

(2021) 06 BOM CK 0059

In the Bombay High Court

Case No : Writ Petition No. 750, 1008, 1010, 104, 1015, 1016, 1017, 1019, 1021, 11311 Of 2021

Prithviraj Enterprises And Others

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 28-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
National Food Security Act, 2013 — Section 3
Essential Commodities Act, 1955 — Section 5

Citation : (2021) 06 BOM CK 0059

Hon'ble Judges : S.C.Gupte, J;M. S.Karnik, J

Bench : Division Bench

Advocate : Anil V. Anturkar, Mahesh Tarawade, Vilas Londe, Ranjit D. Shinde, S.M. Vaishnav, Nikhil Sakhardande, Hrishikesh S. Chitaley, Rohit P. Masurkar, Santosh S. Jadhavar, Aditya N. Sikchi, V.D. Sapkal, Sandip R. Sapka, Ajit B. Chormal, R.N. Dhorde, Vikram R. Dhorde, Sanket S. Kulkarni, Sunip K. Sen, Ranjit S. Hatkar, A.A.Kumbhakon, P.P. Kakade, Akshay Shinde, A.P. Vanarase, S.S. Panchpor, G.R. Golatkar, Sudhir Tungar

Final Decision : Dismissed

Judgement

M.S. Karnik, J

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of the parties.
2. The issues involved in these Petitions are common and therefore disposed of by a common judgment. However, Writ Petition Stamp No.11311 and Writ Petition No.1010 of 2021, though they challenge the same GR, considering the nature of that challenge, are dealt with separately.
3. These Petitions under Article 226 of the Constitution of India take exception to the Government Resolution bearing No.Contract / 1120 / Pra. Kra.106 / Na. Pu. 16-A Food and Civil Supplies and the Consumer Protection Department,

Government of Maharashtra dated January 15, 2021 ('GR dated January 15, 2021' for short). In the alternative, the Petitioners have challenged various clauses in the said GR dated January 15, 2021. The details of the relevant clauses under challenge are set out in the later part of this Judgment.

THE CHALLENGE IN BRIEF :

4. The impugned GR dated January 15, 2021 has been issued by the State Government for the purpose of giving contracts of transportation of food and other essential commodities from the Food Corporation of India (FCI) Godown to Public Distribution Shops (PDS). It is the contention of the Petitioners that the terms and conditions and criteria prescribed by the GR dated January 15, 2021 have no nexus with the purpose for which the tender is issued, as a result of which, though the Petitioners are very much competent and otherwise equipped to execute the works under the GR dated January 15, 2021, due to tailor-made conditions set out in the GR to favour existing bidders, the Petitioners are arbitrarily excluded from participating in the tender process.

5. For the purpose of convenience we refer to the facts in Writ Petition No. 750 of 2021.

6. The State of Maharashtra had from time to time issued various GRs for the purpose introducing transparency and for the purpose of ensuring that the beneficiaries receive food and civil supplies on regular basis and in prescribed time. Towards that end, initially, GR dated February 23, 2012 was issued. As per this GR, from the base depot of the FCI upto the ration shop in the districts, transportation was to be done under one contract at the cost of the Government, for maintaining the food and civil supplies.

7. Thereafter, vide GRs dated November 26, 2012 and April 20, 2017, in all districts in the State of Maharashtra, food and civil supplies were to be transported, in two stages, that is to say, first from FCI depot to district collection centres or Government godown and from there to individual fair price shops, and in respect of circle areas of Mumbai and Thane and so far as municipal corporation areas of Pune, Nashik, Nagpur, Aurangabad and Solapur are concerned, directly from FCI depot to fair price shops. The guidelines for such transportations were prescribed by these two GRs dated November 26, 2012 and April 20, 2017.

8. Thereafter, GR dated November 1, 2018 was issued for the purpose of bringing co-ordination in the handling of food and civil supplies department at the level of the Government godown and for the purpose of making transportation of food and civil supplies as per 'PDS' managed by the Government of Maharashtra and for increasing the efficiency thereof. Towards that end, it was decided that combined tenders would be issued and that was so provided by this GR dated November 1, 2018.

9. The issuance of GR dated November 1, 2018 resulted in hamal contractors

raising a grievance that the said GR would adversely affect their work. Various Writ Petitions came to be filed challenging the GR dated November 1, 2018. Consequently, the State of Maharashtra took a decision vide GR dated September 20, 2019 to withdraw and repeal the earlier GR dated November 1, 2018. Thereupon, the impugned GR dated January 15, 2021 came to be issued. It is the Petitioners' case that this GR has adversely affected the Petitioners, hence these Petitions.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONERS (EXCEPT WRIT PETITION STAMP NO.11311 AND WRIT PETITION NO.1010 OF 2021)

10. The Petitioners are aggrieved by the impugned GR dated January 15, 2021 more particularly Clauses 5.1, 5.2, 5.3, 5.15, and 5.16 thereof. According to learned Counsel, there are no provisions similar or comparable to these clauses in the earlier GRs. Our attention is invited to the comparative table of the various GRs referred to herein before with those of the relevant provisions of the impugned GR dated January 15, 2021.

11. Having regard to the nature of the challenge, the submissions made in these Petitions by learned Senior Advocates and learned counsel are overlapping. Broadly the submissions are stated thus :

(a) That provision of experience of transportation only in Government or semi Government entities to the exclusion of a bidder who may have a vast experience of transportation of food-grains in respect of non Government and autonomous entities is without any basis and irrational. That the purpose for inviting bids is 'transportation of food-grains' from FCI godowns to PDS. There is, therefore, no rational or logic in only considering those transporters who have experience with Government or semi - Government entities. The nature and manner of transport is identical. This exclusion is unreasonable and irrational and has no nexus with the object sought to be achieved, i.e. the transportation of food grains from the FCI godown to the PDS.

(b) Insistence on experience in respect of those bidders who are transporting food-grains only and not that of transport of other essential commodities is not at all justified. Food grains undoubtedly classify as an essential commodity under the provisions of the Essential Commodities Act. Likewise even cement and other goods classify as essential commodities. Therefore, exclusion of a bidder who has experience of transporting essential commodities other than food grains is arbitrary and unjustifiable. There is no rational basis for insisting that only bidders who have experience in transporting food grains alone will qualify to bid.

(c) The criteria of experience matching 33% of the work in the particular district after taking into consideration the total transportation work in that particular district in last 3 years is wholly irrational. A bidder may have experience of transporting goods in different districts and therefore, the experience in different districts may vary depending on the supply. To insist that the experience must match 33% work in the particular district is completely irrational, as though the

bidder may have a large experience of transportation of goods, but may well fall short of matching 33% of the work in the particular district after taking into consideration the total transportation work in the particular district in the last 2 years. The criteria of 33% work experience in a particular district is absolutely irrelevant and capricious.

(d) A perusal of GRs dated February 23, 2012, November 26, 2012, April 25, 2017, November 1, 2018, September 20, 2019 and April 25, 2017 would reveal that at no point of time, there was any insistence on transport experience only of 'Government or semi Government' or experience only in 'transportation of food grains'. It is therefore submitted that when right from the year 2012 till the issuance of the impugned GR, when transportation of food and civil supplies was being carried out smoothly and effectively in accordance with the conditions set out in those GRs, the State Government was not justified in deviating from the criteria prescribed in the earlier GRs by introducing a new set of conditions altogether. This has adversely affected the Petitioners, who otherwise are eligible to bid in terms of the earlier GRs.

(e) The relevant conditions could include (i) reliability of the bidders is a reliable contractor, (ii) his work experience, and

(iii) infrastructure, vehicles and manpower required for transportation at his command for the purpose of reliable and time bound distribution of food and civil supplies. Any criteria which can be applied for the purpose of meeting these requirements can be said to be reasonable criteria but the criteria prescribed by the impugned GR are absolutely unreasonable, whimsical and arbitrary. A reference is then made to transportation contracts of similar nature awarded by the FCI, to suggest that even FCI does not insist that the experience has to be only in 'food grain transportation'. The submission is that by making such artificial distinction, the element of free and fair competition, which is the very essence of contract processes run by the State, is completely done away with. This results in completely excluding new entrants and even those bidders who, though they have experience, cannot bid as a result of these stringent conditions.

(f) So far as Clause 5.16 is concerned, the impugned GR dated January 15, 2021 nowhere specifies exactly at what stage the decision is taken for supplying satisfactory documents mentioned in Clause 5.16 and at what stage and which authority will take a decision to qualify the contractor who wants to submit necessary documents to enable the tender committee to decide the contractor's eligibility.

(g) It is submitted that the standardization process adopted is arbitrary. Further, it is contended that there is discrepancy in Clauses 5.16 and 10.5 of the GR. These submissions are dealt with in the later part of this judgment.

12. On the other hand, Shri Kumbhakoni, learned Advocate General, submitted that the State Government has taken an informed policy decision after considering all relevant materials in larger public interest. He submitted that the

Petitioners cannot claim a fundamental right to carry on business with the Government. According to him, the impugned guidelines do not in any manner violate any of the fundamental rights of the Petitioners. Learned Advocate General contends that prescribing pre - conditions and/or qualifications for tenders so as to choose an efficient contractor is in the realm of the policy and executive action of the State Government and in the absence of any arbitrariness, discrimination or malice, the same is not open to judicial scrutiny. He relied upon Section 3 of the National Food Security Act, 2013 and orders made thereunder to contend that the Public Distribution System (Control) Order 2015 casts a duty upon the State Government to make an arrangement for taking delivery of food-grains from the base depots of FCI and ensure that the same reaches the fair price shops within 1st week of the month for further distribution. He pointed out that it is the duty of the State Government to appoint an experienced and eligible transport contractor who would provide efficient, quick and quality service for transportation of food-grains. Learned Advocate General pointed out that the State Government is required to deal with issues like black marketing of food-grains, misappropriation/ leakage of food-grains and delay in delivery of food-grains. Therefore, the State Government decided to adopt advanced techniques like installation of geo-mapping in vehicles, installation of load cells, establishing district level monitoring cells, strengthening supply chain, etc. He submits that the terms and conditions of the tenders for awarding transport contract stipulated as per the policy dated 26/11/2012 and 20/4/2017 framed by the State Government were of general nature. It was noticed that inexperienced and inefficient transport contractors, who ultimately fulfilled such general terms and conditions, ended up being awarded contracts. It was noticed that these transport contractors lacked sufficient basic resources and hence, transportation of food-grains was not efficiently carried out. This led to termination of contracts in some districts which further led to inconvenience. To overcome the difficulties faced by the general nature of terms and conditions of tender and also in order to strengthen the transport system, the State Government has decided to frame the present policy dated January 15, 2021, so as to stipulate pre-conditions and qualifications for tender to ensure that the transport contractor has the capacity and resources to successfully and efficiently execute the work. He then pointed out what are the basic objectives of the new policy dated January 15, 2021. He ultimately submitted that this entire exercise is to ensure that the food-grains are distributed to eligible beneficiaries within time as per the schedule. Learned Advocate General submitted that the Petitioners cannot claim a vested right to do business with the Government. Moreover, prescribing the conditions is entirely within the purview of the executive and the Courts hardly have any role to play in this process except for striking out such action of the executive as is proved to be arbitrary or unreasonable.

13. In support of his submissions, learned Advocate General relied upon the decisions of the Apex Court in *Michigan Rubber (India) Limited vs. State of*

Karnataka and others (2012) 8 SCC 216 and Shimnit Utsch India Private Limited and another vs. West Bengal Transport Infrastructure Development Corporation Limited and others (2010) 6 SCC 303. He also relied upon the decisions of this Court in Central Railway Caterers' Association and another vs. Union of India and others 2016(2) Mh.L.J. 769 , Balaji Goods Transport Company vs. State of Maharashtra and another 2014(3) Mh.L.J. 569 and TPS Infrastructure Ltd. and another vs. Thane Municipal Corporation and others 2014 (4) Mh.L.J. 551.

14. Heard learned Senior Advocates and learned Counsel appearing on behalf of the respective parties. We have heard learned Advocate General appearing on behalf of the Respondent - State. We have perused the pleadings and the documents annexed and the compilations tendered.

CONSIDERATIONS :

15. At the outset, a reference to various Clauses of the GR which are under challenge / or relied upon needs to be made for appreciating the controversy in its proper perspective. English translation of Clauses 5.1, 5.2, 5.3, 5.15, 5.16 read thus :-

"5.1) Work Experience :

Tenderer should have the experience of the work of Government/Semi-Government food grain transportation of minimum one year out of previous five continuous financial years. Work experience of the tenderer should be upto the capacity of 33% of the work of transportation which has been carried out during previous three years in the district where he is filing the tender for district/zone. It is necessary that the said experience should be in the name of the tenderer himself who is filing the tender.

5.2) The experience of the work mentioned at para 5.1 above should be of doorstep delivery scheme and work of any other schemes of Government/Semi-Government transportation of Central/State Government similar to this scheme. For considering the experience of transportation with Central/State Government and Semi-Government undertakings, copies of all work orders and experience certificate of the Competent Authority will be required to be submitted.

5.3) Financial capability :

For the same period in respect of the work experience indicated by the tenderer in paragraph 5.1 above, the tenderer should have a total minimum financial turnover of transportation which should be 33% of the total expenses incurred on transportation during the previous three years in the district/zone for which he is filing the tender.

5.15) In connection with Government/Semi-Government work, if the contract of the contractor has been terminated as a result of default on his part or if he is found inefficient any time during the past continuous 5 years, then such firms/ persons will not be eligible to participate in the tender process.

5.16) Any tenderer whose Earnest Money Deposit/Security Deposit has been forfeited by the Government/Semi-Government Department during the past continuous 5 years, will not be eligible to participate in the tender process. However, in respect thereof, on producing satisfactory documents in this regard, the Tender Process Committee can take a decision regarding their eligibility."

16. On the earlier date of hearing, we did find some substance in the contention raised by learned Senior Advocate for the Petitioners that Clauses 5.1, 5.2 of the G.R. dated January 15, 2021 lacked clarity in as much as the GR did not present a clear picture whether it excluded the contractors who had carried out transportation work only in the first phase of the two-phase transportation work, without undertaking the transportation work related to the second phase of the scheme, if they otherwise satisfied all other criteria of eligibility. Learned Advocate General had then requested for some time for deliberating with responsible Officers of the State Government on this issue and come out with a clarification. In all fairness, the State Government has issued a clarification which was handed over to this Court and which reads thus :-

Clarification

(on behalf of the State)

"In respect of interpretation of the Clauses 5.1 and 5.2 of the Government Resolution dated 15th January, 2021 and the consequent RFP issued on 21st June, 2021, it is clarified on behalf of the State as under.

The eligibility criteria specified in Clauses 5.1 and 5.2 of the Government Resolution dated 15th January, 2021 and the consequent RFP issued on 21st June, 2021 does also include the contractors, if any, with the experience set-out hereunder, provided that they satisfy all other criteria of eligibility, spelt out in the aforesaid two documents, including the aforesaid two clauses 5.1 and 5.2

"Those contractors who have carried out transportation work only in the first phase of the two-phase transportation work, without undertaking the transportation work related to the second phase, of the scheme, which is the subject matter of the exercise in issue."

According to the State, not a single such contractor is available, and the aforesaid clarification is merely academic in nature. However, if any tenderer fits into the aforesaid entire description, such tenderer will not be disqualified, only on the ground that such tenderer has the experience of transportation of only the first phase and not of the second phase, of the two-phases execution of the scheme, which is the subject matter of the exercise in issue."

We find that this clarification resolves a part of Petitioners' grievance. The clarification is accepted.

17. Before we deal with the rest of the submissions, it will be profitable to refer to some of the decisions of the Hon'ble Supreme Court which have a material

bearing on the controversy. In *Tata Cellular vs. Union of India* (1994) 6 SCC 651 Their Lordships laid down as under :

- "1. The modern trend points to judicial restraint in administrative action.
2. The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.
3. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
4. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
5. The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of *Wednesbury* principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

18. In *Michigan Rubber (India) Limited* (supra) the Hon'ble Supreme Court held thus :

"(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work;"

19. Further in *Meerut Development Authority vs. Association of Management Studies and anr.* (2009) 6 SCC 171 the following observations of Their Lordships are relevant :

"A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the

terms of the invitation to tender were so tailor made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process.

The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the Authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations."

20. In *Monarch Infrastructure (P) Ltd. vs. Commissioner, Ulhasnagar Municipal Corporation and others* (2000) 5 SCC 287 Their Lordships held that "the authority calling the tender is the best Judge as regards conditions prescribed in the tender".

21. Having regard to the settled position of law, merely because the Petitioners are already in the transport business and had successfully executed contracts on behalf of the State Government or others in the past, that does not confer a vested right on them to do business with the Government or mandate the Government to prescribe conditions which suit the requirement of such Petitioners if otherwise the conditions are not arbitrary or capricious. The authority calling tenders is the best judge as regards conditions prescribed in the notice inviting tenders. The authority, in formulating the conditions of the tender document and awarding a contract, is required to be conceded with a greater latitude. We do not find in the present case the action of the tendering authority being actuated by mala fides or misuse of statutory powers, warranting interference by this Court. The allegations that the conditions are tailor made to suit the requirements of a few transport contractors are as vague as they can be. There are no material particulars furnished justifying these allegations except for stating that the conditions are tailor made to suit a few contractors and eliminate all others from participating in the process. Such vague allegations of favouritism made without any materials supporting the same cannot assist the Petitioners.

22. It is well settled that the terms of invitation to tender being in the realm of contract, the same cannot be open to judicial scrutiny. Let us, nonetheless, examine the stand of the Respondents justifying the policy. Section 3 of the National Food Security Act, 2013 (hereinafter referred to as 'the FSA' for short) gives a right to every beneficiary belonging to eligible households to receive food grains at a subsidized price under the Targeted Public Distribution System (hereinafter referred to as 'the TPDS' for short). The TPDS is a system for distribution of food grains and essentials to ration card holders through fair price shops. Under the provisions of the FSA read with the provisions of the Essential Commodities Act, 1955, the State Government is required to undertake

necessary reforms in the TPDS, which includes doorstep delivery of food grains to fair price shops. The State Government had to undertake reforms for application of information and communication technology tools in order to ensure transparent recording of transactions at all levels, and also to prevent unauthorised movement or delivery of food grains lifted from base depots belonging to FCI. Under the provisions of the FSA, the State Government is responsible for implementation and monitoring of the TDPS. It is the duty of the State Government to take delivery of food grains from designated base depots of FCI and seamlessly transport the same through its authorised agencies at the door step of fair price shops for further distribution. Further, the Public Distribution System (Control) Order, 2015 also casts a duty upon the State Government to make an arrangement for taking delivery of food grains from base depots of FCI and ensure that the same reaches fair price shops within the first week of the month for further distribution. Therefore, it is the duty of the State Government to appoint an experienced and eligible transport contractor who would provide efficient, quick and quality service for transportation of food grains.

23. It is the stand of the State Government that it is implementing the TPDS under the guidelines issued by the Central Government; still the State Government is required to deal with issues like black marketing of food grains, misappropriation/ leakage of food grains and delay in delivery of food grains. Therefore, the State Government has decided to adopt advanced techniques like installation of geo mapping in vehicles, installation of load cell, establishing district level monitoring cells, strengthening supply chain, etc. The State Government has taken a decision that the tracking and monitoring devices will have to be installed by the transport contractor at his own cost. Further, the State Government was in need of efficient transport contractors who would supply the food grains at the door step of fair price shops within the stipulated time.

24. Paragraph 10 of the affidavit further records that the terms and conditions of the tender for awarding transport contract stipulated as per the policy dated November 26, 2012 and April 20, 2017 framed by State Government were of general nature. Resultantly, it transpired that even some of the inexperienced and inefficient transport contractors, who ultimately fulfilled such general terms and conditions, came to be awarded contracts. It has been noticed that most of the transport contractors lacked sufficient basic resources and hence, transportation of food grains was not efficiently carried out. Inefficient transportation of food grains has led to termination of contracts in some Districts, which led to further inconvenience. Therefore, in order to overcome these difficulties faced by the general nature of terms and conditions of tender and also in order to strengthen the transport system, the State Government has decided to frame the present policy dated January 15, 2021 so as to stipulate certain preconditions and qualifications for tender to ensure that the transport contractor has the requisite capacity and resources to successfully and efficiently execute the work.

25. The basic objectives of the new policy dated January 15, 2021 are then spelt out as under :

- i. improving the basic rate of transportation (SOR) per quintal of food grains under the TPDS ;
- ii. curbing embezzlement and theft of food grains ;
- iii. avoiding double handling of food grains ;
- iv. reducing food grain leakage ;
- v. increasing the storage capacity of warehouse, etc.

26. The affidavit further records that the State Government is required to stipulate the terms and conditions of the tender taking into consideration the local circumstances prevailing in that particular State, more particularly when the nature of transportation is intra State.

27. It is thus the stand of the State Government that the Food, Civil Supplies and Consumer Protection department of the State Government is actively working to ensure that foodgrains reach the doorstep of fair price shops in stipulated time, i.e. first week of every month, so that further distribution continues as per the schedule. Further, taking into consideration several past experiences, where the State Government was required to deal with misappropriation, leakage and delay in delivery of food grains, the State Government has now decided to introduce certain specific eligibility conditions so as to select an efficient transport contractor who has sufficient basic resources to efficiently and seamlessly execute transportation of food grains.

28. It is further stated that the eligibility conditions stipulated in clause 5.1 of the impugned policy, like past experience of transportation of food grains for a period of one year in immediately preceding 5 years in Government/Semi Government organization and work experience of having transported quantity equivalent to 33% of the total quantity transported in that particular district in last three years, is for selecting an efficient transport contractor who has sufficient basic resources to efficiently and seamlessly execute transposition of food grains. The reason why previous one year experience in supplying food grains in Government or Semi Government organizations is insisted is to ensure that the transport contractor has the requisite experience of supplying food grains adhering to the time constraints.

29. We do not find the condition of prescribing eligibility of 1 year immediately preceding 5 years in Government / semi Government Organisation to be arbitrary or irrational. Merely because the Petitioners do not have such experience can hardly be a ground to compel the State Government to incorporate the condition to suit the requirement of the Petitioners. Learned Advocate General rightly placed reliance on the decision of this Court in TPS Infrastructure Ltd. and another (supra) to support this proposition.

30. While dealing with the contention of the Petitioners as to why the eligibility prescribed is only that of "transport in food grains" and "not other essential commodities" is that unlike other essential commodities like cement, fertilizer etc., transportation of food grains has to be done within a particular time schedule and therefore, the State Government thought it fit to impose a condition of a transport contractor who has a previous experience in 'transportation of food grains'. This is the stand taken to support the contention that the eligibility condition stipulated in Clause 5.1 of the impugned G.R. is in no manner unreasonable or arbitrary. We do not find anything unreasonable with this condition.

31. Clause 13.3 of the GR clearly provides that the responsibility of stacking, stitching, weighing and even installation of a weighing machine in the truck in case of direct delivery to the fair price shop is the responsibility of the bidder and that the rates to be quoted have to factor in these things also.

32. We do not find anything irrational or arbitrary in imposing a condition by Clause 5.15 that in respect of those bidders whose contracts have been terminated for default on their part during the last five years will not be eligible to bid.

33. Clause 5.16 of the impugned policy provides that the transport contractor whose earnest money deposit has been forfeited by any Government or Semi Government organization, then such transport contractor would not be eligible to participate. However, in order to give a fair chance to such transport contractor, it has been further provided that such transport contractor can file a representation for deciding eligibility with the tender process committee to show that the forfeiture of earnest money deposit was not due to the fault of the contractor. The object behind introducing Clause 5.16 of the impugned policy is to disqualify defaulting or inefficient contractors. We find that the condition stipulated in Clause 5.16 is not absolute and that such a contractor has been given a fair chance to get his eligibility tested. We find substance in the contention of learned Advocate General that there is no discrepancy between Clause 5.16 and Clause 10.5 of the impugned policy. Clause 5.16 relates to forfeiture of earnest money deposit in the previous 5 years, whereas Clause 10.5 relates to forfeiture of earnest money deposit in the very same tender process when the approved tenderer refuse or avoid to enter into an agreement. We therefore do not find any substance in the submission of the Petitioners that there is discrepancy between Clause 5.16 and Clause 10.5 of the impugned policy.

34. In response to the contention that the impugned policy has compromised free and fair competition, the stand is taken that any transport contractor who satisfies the prescribed eligibility conditions can participate in tender process. We find substance in the contention of the Respondent-State that the process of selecting the transport contractor by introducing certain specific eligibility conditions does not amount to putting an artificial barrier or compromising free and fair competition.

35. It is further pertinent to mention that in the affidavit-in-reply the State Government has clarified that the impugned policy is just a guideline which lays down broad principles on the basis of which tender has been floated. It is further stated that the procedure of filing an application with the tender process committee will be elaborately mentioned in the tender document which will be floated pursuant to the impugned policy. Pursuant to the impugned policy, the authority has issued the Request for Proposal ('RFP' for short) dated 21.05.2021 which has also been challenged. We do not find anything arbitrary or unreasonable with the RFP which is issued in terms of the GR.

36. Learned Advocate General invited our attention to Clause 13.3 of the impugned policy which provides that it is the responsibility of the transport contractor to weigh the food grains, stacking and that these expenses have to be borne by the transport contractor. In respect of those transport contractors who directly supply food grains to the fair price shop, the weighing scale has to be provided in the vehicle itself. Thus the bidders are well aware of this process of standardization of the transport contract and we find nothing arbitrary in stipulating these conditions. The contention of learned counsel for the Petitioners that the standardization process is arbitrary is without any substance and can only be stated to be rejected for ultimately it is the concerned authority which is best suited to stipulate the terms and conditions of the tender.

37. The policy or tender conditions, thus do not appear to us to be so unreasonable or arbitrary so as to warrant interference by this Court. The conditions with which the Petitioners are aggrieved cannot be held to be manifestly arbitrary only on the count that the Petitioners stand excluded from bidding. The Petitioners failed to make out a case of manifest arbitrariness or perversity in the policy.

38. We see no reason to fault the stand of the State Government that the conditions imposed further the object of the National Food Security Act and the Essential Commodities Act for the ultimate purpose is to improve and make the transport system more efficient so as to ensure that food grains are delivered at the doorsteps of the fair price shop within the stipulated time. In any case, prescribing conditions is in the realm of policy making, which, for reasons more particularly noted above, we do not find to be arbitrary or actuated by malafides. Any transport contractor who satisfies the conditions set out in the tender document is eligible to participate in the bidding process. The Petitions are thus devoid of any merit and deserve to be dismissed subject to the clarification issued by the State Government and which we have recorded in the earlier part of this judgment.

39. At this juncture it is pertinent to mention that learned Advocate General invited our attention to Writ Petition No.1879 of 2021 in the case of Sublime Warehousing Pvt. Ltd., through its Director - Shri Kapil s/o Lalsing Thakur Vs. State of Maharashtra through its Secretary, Department of Food, Civil Supplies and Consumer Protection, Mantralaya, Mumbai-32 filed at the Nagpur Bench of

this Court raising challenges similar to the ones raised in the present Petitions. He pointed out that by an order dated 08.06.2021, this Court by a reasoned order dismissed Writ Petition No.1879 of 2021. It is, therefore, his submission that on this ground alone the present Petitions deserve to be dismissed. Learned counsel for the Petitioners submitted that the decision in the case of Sublime Warehousing Pvt. Ltd. cannot have any bearing on the controversy raised in the present Petitions. It is pointed out that what was under challenge before the Nagpur Bench was Clause QC9 of the tender notice dated 19.05.2021. It is submitted that even the Nagpur Bench in paragraph 4 has observed that the Petition before it sought only quashing and setting aside of the tender notice dated 19.05.2021 and did not include any direction for quashing and setting aside of the G.R. dated 15.01.2021. It is thus the contention of the Petitioners that the decision of the Division Bench of this Court will not preclude the Petitioners from raising a challenge to the G.R. dated 15.01.2021 by way of the present Petitions.

40. In the interest of justice, we thought it fit to examine the contention of the Petitioners in this regard. At this juncture it would be pertinent to reproduce the order dated 08.06.2021 passed in the case of Sublime Warehousing Pvt. Ltd. The order reads thus :-

" Hearing is conducted through Video Conferencing and all the learned Advocates agreed that the audio and visual quality is proper.

2. Heard Shri Dhattrak, learned counsel for the petitioner. By this petition, the petitioner has challenged some of the conditions of the tender notice dated 19.05.2021 on the ground that these conditions make a departure from the conditions prescribed in earlier G.R. dated 20.04.2017 and also on the ground that such modification of the conditions has been done in order to debar certain parties and favour some other group of contractors. The conditions to which an exception has been taken are those as contained in Clauses 5.1, 5.2, 5.3, 5.5, 5.6 and 5.9 of the Government Resolution dated 15.01.2021. On these grounds, the petitioner has sought quashing and setting aside of the tender process undertaken pursuant to E-tender notice dated 19.05.2021 issued by Secretary, Food, Civil Supplies and Consumer Protection Department, State of Maharashtra. The petitioner has also sought a further direction to the State to frame a fresh policy informed by the principle of reasonableness so that in future there would be a fair competition in the tender process.

3. The tender notice dated 19.05.2021 contains a Clause QC9 (page 102) which states that the bidder shall be bound by all the terms and conditions set out in the tender notice and the GR dated 15.01.2021.

4. The prayers made in this petition, however, seek only quashing and setting aside of the tender notice dated 19.05.2021 and they do not include any direction for quashing and setting aside of the G.R. dated 15.01.2021. In the absence of any specific challenge having been made to the G.R. dated

15.01.2021, it would not be possible for this Court to make any intervention in the tender process, on the grounds raised by the petitioner.

5. Apart from what is stated above, even if we decide to consider the exception taken to the Clauses 5.1, 5.2, 5.3, 5.5, 5.6 and 5.9 of the G.R. dated 15.01.2021, we find that it is also not possible as nothing has been demonstrated before us by the petitioner to enable us to take a view that these conditions are arbitrary having been prescribed only to favour certain group of contractors and exclude another group of bidders. The objection raised is that these conditions are different from the conditions prescribed in the earlier G.R. dated 20.04.2017. Just because some modifications of the conditions have been made by the said Government and some of the conditions contained in the earlier Government Resolution have been given up, it could be no ground for a prospective bidder like the petitioner to say that the changed conditions are arbitrary. Something more will have to be shown by such a person. He has to point out some rule, some regulation, some criteria against which the newly prescribed conditions go. But, such is not the case here. The petitioner has not pointed to us any such rule or regulation or criteria based upon which we could say that these conditions could not have been prescribed at all. In fact, if we go through these conditions, we find that apparently there is nothing wrong in them. After all, prescription of conditions in a tender notice is a matter of policy and in undertaking judicial review of any policy matter, the Court has to be fully satisfied that the policy so framed is patently against law or public interest or manifestly arbitrary or is not workable. None of these ingredients of an illegal or arbitrary policy is seen to be present here.

6. Then, the conditions prescribed at one point of time need to be reviewed by a policymaker after passage of certain time due to change in the fact situations and circumstances governing the subject. Depending upon the facts and circumstances of a situation, policymaker has to follow a course which in his opinion is best suited to deal with the extant situation and therefore, need may arise for a policymaker to give up some or all of the earlier conditions and prescribe a few new or altogether new conditions.

7. Considering such responsibility of the policymaker, it would be necessary for a person who seeks to challenge a new policy to show to the Court as to how the policy goes against the settled principles of law or any provisions contained in any law or regulation or rule or as to how the policy is unworkable or unfairly kills the competition. As stated earlier, such is not the case here.

8. In the circumstances, we find no merit in the petition. Petition stands dismissed. No costs."

41. No doubt Their Lordships in paragraph 4 observed that the prayers made in that Petition seek only quashing and setting aside of the tender notice dated 19.05.2021 and they do not include any direction for quashing and setting aside of the G.R. dated 15.01.2021. Further, undoubtedly, a reference is made in the

order that in the absence of any specific challenge having been made to the G.R. dated 15.01.2021, it would not be possible for this Court to make any intervention in the tender process, on the grounds raised by the Petitioner. However, a reading of paragraph 2, 5, 6 and 7 of the order dated 08.06.2021, makes it clear that the Petitioner therein had also challenged the tender notice after taking an exception to Clauses 5.1, 5.2, 5.3, 5.5, 5.6 and 5.9 of the GR dated 15.01.2021. Having considered the exception taken by the Petitioner therein to the said Clauses in the GR dated 15.01.2021, their Lordships observed that the said conditions cannot be said to be arbitrary having been prescribed only to favour certain group of contractors and exclude another group of bidders. Even the objection that the conditions prescribed by these Clauses are different from the conditions prescribed in the earlier G.R. dated 20.04.2017 has been dealt with. This Court observed that only because the conditions are modified by the State Government by issuing the impugned G.R. and some of the conditions contained in the earlier G.R. have been given up, it could be no ground for any prospective bidder to say that the changed conditions are arbitrary.

42. We do not see any reason to take a different view than the one taken by the Division Bench of this Court in the case of Sublime Warehousing Pvt. Ltd. The only reason why we heard the Petitioners at length is in view of the contention of learned counsel that apart from the Clauses which were the subject matter of challenge in the case of Sublime Warehousing Pvt. Ltd., the Petitioners have also challenged various other Clauses of the GR which were not the subject matter in the case of Sublime Warehousing Pvt. Ltd.

43. Learned Advocate General also pointed out that the SLP filed before the Hon'ble Supreme Court against the decision in the case of Sublime Warehousing Pvt. Ltd. has been dismissed. We thus find that not only the majority of the Clauses which are the subject matter of challenge in this Petition are dealt with in the case of Sublime Warehousing Pvt. Ltd. but even a challenge to the decision of this Court in the case of Sublime Warehousing Pvt. Ltd. has been dismissed by the Hon'ble Supreme Court. In this view of the matter also, we see no reason to interfere with the impugned decision in exercise of our writ jurisdiction under Article 226 of the Constitution of India.

44. The Petitions (Writ Petition No.750 of 2021, Writ Petition No.1008 of 2021, Writ Petition No. 1014 of 2021, Writ Petition No. 1015 of 2021, Writ Petition No. 1016 of 2021, Writ Petition No. 1017 of 2021, Writ Petition No.1019 of 2021 and Writ Petition No. 1021 of 2021) are accordingly dismissed.

45. Rule is discharged with no order as to costs.

Writ Petition Stamp No.11311 of 2021

46. Mr. Sunip K. Sen, learned counsel for the Petitioners, pointed out that the Petitioners are registered Consumer Co-operative Societies and/or Associations formed by ration shop license holders and were authorised agents as defined under the Maharashtra Foodgrains Rationing (Second) Order, 1966 for

transporting foodgrains and other materials to fair price shops in Mumbai / Thane rationing area. It is the contention of learned counsel that the impugned Government Resolution is issued only to ensure that the contracts of the transport contractors appointed under G.R. dated 25.04.2017 are continued thereby ensuring the exclusion of the Petitioners from participating in the tender process. It is the contention of learned counsel that the Maharashtra Foodgrains Rationing (Second) Order, 1966 (hereinafter referred to as '1966 Order' for short) was issued by the State Government with prior concurrence of the Central Government for distributing food grains to cardholders through fair price shops and transportation of foodgrains to these shop from the FCI or Government godowns. The 1966 Order is applicable for Mumbai - Thane Rationing Area (MTRA). It is the submission of learned counsel that under the said order, a transportation system has been introduced to transport foodgrains from FCI godowns/Government godowns to fair price shops through authorised agents by granting them a licence. The Petitioner Society and like societies are formed by fair price shop licence holders, who themselves transported food-grains to their fair price shops under a licence granted by Respondent No.3 till the year 2017. Learned counsel submitted that fair price shop owners situated in the area of Mumbai and Thane alone were granted licence for transportation unlike other areas and districts where a diferent arrangement/method for transportation of goods to the fair price shop existed. Thus, in rest of Maharashtra, excluding Mumbai and Thane, foodgrains are supplied to fair price shops only by transport contractors appointed by a new tender process in terms of the policy decisions taken by the State Government from time to time.

47. Learned counsel, therefore, submits that the Petitioners have been transporting food grains and other ration items from 1966 to 2017 without any complaints or issues and it is unfair and arbitrary on the part of the State Government to exclude the Petitioners from participating in the tender process. In efect, it is the contention of learned counsel that their right to carry the business of transportation of food grains will be taken away with a sole desire to exclude competition from persons such as the Petitioners. Learned counsel submits that though the Petitioners have the necessary experience to transport goods, the State Government, by arbitrarily incorporating such conditions which the Petitioners will never satisfy, has excluded them, which exercise is done obviously with a view to favour some contractors. It is the contention of learned counsel that the State Government does not have power to exclude authorised dealers from the business of transportation under the Essential Commodities Act, 1955 or the orders issued from time to time.

48. We do not find any force in the submissions of learned counsel for the Petitioners. No doubt, under a licence, the Petitioners were permitted to transport foodgrains from the Food Corporation of India ('FCI')/Government godowns to fair price shops in Mumbai and Thane from 1966 to 2017. That by itself will not confer a vested right on the Petitioners to contend that only the Petitioners should be permitted to transport food grains from the FCI godowns to

their fair price shops. We do not find anything arbitrary if, for valid policy considerations, the State Government decides to call for tenders from all concerned to transport food grains subject to the fulfillment of the conditions mentioned in the tender. For the reasons discussed earlier, while disposing of connected Petitions, we have already held that as the terms of invitation to the tender are in the realm of contract, the same cannot be open to judicial scrutiny. It is not that the Petitioners are excluded from participation in the tender process. Merely because the Petitioners are transporting the food grains from 1966 to 2017, that by itself will not confer a vested right on the Petitioners to contend that for all times to come, it is the Petitioners only who should be granted a licence to transport food grains.

49. The Essential Commodities Act, 1955 does not prohibit the State Government from transporting food grains by issuing a notice inviting tenders by imposing conditions which are best suited in the larger public interest. We are satisfied from the affidavit-in-reply filed by the State Government in Writ Petition No.750 of 2021 and Writ Petition No. 1010 of 2021 about the propriety of the reasons why the State Government felt it necessary to impose stringent conditions in the matter of transportation of food grains. Though the Petitioners made an allegation that the impugned G.R. is issued with a view to exclude competition and deprive the Petitioners from participation, we find the averments in the Petition regarding favouritism as vague as can be. There are no material particulars in the Petition supporting the contention that the conditions are tailor made to favour the existing contractors or with a view to exclude the participation of the Petitioners. We are satisfied from the stand of the State Government in the connected Petitions that the policy is made to improve and modernise transportation for ensuring efficiency and timely distribution of food grains and, as we have already held, the policy does not suffer from manifest arbitrariness or is in any manner irrational. The exclusion of the Petitioners from participating in the bid if they fail to satisfy the eligibility, in the absence of the policy being arbitrary, whimsical or perverse cannot be said to be unjustified.

50. It is the contention of learned counsel for the Petitioners that any regulation of transport is required to be done by way of an order under Section 3 read with Section 5 of the Essential Commodities Act, 1955 and not by way of a GR. This contention needs only to be stated to be rejected. There is nothing in the Essential Commodities Act or the orders referred to by the Petitioners that prohibits the State Government from adopting a method which is best suited for transportation of foodgrains under the Essential Commodities Act, 1955. As discussed earlier, under the various orders issued under the Act, it is also open for the State Government to appoint Petitioners as Authorised Agents for transportation of goods, but it is not that the State Government can never resort to any other permissible mode of transportation to effectuate the object for which the Essential Commodities Act was brought into force.

51. As per the Petitioners' own showing, whilst the Petitioners were authorised

agents from 1966 to 2017, from 2017 onwards, even for Mumbai and Thane districts transportation of foodgrains was made after issuing notice inviting tenders from eligible transport contractors. It is the Petitioners' own case that prior to 2017, for the rest of the State of Maharashtra excluding Mumbai and Thane, the method of transportation was by floating tenders. If in such circumstances, the State Government has taken a policy decision to carry on transportation by floating tenders even for Mumbai and Thane, we see no reason to interfere with such a decision, more so, when we are satisfied that such decision is not arbitrary, whimsical or capricious.

52. The Petition (Writ Petition Stamp No.11311 of 2021), therefore, fails and is accordingly dismissed.

Writ Petition No.1010 of 2021

53. Mr. Nikhil Sakhardande, learned Senior Advocate for the Petitioner, submitted that the Petitioner is a registered trade union under the Trade Unions Act, 1926, established with an object of protecting the rights and catering to the interest of its members and labourers, who are organised under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as 'the Mathadi Act' for short). It is the submission of learned Senior Advocate that the provisions of the Act envisage that the State Government should, by means of schemes, take such steps as are essential to ensure protection of employment, full utilisation of unprotected workers and strictly implement utilisation of such workers in every scheduled employment. It is, therefore, his submission that in terms of the 'Mathadi Act', it is the responsibility of the State of Maharashtra to make provisions for adequate supply of unprotected manual workers, and their proper and full utilisation in such employment. Mr. Sakhardande pointed out that prior to the issuance of the impugned G.R., lifting of food grains and essential commodities was permitted by the State Government from designated depots of the 'FCI' to an intermediate storage point at a State Government food storage facility and delivery to fair price shops thereafter. It is submitted that within the Vidarbha region itself, there are about 96 depots owned and hired by FCI, whereas there are 514 storage facilities of the State Government for 358 talukas in 36 districts. It is submitted that 14 districts have only one FCI depot, 13 districts have two FCI depots, whereas 19 districts have more than two FCI depots. Mr. Sakhardande is essentially aggrieved by Clause 1.4 and 4.5 of the impugned G.R. dated 15.01.2021. He submits that by virtue of the impugned G.R. which contemplates direct transport of foodgrains under the Public Distribution System ('PDS') to fair price shops, this mode will be impacted and that, in turn, will have a direct impact on the employment of Mathadi workers as a result of elimination of handling of foodgrains under the PDS at the State Government storage facilities, reducing the requirement thereby of employment of Mathadi Hamals. It is the submission of learned Senior Advocate that the National Food Security Act, 2013 imposes an obligation on the State Government to create, establish and maintain

modern and scientific storage facility at district, taluka block levels for the purpose of implementation of the PDS. This obligation is cast on the State Government at the State level to ensure an unhindered, smooth and regular supply of foodgrains at the respective fair price shops. The object to be achieved is that the distance between the fair price shop and the storage facility should be as minimum as possible so as to achieve efficiency and regularity as also continuity in supply. It is his submission that such direct transport is in contravention of the statute and the obligation cast upon the State Government thereunder. It is, therefore, urged that as a result of this new transportation methodology, the use of State storage facilities is not only eliminated but the same is contrary to the provisions of the National Food Safety Act, 2013. It has the effect of drastically reducing employment of Mathadi workers thereby frustrating the object for which the Mathadi Act was enacted.

54. Learned Advocate General for the State, on the other hand, invited our attention to the affidavit-in-reply filed on behalf of the State Government affirmed by Mr. Sudhir D. Tungar, presently working as Joint Secretary in the Department of Food, Civil Supplies and Consumer Protection, Government of Maharashtra and contended that by adopting the methodology envisaged in the impugned G.R., it cannot be said that there is any contravention of the provisions of either the National Food Security Act, 2013 or the Mathadi Act.

55. The Mathadi Act was enacted by the State Government for regulating the employment of unprotected manual workers employed in certain employments in the State of Maharashtra and to make provisions for their adequate supply, and proper and full utilization in such employments, and for matters connected therewith. The National Food Security Act, 2013 was enacted 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 enable them to live a life with dignity and for matters connected therewith or incidental thereto.

56. It is the stand of the State Government that the Food, Civil Supplies and Consumer Protection Department is actively working to ensure that foodgrains are distributed to beneficiaries of National Food Security Act, 2013 in an efficient manner. Effective and efficient transportation of foodgrains is an essential part of the 'PDS'. The affidavit filed by the State Government states that it is the intention of the department to transport wheat, rice, sugar and pulses from FCI warehouses to State Government Godowns and from State Government Godowns to Fair Price Shops within the stipulated timeline, so that the foodgrain distribution exercise can be carried out in time. The object behind the introduction of policy underlying the impugned G.R. dated 15.01.2021 is to ensure that the foodgrains reach the Fair Price Shops in stipulated time, i.e. first week of every month, so that the same can reach the end users, i.e. the beneficiaries who are mainly poor and lower strata of the society. The Central Government issued order dated 20.03.2015 in exercise of powers conferred under Section 3 of the Essential Commodities Act, 1955. The aforesaid order was

issued, since it was found necessary and expedient so to do for maintaining supply and securing availability and distribution of an essential commodity, namely, foodgrains, under the Targeted Public Distribution System. It is the stand of the State Government that Clause 11 of the said order makes it obligatory on the part of 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 foodgrains to fair price shops with the rider that the State Government may also transport foodgrains directly to fair price shops from FCI godowns and ensure a door-step delivery to fair price shops. This order, which is issued under the Essential Commodities Act, provides that the State Government may devise a mechanism whereby foodgrains can be transported from FCI godowns to fair price shops directly. In the affidavit, in paragraph 9, it is stated that the State Government has independently applied its mind before framing the aforesaid policy and while doing so, has taken into consideration the following factors, which would ultimately yield various benefits. The same reads thus :-

"a) At present, except for direct transport, standardization of grains is done when the grains reach the government godowns at other places. This is done by placing a sack of grains unloaded from a truck on a weighbridge to make it weight 50 kg either by reducing the grains from the sack or by adding grains in other bags to make it measure 50 kg., then it is sewn and stacked. During the said process, the grains either are spilled or they get mixed with the soil. The same grain is refilled in bags and sent to ration shops for distribution. During standardization of grains, the weight of the bags never comes to 50 kg. And the same is always reduced by 2 to 3 kg. This lead to pilferage/malpractice of grains at the level of godowns. This would be clearly avoided if the food grains are transported directly from the FCI godown to the Fair Price Shops;

b) The cost of twine required for standardization of all grains is to the tune of Rs.24 Crores. However, by way of direct transport this cost of twine can be saved;

c) The State requires to incur an expenditure of Rs.5,00,39,323/- per month and Rs.60,04,71,193/- towards godown handling charges. However, by way of direct transport system the State will save an amount of Rs.60.05 Crores. Thus, the State will be able to save total amount of Rs.84 Crores. (24 Cr. + 60.05 Cr.);

d) Similarly, modernization and strengthening of public distribution system saves resources, real-time savings in transportation and handling of foodgrains due to streamlining of the public distribution system, saving of grain on account of pilferage in grains, by efficient monitoring of the system foodgrains will be timely and regularly distributed to the beneficiaries;

e) The closure of warehouse level food standardization system due to direct transportation will reduce FIRSTLY the double handling of food grains, SECONDLY warehouse level grain pilferage and THIRDLY grain leakage to a great extent and will save administrative cost at the warehouse level;

f) With the increase in the scope of direct transport and starting direct transport in the urban areas, more than 35 per cent i.e. about 28,549 metric tonnes of foodgrains will no longer go to the government godowns. Therefore, the storage capacity of government godowns will be increased so also the cost of construction of new godowns will be reduced. At present the average cost of construction of a warehouse is Rs.24,213/- per metric ton. This means that the construction of godown with a capacity of 31,538 metric tonnes could cost about Rs.76.36 crores. The increased scope of direct transport will indirectly save on these costs."

57. Having regard to the stand taken by the State Government and the various factors taken into consideration while framing of policy for transportation of foodgrains, which are essential commodities, we do not find the policy to be unreasonable, arbitrary, mala fide or suffering from non application of mind. The decision taken by the State Government is in the realm of policy making. The decision cannot be said to be arbitrary or contrary to the provisions of the National Food Security Act or the Mathadi Act. In order to do away with pilferage/ malpractice in distribution of grains at the level of the godowns that the decision has been taken to transport the goods from FCI godown to the Fair Price Shops, whenever possible. For the reasons stated in the affidavit, this policy decision has been arrived at as the same is based on materials and for considerations stated hereinbefore. The decision cannot be said to be perverse. It is also not possible for us to substitute our own opinion with that of the State Government merely because another view is possible. There is no warrant to exercise the power of judicial review, if otherwise we find the policy decision to be reasonable and not arbitrary and taken for valid consideration.

58. We do not find any substance in the contention of the learned Senior Advocate that the policy is in contravention of the provisions of the National Food Security Act, 2013 in any manner. On the contrary, we find substance in the justification given by the State Government that the new policy is in consonance with and in furtherance of the provisions of the National Food Security Act, 2013.

59. We also do not find force in the submission of the learned Senior Advocate for the Petitioner that the object of the Mathadi Act is in any manner defeated by doing away with storage of foodgrains at State Government storage facilities as a consequence of direct transportation. The State Government has devised a mechanism for transportation of foodgrains in terms of Clause 11 of the Central Government order dated 20.03.2015 under the Essential Commodities Act and for the reasons stated hereinbefore. The object of this new mechanism is transportation of goods from the Corporation godown to the Fair Price Shops directly as far as possible. Such policy cannot in any manner be said to be contrary to the provisions of the Mathadi Act.

60. The Mathadi Act applies to employments specified in the schedule appended thereto. The Mathadi Act is enacted for regulating the employment of unprotected manual workers. No doubt some degree of inconvenience would be

suffered by the Mathadi workers as a result of reduction of loading/unloading work at State storage facilities. However, it cannot be ignored that the rights of the Mathadi workers have to be balanced with the object for which transportation of foodgrains from FCI godowns to Fair Price Shops is to be made directly. For the reasons enumerated by the State Government, the reduction of the State Government storage facility, if any, cannot be said to be contrary to any provision of the Mathadi Act. The State Government is duty bound to regulate the employment of Mathadi workers in a scheduled employment. The G.R. does not exclude the applicability of the Mathadi Act. In our opinion, the G.R., as it stands, does not contravene any provisions of the Mathadi Act.

61. In the event of the tender being issued in favour of the successful bidder and upon issuance of work order, if the transport contractor or any other person, contravenes the provisions of the Mathadi Act, it is always open for the aggrieved to seek their remedies against such infractions. Keeping this liberty of the Petitioners open, we do not find any substance in the Petition (Writ Petition No.1010 of 2021). The Petition is accordingly dismissed. Rule stands discharged with no order as to costs.