07.2018 conveying approval of the Government to lift WBNP (rice) departmentally and on the same day, two letters were issued to the Area Manager, FCI for issue of release orders for lifting WBNP (rice) departmentally. It is the contention of the petitioner that the said lifting of the rice is being sought to be done through unsuccessful bidders in the guise of lifting it departmentally as it is a well known fact that the Department does not have carriages and means and funds to lift departmentally except by hiring other contractors. Accordingly, the said letters dated 03.07.2018 are challenged in the petition WP(C) No. 614 of 2018.

[20] Thus, this Court is primarily concerned with the validity of the Government order/letter dated 23.6.2018 by which the Government decided to lift/transport the WBNP (Rice) departmentally which has been challenged in WP(C) No. 562 of 2018. The issues raised in other writ petition, WP(C) No. 614 relate to the consequential acts of the authorities after the interim order was passed in WP(C) No. 562 of 2018.

[21] Though this Court had disposed of the batch of writ petitions with certain directions on 20.06.2018 for reviewing and completing the tender process including signing of agreements on 21.07.2018, the Court did not pass any specific order about the transportation during the said intervening period from the date of passing the order upto the finalization of the transportation contract.

[22] Learned senior Counsel for the petitioner, however, submitted that the transportation contract with the petitioner had been already finalized by signing an MOU which was controverted by the learned Advocate General submitting that the said agreement had been cancelled by a letter dated 18.1.2018. Mr. Paonam, Ld. Senior counsel for the petitioner contended that the said cancellation letter was challenged in the writ petition, WP(C) No. 41 of 2018 and the Court found it to be unreasonable and arbitrary as mentioned in paragraph no. 18 of the final

judgment and order dated 20.6.2018. Accordingly, he submitted that the cancellation could not be given effect to.

[23] As we proceed to examine these issues, it may be relevant to note some of the interims orders passed by the Court in the aforesaid batch of writ petition.

In WP (C) No. 41 of 2018 filed by the present petitioner, the Court passed an interim order on 19.1.2018 suspending the letter dated 16.1.2018 in respect of all routes including Route No.VIII.

In WP (C) No. 49 of 2018, also filed by the present petitioner, the Court passed an interim order on 23.1.2018 merely directing the FCI authorities to extend the period of lifting of WBNP Rice for the Quarter ending December, 2018.

In WP(C) No. 255 of 2018 filed by the petitioner, the Court passed an interim order on 29.3.2018 directing that the State Government or its officers, through any of the contractors/authorities, shall not lift the WBNP (Rice) in respect of the third and fourth quarters from the FCI Godown to CDPO offices.

Of course, as contended by HS Paonam, learned Senior counsel, the Court also held in para No. 18 of the common judgment and order dated 20.6.2018 that the cancellation of the transport contract of the petitioner on the recommendation of the Vigilance Commission on ground that the petitioner submitted a Manager's cheque in place of bank guarantee, is unreasonable and arbitrary. Thereafter, the Court went to consider the issue (a) framed, as to whether having regard to the facts of the case, the State respondents were justified in issuing the letters dated 16.1.2018 and 18.1.2018. The Court held in para No. 19 of the common judgment that in view of the observations made in the judgment that cancellation of the petitioner's appointment as transport contractor was unreasonable and arbitrary, the issue (a) need not be considered at all.

[24] It may be noted that apart from the aforesaid observations, there was no order, either in any of the interim orders or in the final order, giving any specific direction in favour of the petitioner for transportation of WBNP (Rice) from the FCI godown to the respective places of destinations.

It is in this context that the validity of the letter dated 23.6.2018 impugned in WP(C) No. 562 of 2018 has to be examined.

[25] As mentioned above, the aforesaid letter dated 23.6.2018 is for lifting of the 1st Quarter quota of the WBNP(Rice) for the 1st Quarter Quota of 2018-19 departmentally.

In this connection, the learned Advocate General has submitted the relevant government records/files bearing no. 3/2/09-S(SW) and a part file namely file no. 3/2/09/S(SW) Pt.IA. He also submitted that the reconsideration of the tender process by the High Power Committee has been concluded on 21.07.2018. This Court is not making any observation and comment about the findings and recommendations of the said High Power Committee, as the same is not the

subject matter of consideration before this Court in these petitions nor there is anything on record to show that the same has been accepted and acted upon the State Government. It may be noted that we are considering the validity of the letter dated 23.6.2018 which was issued by the State authorities for transportation of rice during the aforesaid intervening period before completion of the reconsideration by the High Power Committee.[26] After having heard the respective submissions of the learned counsel for the parties and also on perusal of the records produced by the Ld. Advocate General, this Court has noted the following aspects.

(i) The Court while disposing of the batch of writ petitions on 20.6.2018 did not pass any specific order about transportation of WBNP (Rice) during the intervening period from the date of passing the final order on 20.6.2018 till the conclusion of the tender process by 21.7.2018.

(ii) Neither the Court passed any interim order in any of the batch of writ petitions, giving direction allowing transportation of rice by the petitioner or any other person. On the contrary, there is an interim order passed in WP(C) No. 255 of 2018 to the effect that the State Government or its officers through any of the contractors or authorities shall not lift the WBNP (Rice) in respect of the third quarter and fourth quarter from the FCI Godown to the CDPO offices.

(iii) It, therefore, cannot be said that the issuing of the letter dated 23.6.2018 for transportation of rice for the 1st quarter quota of 2018-19 was violative of any specific order passed the Court.

(iv) On perusal of the records/files produced by the Ld. Advocate General, it has been observed that after the Court disposed of the said batch of writ petitions on 20.6.2018, before the date line granted by the Court for implementation of the order, the last date of lifting of WBNP (Rice) for the first quarter quota of 2018-19 would lapse on 25.6.2018. Accordingly, a proposal was sent to the higher authorities as to whether WBNP (Rice) for the first quarter quota can be lifted by any temporary method or not, to avoid lapse of the quota till High Power Committee comes to a decision, in the interest of the pregnant and lactating mothers and children. After the matter was considered, a decision was taken by the Government to lift the WBNP (Rice) departmentally in respect of the first quarter quota of 2018-19. Accordingly, the said impugned letter was issued on 23.6.2018, which has been challenged in W.P(C) No.562 of 2018. This Court is of the view that in the light of the observations made above that there was no specific embargo placed by the Court on the Department not to lift any rice during the intervening period of consideration by the High Power Committee, and considering the urgency of the matter as the quota would have lapsed by 25th June, 2018 and in the interest of the children and lactating mothers, this Court would hold that such a decision taken by the Department to lift the rice departmentally cannot be said to be unreasonable and illegal which would warrant interference from this Court.

(v) Though this Court had passed an interim order on 27.6.2018 in W.P(C) No.562 of 2018, it has to be noted that it was purely by way of an ad-interim measure without examining the merit of the case. However, this Court, after hearing the parties and considering the materials on record, is of the view that there is no illegality in issuance of the aforesaid letter dated 23.6.18 challenged in W.P(C) No.562 of 2018 and the interim order passed on 27.6.2018 is liable to be vacated.

[27] That leaves for decision of the issue raised in W.P(C) No.614 of 2018. As mentioned above, the aforesaid WP(C) No.614 of 2018 was filed against the violation of the interim order passed by this Court on 27.6.2018 in W.P(C) No.562 of 2018 contending that inspite of the aforesaid interim order, without first offering the petitioner to lift the rice, the authorities were going ahead to lift the rice departmentally as evident from the impugned letters dated 3.7.2018.

[28] As regards this contention, it has been submitted by the learned Advocate General that the petitioner was not offered to lift the rice because of the reason that the direction of this Court was to allow the petitioner to deposit a sum of Rs. 20 lakhs though there were other routes and each of which would require deposit of Rs.20 lakhs and as such, the petitioner was not offered the same. This Court, however, finds such an explanation utterly unacceptable for the reason that if there was any such ambiguity in the order of the Court, nothing prevented the Department from approaching this Court to get it clarified rather than deciding on their own that the Court's order is not implementable and proceed as if sitting on appeal against the order of this Court. This Court would, accordingly, deprecate such course of action adopted by the authorities. It is now well settled that the Court's order has to be complied with by the persons/ authorities concerned and if there be any difficulty in complying with the Court's order, such person/ authority ought to approach the Court for clarification, rather than sitting over or ignoring it on the ground that such an order is not implementable. To that extent, the submission of the learned Advocate General is not acceptable.

[29] This Court would hold that such an action taken by the authorities concerned or person is plainly contumacious. However, as no such contempt petition has been filed, this Court would , at this stage, only make the observation that such an action on the part of the functionaries/authorities is totally unacceptable as such action and approach would greatly undermine the rule of law. It is the responsibility of the State and its functionaries to respect the rule of law or else, it can lead to break down of the system. There may be situations where the order of the Court may seem impracticable to be implemented, but, in such a situation, it is the bounden duty of the authorities/ functionaries concerned to get it clarified from the Court. However, without doing so, the functionaries/authorities of the state cannot ignore a judicial order on the plea that the order of the Court could not be implemented for some reason or other, as has been sought to be explained by the learned Advocate General in this case.

This Court, accordingly, would issue a stern warning to the authorities/ functionaries concerned not to repeat such act/acts in future as otherwise, there may not be any alternative but to haul up such functionaries/officials for impeding and causing obstruction to justice and would be proceeded accordingly under the law including the Contempt of Courts Act, 1971 and/or under Article 215 of the Constitution of India.

This Court would like to remind the authorities concerned that the Court had already indicated in the final order dated 20.6.2018 that the actions of the official functionaries/ department are much to be desired. The Court, in the said common judgment and order dated 20.6.2018, had made a very critical remark of the actions taken by the authorities in constituting a State Vigilance Commission and giving certain findings when the matter was in seisin of the Court as observed in para Nos. 18.1 and 18.2 of the said common judgment and order and the Court held that such an action of the authorities amounts to interfering with the proceedings of the Court.

This Court accordingly, deprecates such non-challant attitude of the authorities in ignoring the judicial proceedings and orders passed therein which may entail serious consequence for the officials/functionaries in future.

However, it has been noted that the authorities themselves had withdrawn the letters dated 3.7.2018 challenged in WP(C) No.614 of 2018 by issuing an order dated 19.7.2018, a copy of which has been annexed to the additional affidavit filed by the respondents authorities on 30.7.2018 In view of the above, the writ petition has virtually become infructuous.

[30] This Court also has noted another disturbing aspect. Though the submission was made that the High Power Committee had concluded its proceedings on 21.7.2018, it was never brought to the notice of this Court on earlier occasions and in fact, when the authorities filed their last affidavit on 30.7.2018, it was not mentioned therein also. Only at the time of final hearing today, the learned Advocate General has submitted that the High Power Committee had concluded its proceedings on 21.7.2018 and made the necessary recommendations.

[31] Accordingly, after hearing the learned counsel for the parties and considering the materials on record, this Court is of the view that there is no material to interfere with the impugned letter dated 23.6.2018 challenged in W.P(C) No.562 of 2018 and the same is dismissed.

[32] As regards W.P(C) No.614 of 2018, since the impugned letter had been withdrawn by the authorities themselves vide letter dated 19.7.2018, this writ petition has been rendered infructuous and accordingly, is closed as infructuous.

However, this Court takes a serious view of the actions of the authorities in ignoring the direction of this Court passed on 27.6.2018 in WP(C) No.562 of 2018 and accordingly the concerned authorities are warned not to repeat such unacceptable actions in future as repeating such acts would be at their own peril.

[33] Mr.H.S.Paonam, learned senior counsel has vehemently argued that the lifting of rice departmentally by two separate release orders are actually meant to benefit two private contractors who were unsuccessful in the tender and as such, the action taken by the Department to lift the rice departmentally is merely a subterfuge to avail the services of contractors who were not successful. He submits that the Social Welfare Department, in fact, have no means of their own to get the rice lifted from FCI godown and to reach the concerned CDPOs in the districts without the help of these transporters. He submits that it can be also ascertained that the rice which had been lifted from the FCI, are being stored in the private godowns. These are indeed a serious allegations made by the petitioner. This Court however, does not wish to make any observation as regards these allegations in absence of necessary details and evidentiary materials as it would require ascertainment of the real facts, which have been obviously disputed by the authorities. However, it is made amply clear that while lifting the rice departmentally in terms of the order dated 23.6.2018, such lifting shall not involve the help/ assistance of any of the contractors or transporters who had bidden in the tender as involvement of any such contractor or bidder would amount to giving undue favour to them.

Further the submission of the learned Advocate General before this Court that though the Department had hired some private trucks, rates for such transportation has not been decided, is a matter of surprise. There could not have been any transportation or lifting of rice without first ascertaining the price to be paid. In fact, the tender was floated to get the minimum rate for transportation from the transporters. Therefore, it goes without saying that the rate fixed for lifting of rice from the godown departmentally shall, in no case, exceed the lowest rate which would be accepted by the authorities on finalisation of the tender by the authorities.

Accordingly, it is held that if the petitioners are able to establish that the Department had been taking the help of any of the unsuccessful contractors or had paid the same or more from the rate offered by the petitioner, the petitioner will have a legitimate grievance to raise the issues again before the competent authority/forum for appropriate relief.

[34] With the above observations and directions, these two writ petitions are dismissed.