

[2021] 11 S.C.R. 91

M/S B. K. ENTERPRISES

A

v.

THE STATE OF MANIPUR

(Civil Appeal No. 6532 of 2021)

NOVEMBER 12, 2021

B

[M. R. SHAH AND A. S. BOPANNA, JJ.]

Tender: Conduct fresh Notice Inviting Tender-NIT through e-Tender for transportation of food grains and Micronutrients under the Wheat Based Nutrition Programme-WBNP – Direction by High Court of Manipur to the State Government and in particular, the Social Welfare Department in November last year to take up immediate steps and issue fresh NIT for transportation of food grains and Micronutrients under the WBNP within a stipulated period and that the whole tender process including the issuance of work order to be completed within the stated time – However, no steps taken till date and since 2017-18 the contract for transportation of the rice and other Micronutrients had continued by way of an interim arrangement only and at the rates prevailing in the year 2017-18 – Held: Action on the part of the State Government and the Social Welfare Department of the State of Manipur is highly deprecated – Contracts cannot be continued without finalizing of the tender process and/or without issuing fresh tenders and/or without undertaking the fresh tender process and by way of an interim arrangement only and that too at the rates prevailing in the year 2017-18 – It is causing huge loss to the State and the Public Exchequer and shows lethargy and negligence on the part of the State Government – Unconditional apology tendered by the State for the same cannot be accepted – Issuance of direction to State of Manipur and the concerned Department including respondent no. 2 to issue fresh NIT for appointment of transport contractor under Supplementary Nutrition Programme (SNP), within the stipulated period – Further direction that fresh NIT is conducted in a fair and transparent manner through e-Tender – Judicial depreciation.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6532
of 2021.

C

D

E

F

G

H

A From the Judgment and Order dated 04.11.2020 of the High Court of Manipur at Imphal in W. A. No.28 of 2018.

Siddhartha Dave, Sr. Adv., L. K. Paonam, Ms. Tomthinnganbi Kojam, Niraj Bobby Paonam, Ms. Aswathi M. K., Ms. Saumya Gupta, Advs. for the Appellant.

B Pukhrambam Ramesh Kumar, Anupama Ngangom, Karun Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

C 1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Manipur at Imphal dated 04.11.2020 in Writ Appeal No. 28/2018, by which the Division Bench of the High Court has disposed of the said writ appeal with the following directions,

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

E b) The whole tender process including the issuance of work order should be completed within 20 (twenty) days from the date of issue of fresh NIT; and

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

M/s B.K. Enterprises has preferred the present appeal.

G 2. We have heard Shri Siddhartha Dave, learned Senior Advocate appearing on behalf of the appellant and Shri Pukhrambam Ramesh Kumar, learned Advocate appearing for the respondents.

H G 2.1 At the outset, it is required to be noted that this is a glaring example of lethargy on the part of the State Government in not inviting the fresh tenders for transporting Rice & other micronutrients under the Wheat Based Nutrition Programme (WBNP), from Food Corporation of India's depots in the State of Manipur, to the offices of Child

Development Project Officers and to continue the contract without inviting fresh tenders on the basis of the Notice Inviting Tender (NIT) issued on 22.06.2017 causing huge loss to the State and the Public Exchequer. A

3. That the State of Manipur through the Director of Social Welfare Department, Government of Manipur issued a NIT on 22.06.2017 for transporting Rice & other micronutrients under the Wheat Based Nutrition Programme (WBNP), from Food Corporation of India's depots in the State of Manipur, to the offices of Child Development Project Officers. That the State's Higher Tender Committee in its meeting dated 16.12.2017, recommended that the acceptable band of rate was Rs.6.265 – Rs.11,635 per MT per KM and further recommended that Route No. 8 be awarded to one RK & Co. and that fresh tender should be conducted for the other routes. That respondent no. 2 awarded contracts for all the routes to one RK & Co. by way of interim arrangement till the finalization of the re-tender process. That the appellant herein filed a writ petition before the High Court being Writ Petition (Civil) No. 63/2018 seeking award of tender with respect to route nos. 1, 3, 5 & 9 alleging inter alia that being the lowest bidder as per Higher Tender Committee's band rate, it should be awarded the contract with respect to route nos. 1, 3, 5 & 9. During the pendency of the aforesaid writ petition, respondent no. 2 – Director, Social Welfare Department vide order dated 30.04.2018 cancelled the Higher Tender Committee's proceedings and recommendations dated 16.12.2017. C D E

3.1 That the High Court vide order dated 20.06.2018 disposed of the aforesaid writ petition with the directions to the respondents to constitute a High Power Committee to proceed with the tender process afresh from the stage where and after the technical and financial bids opened by the State/Director, Social Welfare Department and it should be completed on or before 21.07.2018. F

3.2 The appellant herein filed Writ Appeal No. 28/2018 before the Division Bench of the High Court. Vide interim order dated 19.12.2018, the Division Bench of the High Court directed for equal distribution of the available WBNP rice amongst three contractors, namely, RK & Co., BLL Enterprises and BLL Agency as a temporary arrangement of all nine routes. The State entered into temporary distribution agreements with the aforementioned bidders. By the impugned judgment and order, the High Court has disposed of writ appeal no. 28/2018, with the following directions: G H

- A a) The State Government and in particular, the Social Welfare Department shall take up immediate steps and issue fresh NIT for transportation of food grains and Micronutrients under the WBNP within a period of 10 (ten) days from the date of receipt of a copy of this judgment and order;
 - B b) The whole tender process including the issuance of work order should be completed within 20 (twenty) days from the date of issue of fresh NIT; and
 - C c) Till the completion of the tender process and issuance of the work orders, the present arrangement for transportation of food grains under the WBNP pursuant to the interim order of this Court dated 19.2.2018 shall continue
4. From the aforesaid, it can be seen that since 2017-18 the contract for transportation of the rice and other micronutrients under the WBNP to the offices of Child Development Project Officers has been continued solely on the basis of the interim arrangement and without inviting fresh tenders and without entering into any permanent contracts. To continue with the contracts for transportation of rice and other micronutrients within the State without any fresh tenders and by way of an interim arrangement only and at the rates which were prevailing in the year 2017-18 has caused tremendous/huge loss to the State and the Public Exchequer. Even after the impugned order is passed by the High Court, which has been passed on 04.11.2020, by which the Division Bench of the High Court has directed to take immediate steps and issue fresh NIT for transportation of food grains and micronutrients under the WBNP within a period of 10 days from the date of receipt of the judgment and order and has further directed that the whole tender process including issuance of work orders should be completed within 20 days from the date of fresh NIT, no steps have been taken till date and the contract has been continued which was by way of an interim arrangement only pursuant to interim order dated 19.12.2018, causing further loss to the State. The action on the part of the State Government and the Social Welfare Department of the State of Manipur is highly deprecated. Contracts cannot be continued without finalizing of the tender process and/or without issuing fresh tenders and/or without undertaking the fresh tender process and by way of an interim arrangement only and that too at the rates prevailing in the year 2017-18. It appears *prima facie* that everybody is happy, namely, the officers of the State Government, more

particularly the officers of the Social Welfare Department and the Contractors and it appears that the State is not interested in issuing fresh NIT. A

5. Learned counsel appearing on behalf of the State of Manipur has stated at the Bar that now the State/concerned department has taken a decision for appointment of Transport Contractor under the Supplementary Nutrition Programme (SNP) and that the State/Department is ready to float the tender within 10 days. It is submitted that the entire process is likely to take about two months as the opening of the financial bids and the verification of the technical bids will take some time. Therefore, it is prayed to grant some reasonable time to the State/concerned Department for completing the tender process. It is stated that the State/Department undertakes to conduct fresh NIT in a fair and transparent manner through e-Tender. It is submitted on behalf of the State that the State/Department has not been able to implement the order passed by the Division Bench of the High Court dated 04.11.2020 in Writ Appeal No. 28/2018 because of the administrative difficulties and the State/Department tenders its unconditional apology for the same. The aforesaid is a vague explanation which is not accepted. It is very unfortunate that the contract for supply/transportation of rice and other micronutrients under the Development Scheme has been continued by way of an interim arrangement only and without issuing any fresh tenders and the contract has been continued at the old rates of 2017-18, which must have caused tremendous/huge loss to the State and the Public Exchequer. There is a total lethargic and negligence on the part of the State and its departments in not issuing the fresh tender process and in not issuing fresh NIT after 2018. B C D E F

6. In view of the above, we dispose of the present appeal by directing the respondents – State of Manipur and the concerned Department including respondent no.2 to issue fresh NIT for appointment of transport contractor under Supplementary Nutrition Programme (SNP), within a period of 10 (ten) days from today and it is directed that the fresh NIT is conducted in a fair and transparent manner through e-Tender and invitation of the fresh NIT shall be nation-wide and it is the duty of the State/concerned Department to see that there is no cartel by the contractors and that the maximum price is received and there is no loss to the Public Exchequer and the State. The entire tender process be completed within a period of six weeks from the date of issuance of G H

- A the e-Tender. In the peculiar facts and circumstances of the case and only with a view to see that there is no inconvenience caused to the beneficiaries, the directions issued by the High Court relating to transportation of goods under Supplementary Nutrition Programme (SNP) in the impugned order/interim order dated 19.12.2018 is directed to be continued till 31.12.2021. The State of Manipur is directed to submit a compliance report before this Court. Any lapse on the part of the State and/or its departments and non-compliance of the present order shall be viewed very seriously.

7. With the aforesaid directions, the present appeal stands disposed of. Pending applications, if any, also stand disposed of.

Nidhi Jain

Appeal disposed of.