

Dhanlaxmi Mahila Mandal And Ors vs The Union Of India, Through Its ... on 6 December, 2023

Author: Nitin Jamdar

Bench: Nitin Jamdar

2023:BHC-AS:36444-DB

Trupti

1

Writ Petition No- 5942-20

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 5942 OF 2023

Renuka Mata Mahila Bachat Gat,
Pawar Galli, Taluka- Kannad,
Aurangabad - 431 103

Through Its President
Urmila Manoj Pawar

... Petitioner

Versus

1 State of Maharashtra,
Through Department of Women &
Child Development, Mantralaya,
Madam Cama Road,
Hutatma Rajguru Square,
Nariman Point, Mumbai - 400 032

2

The Commissioner (ICDS)
Commissionerate Integrated Child
Development Services,
1st Floor, Raigad Bhavan,
Rear Wing, CBD Belapur,
Navi Mumbai- 400 614.

... Respondents

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Mr. Vishwajit P. Sawant, Senior Advocate with Mr. Vaibhav
Bhure, Nikhil Patil, Shantanu Shetty i/b. Mr. P.M. Jadhav for the
Petitioners.

Dr. Birendra Saraf, Advocate General with Ms. Prachi Tatake,
Mr. M.M. Pabale, AGP and Mr.Kushal Amin for the Respondent
Nos. 1 to 3.

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WITH

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Writ Petition No- 5942-2023 and Group.doc

- 1 Nari Niketan Mahila Mandal,
CIDCO, New Nanded,
Tq. & Dist Nanded,
Through its Treasurer,
Shashikala Madhav Dimple,
Age: 40 years , Occu.: Household
R/o. Dnyaneshwar Nagar, CIDCO,
New Nanded
- 2 Aai Savitri Mahila Bachat Gat,
Herbal, Tq. Loha, Dist. Nanded,
Through its President,
Anita Datta Dimple,
Age: 35 years, Occu.: Household,
R/o. Harbal (P.U.) Tq. Loha,
Dist. Nanded
- 3 Mohammad Mustafa Mahila Bachat
Gat, Narshi, Tq. Naigaon, Dist.
Nanded, Through its Secretary,
Munibbi Najisab Shaikh,
Age: 48 years, Occu.: Secretary,
R/o. Narshi, Tq. Naigaon,
Dist. Nanded
- 4 Jai Matadi Mahila Bachat Gat,
Kalmnuri, Tq. Kalmnuri, Dist.
Hingoli, Through its President,
Anita Subhash Warma,
Age: 45 years, Occu.: President,
R/o. Kalmanuri,
Tq. Kalmanuri, Dist. Hingoli
- 5 Idira Mahila Bachat Gat,
Risangaon, Tq. Loha, Dist. Nanded,
Through its President
Sangita Shivaji Pawar,
Age: 38 years, Occu.: President,
R/o. Risangaon, Tq. Loha,

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Writ Petition No- 5942-2023 and Group

Dist. Nanded

6 Sarswati Mahila Sevabhavi Sanstha
Parbhani, Tq. & Dist. Parbhani,
Through Its President,
Jyoti Jivan Tarwadge,
Age: 59 years, Occu.: President,
R/o. Parbhani, Tq. & Dist. Parbhani

7 Adarsh Mahila Bachat Gat,
Akkalkuwa, Tq. Akkalkuwa,
Dist. Nandurbar,
Through its President,
Pathan Mushruaf Jahan Imran Khan
Age: 40 years, Occu.: President,
R/o. At Post Akkalkuwa,
Tq. Akkalkuwa, Dist. Nandurbar

8 Harshiddi Mahila Bachat Gat,
Harsul, Ch. Sambhaji Nagar,
Through its President,
Sangita Babasaheb Nalawade,
Age: 50 years, Occu.: President,
R/o. Brahman Galli, Harsul,
Ch. Sambhaji Nagar

9 Shri Swyamsevi Mahila Bachat Gat
Jawahar Colony, Ch. Sambhaji
Nagar. Through its President
Shobha Vijay Shinde,
Age : 42 years, Occu. : President,
R/o Jawahar Colony,
Ch. Sambhaji Nagar

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Writ Petition No- 5942-2023 and Group

10 Pavan Ganesh Mahila Bachat Gat,
Newasa (K.h.) Tq. Newasa,
Dist. Anmadnagar
Through its President
Ujawala Sanpatrao Kadu,
Age : 42 years, Occu. : President,
R/o Newasa (K.h.) Tq. Newasa,
Dist. Ahmadnagar

11 Matoshri Mahila Bachat Gat,
Jirewadi, Tq. Parli, Dist. Beed,
Through its President,

- Suchita Balasaheb Wankhede,
Age: 48 years, Occu.: President
R/o. Jirewadi, Tq. Parli,
Dist. Beed.
- 12 Sanjeevani Mahila Bachat Gat,
Nitur, Tq. Nilanga, Dist. Latur,
Through its President,
Pallavi Dayanand Somvanshi,
Age: 42 years, Occu.: President,
R/o. Nitur, Tq. Nilanga,
Dist. Latur
- 13 Krushnai Mahila Bachat Gat,
Nagardevale P.O. Bhigar,
Tq. & Dist. Ahmednagar,
Through its President,
Nanda Baban Harale,
Age: 45 years, Occu.: President,
R/o. Nagardevale P.O. Bhigar,
Tq. & Dist. Ahmednagar
- 14 Laxmibai Magaswargiya Mahila
Mandal Badrapur,
Tq. Kandhar, Dist. Parbhani
Through its President,
Laxmibai Kalji Kawale,
Age: 55 years, Occu.: President,

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Writ Petition No- 5942-2023 and Group

- R/o. Badrapur, Tq. Kandhar,
Dist. Parbhani
- 15 Maa Jijau Mahila Swayamsayta
Bachat Gat, Purna, Tq. Purna,
Dist. Parbhani
Through its President,
Jayashri Deelip Kurhe,
Age: 41 years, Occu.: President,
R/o. Purna, Tq. Purna,
Dist. Parbhani
- 16 Rajmata Mahila Bachat Gat,
Hudco, Tq. & Dist. Nanded,
Through it President,
Bhagiratha Ananda Pangarekar,
Age: 52 years, Occu.: President,
R/o. Hudco, New Nanded,
Tq. & Dist. Nanded
- 17 Suraj Mahila Va Balvikas Sanstha
Chaurah,
Tq. & Dist. Ch. Sambhaji Nagar,

Through its President
Ranjana Ramesh Kshirsagar,
Age: 48 years, Occu.: President,
R/o. Chaurah, Tq. & Dist. Ch.
Sambhaji Nagar

- 18 Sumedha Mahila Bachat Gat,
Milind Nagar Ch.Sambhaji Nagar,
Tq. & Dist. Ch. Sambhaji Nagar,
Through its President
Anjana Madhukar More,
Age: 50 years, Occu.: President
R/o. Milind Nagar Ch. Sambhaji
Nagar, Tq. & Dist. Ch. Sambhaji
Nagar

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Writ Petition No- 5942-2023 and Group

- 19 Parivartan Mahila Bachat Gat,
Indiranagar, Ch. Sambhaji Nagar,
Tq. & Dist. Ch. Sambhaji Nagar,
Through its President
Yojana Shrikrushna Bagade
Age: 42 years, Occu.: President,
R/o. Indiranagar,
Ch.Sambhaji Nagar,
Tq. & Dist. Ch. Sambhaji Nagar
- 20 Shrdha Mahila Bachat Gat,
Indiranagar, Ch. Sambhaji Nagar,
Tq. & Dist. Ch. Sambhaji Nagar,
Through its President,
Karunabi Vishwanath Pagare,
Age: 49 years, Occu.: President,
R/o. Indiranagar,
Ch. Sambhaji Nagar,
Tq. & Dist. Ch.Sambhaji Nagar
- 21 Aai Syamsayata Mahila Bachat Gat,
Shivaji Nagar, Ch. Sambhaji Nagar,
Tq. & Dist. Ch.Sambhaji Nagar,
Through its President,
Manda Vithal Kadam,
Age: 52 years, Occu.: President,
R/o.Shivaji Nagar,
Ch. Sambhaji Nagar,
Tq. & Dist. Ch. Sambhaji Nagar
- 22 Sfurti Mahila Swyamsayata Bachat
Gat, Parbhani, Tq. & Dist. Parbhani
Through its President,

Sarojni Ramkrushna Kauthekar,
Age: 58 years, Occu.: President,
R/o. Vishnu Nagar, Parbhani,
Tq. & Dist. Parbhani

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Writ Petition No- 5942-2023 and Group

23 Shitaladevi Mahila Bachat Gat,
HUDCO, New Nanded,
Tq. & Dist. Nanded,
Through its President,
Sunita Subhash Wagmare
Age: 27 years, Occu.: President,
R/o. Guru Vithalnath Nagar,
HUDCO, New Nanded,
Tq. & Dist. Nanded

... Petitioners

Versus

1. The Union of India,
Through its Principal Secretary,
Women and Child Welfare
Department, New Delhi
2. The State of Maharashtra,
Through its Principal Secretary,
Women and Child Welfare
Department, Mantralaya, Mumbai
3. The Commissionerate of Integrated
Child Development Services
Scheme, Department of Women and
Child Development, Government of
Maharashtra, Belapur, Navi Mumbai ... Respondents

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Mr. D.S. Bagul with Deepak Pote for the Petitioners.

Dr. Birendra Saraf, Advocate General with Ms. Prachi Tatake,
Mr. M.M. Pabale, AGP and Mr. Kushal Amin for the Respondent
Nos. 2 to 3.

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WITH

WRIT PETITION NO. 7394 OF 2023

1 Dhanlaxmi Mahila Mandal
N-11, CIDCO, Aurangabad,

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Writ Petition No- 5942-2023 and Group

- Tq. & Dist. Aurangabad,
Through its President,
Jyoti Vithal Pawar,
Age: 57 years, Occu.: President,
R/o. N-11, CIDCO, Aurangabad,
Tq. & Dist. Aurangabad
- 2 Valai Mahila Bachat Gat, Harbal,
Tq. Loha, Dist. Nanded,
Through its President,
Usha Shivaji Dimple,
Age : 45 years, Occu: President,
R/o. Harbal, Tq. Loha,
Dist. Nanded
- 3 Mata Ramai Mahila Bachat Gat,
CIDCO, New Nanded,
Tq. & Dist. Nanded,
Through its President,
Sruti Sachin Bhalerao,
Age: 22 years, Occu. President,
R/o. CIDCO, New Nanded,
Tq. & Dist. Nanded
- 4 Nirmal Swyamsayata Mahila Bachat
Gat, Nimbalk,
Tq. & Dist. Ahmednagar,
Through its President,
Jyoti Rajendra Sawant,
Age: 44 years, Occu: President,
R/o. Nimbalk,
Tq. & Dist. Ahmednagar
- 5 Utkushtha Mahila Swyamsayata
Bachat Gat, Kailashnagar, Nandgaon,
Tq. Nandgaon, Dist. Nashik,
Through its President,
Shabana Khalil Mansuri,
Age: 45 years, Occu.: President,

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Writ Petition No- 5942-2023 and Group

- R/o. Kailashnagar, Nandgaon,
Tq. Nandgaon, Dist. Nashik
Versus
- 1 The Union of India,
Through its Principal Secretary,

... Petitioners

- Women and Child Welfare
Department, New Delhi
- 2 The State of Maharashtra,
Through its Principal Secretary,
Women and Child Welfare
Department, Mantralaya, Mumbai
- 3 The Commissionerate of Integrated
Child Development Services Scheme
Department of Women and Child
Development, Government of
Maharashtra, Belapur, Navi Mumbai ... Respondents

.....

Mr. Lalit S. Mahajan for the Petitioners.

Dr. Birendra Saraf, Advocate General with Ms. Prachi Tatake, Mr.
M.M. Pabale, AGP and Mr. Kushal Amin for the Respondent
Nos. 2 to 3.

.....

WITH
WRIT PETITION NO. 7632 OF 2023

1. Vaishno Rani Mahila Bachat Gat
Through its Secretary
Mrs.Vinita Vinayak Sawant
Having its office at: Shop No. R4,
Gala No. 90/ 106,
Jai Hind Co-op. Society,
Mahatma Phule Road,
Khartan, Thane (W) 400 601

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Writ Petition No- 5942-2023 and Group.d

2. Priyadarshini Mahila Swayamshyata
Bachat Gat, Through its President,
Mrs.Nikita Ramesh Waghmare
Having its office at : Room No. 5,
Bhaskar Chawl, Bhaskar Nagar on Hill
Top, Ambernath (W)- 421 501
3. Vaibhavlaxmi Swayamshyata Bachat Gat,
Through its Secretary,
Mrs. Ashwani Shinde,
Having its office at - Room No. 214,
Sangam Nagar, Himatnagar,
Near Sai Baba Temple,
Salt Pan Road, Antop Hill,
Wadala (E)- 400 037

4. Durvang Mahila Bachat Gat
Through its President,
Mrs. Vandan Suhash Dongare
Having its office at - Chavan Niwas
Near TMC School, Ghodbunder Road,
Chitalsar Manpada,
Thane (W) - 400 607
5. Varsha Mahila Vividhad Karyakari
Sahakari Sarva Seva Sanstha Limited
Through its President
Smt. Shalan Sudam Borude
Having its office at - Unit No. 9
Bhandup Industrial Estate,
Pannalal Compound, LBS Marg,
Bhandup (W), Mumbai- 400 078.
6. Somnath Swyamshyata Mahila Bachat Gat
Through its President,
Smt. Shobha Damodar Ippar,
Having its office at - Room No. 6/5/10,
Vijay Nagar, S.M. Road,
Anotp Hill, Mumbai - 400 037

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Writ Petition No- 5942-2023 and Grou

Versus

1. State of Maharashtra
Women and Child Development
Department, Government of Maharashtra
Through the Principal Secretary,
Mantralaya, Mumbai- 400 032.
2. The Commissioner, Integrated Child
Development Scheme, Raigad Bhavan,
CBD Belapur, Navi Mumbai -14
3. Ministry of Women and Child
Development,
Government of India,
Through the Secretary,
Shastri Bhawan,
Dr. Rajendra Prasad Road, ... Respondents
New Delhi- 110 001

.....

Ms. Gayatri Singh, Senior Advocate with Mr. Kartikeya Bahadur
i/b, Sangram Chinnappa for the Petitioners.

Dr. Birendra Saraf, Advocate General with Ms. Prachi Tatake,
Mr. M.M. Pabale, AGP and Mr. Kushal Amin for the Respondent
Nos. 1 to 2.
Mr. Advait M. Sethna with Mr. Shreyas Deshpande and

Mr. Sandeep Raman for Respondent No.3.

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CORAM : NITIN JAMDAR &
ARIF DOCTOR, JJ.

DATE : 6 DECEMBER 2023

JUDGMENT :

(Per Nitin Jamdar, J.) Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal.

Trupti 12 Writ Petition No- 5942-2023 and Group.docx

2. The challenge in these Petitions is to certain conditions of a tender for the supply of energy multi-item contract for the supply of Micronutrient Fortified Energy Dense Food as Supplementary Nutrition Food, the Take Home Ration, through Anganwadi Centres in the State of Maharashtra.

3. The State of Maharashtra issued this tender, as indicated by its title, for the supply of Take Home Ration through One Lakh Ten Thousand Four Hundred Forty Six Anganwadi Centers in the State. The Government of India, under the Integrated Child Development Services Scheme (ICDS Scheme), has implemented various initiatives, including the Supplementary Nutrition Programme, to address the nutritional needs of children under six years of age and pregnant and lactating women. Supplementary Nutrition is provided through two methods: as a Hot-Cooked Meal at Anganwadi Centers or as a Take-Home Ration, which can be in the form of raw ingredients or pre-cooked food packets. Take-Home Ration, fortified for children aged between 6 and 36 months and pregnant and lactating women, are intended for home consumption.

4. The Petitioners, in this case, are women's Self-Help Groups, informal organizations that do not necessarily require registration. A bank account as a Self-Help Group can be opened with the National Bank for Agriculture and Rural Development. Upon Trupti 13 Writ Petition No- 5942-2023 and Group.docx opening a bank account, the Self-Help Group is automatically registered as such. These groups engage in various activities such as selling food items, making masalas, and papads, amongst other initiatives.

5. The Petitioners contend that Self-Help Groups have a preferential right to participate in the distribution of the Take Home Ration based on the decentralized distribution policy being a fundamental principle. While the State Government acknowledges that Self-Help Groups had such a preferential right under the previous policy, regime the new policy, reflected through changes in the statutory Rules, does not confer any vested or preferential rights on the Self-Help Groups, nor does it mandate decentralization. In essence, this is the core dispute in these Petitions.

6. First, we will give a brief overview of the evolution in statutory provisions and judicial decisions, providing details in context when addressing the submissions.

7. The ICDS Scheme, initiated in 1975, is acknowledged as one of the largest food and supplementary programs globally. Despite its magnitude, initially, there was no legislation specifically for providing nutritional food to vulnerable sections of society in need. This void prompted the Hon'ble Supreme Court to grant Trupti 14 Writ Petition No- 5942-2023 and Group.docx to address the concern in Writ Petition No. 196 of 2001, filed by the People's Union for Civil Liberties (PUCL). In the PUCL case, the Supreme Court issued several orders based on a report by the Saxena Commission dated 5 August 2004, which comprehensively covered the ICDS Scheme. Upon observing the absence of affidavits, the Court issued directives on 7 October 2004, including the sanctioning of funds for a Scheme providing food to children through Anganwadi Centers. Furthermore, it mandated that all Scheduled Caste/Scheduled Tribe habitations should have Anganwadi Centers. It emphasized the non- utilization of contractors for nutrition supply, preferring the involvement of village communities, Self-Help Groups, and mahila mandals for procuring grains and preparing meals. Additional consequential directions were also issued. Subsequently, an Interim Application addressing non-compliance with the 7 October 2004 order and seeking further directives was filed and considered by the Supreme Court. During the proceedings, the Court referred to the report on nutritional foods, noted fund allocations, and issued directions for the effective implementation of the ICDS Scheme. The matters were scheduled for listing after three months. The PUCL Petition was kept pending, with several directions being issued over time. The directives pertaining to the mode of distribution of the meals are of particular relevance to these Petitions.

Trupti 15 Writ Petition No- 5942-2023 and Group.docx

8. In 2013, the Parliament enacted a legislation to ensure food and nutritional security, known as the National Food Security Act, 2013 (NFS Act). The NFS Act received presidential assent on 10 September 2013, and was subsequently published in the Government Gazette of India. Section 39 of the NFS Act empowered the Central Government to frame Rules to effectively implement the Act. These Rules could address various aspects, such as providing maternity benefits to pregnant women and lactating mothers under section 4(b) and Schemes covering entitlements outlined in sections 4, 5, and 6, including cost- sharing under section 7.

9. Under the rule-making power conferred by the NFS Act, the Central Government promulgated the Supplementary Nutrition (under the Integrated Child Development Services Scheme) Rules, 2015 (Supplementary Nutrition Rules 2015). These Rules were formulated under Section 39(2)(b) of the NFS Act.

10. Subsequently, in 2017, the Supplementary Nutrition Rules 2015 were replaced by the Supplementary Nutrition (under the Integrated Child Development Services Scheme) Rules, 2017 (Supplementary Nutrition Rules 2017). These Rules superseded the Supplementary Nutrition Rules 2015, except for actions taken before the supersession.

Trupti 16 Writ Petition No- 5942-2023 and Group.docx

11. The PUCL case reached its conclusion in the Supreme Court on 10 February 2017. By order of that date, the Hon'ble Supreme Court noted that, in light of the enactment of the NFS Act and its accompanying Rules, the original cause had lost its relevance, and Poshan was now governed by a statute. The Petitioner was given the liberty to file a new Petition if it had any grievances pertaining to the implementation or other aspects of the NFS Act.

12. In the meanwhile, in 2014, the State of Maharashtra published a tender for 34 Districts inviting applications for the supply of energy-dense micronutrient-fortified extruded blended foods. Several Writ Petitions were filed before the Aurangabad Bench of this Court, leading to an interim order not to open online bids and cease further processing. Eventually, by a judgment and order dated 11 July 2016, the Division Bench of this Court, allowed these Writ Petitions setting aside the tender notice, reducing the projects to 70 and directing a survey of eligible units regarding extrusion technology and other conditions. This was contested before the Supreme Court, along with a challenge to a 2016 order passed by the Division Bench of this Court in the case of Sai Mahila Bahuddesh Sanstha v. State of Maharashtra¹. The Supreme Court addressed the main issue by delivering the judgment in the case of Vaishnorani Mahila Bachat 2016 SCC OnLine Bom 15938 Trupti 17 Writ Petition No-5942-2023 and Group.docx Gat v. State of Maharashtra and others², with reference to the order passed in the PUCL case, the resolutions of the Government of Maharashtra and the Union of India, as well as affidavits regarding the implementation of the supplementary nutritional program. The Hon'ble Supreme Court observed that Take Home Ration did not require sophisticated technology and could be handled by Self-Help Groups. The Supreme Court also considered the NFS Act, Supplementary Nutrition Rules 2015 (amended in 2017), and guidelines issued by the Union of India. The Supreme Court invalidated the tender conditions as arbitrary, directing that new tenders be invited strictly in line with the policy of the Union of India and the observations in the judgment.

13. In 2019, the State of Maharashtra issued a tender for the supply of Take Home Ration through the Maharashtra State Cooperative Consumer Federation (Federation). This decision was challenged before the Nagpur Bench of this Court in Writ Petition No. 3312 of 2019. The Petition was disposed of with a directive for the Federation to invite applications from Self-Help Groups. Subsequently, tenders were invited by the Federation on 5 August 2019 and 9 August 2019.

14. A shift in the distribution policy of Take Home Ration was (2019) 15 SCC 718 Trupti 18 Writ Petition No- 5942-2023 and Group.docx implemented starting from the year 2021. This change marked a significant change in the approach and strategies for the distribution of Take Home Ration.

15. First, on 13 January 2021, the Ministry of Women and Child Development of the Government of India issued a letter to all Chief Secretaries of States/Union Territories, addressing the need for streamlining guidelines related to integrated Ayush concepts and data management and monitoring through the 'Poshan' initiative. The 'Saksham Anganwadi and Poshan (2.0) Scheme Guidelines, 2022' were officially introduced on 1 August 2022. Furthermore, on 29 June 2021, the Ministry notified all States that several provisions under the Supplementary Nutrition Rules 2017 had become redundant.

16. On 12 September 2022, new Rules titled 'Integrated Nutrition Support Programme - Saksham Anganwadi and Poshan (2.0) Rules, 2022 ('Poshan (2.0) Rules 2022') came into effect. Rule 3 of Poshan (2.0) Rules 2022 provides a detailed definition of Take Home Ration. Rule 5 of Poshan (2.0) Rules 2022 deals with procurement and quality of nutrition, differing from Supplementary Nutrition Rules 2017 by omitting reference to Self-Help Groups and introducing the term "entities."

17. In April 2023, the State of Maharashtra issued the Trupti 19 Writ Petition No- 5942-2023 and Group.docx impugned tender for the supply of micronutrient-fortified energy- dense food as Supplementary Nutrition Food (Take Home Ration) through 110446 Anganwadi Centres in the State of Maharashtra. In the tender, the definition of "Bidder" included an Individual, Proprietor, Self help Group, Mahila Mandal, Partnership firm, Co-operative Society, LLP, Corporation, Government undertaking, Company registered under the Companies Act or any other legal entity but did not include Consortium or Joint Venture or Special Purpose Vehicle or Subsidiary, Holding ,Associate , Group Company jointly as a single identity. Thus, the field of eligibility was enlarged with Self- Help Groups being one such entity. The tenders were issued at the level of division.

18. A pre-bid meeting for the tender was to be held on 12 April 2023 at 1.00 pm. The last date and time of submission of bids online was 2 May 2023 at 5.00 pm. The date and time for the tender document download and submission was 6 April 2023 at 11.00 am. The time and date for the opening of the technical bid were given as 3 May 2023 at 11.00 am. The non-refundable tender fee to be submitted through the online gateway system was stipulated at Rs.50,000/- and the address for communication was Commissionerate Integrated Child Development Services, Navi Mumbai.

Trupti 20 Writ Petition No- 5942-2023 and Group.docx

19. At this stage, the Petitioners - Women's Self-Help Group filed this group of Petitions challenging the tender, claiming that it violates the policy of decentralization and their preferential rights.

20. The Petitioner in Writ Petition No. 5942 of 2023 is Renuka Mata Mahila Bachat Gat. It is a women's Self-Help Group established on 7 June 2013 at Aurangabad. The Petitioners have challenged the tender dated 6 April 2023 and sought to quash and set aside conditions in Clause Nos. 4.1.3 and 4.1.7 of tender. The Petitioners in Writ Petition No. 7632 of 2023 are Vaishno Rani Mahila Bachat Gat with five other Bachat Gats. In addition to the challenge to the tender conditions as above, they have sought a mandamus directing the State to decentralise the procurement of Take Home Rations for children in Anganwadi and also take steps to award the work for Take Home Rations production to women from local mahila mandals/ mahila bachat gats and Self-Help Groups. The Petitioners in Writ Petition No.7394 of 2023 are Dhanlaxmi Mahila Mandal with four other Bachat Gats. These Petitioners have sought proceedings to be initiated against the State authorities for breach of the judgment and orders passed by the Supreme Court of India in the matter of Vaishnorani and in the matter of PUCL and the State be directed to decentralise the tender at the block level. The Petitioners in Writ Petition No. 7388 of 2023 are Nari Niketan Mahila Mandal, Trupti 21 Writ Petition No- 5942-2023 and Group.docx with 22 other Bachat Gats. Except for stating that the Petitioners are Mahila Bachat Gats and are challenging the tender process, these Petitioners have also not placed before us their details.

21. The Petitions came up on board on 27 April 2023 and were heard. The Petitioners contended that Clause 4.1.3 and Clause 4.1.7 of the tender conditions are unreasonable and arbitrary as they effectively excluded the entities, such as the Petitioners, as the tenders being issued division-wise. The State had countered the submission stating that there is a complete change in the policy. The learned Advocate General had stated that the evaluation of the tender would go on at least till 10 June 2023, and the Petitions were adjourned. Thereafter, by an administrative order, other Petitions were transferred from the Aurangabad Bench and tagged along with Writ Petition Nos. 5942 of 2023 and 7632 of 2023.

22. In view of the pendency of these Petitions, the State has not taken the tender process forward.

23. We have heard Mr. Vishwajit Sawant, the learned Senior Advocate for the Petitioner in Writ Petition No. 5942 of 2023, Mr. D.S. Bagul, the learned Counsel for the Petitioners in Writ Petition No. 7388 of 2023, Ms. Gayatri Singh, the learned Senior Advocate for the Petitioners in Writ Petition No. 7632 of 2023, Trupti 22 Writ Petition No- 5942-2023 and Group.docx Mr. Lalit Mahajan, the learned Counsel for the Petitioners in Writ Petition No. 7394 of 2023 and Dr. Birendra Saraf, the learned Advocate General for the State in all the Petitions.

24. The fundamental question is whether there is a fixed and unyielding principle dictating that the distribution of Take Home Ration must follow a decentralized approach and involve Self- Help Groups and whether the Petitioners can legitimately assert a claim to preferential treatment in their participation in the procurement and distribution process of Take Home Ration. The basis of the Petitioners' argument rests on decisions by the Hon'ble Supreme Court emphasizing the involvement of Self- Help Groups, like the Petitioners while excluding larger players and stressing procurement at a decentralized level. Additionally, the argument seeks to draw support from the provisions of the NFS Act and the Rules, with reliance on secondary material to establish a principle of decentralization. If there indeed exists an overarching and inflexible principle favouring decentralization, then the Petitioners would have a good case as the impugned tenders are admittedly issued at the division level and not decentralised and do not provide preference to Self-Help Groups. On the other hand, if there is no such inflexible principle but a policy and a policy shift has occurred, then the challenge raised by the Petitioners to the tender conditions will have to be assessed as a regular challenge by a bidder with specific preferential rights.

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25. Regarding preferential rights and decentralisation, the Petitioners contend, briefly, as follows. The decentralisation policy is integral to the effective ICDS Scheme, with Self-Help Groups being a vital part. Court orders have consistently emphasized the significance of involving Self-Help Groups. The clauses in the impugned tenders effectively defeat the established policy of the Central Government regarding decentralization. In the PUCL case, the principle of decentralization was initially recognized in 2004, relying on the Saxena Report, which emphasized that procurement for Anganwadis should ideally involve village communities, Self-Help Groups, and mahila mandals rather than contractors. Subsequently, in 2007, the Supreme Court directed the Chief Secretaries of all States/UTs to submit affidavits detailing the steps taken toward decentralization. In the case of

Vaishnorani, the Supreme Court set aside tenders floated at the district level as it contradicted the policy of decentralization. The NFS Act specifies that to advance food and nutritional security, the Central and State Governments must progressively realize the objectives laid out in Schedule III, emphasizing decentralized procurement. The State Government is merely the implementing authority for Schemes and rules established by the Central Government under the NFS Act. The NITI Aayog's 2022 report underscores the significance of a decentralized production model. Both, the Streamlining Guidelines of 2021 and the Saksham Trupti 24 Writ Petition No- 5942-2023 and Group.docx Anganwadi and Poshan (2.0) Rules of 2022 do not exclude Self- Help Groups from participating in the ICDS Scheme. The Saksham Anganwadi and Poshan (2.0) Rules of 2022, framed by the Central Government under the NFS Act, mandate decentralized procurement in line with the policy of decentralization. The NFS Act acknowledges Self-Help Groups as one of the preferred entities in the Targeted Public Distribution System. The Saksham Anganwadi and Poshan (2.0) Scheme Guidelines, 2022, promote community ownership and the involvement of Self-Help Groups in implementing the Poshan Abhiyan, emphasizing their role in improving nutrition. The State's attempt to centralize the procurement process at the division level contradicts the principles of decentralization and promotes competition which effectively ousts Self-Help Groups. The State's argument that there is no mandate to involve Self- Help Groups cannot be accepted. The decentralization of the tender process at the revenue division level lacks rationale. The reasons given by the State, such as past attempts failing due to increased standards and impracticality in collecting and testing samples every month, are baseless, so also the Request for Proposal (RFP) provides for batch-wise testing at the National Accreditation Board for Testing and Calibration Laboratories (NABL). The impugned tender conditions create a monopoly for private contractors, discriminating against Self-Help Groups and undermining the policy of decentralization. Introducing the Trupti 25 Writ Petition No- 5942-2023 and Group.docx tender at the division level is arbitrary, unjust and against the public interest. The State's argument that there is no statutory regime for decentralization is incorrect, as the NFS Act and Supreme Court directives mandate decentralization. In conclusion, the Petitioners assert that the impugned tender conditions, if allowed to be implemented, would be against the policy of decentralization, violative of the NFS Act, and detrimental to the interests of local communities and Self-Help Groups. The Petitioners seek to quash these conditions and protect the principles of decentralization, community involvement, and nutritional security.

26. In response, on the issue of decentralization, the State has argued that the focal point of consideration revolves around the observations made by the Hon'ble Supreme Court in the orders passed in PUCL case, decision in the case of Vaishnorani and various judicial decisions in this context. These decisions do not establish an overarching principle but are based on interpretations of existing policies within their respective time frames. Without a specific legislative Act governing food security, in the PUCL case the Supreme Court laid down guidelines for adherence. However, with the enactment of the NFS Act, the Supreme Court clarified that rights and liabilities in this domain would be determined under the statutory provisions of the NFS Act. The Supreme Court's observations in the PUCL case date back to when the Trupti 26 Writ Petition No- 5942-2023 and Group.docx NFS Act had not come into force. After that, when a legislative Act is in effect, it took precedence. When the Division Bench considered the challenge to the tender in the case of Shriram Mahila Bachat Gat and Others v. Union of India and Others³ in 2016, Supplementary Nutrition

Rules 2015 were applicable, and these Rules explicitly referred to the engagement of Self-Help Groups for the supply of supplementary nutrition. Furthermore, when the Hon'ble Supreme Court addressed the issue in Vaishnorani, it emphasized the legislative history and referred to the NFS Act and Supplementary Nutrition Rules 2015 and 2017. Therefore, the decision of the Hon'ble Supreme Court will have to be read along with the relevant statutory provisions in force at the time. The observations in the case of Vaishnorani, stating that most items do not require sophisticated techniques, are contextual to the Supplementary Nutrition Rules 2015 and 2017. It is essential to consider how the Poshan (2.0) Rules specifically define "Take Home Ration" and its contents. When the Supplementary Nutrition Rules 2015 and 2017 were in effect, they already provided for the involvement of Self-Help Groups, and the Supreme Court's observations were made in that context, specifically referring to Rule 9 of Supplementary Nutrition Rules 2017. The observations in Vaishnorani expressing concern about major players dominating the field should be understood within the context of the policies and rules in place at that time. The 2016 SCC OnLine Bom 15939.

Trupti 27 Writ Petition No- 5942-2023 and Group.docx State, during that period, expressed its commitment to adhere to the policies established by the Union of India, which aimed to provide preferential treatment to Self-Help Groups and promote decentralization. There is no dispute concerning the policies in place when the Supreme Court rendered its decision in the case of Vaishnorani, which aimed to provide preferential treatment to Self-Help Groups and promote decentralization, but the Poshan now has undergone a change. The Petitioners also cited decisions from a Division Bench of this Court, Bench at Nagpur, in the cases of Sanjivani Mahila Bachat Gat and Others vs. The State of Maharashtra and Others⁴ and Mumbai V. Konkan Vibhagiya Mahila Aydyogik Utpadak Sahakari Sanstha Mahasangh Ltd Versus State of Maharashtra and Others, ⁵ however, it is worth noting that these decisions were rendered before Poshan (2.0) Rules 2022 came into effect. It is a well-established legal principle that judicial pronouncements are not inflexible and should not be treated as immutable, much like statutes. The report of NITI/Aayog is not a binding instrument. The Petitioners are not excluded from the tender process. Furthermore, there is no challenge to Poshan (2.0) Rules 2022. There is, therefore, no binding principle of decentralization for all time to come and unalterable vested rights in Petitioners.

27. The first enquiry will be to find out if the Hon'ble Supreme Writ Petition No. 4372 of 2019 dated 25 July 2019 2020 SCC Online Bom 4347 Trupti 28 Writ Petition No- 5942-2023 and Group.docx Court has laid down any basic unchanging principle in the cases of PUCL and Vaishnorani and other judicial pronouncements that subsequent policy decisions cannot change the manner in which nutritious food will be supplied. The established principle that judicial pronouncements should not be treated as immutable, similar to statutes, would require careful scrutiny of the orders passed in the cases of PUCL and Vaishnorani. We will now detail the development of the statutory regime, policies and judicial pronouncements.

28. The NFS Act was enacted to ensure food and nutritional security throughout the human life cycle. The overarching goal is to provide people with access to adequate quality food at affordable prices, enabling them to lead a life with dignity. In this context, food security revolves around the accessibility of essential and nutritious food to promote a healthy life. It is noteworthy that while the Constitution of India does not specifically mention the right to food, the Courts had interpreted it as

an inherent aspect of the fundamental right to life under Article 21. Before the NFS Act, the Central Government had addressed the issue of food security through initiatives like the Public Distribution System, Targeted Public Distribution System, and ICDS Scheme. The enactment of the NFS Act made a change in emphasis shift from a welfare based approach to a rights-based framework. The NFS Act extends its coverage to include up to 75% of the rural and 50% of Trupti 29 Writ Petition No- 5942-2023 and Group.docx the urban populations, allowing them to receive subsidized food grains through the Targeted Public Distribution System. The NFS Act specifically addresses the nutritional needs of pregnant women, lactating mothers, and children aged 6 months to 14 years, ensuring their entitlement to free nutritious food through the ICDS. The NFS Act establishes a shared responsibility between the Central and State Governments. The Central Government is tasked with allocating food grains, facilitating transportation, and providing assistance. The States and Union Territories are responsible for effective implementation, encompassing household identification, ration card issuance, and distribution through fair price shops. At its core, the primary objective of the NFS Act is to ensure food security, thereby elevating it to the status of a right.

29. According to Section 2(a) of the NFS Act, a "Meal" is defined as either a hot cooked meal or a pre-cooked meal that is heated before being served, or a Take Home Ration, as the Central Government prescribes. Consequently, "Take Home Ration" is considered a component of the broader category of "Meal," as stipulated in Section 2(9) of the NFS Act.

30. Chapter II of the NFS Act makes provisions for food security. Food Security is defined under the NFS Act as the supply of the entitled quantity of food grains and meals specified under Trupti 30 Writ Petition No- 5942-2023 and Group.docx Chapter II. Section 3 of the NFS Act provides the right to receive food grains at a subsidized prices in the public distribution system. Section 3 of the NFS Act states that every person belonging to priority households, identified under section 10(1) of the NFS Act, shall be entitled to receive five kilograms of food grains per person per month at subsidized prices specified in Schedule I from the State Government under the Targeted Public Distribution System. Sections 4 and 5 of the NFS Act are of importance. Section 4 deals with pregnant women and lactating mothers. Section 4 reads as under:

"4. Nutritional support to pregnant women and lactating mothers- Subject to such Schemes as may be framed by the Central Government, every pregnant woman and lactating mother shall be entitled to--

(a) meal, free of charge, during pregnancy and six months after the child birth, through the local anganwadi, so as to meet the nutritional standards specified in Schedule II; and

(b) maternity benefit of not less than rupees six thousand, in such instalments as may be prescribed by the Central Government:

Provided that all pregnant women and lactating mothers in regular employment with the Central Government or State Governments or Public Sector Undertakings or

those who are in receipt of similar benefits under any law for the time being in Trupti 31 Writ Petition No- 5942-2023 and Group.docx force shall not be entitled to benefits specified in clause (b)".

(emphasis supplied) Correspondingly, Section 5 of the NFS Act is regarding nutritional support to children. Section 5 reads thus:

"5. Nutritional support to children -(1) Subject to the provisions contained in clause

(b), every child up to the age of fourteen years shall have the following entitlements for his nutritional needs, namely:--

(a) in the case of children in the age group of six months to six years, age appropriate meal, free of charge, through the local anganwadi so as to meet the nutritional standards specified in Schedule II:

Provided that for children below the age of six months, exclusive breast feeding shall be promoted;

(b) in the case of children, up to class VIII or within the age group of six to fourteen years, whichever is applicable, one mid-day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies, Government and Government aided schools, so as to meet the nutritional standards specified in Schedule II. (2) Every school, referred to in clause (b) of sub-section (1), and anganwadi shall have facilities for cooking meals, drinking water and sanitation:

Provided that in urban areas facilities of centralised kitchens for cooking meals may Trupti 32 Writ Petition No- 5942-2023 and Group.docx be used, wherever required, as per the guidelines issued by the Central Government".

(emphasis supplied)

31. According to Sections 4 and 5 of the NFS Act, every mother and child in the age group of 6 months to 6 years is entitled to a meal, which includes Take Home Ration, provided free of charge. This forms the fundamental entitlement and objective of the enactment. Section 6 of the NFS Act obligates the State Government, through local Anganwadis, to identify and provide free meals to children suffering from malnutrition, meeting the nutritional standards specified in Schedule II. Section 7 of the NFS Act outlines that State Governments are mandated to implement Schemes covering entitlements under Sections 4, 5, and 6. This implementation is to be carried out in accordance with guidelines, including cost-sharing arrangements, between the Central Government and the State Governments, as prescribed by the Central Government.

32. Chapter XII of the NFS Act encompasses provisions to advance food security. In particular, Section 31 of the NFS Act outlines measures to further enhance food and nutritional security. This

section emphasizes that, in pursuit of advancing food and nutritional security, the Central Government, State Governments, and local authorities will endeavour to Trupti 33 Writ Petition No- 5942-2023 and Group.docx progressively achieve the objectives outlined in Schedule III.

33. Section 39 of the NFS Act empowers the Central Government to formulate Rules to execute the provisions of the Act. This includes framing Rules concerning the Scheme, such as cost-sharing for providing maternity benefits to pregnant women and lactating mothers under clause (b) of section 4. Additionally, Rules can be framed for Schemes covering entitlements under Sections 4, 5, and 6, encompassing aspects of cost-sharing outlined in section 7. In essence, this outlines the statutory framework of the NFS Act.

34. Under the provisions of the NFS Act, the Central Government formulated Rules in 2015 known as the Supplementary Nutrition (under the Integrated Child Development Services Scheme) Rules, 2015. These Rules were framed in accordance with Section 39(2)(b) of the NFS Act. The definition of "Meal" in the Supplementary Nutrition Rules 2015 is similar to that under Section 2(9) of the NFS Act. Part II of the Supplementary Nutrition Rules 2015 outlines entitlements and nutritional standards. Part III specifies the maintenance of standards and the quality of meals, along with provisions for their enforcement and monitoring. Rule 8 of the Supplementary Nutrition Rules 2015 specifically addresses the responsibility to monitor and review arrangements for supplementary nutrition.

Trupti 34 Writ Petition No- 5942-2023 and Group.docx Rule 8 of Supplementary Nutrition Rules 2015 reads as under :

"8. Responsibility to monitor and review arrangement for supplementary nutrition.- The respective State Governments and Union territory Administration, and the Monitoring and Review Committees at the National, State, District, Block and Anganwadi levels, constituted by the Central Government in the Ministry of Women and Child Development from time to time, shall be responsible to monitor and review the status of arrangement for Supplementary Nutrition, convergence with the line Departments to ensure water and sanitation facilities, ensure regular functioning of Anganwadi Centres, ensure regular supply of Supplementary Nutrition at Anganwadi Centres without disruptions and use of iodized or iron fortified iodized salts, ensure monitoring and supervision visits by officials at different levels as per norms, method of delivery of supplementary food at Anganwadi Centres, engagement of Self Help Groups, ensure supply and quality of Supplementary Nutrition through them and all other issues relating to the above, as per their roles defined in the guidelines issued by the Central Government in the Ministry of Women and Child Development from time to time:

Provided that till the engagement of Self Help Groups, the supply of Supplementary Nutrition shall be ensured from such other sources or approved agencies in terms of the existing rules and regulations notified by the Central Government and the State Governments".

(emphasis supplied) Trupti 35 Writ Petition No- 5942-2023 and Group.docx The Supplementary Nutrition Rules 2015 specifically mentioned the inclusion of Self-Help Groups. Subsequently, the Supplementary Nutrition Rules 2015 were replaced in the year 2017 with new Rules titled Supplementary Nutrition (under the Integrated Child Development Services Scheme) Rules, 2017. These Rules superseded the Supplementary Nutrition Rules 2015, except in cases where actions were already taken or omitted before the new Rules came into effect.

35. Regarding entitlement and nutritional standards, the Supplementary Nutrition Rules 2017 retained the same provisions as the Supplementary Nutrition Rules 2015. Rule 9 of the Supplementary Nutrition Rules 2017, pertaining to the responsibility to monitor and review arrangements for supplementary nutrition, remained consistent with Rule 8 of the Supplementary Nutrition Rules 2015. Both, Rule 8 of Supplementary Nutrition Rules 2015 and Rule 9 of Supplementary Nutrition Rules 2017 specified a particular method of delivering supplementary food at Anganwadi Centres specifically emphasizing the engagement of Self-Help Groups to ensure the supply and quality of supplementary nutrition through them. This, in short, is the Scheme and purport of the NFS Act and the Rules formulated under it concerning entitlement and the method of delivery to the intended recipients.

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36. Noting that the NFS Act and the Rules created a right and corresponding obligation, the Hon'ble Supreme Court disposed of the PUCL Petition on 10 February 2017 by the following order:-

"In view of the passage of the National Food Security Act, 2013, nothing further survives in this petition. It is accordingly disposed of.

In case the petitioner has any grievance with regard to the implementation or otherwise of the National Food Security Act, 2013, he may file a fresh petition.

In view of the disposal of the writ petition, all pending applications including applications for impleadment / intervention are disposed of".

The Supreme Court directed that if the Petitioner has concern regarding the NFS Act's implementation, they are free to file a fresh Petition.

37. The Hon'ble Supreme Court, in the PUCL case, provided guidelines to be followed in the absence of a statutory enactment. However, with the enactment of the NFS Act, the Hon'ble Supreme Court clarified that the rights and liabilities in this domain, now governed by statutory enactment, would be adjudicated under the provisions of the said enactment. While there is a debate regarding the finality of proceedings in the PUCL case relying on subsequent orders, the observations of the Trupti 37 Writ Petition No- 5942-2023 and Group.docx Hon'ble Supreme Court in the order dated 10 February 2017 is unequivocal that once the legislation has come into force, the NFS Act would be the governing framework in this field. The observations of the Supreme Court are clear that with the coming in force of the NFS Act, nothing further survived in the Petition. The Supreme Court had

monitored the implementation of the ICDS Scheme in 2001, emphasizing the exclusion of private contractors and decentralization based on expert reports and had passed several orders. The order of 10 February 2017 does not refer to earlier orders; it merely observes that, since the NFS Act came into effect, there is no need to continue the proceeding. In our respectful opinion, the orders passed in PUCL are not a decision on the issues raised before us in view of subsequent developments and changes in the policy.

38. In the year 2014, the State had issued a single tender for 34 districts, inviting applications for the supply of energy-dense micronutrient-fortified extruded blended foods. A bunch of Writ Petitions, including those filed by Shriram Mahila Bachat Gat and others, were brought before the Aurangabad Bench of this Court. Through an interim order, the Division Bench directed the stay of the opening of online bids and any further processing. Subsequently, the Writ Petitions were disposed of by a judgment and order dated 11 July 2016. The Division Bench took note of the order passed in the PUCL case, emphasizing that contractors Trupti 38 Writ Petition No- 5942-2023 and Group.docx should not be used for the supply of nutrition in Anganwadi. It considered the provisions of the NFS Act and Supplementary Nutrition Rules 2015, asserting that these Rules and the Act did not in any way negate the orders of the Hon'ble Supreme Court. In light of a divergence of opinion between the departments, the Division Bench directed the Chief Secretary of the State to submit an affidavit and place the Cabinet decision. Further, the Division Bench raised the question of whether the objective of decentralization was being achieved. During the proceedings, both departments of the State concurred that decentralization was necessary, and the Supreme Court's directive to involve village communities, Self-Help Groups, and mahila mandals remained valid to ensure the availability of nutritious food at the local level. In its affidavit, the Women and Child Development Department took a position that large-scale tenders may not be suitable. In these circumstances, the Division Bench set aside the tender to the extent of reducing the projects to 70, and the State was instructed to survey eligible units concerning extrusion technology and compliance with all other conditions.

39. This was the position when the challenge came up before the Hon'ble Supreme Court in the case of Vaishnorani along with a challenge to the order passed by the Division Bench of this Court, Bench at Nagpur dated 15 March 2016 in the case of Sai Mahila Bahuddesh Sanstha. The Supreme Court crystallized the Trupti 39 Writ Petition No- 5942-2023 and Group.docx issue in paragraphs 2 and 3, which read as under:-

"2. The question as stated in the appeal is that the local self-help groups are sought to be ousted by the money power of large corporate houses with the help of the State, the decision by this Court in PUCL v. Union of India is being violated and that of Shagun Mahila Udyogik Sahakari Sanstha Maryadit v. State of Maharashtra. It is urged that the local organization of women (Mahila Mandals) and self-help groups are best suited to give local food and other necessary efforts to provide supplementary nutritional food for children. The so-called Mahila Mandals who have applied under the tender that has been floated is, in fact, large industrial units and nothing to do with the Mahila Mandals and self-help groups. They are close to certain political personalities in the State of Maharashtra. Industrialists are not supplying

good food as compared to these Mahila Mandals in different parts of the country, as accepted by the Union of India in its report. The imposition of the unrealistic conditions made it impossible for the Mahila Mandals to compete. Thus, the State is entertaining fake business units and is acting contrary to the various decisions of this Court and the spirit of the scheme.

3. The principal issue raised is whether contracts for the supply of such food for Anganwadis should be given to local Mahila Mandals run along democratic lines with local women participating or whether such contracts ought to be given by the State to large corporates/contractors under the guise of Trupti 40 Writ Petition No- 5942-2023 and Group.docx the conditions of the tender. In PUCL v. Union of India, this Court has passed the order, on 7-10-2004, inter alia to the following effect : (SCC p. 107, para 10) "10. ... 3. Contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self- help groups and Mahila Mandals for buying of grains and preparation of meals."

(emphasis supplied) Thereafter, the Supreme Court referred to the other orders passed from time to time in the case of PUCL. It then refers to the resolutions passed by the Government of Maharashtra and the Union of India. Then, reference was made to the National Rural Livelihood Missions and the Operational Guidelines for Food Safety and Hygiene. Further, Operational Guidelines for Food Safety and Hygiene in ICDS with respect to Self-Help Groups and local groups issued by the Government of India were noted.

40. In paragraph 33 of Vaishnorani decision, the Hon'ble Supreme Court made reference to the affidavit submitted by the Secretary on 6 August 2018. The affidavit emphasized that the supplementary nutritional program was implemented, managed, and controlled by the respective States, with a focus on adhering to overall guidelines and nutritional norms. In paragraph 36, the Hon'ble Supreme Court observed that the manufacturing process for most items in Take Home Ration, typically dry mixtures, did Trupti 41 Writ Petition No- 5942-2023 and Group.docx not require sophisticated techniques. It was noted that Self-Help Groups possessed the necessary competence to supply such food. The Hon'ble Supreme Court referred to Sections 4, 5, and 6 of the NFS Act, along with specific mention of Rules 7 and 9 in Supplementary Nutrition Rules 2015. The Supreme Court examined the proceedings of the National Council of India addressing the issue of hot-cooked meals for children and mothers in line with the NFS Act and Supplementary Nutrition Rules 2015 (substituted in 2017). Subsequently, the Hon'ble Supreme Court noted that an affidavit filed by the Government of India, Ministry of Women and Child Welfare, referring to the NFS Act, Supplementary Nutrition Rules 2015 (substituted in 2017), and guidelines issued by the Union of India. The Hon'ble Supreme Court highlighted the points made in the affidavit regarding the preparation of hot-cooked meals at Anganwadi Centers and the supply of Take Home Ration from Self-Help Groups in consonance with the NFS Act and Rule 9 of Supplementary Nutrition Rules 2017. It acknowledged certain differences between Supplementary Nutrition Rules 2015 and Supplementary Nutrition Rules 2017, particularly the introduction of provisions for food security allowance in the latter. However, for the present controversy, it has to be noted that Supplementary

Nutrition Rules 2015 remained unchanged.

41. Thereafter, the Hon'ble Supreme Court in Vaishnorani set Trupti 42 Writ Petition No- 5942-2023 and Group.docx aside the tender observing thus :

"49. When we consider NIT in question issued by the Government of Maharashtra we are of the considered opinion that it was not in the spirit of the orders passed by this Court as the imposition of the condition of 25% of turnover during any one of the last three financial years in the various districts by insisting for the performance for supplying at least annual average value equal to 25% of required turnover of applied sectors. As to the formation of applied sectors it is apparent from the tender notice that each of the districts has been taken as a unit and yearly expenditure, for example, Ahmednagar is Rs 31,78,87,200 yearly, 25% would come to Rs.7,94,71,800 and so on district wise which ranges from Rs. 1 crore to more than Rs. 10 crores in various districts. Thus, we find force in the submission that by virtue of the imposition of the aforesaid condition only big players have been left in the field and that is not in tune with the spirit of the Act and the orders passed by this Court as well as the policy framed by the Government of India, as projected in the aforesaid affidavit dated 6-8-2018. Thus, the tender conditions cannot be held to be valid as they were arbitrarily fixed and it was fairly conceded by Mr.Nadkarni, learned Additional Solicitor General appearing for the State of Maharashtra as well as by Mr.Vijay Thora, learned Senior Counsel, appearing for the State of Maharashtra that they have to abide by the conditions as imposed by the Union of India and the Trupti 43 Writ Petition No- 5942-2023 and Group.docx policy framed by the Union of India as projected in the affidavit dated 6-8-2018.

50. Tender notice which has been issued also falls down; we direct the tenders to be invited afresh, within four weeks, strictly as per the policy and observations made in this judgment.

51. It has also been found that fixing of unit area as a district several players have been effectively ousted from the field, it would be appropriate to form groups of the smaller area such as at panchayat or group of panchayats, etc. within the district so that the real intention behind the policy is fulfilled in its real sense and supply should be decentralised as much as possible as it is not for the big players/industrialists in the field to cater to the needs of the Scheme as they have usurped in past. It is open to the State Government to make alternative arrangement and they are restrained from continuing the existing system of supply in the interregnum period. This decision as to alternative arrangement should be taken within ten days".

(emphasis supplied) With these observations, the Appeals and the Writ Petition were disposed of.

42. When the Division Bench was addressing the challenge to the issuance of tenders in 2016 in the case of Shriram Mahila Trupti 44 Writ Petition No- 5942-2023 and Group.docx Bachat Gat,

Supplementary Nutrition Rules 2015 were in effect. These Rules explicitly referred to the engagement of Self-Help Groups and the supply of supplementary nutrition through them. Later, when the matters reached the Hon'ble Supreme Court in the case of Vaishnorani, the Court emphasized the legislative history and cited the NFS Act, Supplementary Nutrition Rules 2015 and 2017. The observations in paragraph 36, stating that most items do not require a sophisticated technique were in light of Supplementary Nutrition Rules 2015 and 2017. Later, the Poshan (2.0) Rules 2022, specifically defined Take Home Ration and its contents. When Supplementary Nutrition Rules 2015 and 2017 were in force, they already provided for the involvement of Self-Help Groups, and the Hon'ble Supreme Court made these observations in that context, specifically referring to Rule 9 of Supplementary Nutrition Rules 2017. The observation in the case of Vaishnorani that only major players remained in the field was made in the context of the policy then. The observations of the Hon'ble Supreme Court were based on interpreting the policy and the Rules existing at that time. It is necessary to note that the State, represented by the learned Special Counsel for Maharashtra, had affirmed its commitment to abide by the policy framed by the Union of India. There is no dispute, and there cannot be any dispute, that at the time the Hon'ble Supreme Court rendered the decision in the case of Vaishnorani, the policy was for preferential treatment for Self-Help Groups/Mahila Bachat Gats and the Trupti 45 Writ Petition No- 5942-2023 and Group.docx promotion of decentralization. Upon careful examination of the judgment in the case of Vaishnorani, it becomes evident that the Hon'ble Supreme Court had specially directed adherence to the existing policies of both the Central and State Governments at the time of delivering the judgment. The judgment specifically refers to various documents, including an affidavit from 6 August 2018, nutritional norms from 24 February 2009, Supplementary Nutrition Rules 2015 and Supplementary Nutrition Rules 2017 which emphasized decentralization. Therefore, in our respectful reading of the decision in the case of Vaishnorani, it does not indicate an inflexible principle that cannot be changed.

43. The Petitioners have also sought to cull out the policy of decentralization and the preferential right of the Self-Help Groups from the NFS Act itself. The Petitioners rely on Section 31 and Schedule III framed thereunder. Schedule III framed under section 31 reads as under :

"Provisions for advancing food security (1) Revitalisation of Agriculture-

(a) agrarian reforms through measures for securing interests of small and marginal farmers;

(b) increase in investments in agriculture, including research and development, extension services, micro and minor irrigation and power to increase productivity and production;

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(c) ensuring livelihood security to farmers by way of remunerative prices, access to inputs, credit, irrigation, power, crop insurance etc.

(d) prohibiting unwarranted diversion of land and water from food production.

2) Procurement, Storage and Movement related interventions-

(a) incentivising decentralised procurement including procurement of coarse grains;

(b) geographical diversification of procurement operations;

(c) augmentation of adequate decentralised modern and scientific storage;

(d) giving top priority to movement of foodgrains and providing sufficient number of rakes for this purpose, including expanding the line capacity of

railways to facilitate foodgrain movement from surplus to consuming regions.

(3) Others: Access to-

(a) safe and adequate drinking water and sanitation;

(b) health care;

(c) nutritional, health and education support to adolescent girls;

(d) adequate pensions for senior citizens, persons with disability and single women".

44. It is important to note that there is no specific definition of Self-Help Groups in the NFS Act. The Petitioners have relied on Trupti 47 Writ Petition No- 5942-2023 and Group.docx Section 2 of the NFS Act as regards the definitions of meal and food security. How that would result in establishing the principles of decentralization is not explained by the Petitioners. The Petitioners' emphasis then shifts to Schedule III, where there is a reference to procurement, storage, and movement incentivizing decentralization procurement and geographical diversification of procurement operations. The learned Advocate General correctly points out that the aforementioned references in Schedule III regarding procurement and storage must be understood in that context. Schedule III is in reference to Section 31 of the NFS Act. Section 31 of the NFS Act calls upon the Central Government, State Governments, and local authorities to progressively realize the objectives specified in Schedule III. These are the expectations to be achieved. Clause 1 of Schedule III pertains to the revitalization of agriculture, while Clause 2(a) incentivizes decentralized procurement of coarse grains, and Clause 2(b) is related to geographical diversification of procurement operations. These are, therefore, entirely distinct from Take Home Rations. Even assuming that is the mode stated in Schedule III, if the State asserts that it can accomplish the ultimate objective of this enactment, namely, combat malnutrition for food security more effectively, its attempt cannot be undermined by reading a strict mandate in Schedule III. Therefore, in the absence of any statutory mandate, the State's Trupti 48 Writ Petition No- 5942-2023 and Group.docx endeavour through

this tender process to attain the objective of the NFS Act cannot be called as contrary to the NFS Act.

45. Therefore, it is clear that there is no such overarching principle of decentralization and involvement of Self-Help Groups laid down in the decisions relied on by the Petitioners or the NFS Act to deviate from the statutory Rules and the policy of the State existing as of today, which reflect a different policy.

46. Now, we have come to the details of the change in the policy. A notable shift occurred with the issuance of new guidelines and the subsequent de-notification of Supplementary Nutrition Rules 2017. These changes effectively superseded the previous Scheme and guidelines in accordance with Section 41 of the NFS Act. It began on 13 January 2021 with the issuance of streamlined guidelines called the Integrated Nutrition Support Programmer-Mission Poshan Scheme. In the clause of Quality Assurance, it was mandated that Take-Home Ration shall be tested from FSSAI owned/ registered/ empaneled/ NABL accredited laboratory. Random testing must be conducted by Anganwadi Services functionaries after receipt of stock at the AWC or at the Block level. Anganwadi Services were directed to draw the samples, as per the prescribed procedure and send the sample for testing to a FSSAI owned/ registered/ empaneled/ NABL accredited laboratory.

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47. This policy encompassed supply-chain management, emphasizing the need for transparency in the supply-chain processes at the state level. It is stated that transparency is crucial for officials to guarantee an uninterrupted supply to the last mile, aligning with the FSSAI registration-licensing process for entities engaged in manufacturing, storing, and distributing food, thereby ensuring food safety and hygiene. The supply-chain management clause outlined three levels: State, District and village. Clause 3 of the streamlined guidelines focused on data management and monitoring through the Poshan Tracker, developed by the Ministry of Women and Child Development, Government of India. The procurement procedure outlined in the guidelines mandated that States and Union Territories adopt a transparent procurement process in accordance with General Financial Rules and vigilance guidelines. Additionally, it emphasized the necessity of ensuring that Take Home Ration adheres to the technical and nutritional standards set by the Ministry of Women and Child Development. The policy highlighted the importance of strengthening services by counselling mothers of children at Anganwadi Centers.

48. Following the initiatives of the Poshan Abhiyan, the Government of India issued communications to all Chief Secretaries of States/Union Territories. The Ministry of Women and Child Development of the Government of India issued a Trupti 50 Writ Petition No- 5942-2023 and Group.docx letter to all Chief Secretaries of States/Union Territories. The letter pertained to streamlining guidelines on quality assurance, delineating roles and responsibilities of duty holders, the procurement process, integrated Ayush concepts, and data management and monitoring through the 'Poshan Tracker.' These measures aimed to promote transparency, efficiency, and accountability in delivering supplementary nutrition. The preamble of the guidelines emphasized the imperative to ensure that entitlements under the supplementary nutrition program, as part of Anganwadi services and the Poshan Abhiyan, reach the intended beneficiaries promptly while

adhering to prescribed quality and nutritional standards.

49. The guidelines issued by the Ministry of Women and Child Development on 13 January 2021, signify a distinct departure from the previous guidelines and Rules. These new guidelines emphasised upholding norms and standards for supplementary nutrition and the supply system under the Scheme. Notably, specific provisions related to the involvement of Self-Help Groups from the Supplementary Nutrition Rules of 2015 and 2017 have been omitted. Furthermore, the Supplementary Nutrition Rules of 2017 have been de-notified.

50. On 29 June 2021, the Under Secretary to the Government of India, with the approval of the competent authority, conveyed Trupti 51 Writ Petition No- 5942-2023 and Group.docx to all Chief Secretaries of States/Union Territories and Principal Secretaries/Secretaries of the Department of Women and Child Development. The communication highlighted that, in light of the streamlined guidelines issued by the Ministry of Women and Child Development on 13 January 2021, many provisions under the Supplementary Nutrition Rules 2017 had become obsolete due to the proposed new Scheme, "Integrated Nutrition Support Programme-Mission Poshan 2.0." Consequently, the streamlined guidelines dated 13 January 2021, have superseded the Supplementary Nutrition Rules 2017. It was further mentioned that the Supplementary Nutrition Rules 2017 have been de-notified, leading to the de-notification of the rules concerning the delivery of supplementary nutrition.

51. On 12 September 2022, the Ministry of Women and Child Development issued a notification to enact the new Rules titled "Integrated Nutrition Support Programme - Saksham Anganwadi and Poshan (2.0), Rules, 2022." These Rules, which governed the position as of today and under which the impugned tenders are issued, are of importance and are reproduced in their entirety:

"MINISTRY OF WOMEN AND CHILD DEVELOPMENT NOTIFICATION New Delhi, the 12th September, 2022 G.S.R. 766(E). --WHEREAS vide notification No. G.S.R. 149(E), dated 20"

Trupti 52 Writ Petition No- 5942-2023 and Group.docx February, 2017, the Supplementary Nutrition (under the Integrated Child Development Services Scheme) Rules, 2017 were notified by the Government of India, Ministry of Women and Child Development with a view to provide nutritional standards to pregnant women and lactating mothers under the provisions of the National Food Security Act, 2013;

AND WHEREAS Streamlined Guidelines on quality assurance were framed by the Government of India, Ministry of Women and Child Development, vide its order dated 13"

January, 2021, to ensure transparency in procurement, integration of AYUSH concepts and data management and monitoring through "Poshan Tracker" for transparency, efficiency and accountability in delivery of supplementary nutrition;

AND WHEREAS in the light of the aforesaid guidelines, the Government of India, Ministry of Women and Child Development, vide its order dated 28" June, 2021 had rescinded the rules

referred to in the first paragraph;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) read with clause (b) of sub-section (2) of section 39 of the National Food Security Act, 2013 (20 of 2013), except as respects things done or omitted to be done before such rescission, the Central Government in consultation with the State Governments and Union Territory Administrations, hereby makes the following rules to regulate the entitlements specified under the provisions of the said Act for every pregnant woman and lactating mother, till six months after child birth and every child in the age group of six months to six years, namely:-

1. Short title and commencement- (1) These rules may be called the Integrated Nutrition Support Programme --

Saksham Anganwadi and Poshan (2.0), Rules, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Application:- These rules shall apply to every pregnant woman and lactating mother till six months after child birth and every child in the age group of six months to six years (including those suffering from malnutrition) for three hundred days in a year, as per the nutritional standards specified in Schedule II to the National Food Security Act, 2013 (20 of 2013).

3. Definitions:- (1) In these rules, unless the context otherwise requires,

(a) "Act" means the National Food Security Act, 2013;

(b) "intended beneficiaries" means those beneficiaries who are registered at an Anganwadi Centre with Aadhar identification to receive Supplementary Nutrition. Aadhar details of child beneficiaries are not mandatory and in case the child does not have Aadhar, the benefits Trupti 54 Writ Petition No- 5942-2023 and Group.docx of the program shall be delivered using the Aadhar identification of the parent or guardian;

(c) "Central Government" means the Government of India

(d) "nutrition" means supplementary nutrition which aims at providing quality protein and essential macro and micro-nutrients;

() "Take Home Ration" for the purpose of Supplementary Nutrition should be made using locally available staple cereals and millets, pulses and legumes, nuts and oilseeds, ensuring that refined sugar does not exceed permissible limits. Take Home Ration should be in the form of a processed mixture of various food ingredients (not raw ration), which when consumed by a child or Pregnant Woman and Lactating Mother meets the recommendation for calories, proteins and micro nutrients (Calcium, Zinc, Iron, Dietary Folate, Vitamin A, Vitamins B6, B12 and D) and such Ration should be tested in Food Safety and Standards Authority of India approved laboratories to ensure that the

norms of macro and micro nutrients recommended or bench-

marked for the different categories of Supplementary Nutrition beneficiaries are maintained. Raw Ration as Take-

Home Ration is not permissible and the Take-Home-Ration as mentioned under National Food Security Act, Trupti 55 Writ Petition No- 5942-2023 and Group.docx 2013 shall not be misconstrued as 'raw ration';-

(2) The words and expressions used herein and not defined in these rules but defined in the National Food Security Act, 2013 and the Food Safety Standards Act, 2006 shall have the meanings respectively assigned to them in those Acts.

4. Nutritional Standards: -- The detailed standards of nutrition to be supplied to the beneficiaries would be as per the provisions of the Act.

5. Procurement and Quality of Nutrition::

-- (1) The State or Union Territory must introduce transparent process for procurement as per General Financial Rules, 2017 and Vigilance Guidelines and other norms issued from time to time by the Government of India and ensure that Take-Home Ration procured conforms to nutritional norms set by the Government of India.

(2) The States or Union Territories shall ensure that the quality of Supplementary Nutrition items procured is as per the food safety norms as well as nutrient composition. Supplementary Nutrition must conform to prescribed standards as laid down under the Food Safety and Standards Act, 2006 and regulations made thereunder to ensure consistent quality and nutritive value per serving and the periodicity of sample testing shall be once in a quarter of annual year, per project.

(3) Take-Home Ration shall be tested from Trupti 56 Writ Petition No- 5942-2023 and Group.docx Food Safety and Standards Authority of India owned or registered or empanelled and National Accreditation Board for Testing and Calibration Laboratories accredited laboratory and random testing must be conducted by Anganwadi Services functionaries after receipt of stock at the Anganwadi Centre or at the Block level.

Provided that in case of Hot Cooked Meal, it should be ensured that it is prepared in proper kitchen sheds having adequate sanitation and safe drinking water so as to maintain hygienic conditions.

(4) Supply chain process in the States or Union Territories must be made transparent for functionaries to ensure uninterrupted supply to the last mile, which are compliant with Food Safety and Standards Authority of India registration- licensing process for entities involved in manufacture, storage and distribution of food to ensure food safety and hygiene.

(5) The States or Union Territories shall co-ordinate the activities of various departments through a State Level Steering Committee to ensure effective convergence between various schemes or programs having bearing on nutrition and review the progress made regarding Nutritional Indicators on regular basis.

(6) The States or Union Territories shall mandatorily and regularly input data into the Poshan Tracker Information and Communication Technology application.

(7) The States or Union Territories are required to adhere to Saksham Anganwadi Trupti 57 Writ Petition No- 5942-2023 and Group.docx and Poshan 2.0 Scheme guidelines with reference to integrating AYUSH concepts for holistic nourishment.

(8) The Scheme guidelines shall address the required changes warranted from time to time and shall be coextensive with the nutrition dynamics.

6. The Central Government may, taking into consideration the nutritional requirements of beneficiaries, modify the cost norms from time to time.

7. Rules not in derogation of any Scheme:-

The provisions of these rules shall be in addition to and not in derogation to any existing Scheme implemented by the Central Government.

[F. No. 22-3/2016-CD.II]"

52. Rule 3 of the Poshan (2.0) Rules 2022, provides a detailed definition of Take Home Ration. The definition explicitly outlines the specifications of what constitutes Take Home Ration. Rule 5 of the Poshan (2.0) Rules 2022, addresses procurement and introduces a distinct approach to the quality of nutrition compared to the earlier Rules of 2017. In these Rules, the reference to Self-Help Groups has been omitted, and the term "entities" has been introduced. There is no dispute either by the Petitioners or the State that for the impugned tender the term "entities" mentioned in Rule 5(4) also includes Self-Help Groups such as the Petitioners.

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53. With these Rules now in place, the key question arises: Do the Petitioners continue to have a vested right that justifies the modification or setting aside the tender condition nos. 4.1.3 and 4.1.7.

54. We find that there is a clear shift in intent between the Supplementary Nutrition Rules of 2015 and 2017 and the Poshan (2.0) Rules 2022. In clauses 8 and 9 of the Supplementary Nutrition Rules of 2015 and 2017, it was specifically stated that respective State Governments were responsible for monitoring and ensuring the

regular supply of supplementary nutrition at Anganwadi Centres, specifying the method of delivery and engagement of Self-Help Groups. Until the engagement of Self-Help Groups, the supply of supplementary nutrition was to be ensured from other sources or approved agencies. In contrast, the Poshan (2.0) Rules 2022 omit this mandate and emphasize procurement and the quality of nutrition in accordance with the General Financial Rules and Vigilance Guidelines. Furthermore, there is a focus on ensuring the quality of supplementary nutrition items, testing Take Home Ration by the Food Safety and Standards Authority, and emphasizing the need for a transparent supply chain process to ensure compliance with the Food Safety and Standards Authority Registration-Licensing Process for Involved Entities. Importantly, there is a specific deletion of references to Self-Help Groups. Under the Supplementary Trupti 59 Writ Petition No- 5942-2023 and Group.docx Nutrition Rules 2015 and 2017, clauses 8 and 9 specifically stated that respective State Governments were responsible for monitoring and ensuring the regular supply of supplementary nutrition at Anganwadi Centres, detailing the method of delivery and engagement of Self-Help Groups. Until the engagement of Self-Help Groups, the supply of supplementary nutrition was to be ensured from other sources or approved agencies. In Poshan (2.0) Rules 2022, there is an omission of this mandate, and emphasis is placed on procurement and the quality of nutrition in accordance with the General Financial Rules of 2017 and Vigilance Guidelines. Additionally, there is an emphasis on ensuring the quality of supplementary nutrition items, testing Take Home Ration by the Food Safety and Standards Authority, and underscoring the need for a transparent supply chain process to ensure compliance with the Food Safety and Standards Authority Registration-Licensing Process for Entities Involved. Importantly, there is a specific deletion of references to Self-Help Groups.

55. The Petitioners' grievance is that the Respondents' action in calling for tenders at the revenue division level is nothing but centralization of the procurement and distribution process. It is stated that this would amount to concentration in the hands of a few large contractors. There is no merit in this submission. While it is true that the Self-Help Groups have functioned as Trupti 60 Writ Petition No- 5942-2023 and Group.docx procurement and supply agencies for Take Home Ration and mid-day meals under the ICDS Scheme since long, their involvement was following the directive of the Honorable Supreme Court in the PUCL case on 7 August 2004, which mandated the decentralization of the procurement and supply system, specifically through the engagement of Self-Help Groups. However, with the de-notification of the Supplementary Nutrition Rules 2017 and the implementation of new Rules in 2022, the role of Self-Help Groups as implementing agencies is now diminished. Therefore, there is no specific legally enforceable right to be appointed as agents by the State Government for delivery of Take Home Ration in light of the new guidelines issued by the Central Government on 13 January 2021 and the provisions of the NFS Act and Poshan (2.0) Rules 2022.

56. In the affidavit reply filed by the State in these Petitions, emphasis is placed on the guidelines issued on 13 January 2021. These guidelines cover aspects such as Quality Assurance, Roles and Responsibilities of Duty Holders, Procurement Procedures, Integration of Ayush concepts, and Data Management and Monitoring through the 'Poshan Tracker.' The States are directed to adopt a transparent procurement process in accordance with the General Financial Rules of 2017 and Vigilance Guidelines. It is mandated that the Take Home Ration adheres to the technical and nutritional standards set by the Ministry of Women and Child Development. 61 Writ Petition No- 5942-2023 and Group.docx Development. Direct negotiation for procurement is permissible only under exceptional circumstances, such as emergencies or situations requiring proprietary techniques, ensuring fairness in the process. This underscores the significance of the guidelines issued on 13 January 2021. Section 38 of the NFS Act empowers the Central Government to issue directions to the State Governments to effectively implement the NFS Act. Thus, the guidelines issued on 13 January 2021 by the Ministry of Women and Child Development to carry statutory authority are akin to the guidelines under the Supplementary Nutrition Rules 2017 and the policies in place at the time of the judgment in Vaishnorani. The de-notification of the Supplementary Nutrition Rules 2017, which have statutory backing through Section 38 of the NFS Act, fundamentally alters the policy and regulatory mechanism. With this change, Self-Help Groups are eligible to bid but cannot claim exclusive rights. Therefore, the Petitioners have no vested right to insist on exclusive treatment.

57. There is no challenge to the Saksham Anganwadi and Poshan (2.0) Rules, 2022. The Petitioners argue that there is no need to challenge these Rules, but they must be interpreted in a way that incorporates the principle of decentralization, and after reading this principle in the Poshan (2.0), Rules, 2022, the impugned clauses of the tender be struck down. This contention cannot be accepted. The Petitioners are attempting to introduce Trupti 62 Writ Petition No- 5942-2023 and Group.docx the principle of decentralization and emphasize the role of Self- Help Groups by introducing a factor specifically omitted in the Poshan (2.0) Rules 2022. The State has relied upon the decision of the Hon'ble Supreme Court in the case of Kolhapur Canesugar Works Ltd. and Another Versus Union of India and Others 6 to contend that once the provision is deleted, the same ought not to be introduced by way of interpretation. The learned Advocate General has stressed upon this as specific and conscious omission is a matter of change of policy. The learned Advocate General, therefore submits that local Self-Help Groups would be one of the entities who would be entitled to participate in the bidding process, but there is conscious deletion for their preferential treatment that was then which deletion has been made and the same cannot be brought in by back door method resorted to interpreting process. This submission, according to us, is correct. When a specific provision from an old statute is deliberately omitted upon enacting a new statute, it cannot be resurrected or reintroduced through mere interpretation. The deliberate exclusion of a provision in the transition from an old statute to a new one when is purposeful, indicates the

legislative intent to discontinue it. The omission of a specific reference to a Self-Help Group and deletion of an indication of decentralisation in the Poshan (2.0) Rules 2022 is not an oversight; rather, it signifies a conscious decision to exclude the preferential right from the (2000) 2 SCC 536 Tupti 63 Writ Petition No- 5942-2023 and Group.docx newly enacted law. The process of enacting the Poshan (2.0) Rules 2022 involved careful consideration preceded by guidelines and a deliberate choice to exclude specific provisions from the previous legal framework.

58. The Petitioners relied on the decisions of the Hon'ble Supreme Court in the cases of Janapada Sabha, Chhindwara etc., vs The Central Provinces Syndicate Ltd and Another 7; Madan Mohan Pathak v. Union of India⁸; and Madras Bar Association.

v. Union of India and Another.⁹ In light of these decisions, the Petitioners argued that legislation cannot negate the foundation of judgments of the Court. However, upon our careful analysis of the decisions of the Hon'ble Supreme Court, we have noted that the Hon'ble Supreme Court, in those rulings, interpreted and enforced the existing statutory provisions. In the PUCL case, in the absence of a statute, the Hon'ble Supreme Court enforced the fundamental right under Article 21 of the Constitution of India, invoking its extraordinary powers. Therefore, this contention also cannot be accepted.

59. The Petitioners also argued that the State is bound by the doctrine of non-retrogression. The Petitioners relied on the decision of the Hon'ble Supreme Court in the case of Navtej (1970) 1 SCC 509 (1978) 2 SCC 50 (2022) 12 SCC 455 Tupti 64 Writ Petition No- 5942-2023 and Group.docx Singh Johar and Ors. Versus Union of India, Thr. Secretary, Ministry of Law and Justice¹⁰ to advance that once the Hon'ble Supreme Court has established a trajectory for decentralization in terms of food programs, especially as reflected in Section 30 and Schedule III of the NFS Act, this direction cannot be reversed. It is argued that the State is now precluded from attempting to negate, either through executive action or otherwise, the mandate that women from the community and children should be actively engaged in the production of their food within the ICDS program. However, this argument is flawed as it is grounded in the assumption that the policy of decentralization is rigid and perpetual. The Saksham Anganwadi and Poshan (2.0) Scheme Guidelines, 2022, which were introduced on 1 August 2022, do not contain this policy. The Ministry of Women & Child Development issued a letter to the Principal Secretaries /Secretaries in charge of dealing with Anganwadi services in all States, informing them that "Saksham Anganwadi and Poshan 2.0" represents a strategic shift in mission mode to develop practices that nurture health, wellness, and immunity from malnutrition.

60. The Petitioners relied on statements in Saksham Anganwadi and Poshan 2.0 that refer to the effective participation of beneficiaries and local stakeholders in local Anganwadi activities.

(2018) 10 SCC1 Tupti 65 Writ Petition No- 5942-2023 and Group.docx They also cited references to the Streamlined Guidelines of 2021 and references to stakeholders, which, according to the Petitioners, include Self-Help Groups. The learned Advocate General highlighted the opening paragraph of the Scheme, which emphasizes a strategic shift in delivery to nurture health, wellness,

and immunity. Clause 4 of the Integrated Nutrition Support Programme Saksham Anganwadi & Poshan 2.0, Rules 2022, referring to the Poshan Abhiyan, is crucial. While there is mention in clause 4.1 of Self-Help Groups, it pertains to the existing practice of involving Panchayat Raj Institutions/Villages Organizations/Self-Help Groups. Their involvement is directed towards attending meetings of the Poshan Panchayat, tasked with various functions such as monitoring the number of anaemic women, children, and adolescent girls in the community, tracking progress in their health status, motivating the community to actively participate in Poshan Jan Andolan for behavioural change, and monitoring the content and delivery of supplementary nutrition to beneficiaries at Anganwadi Centers. This involvement includes local stakeholders, mothers' groups, lady supervisors, and Self-Help Groups. The participation of Self- Help Groups is part of a broader engagement with multiple stakeholders in Poshan Abhiyan for monitoring. Notably, there is no reference in the entire Scheme to the preferential right of Self- Help Groups. In fact, this Scheme, which is subsequently statutorily engrafted, signifies a strategic shift in the delivery of Trupti 66 Writ Petition No- 5942-2023 and Group.docx nutrition under the program. There is no merit in the contention that the tender document does not refer to the 2022 Scheme as it is clear that the Rules currently in force are applicable to the tender.

61. Now, turning to the secondary sources relied upon by the Petitioners.

62. The Petitioners have relied on the NITI Aayog's report for the year 2022. In the foreword, this document is referred to as a compilation of good practices and innovations across various States. This compilation is a collaborative effort between NITI Aayog and the UN World Food Programme. In the foreword, the Vice Chairman indicates that this Report serves as a resource for State Governments to adopt effective practices in their Take Home Ration programs. The Report is based on secondary data from State Governments concerning Take Home Ration practices, essentially compiling initiatives taken by State Governments and Union Territories to guide their initiatives. However, such a compilation cannot be elevated to a status where it sets aside statutory Rules and policies that now include various entities beyond Self-Help Groups alone. While the Report mentions a decentralized production model involving local agencies like women's Self-Help Groups, this is under the section discussing the Review of Good Practices. The Report makes references to Trupti 67 Writ Petition No- 5942-2023 and Group.docx the Supplementary Nutrition Rules 2017, decisions of the Hon'ble Supreme Court, and the Streamlined Guidelines dated 13 January 2021. Notably, there is no mention of the Office Memorandum dated 29 June 2021, which declared the de-notification of Supplementary Nutrition Rules 2017 in light of the Streamlined Guidelines of 13 January 2021. Additionally, there is no reference to the Poshan (2.0) Rules 2022, which came into effect on 12 September 2022. Thus, The NITI Aayog report can only be considered as a compilation of Good Practices and to highlight which good practices have been successful. There is also a reference to the decentralization model yielding positive results. It is possible that the NITI Aayog expressed an opinion on the efficacy of a specific practice, but it remains the prerogative of the government to formulate policy and frame statutory Rules.

63. The emphasis of the Petitioners on the affidavit filed by the State of Maharashtra through the Deputy Commissioner, Integrated Child Development Services in these Petitions, is misplaced. In this affidavit, the Deputy Commissioner stated that directions had been issued to give first

preference to Self-Help Groups and Mahila Manuals. This was when the Supplementary Nutrition Rules 2015 and 2017 were in force. So, this is not an admission by the State as contended.

64. Then reliance is sought to be placed by the Petitioners on Trupti 68 Writ Petition No- 5942-2023 and Group.docx the answer given to a query raised by the Additional Secretary, Ministry of Rural Department on 21 January 2013. In response, the Additional Secretary has stated the role of the Women's Self- Help Groups. However, this response is from the year 2013, and there have been several developments thereafter, as we have pointed out earlier.

65. Therefore, to conclude on this aspect, once it is observed that the emphasis on Self-Help Groups has been removed through a statutory enactment, the argument based on decentralization, which is not an overarching principle but a policy decision, loses its force. It is not the case that the Petitioners are prohibited from participating in the tender process. If the intention was opening the bidding to entities other than Self-Help Groups while still giving preferential rights to Self-Help Groups, and if the tenders were to be called at the project level, Poshan (2.0) Rules 2022 would have specifically provided for such contingency. The Petitioners contentions would be rewriting the Rules. A clear intent is evident from the way Poshan (2.0) Rules 2022 as interpreted, indicating the removal of preferential rights previously granted to Self-Help Groups. If the Petitioners were aggrieved by the removal of this preferential right, specifically outlined in the earlier Rules, they should have challenged the statutory Poshan (2.0) Rules 2022, which they have not done. Maintaining the Rules as they do not permit the inclusion of the Trupti 69 Writ Petition No- 5942-2023 and Group.docx preferential right that existed before but has now been deleted, merely through the interpretation process. Thus, we respectfully conclude that the decisions of the Hon'ble Supreme Court in the cases of PUCL and Vaishnorani and the judicial pronouncements that followed them, were as per the policy and legislative position prevalent at that time only, and there is no overarching principle or policy set for all time to come.

66. Therefore, what remains before us is a challenge to the tender conditions by a party who is not precluded from participating in the tender process.

67. It will be necessary at this stage to note the specific clauses of the impugned tender.

68. In the tender, the definition of "Bidder" is as under :

a) "Bidder" means reputed, competent, experienced bona fide manufacturer of Micronutrient Fortified Energy Dense Food (MFEDF) -[as defined under Definition Clause (f)], and/or manufacturer of Micronutrient Fortified Meal [as defined under Definition Clause (t)] which may be an Individual / Proprietor /SHG/ Mahila Mandal/Partnership/Co-operative Society /LLP/Corporation/ Govt. undertaking /Company registered under Companies Act 1956/2013 or any other legal entity but does not include Consortium or Joint Venture or Special Purpose Vehicle (SPV) or Subsidiary/ Trupti 70 Writ Petition No- 5942-2023 and Group.docx Holding / Associate / Group Company jointly as a single identity".

69. "Micronutrient Fortified Energy Dense Food" is defined as food items to be distributed as Take Home Ration being Supplementary Nutrition Food as per the provisions of the NFS Act meeting the nutritional standards prescribed in Schedule-II of the said Act and prepared following the Revised Nutritional and Feeding Norms and Guidelines issued by the Government of India on 24 February 2009, 24 December 2013 and 13 January 2021 duly fortified with essential micronutrients as per 50% of Recommended Dietary Allowance (RDA) during the manufacturing process and not requiring addition of any raw material before consumption. It should be 100% vegetarian, prepared without using any preservative, and include the food items prescribed under this RFP. "Supplier" is defined as the successful bidder (s) who has/ have entered into the contract with the purchaser to manufacture and supply MFEDF and related services. "Turnover" is defined as turnover achieved by manufacturing and supplying of Micronutrient Fortified Energy Dense Food and/or supplying of Micronutrient Fortified Meal under any Government Scheme to the Central Government/ State Government / Union Territory in last five financial years. The Turnover should be substantiated by GST/VAT Return along with all applicable periodic returns submitted to the concerned Government Authorities during the last five Financial Years, as Trupti 71 Writ Petition No- 5942-2023 and Group.docx per applicability, in addition to Financial Statements along with statutory Audit Report and Tax Audit Report (as applicable) during last five financial years, as per applicability. The turnover of Bidder, in its individual capacity (stand alone), will only qualify the definition of Turnover, and no Turnover of Consortium or Subsidiary /Holding/ Associate/ Group Company shall be considered under the definition of Turnover. "Past Performance"

is defined as the experience of manufacturing and supply of Micronutrient Fortified Energy Dense Food as Supplementary Nutrition Food under ICDS Scheme and/or supplying of Micronutrient Fortified Meal under any Government Scheme to the Central Government/ State Government/ Union Territory. The past performance of Bidder, in its individual capacity (stand alone) will only be qualify the definition of "Past Performance"

and no Past Performance of Consortium or Subsidiary/Holding/ Associate/, Group Company shall be considered under the definition of "Past Performance". Further, if there is any deviation in the Affidavit prescribed as Annexure-I, then performance by such Bidder shall not be considered as satisfactory performance and shall not entitled to participate in the Bidding Process. In clause (t) of the tender, "Micronutrient Fortified Meal" is defined as prepared meal eating regularly at a certain time with local taste, texture and liking duly fortified with essential micronutrients served to the beneficiaries of any Government Scheme as complete meal and not requiring any further cooking before Trupti 72 Writ Petition No- 5942-2023 and Group.docx consumption by the beneficiaries. It should be 100% vegetarian and prepared without using any preservative.

70. The tender is to be evaluated in four stages: the technical bid evaluation, plant inspection, sample testing, and rate tender opening. Quotation Price was stated in clause 2.5 (b) which reads as under :

"(b) The Financial Bid will only be opened for such Bidders, which are qualified technically. The Financial Bid will be evaluated on the basis of Lowest Price of all

MFEDF Item (sum of all MFEDF items) offered by the technically qualified bidder for that particular division. The sum of all items shall be taken into consideration for deciding lowest price for that particular division. However, negotiations will be made with L-1 Bidder to accept the lowest price of each MFEDF item quoted in all the division of the State for a single price for particular MFEDF item in the State. The Commissioner reserves the right to place purchase order on one or more Successful Bidder (s) for that particular division subject to acceptance of lowest rate for respective MFEDF Item".

71. Section III of the tender deals with the scope of work and technical specifications. In clause 3.3, the government guidelines to be followed were stipulated. Reference was made to Government Gazette Notification dated 28 June 2021 issued given streamlined guidelines dated 13 January 2021 de-notifying the supplementary nutrition under the ICDS Scheme. The tender Trupti 73 Writ Petition No- 5942-2023 and Group.docx also referred to the statutory provisions and mandatory guidelines required to be followed for the procurement of supplementary nutrition food under the ICDS Scheme.

72. In section IV of the tender, the eligibility criteria of bidders are stated. Since the arguments centers around this primary section of the tender, it would be useful to reproduce the same in its entirety:

"4.1ELIGIBILITY/ PREQUALIFICATION CONDITIONS 4.1.1 The Bidder [as defined under Clause

(a) of Definition Clause] must be bona-fide manufacturer of Micronutrient Fortified Energy Dense Food [as defined under Clause (f) of Definition Clause] and/or manufacturer of Micronutrient Fortified Meal [as defined under Clause (t) of Definition Clause]. In case Bidder falls under the category of Micro, Small or Medium Enterprise, the copy of Udyog Aadhar/Udhyam Registration must be submitted by the Bidder. Contractors, traders, middlemen, distributors, dealers, agents and any other individual and / or legal entity who are not bona fide original manufacturer of MFEDF are strictly prohibited from bidding in this RFP.

4.1.2 All the qualifying criteria as specified in this RFP must be fulfilled by the bidder itself. The bidder shall submit Power of Attorney as per format at Annexure-IV authorizing any person(s) to represent the bidder and sign contract.

Trupti 74 Writ Petition No- 5942-2023 and Group.docx 4.1.3 Bidder(s) must have during any of 03 financial years out of last 05 financial years [as per Clause (1) of Definition Clause] minimum average turnover [as per Clause (m) of Definition Clause] equivalent to 15% of yearly expenditure for the division(s) applied for. However, the last financial year (2021-22) shall be considered mandatorily in calculating any of 03 financial years out of last 05 financial years. During the last financial year (2021-

22), the Bidder must also have the minimum turnover [as per Clause (m) of Definition Clause] at least equivalent to 15% of total yearly expenditure of smallest division of the State to ensure that the unit of such Bidder(s) was in operational condition during the last financial year.

4.1.4 The bidder must have necessary Infrastructure, System of Automation and In-House Lab as defined under the Definition Clause for which necessary documents shall be enclosed.

4.1.5 The Bidder must submit Affidavit strictly in accordance with format prescribed under Annexure-I. Any deviation to the format prescribed in Annexure-I entail the Bidder disqualified without any further evaluation resulting forfeiture of EMD furnished by the Bidder.

4.1.6 All the valid licenses and certificates required under this proposal for the Trupti 75 Writ Petition No- 5942-2023 and Group.docx manufacturing unit designated for supply must be in the name of bidders only during which the Unit is claimed to be in operation. The unit designated for supply of MFEDF under this proposal must mandatorily be in operation during last financial year (i.e.2021-22).

4.1.7 The Net Worth of the bidder should not be less than 05% of the total yearly expenditure/tender value of applied divisions as reflected in the audited balance sheet for FY 2021-22. Net Worth shall mean capital of the Proprietor or Partnership Firm or SHG or Mahila Mandal or Cooperative Society or other Legal Entity (in case of Bidder being Proprietor/Partnership Firm /SHG /Mahila Mandal/ Cooperative Society and other Legal Entity). However, in case of Bidder being Corporate Entity, the Net Worth shall mean as defined under Section 2(57) of Companies Act, 2013 i.e. (57) "net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance Sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation. The bidder shall submit a certificate issued by registered Chartered Accountant for the above.

Trupti 76 Writ Petition No- 5942-2023 and Group.docx 4.1.8 The bidder must demonstrate that it has a record of satisfactory past performance [as per Sub Clause (n) of Definition Clause] history equivalent to the turnover criteria prescribed under this Eligibility / Pre-Qualification Criteria. Bidder must submit an affidavit regarding the same which clearly shows the ordered and supplied quantity of MFEDF/ Fortified Meal and its value year wise. The bidder shall also submit copy of the work orders issued by concerned State/UT Governments along with a declaration that the submitted list of work orders is exhaustive and no work order and its performance has been omitted by omission or commission. Bidders must furnish detailed information regarding State-wise supply completed and order received in the prescribed format given in Annexure-V. 4.1.9 Bidder shall furnish all documents establishing the eligibility and conformity to the Proposal Document. The bidder should ensure that all certified copies are legible.

4.1.10 The Bidder is required to submit 03 Samples (each Sample having 500 gram weight) of each Recipe prescribed under this RFP along with NABL Accredited Laboratory Test Report physically

along with Tender Fee and EMD on the date prescribed under RFP. The Commissioner or TEC shall be at liberty to get the sample tested from any Government or NABL Trupti 77 Writ Petition No- 5942-2023 and Group.docx Accredited Laboratory to verify the Test Report before declaring the Bidder as Technically qualified. The failure of the sample in the Test will entail the Bidder Technically disqualified.

4.1.11 The bidder must submit self-

attested copies of the following documents in addition to the documents for establishing the fulfillment of eligibility criteria.

(a) Registration Certificate of Bidder (in case of Proprietorship Firm - GST Registration Certificate, in case of Partnership Firm - Partnership Deed along with Firm Registration Certificate, in case of Company - Certificate of Incorporation, Copy of MOA and AOA, in case of Cooperation Society/Mahila Mandal - Copy of Registration Certificate and Bye-Laws.

(b) Copy of Authorization issued to the person for submission of Bid along with Power of Attorney executed in favour of authorized person.

(c) DIC Registration / Udyog
Aadhar/Udhyam Registration, in case the
Unit is registered as Micro or Small or
Medium Enterprises.

(d) Copy of PAN CARD

(e) Copy of GST Registration
Certificate.

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(f) All GST returns, for which eligibility of turnover and past performance has been claimed.

(g) Copy of FSSAI License.

(h) Copy of ISO 22000:2005 / 22000:

2018 certification of bidder's manufacturing unit.

(i) Copy of Factory License

(j) Copy of Consent to Operate issued by the respective Pollution Control Board

(k) Turnover Certificate issued by the Chartered Accountant/ Statutory Auditor.

(l) Net worth certificate issued by the Chartered Accountant/ Statutory Auditor along with relevant Balance Sheet, on the basis of which net worth is claimed.

(m) Financial Statements (as defined under Companies Act, 2013) for last 05 financial years along with complete Audit Report (i.e. Statutory Audit Report and Tax Audit Report -- as per applicable provisions of law).

(n) Notarized Affidavit, on non-judicial stamp paper of Rs. 100/-strictly as prescribed under Annexure-I. Trupti 79 Writ Petition No- 5942-2023 and Group.docx

(o) Copy of Analytical test report of MFEDF as per specification and parameters prescribed under this RFP.

(p) Copy of documents required for substantiating past performance.

(q) Copies of the documents in support of having necessary infrastructure (list of Plant & Machinery), and list of In-House Lab Equipments, Automation System.

(r) Bid Document duly signed and stamped on each paper in token of acceptance of all terms & conditions of bidding document.

4.1.12 Following documents must also be furnished :

Sl. No.	Entity	Document Required
1.	In case of Copy of Proprietorship Certificate Firm	of Registration An undertaking on non-judicial stamp paper of Rs.100/- stating that -Bidder shall be liable for contractual obligations, responsibilities and liabilities arising under the Agreement.
2.	In case of Copy of Partnership Deed Partnership and Firm Certificate.	Firm Registration Resolution duly signed by all the Partners for participation

in bidding process and execution of Agreement, in case of selection.

An undertaking on non-judicial stamp paper of Rs. 100/- by all the partners, stating that: -all the Partners of the firm shall be jointly and severally liable for obligations, responsibilities and liabilities arising under the Agreement.

3. In case of Copy of Certificate of Company Incorporation. (duly Copy of Memorandum and registered Articles of Association. under True Copy of Board Companies Resolution duly signed and Act certified by Director/ 1956/2013) company secretary for participation in bidding process and execution of Agreement, in case of selection.
An undertaking on non-judicial stamp paper of Rs. 100/- by all the Directors, stating that:-in addition to the company, all the Directors thereof shall also be jointly and severally liable for obligations, responsibilities and liabilities arising under the Agreement.
4. In case of Self Copy of Registration Help Group/ Certificate and Bye-Laws.

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Mahila
Mandal/
Village
Community

Resolution duly signed by all the Members of Managing/ Executive Committee for participation in bidding process and execution of

Agreement, in case of selection.

An undertaking on non-judicial stamp paper of Rs. 100/- by all the Members of Managing/ Executive Committee, stating that : - all the Members of Managing/ Executive Committee shall be jointly and severally liable for obligations, responsibilities and liabilities arising under the Agreement.

5. In case of Co- Copy of Registration operative Certificate and Bye-Laws.

Societies The Resolution duly signed by all Co-operative the Members of Managing/ Society must Executive Committee for be registered participation in bidding under process and execution of Maharashtra Agreement, in case of Cooperative selection.

Societies Act, An undertaking on non-

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judicial stamp paper of Rs. 100/- by all Members of Managing/ Executive Committee, stating that:- all the Members of Managing / Executive Committee shall be jointly and severally liable for obligations, responsibilities and liabilities arising under

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the Agreement.

4.2 Withdrawal of Bids

.....
.....

4.3 MISCELLANEOUS

.....".

These are the relevant conditions of the tender. Apart from the challenge to the tender process on the ground of decentralization, a specific challenge is to clause 4.1.3 and clause 4.1.7, which have

been highlighted above. The rest of the clause of the tender lays down other formalities that are not germane to the controversy at hand.

73. The Petitioners have challenged the Tender conditions on the following grounds. The primary argument, already addressed, revolves around decentralization. Clauses 4.1.3 and 4.1.7 of the RFP are specifically challenged as arbitrary, unreasonable, and irrational. The other contentions are as follows: These clauses impede the participation of Self-Help Groups and mahila mandals in the tender process, despite the inclusive definition of 'Bidders' that encompasses them and does not expressly exclude their involvement. The current tender, issued at the division level in Maharashtra, deviates from previous tenders conducted at the gram-panchayat, project, or district levels. Additionally, after the Vaishnorani case decision in the financial year 2021-22, no tender Trupti 83 Writ Petition No- 5942-2023 and Group.docx for supplying Micronutrient Fortified Energy Dense Food and Micronutrient Fortified Meal had been issued by the State of Maharashtra. The definition of "Turnover" in Clause (m) of the RFP considers turnover from manufacturing and supplying Micronutrient Fortified Energy Dense Food and Micronutrient Fortified Meal over the last five financial years. It will cause prejudice to the Petitioners because the turnover for the last financial year 2021-22 is mandatory for calculation. That year, the ICDS Scheme of Take Home Ration (Dry Ration) was implemented at the Anganwadi level (gram-panchayat), leading to significantly lower turnover and net worth. Clause 4.1.7 stipulates that the net worth of the bidder must not be less than 5% of the yearly expenditure of the applied revenue division, consolidated from each district within that division. These requirements, if upheld, could effectively exclude Self-Help Groups, providing an undue advantage to large private contractors, and contradicting principles of fair competition. Consequently, Clauses 4.1.3 and 4.1.7 are deemed arbitrary, discriminatory, unrealistic, unfair, and unreasonable, violating Article 14 of the Constitution of India. The procedure of floating the tenders at the division level is viewed as unfair and unjust, and the Respondents have not sufficiently addressed this core issue in their affidavit-in-reply dated 8 June 2023. Clause 2.5 of the tender, which promotes competitive pricing and financial bidding, is arbitrary, irrational, unfair, and unreasonable. The Government of Maharashtra Trupti 84 Writ Petition No- 5942-2023 and Group.docx resolution dated 29 February 2016 expressly discourages competitive bidding, citing potential impacts on food quality. The State's argument that this approach would save State funds lacks a logical basis. If upheld, the impugned clauses and conditions could hinder the participation of Self-Help Groups and mahila mandals, contradicting the principles of decentralization endorsed by various authoritative bodies and policies. The conditions related to "Turnover" and the net worth requirement in clause 4.1.7 are also challenged as unrealistic and potentially exclusionary, with the retention of these clauses likely eliminating Self-Help Groups from competition.

74. The State has argued that the conditions it has outlined in its tender are carefully designed to effectively address the problem of malnutrition by providing nutritious supplements. According to the State, while Self-Help Groups are included as bidders, the conditions in the tender primarily focus on how to achieve the goal of combating malnutrition. Since no current statutory provision that confers preferential rights to Self-Help Groups, the tender conditions cannot be amended to accommodate such non-existent rights. Based on its wisdom and experience, the State has observed that the response involving Self-Help Groups was extensive, even at the lowest decentralized level. As a result, it decided to issue a tender with conditions that, in its judgment, are the most

appropriate. As long as these conditions do not violate Trupti 85 Writ Petition No- 5942-2023 and Group.docx any pre-existing statutory rights, they cannot be deemed arbitrary. Ultimately, the State's role is to fulfill its obligations under the NFS Act. There may be room for flexibility, and alternative approaches might achieve the same goal; while the State may not be entirely successful in its efforts, it is entitled to innovate as long as it does not infringe on fundamental principles or existing statutory rights.

75. Before we analyze the rival contentions, it is necessary to keep in mind the extent and limitations of judicial review concerning the tender conditions. The court's role is not to substitute its judgment for that of the authority but to ensure that the tender conditions meet the criteria of reasonableness, non- arbitrariness, and adherence to the rule of law.

76. The Petitioners relied upon the decision in the case of New Horizon Limited and Another Versus Union of India and Others¹¹ wherein reference is made to the contention that the State cannot act arbitrarily while entering into a contract and granting forms of largesse and the free bid like private individuals. There cannot be any dispute regarding this proposition. The law regarding interference in the judicial review of tenders which seek to achieve the public purpose has been substantially developed by the Hon'ble Supreme Court since the year 1995. The learned (1995) 1 SCC 478 Trupti 86 Writ Petition No- 5942-2023 and Group.docx Advocate General has relied upon the decisions that have reviewed the earlier decisions and indicated restricted interference in judicial review.

77. The Supreme Court, through a series of judicious pronouncements, has circumscribed the role of the courts in scrutinizing challenges to tenders concerning public project Tendering, emphasizing a restrained and minimal involvement. Some of the decisions on the subject are of Uflex Limited Versus Government of Tamilnadu and Others¹², Michigan Rubber (India) Limited Versus State of Karnataka and Others ¹³, Directorate of Education and Others v. Educomp Datamatics Ltd. and Others¹⁴, Monarch Infrastructure (P) Ltd. v. Commissioner Ulhasnagar Municipal Corporation and Others ¹⁵, Association of Registration Plates Versus Union of India and Others ¹⁶, Parisons Agrotech (P) Ltd and Another Vs. Union of India and Others ¹⁷. The principles from the above cited decisions would show that the judicial review of tenders operates within defined limitations, primarily aimed at preventing arbitrariness, irrationality, unreasonableness, bias, and malafides. The primary objective of judicial scrutiny is to ensure that decisions are made lawfully rather than to question their soundness or possibilities of (2022) 1 SCC 165 (2012) 8 SCC 216 (2004) 4 SCC 19 2000 (3) SCR 1159 (2005) 1 SCC 679 (2015) 9 SCC 657 Trupti 87 Writ Petition No- 5942-2023 and Group.docx alternative solution. The Wednesbury principle in administrative law comes into play when a decision is so arbitrary and irrational that no reasonable authority would have arrived at such a conclusion, all while safeguarding the public interest. Courts defer to the interpretation of tender documents by the party framing the tender unless there is evidence of malafides or perversity in the interpretation. Judicial interference must be cautious not to undermine the competitiveness and efficiency of public sector contracts. Excessive scrutiny can lead to prolonged litigation, adversely impacting government and public sector activities ultimately the public interest. Grievances from tenderers or contractors can also be addressed by them through proceedings in civil court for damages. The fixation of tender values is solely within the executive's purview, with courts having a limited role, intervening only when executive actions are proven to be arbitrary or

unreasonable. The State has the autonomy to choose its methods for decision making and establish tender terms, which are not subject to judicial scrutiny. The Government enjoys flexibility in determining these terms guided by pragmatic adjustments based on specific circumstances. Courts can intervene if a policy decision is found to be arbitrary, discriminatory, or influenced by malice. The tender conditions, when nondiscriminatory and in the best interest of the public and national security, should generally be upheld. If the tender conditions conform with Article 14 of the Constitution of India, Trupti 88 Writ Petition No- 5942-2023 and Group.docx demonstrate thoughtful consideration supported by substantial evidence, and serve the public interest, the court should uphold it, recognizing that policy-making falls within the executive domain.

78. It is crucial to emphasize that the Petitioners remain eligible to participate in the tender process and are not excluded. Once it is established that the Petitioners lack a preferential right based on decentralization, they cannot insist on modifying the tender conditions merely because they do not conform to their specific objectives. The standing of the Petitioners is analogous to that of agents allowing them to continue their trade without undue hindrances. The Petitioners do not inherently possess the right to be part of the distribution process of the Take Home Ration and their sole entitlement is consideration as bidders in the process. Given this legal context, their challenge to the tender condition lacks a basis. Our earlier findings, which interpret the Poshan (2.0) Rules 2022, have substantially addressed this part of challenges raised by the Petitioners. Therefore, the contention against the tender conditions is unfounded and lacks merit within the existing legal framework.

79. The next question will be whether the tender conditions are arbitrary and against the public interest.

80. Out of approximately 160000 Mahila Bachat Gats in the State, we have 30-35 Mahila Bachat Gats before us. What we have Trupti 89 Writ Petition No- 5942-2023 and Group.docx before us are not Public Interest Litigations. The Petitioners have filed the Petitions in their individual interests. The Petitioner, Renuka Mata Mahila Bachat Gat, has not provided specific details about itself, however, the attached certificate from the Chartered Accountant reveals that the net worth of Renuka Mata Mahila Bachat Gat is Rs. 2,47,00,400/-, and its turnover in the last nine years amounts to Rs. 84,61,87,609. This information is crucial as the Petitioner places significant emphasis on the financial support needs of the Self-Help Groups. Apart from Renuka Mata Mahila Bachat Gat, none of the other Petitioners have furnished details about themselves despite claiming to represent the economically weaker sections for whom the policy is purportedly implemented.

81. The Self-Help Groups are not solely reliant on Take Home Ration initiatives. They also engage in various activities such as masala making and sale, papad making and sale, agriculture, weaving, gardening, toy-making, and Diwali sweets making, among others. The Petitioners can continue their trade without hindrance. The Petitioners do not possess an inherent right to the distribution of Take Home ration; their sole entitlement is to be considered as bidders. Therefore, if the State, based on policy considerations and past experiences, has decided to alter the methodology, such a decision does not amount to discrimination.

82. We also do not find any arbitrariness in the tender. The Trupti 90 Writ Petition No- 5942-2023 and Group.docx State Government is on record to submit that after the decision in the case of Vaishnorani, before issuing the impugned tender, the State of Maharashtra issued a tender in the year 2019 and decided to engage the Federation for the supply of Take Home Ration, which was challenged before the Nagpur Bench of this Court in Writ Petition No. 3312 of 2019. The Petition was disposed of by order dated 25 July 2019 directing that the Federation should invite applications from Self-Help Groups. Thereafter, the Federation invited the tenders on 5 August 2019 and 9 August 2019. According to the State, there was a feeble response to the tender process. The requirement of bank balance was reduced to Rs. 10,000/-even then there was less response. A similar position continued when the third tender was floated on 29 October 2020. The State, in its reply affidavit filed through the Deputy Commissioner, Integrated Child Development Services, placed on record the steps taken by the State Government after the decision in the case of Vaishnorani. The factors which are placed in the affidavit before us are as under :

"59. There was no other alternative but to call proposals under decentralized mode at Revenue Division level, which was the best possible alternative available with the State Government in the light of provisions of Food Security Act read with Rules, 2022, as also keeping in mind:

i.) the quality of the product, ii.) providing requisite calorie and protein content in addition to micronutrients being 50% of RDA, as mentioned above, Trupti 91 Writ Petition No- 5942-2023 and Group.docx iii.) Having proper Packaging and adequate Shelf life, as the beneficiaries are small children who are dependents and therefore it has to be made easy for their parents to give them this meal at a place and time convenient to them and therefore the concept, "Take Home Ration".

iv.) Cost involved in manufacturing of THR at the standards mentioned hereinabove and its effective and timely supply after periodic sample testing and analysis ensuring mandated quality, v.) to have an automated system with proper machinery necessary to eliminate risk and complications which are likely to be caused by not supplying a homogenous mixture with precise measurements of ingredients and nutrients, micro nutrients in order to avoid overdose or under dose of nutrients which cannot be achieved at a domestic level. vi.) Further, it is easier to manage, operate and monitor the Supplementary Nutrition programme with effective functionality with the involvement of limited number of Vendors/ suppliers, whose quality of work and degree of operation can be conveniently monitored ensuring equal distribution also keeping in mind the time constraints and sample testing which is required and necessary.

vii.) The State Government had issued tenders and issued re-tenders for THR as well as HCM on a decentralised scale at grassroot levels. In all Districts and that 15,787 tenders were invited at Gram Panchayat or group of Gram Panchayat level through the District Trupti 92 Writ Petition No- 5942-2023 and Group.docx Collectors not once but three times in the year 2019 to October 2020. However, the State received a very poor response of about 2% from SHGs. I crave leave to refer to and rely upon the said details as mentioned in affidavit dated 10th April 2023 filed in connected W.P no. 2219 of 2023 at pg. no. 291 onwards.

The SHGs could never satisfy the bare minimum conditions set out earlier.

viii.) Neither is the Supplementary Nutrition Programme formulated for providing employment of SHGs nor is it mandated in any of the Rules, Regulations and Guidelines, as mentioned hereinabove.

ix.) The State has floated a similar tender for Hot cooked Meals(HCM), where the mandatory condition for procurement is that the HCM should be prepared in a proper kitchen shed having adequate sanitation and safe drinking water so as to maintain hygienic conditions. The said Tender is open for all eligible Self Help Groups/Mahila Bachat Gats etc."

83. A High Power Committee took a decision to procure supplies through the Maharashtra State Co-operative Consumers Federation Ltd., when the Take Home Ration tender was cancelled. This decision was necessitated by the State's obligation to ensure a constant and uninterrupted supply of raw ration, as mandated under the NFS Act. The State's requirement amounted to over 1,54,632 metric tonnes of wheat and 36,336 metric tonnes of rice annually, prompting the procurement from the Trupti 93 Writ Petition No- 5942-2023 and Group.docx State Federation due to the inability of Self-Help Groups to facilitate such a large supply of grains. Among the State Marketing Federation and the Consumer Federation, the State Consumer Federation expressed its willingness to supply food grains. The Division Bench (Nagpur Bench) directed the Federation to invite applications from Self-Help Groups for the supply of Take Home Ration until the State Government finalized the tender process. The State has informed that subsequently, a public notice was issued by the Federation on 15 August 2019, receiving 77 applications, including those from Mahila mandals/Self-Help Groups, out of these, twenty two were selected.

84. We take note of the State's contention that efforts were made to encourage the participation of Self-Help Groups through multiple tenders, but the response was poor, leading to a crisis situation where children in the age group of 3 to 6 years did not attend Anganwadis and despite minimal conditions, very few participated. This has to be noted along with the fact that despite the substantial number of Self-Help Groups in the State of Maharashtra, almost 160000, only few Petitions have been filed. The Petitioners argue that the State has not investigated the reasons behind the low response. They contend that the condition stipulated that every successful Self-Help Group would be assigned only five Anganwadis. The reasons apart, the factum of low response has not been contradicted by the Petitioners. There Trupti 94 Writ Petition No- 5942-2023 and Group.docx are no specific malafides against the State, except range imputation. When the State is performing its mandate to provide nutrition and formulate policy decisions based on prevailing circumstances, its perception of low response cannot be considered as non-germane criterion in absence of established malafides.

85. According to the State, after making an effort to involve such Self-Help Groups, the next step involved a significant decision to solicit proposals under a centralized mode at the revenue division level, which, in the State's view, represents the best possible alternative available. The State has provided us with a comparison statement for the years 2016, 2019, and 2023 regarding the Take Home Ration tender, illustrating the conditions. It is evident from this comparison that the tender

operates at the revenue division level, with the net worth requirement set at 5% of the immediate total annual turnover. Additionally, the State highlights a poor response to these conditions. The Petitioners contend that as per clause 4.1.3, 15% annual turnover for Aurangabad would be Rs. 34.34 crore; for Amravati Rs. 18.66 crore; for Konkan Rs. 23.64 crore, for Nagpur Rs.18.78 crore, for Nashik Rs.32.29 crore and for Pune Rs.28.92 crore. According to the Petitioners, because of such centralized tender and requirements, the Self-Help Groups will be unable to compete. However, this can also be the argument of Trupti 95 Writ Petition No- 5942-2023 and Group.docx other entities such as proprietors, partnership firms, and private limited companies who do not have financial means. The tender conditions cannot be set aside on that ground alone. Also, once we find that it is not impermissible in law for the State to issue the tender in this fashion, this would be a consequence of the tender conditions. If the State does not get a good response from a particular mode, then it would be a part of trial and error to which the State is entitled to formulate its policy to achieve the statutory objective.

86. The Petitioners also objected to the rates fixed in the impugned tender. They state that the maximum admissible rate for each beneficiary are contrary to the NFS Act and the lower rate would dilute the food quality. The learned Advocate General points out that the NFS Act itself mandates cost-sharing and proportionate payment by the Central Government, and if the Central Government share is being fixed, then nothing stops the State Government from ensuring that it is not needlessly burdened in the cost-sharing exercise. The tender is contractually and ordinarily awarded to the lowest bidder. Therefore, nothing much turns on this aspect as Poshan (2.0) Rules 2022, which mandates the State to follow General Financial Rules and Vigilance Guidelines. Also stringent quality norms are in place to ensure that the quality is not lowered.

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87. The Counsel for the parties have relied upon the decision of the Division Bench of this Court in the case of Mumbai V. Konkan Vibhagiya Mahila Aydyogik Sahakari Sanstha Mahasang Ltd. In this case, the Petitioner - Federation of the Women Self- Help Group had challenged the tender advertisement issued in the year 2020. Reliance was placed on the order passed by the Hon'ble Supreme Court in the case of Vaishnorani. The Division Bench did not entertain the challenge to the tender conditions therein and observed the Scheme of supplementary nutrition is basically for the benefit of children from 6 months to 6 years and for the benefit of several underweight children, pregnant women and lactating mothers. The Division Bench held that the State will have to act in such a manner that the interest of beneficiaries and the interest of Self-Help Groups are protected. However, this order passed on 15 December 2020 does not and could not have made reference to the subsequent developments such as Integrated Nutrition Support Programme-Saksham Anganwadi and Poshan (2.0), Rules 2022.

88. The State has provided detailed information as follows: To illustrate how the current methodology will improve the nutritional content delivery. The ICDS Department is responsible for implementing an online monitoring system for production activities and ensuring effective online supply chain management. The manufacturing of Take Home Ration is subject to rigorous Trupti 97 Writ Petition No- 5942-2023 and Group.docx compliance measures, including interference-free

production, online monitoring of ingredient composition, and batch-wise production with homogeneous mixing of micronutrients. The process must adhere to Food Safety Management System Policies, Good Manufacturing Practices (GMPs), and strict Standards for sanitation and maintenance. Facilities involved in the Take Home Ration production must meet specific criteria, such as proper storage conditions, lighting, ventilation, and equipment maintenance to prevent contamination. Verification procedures for incoming raw materials, effective waste management and disposal measures are essential. Adequate storage conditions for raw materials and finished products, along with QR codes and GPS for product traceability, are necessary. Within the Supply Chain Management process, establishing a tracking system and implementing a monitoring program for controlling microbiological and physical contamination are necessary. Quality packing materials, cleanliness in the finished product storage area, visible manufacturing dates and batch numbers and online weighing systems before pouch discharge are emphasized. Cross-checking pouch weights, automated pouch cutting, and proper bag weighing facilities during packaging are required. Sanitization of the finished product storage area, appropriate colouring in the godown and maintaining cleanliness standards for the roof, walls, and floor are crucial for maintaining product quality. Finished products should be stacked by type to ensure proper organization.

Trupti 98 Writ Petition No- 5942-2023 and Group.docx Additionally, it is essential to guarantee that beneficiaries, as per the Poshan Tracker, receive their statutory rights under the Right to Food, as prescribed by the NFS Act. This methodology is part of an integrated approach to improve the quality and timeliness of the Take Home Ration delivery.

89. When we consider the challenge to tender conditions on the ground of arbitrariness, the magnitude of distribution of the Take Home Ration also needs to be kept in mind. There are 553 projects in the State. Eight recipes are specified for the beneficiaries. According to the Rules, samples must be tested by the Food Safety and Standards Authority of India (FSSAI) and the National Accreditation Board for Testing and Calibration Laboratories (NABL). It is stated that if small plants produce two batches of each recipe, 8848 samples must be collected and tested monthly from FSSAI-notified and NABL-accredited Laboratories. The State is right in contending that managing collection and testing around 10,000 food samples every month is not an easy task. Under the Revenue Division level, every batch would be collected and tested from FSSAI-notified and NABL-accredited Laboratories. Approximately 200-250 batches for all products could be sampled and tested before delivery to beneficiaries. The State has emphasized that offline and online monitoring each plant is essential. Physical inspections are followed by online monitoring of the production process. The department can Trupti 99 Writ Petition No- 5942-2023 and Group.docx monitor logs generated by the automation system online, a process feasible only in the decentralized mode at the Revenue Division level. Based on this, if the State contends that implementing this system at the project level, involving 553 plants and significant automation costs, is impractical, we cannot hold that it is an arbitrary stand. Additionally, physical and online monitoring of 553 units at the project level can be difficult. Therefore, issuance of the tender at the division level is part of the Scheme of the Poshan (2.0) Rules 2022 and is not a mala fide or arbitrary decision.

90. Poshan (2.0) Rules 2022 also mandates transparency in distribution. The State has established stringent conditions in line with the General Financial Rules and Vigilance Guidelines. According to

Section 5(2) and (3) of these Rules, the State must procure Take Home Rations only from suppliers who can guarantee and adhere to the quality of supplementary nutrition as per the standards outlined in the Food Safety and Standards Authority Act, 2006. Take Home Ration must undergo testing at Food Safety and Standards Authority of India-owned, Registered, or Empanelled Laboratories and the National Accreditation Board for Testing and Calibration Labs. This testing involves conducting random sampling at Anganwadis periodically. It is clear, therefore the tender conditions are incorporated to be in consonance with the Poshan (2.0) Rules 2022, and thus, no fault can be found with Trupti 100 Writ Petition No- 5942-2023 and Group.docx them. These factors show that the Poshan (2.0) Rules 2022 are aimed at transparency and efficacy and overhauling the distribution system.

91. One of the Petitioners contended that the entire tender process is vitiated because the subject tender is issued in English contrary to the statutory provisions and the State policy. There is no merit in this contention. It is rightly pointed out by the learned Advocate General that once the centralization tender process is initiated, any entities can participate, not restricted to Maharashtra; the tender terms cannot be restricted to the local language alone.

92. Seven other States in the country, after the implementation of Poshan (2.0) Rules 2022, have initiated the tender process. According to the information provided by the State through a chart, several States, including Gujarat, Jharkhand, and Chhattisgarh, are adopting identical courses of action such as the one in question. The State of Jharkhand, for instance, has undertaken a centralized tender approach with similar conditions, resulting in the issuance of supply orders to successful bidders and the commencement of Take Home Ration supply for the past six months. Tender in Chhattisgarh was challenged before the Chhattisgarh High Court in the case of Maa Santoshi Swa Trupti 101 Writ Petition No- 5942-2023 and Group.docx Sahayata Samuh and Ors. Vs. Union of India¹⁸, and vide Order dated 28 April 2022, the High Court has upheld the tender conditions therein. Additionally, in Gujarat, a centralized order has been awarded to AMUL, a limited company, for the procurement and supply of Take Home Ration under the Supplementary Nutrition Programme. The Petitioners have relied on the model adopted by the State of Delhi. The learned Advocate General pointed out that in Delhi, the tender is at a district level. We find that the main point is that now with the field being widened to include several kinds of entities and the policy of decentralisation no longer mandated, each State has chosen a methodology which, according to them, best suits their needs.

93. The primary concern for States is addressing the nutritional problems. Malnutrition poses a significant threat to public health, particularly amongst section of children, pregnant women, and lactating mothers. The Government of India has implemented various measures to tackle this issue, notably the ICDS Scheme. Malnutrition persists and there is unanimity on the urgent need to address it comprehensively. Strengthening and enhancing the Take Home Ration program is necessary to attain nutritional goals within a specified time frame. As mandated by the NFS Act, the State has a duty to combat malnutrition to safeguard the health and well-being of vulnerable populations.

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94. For effectively eradicating malnutrition, the State has to explore innovative methods and approaches, considering that malnutrition is also influenced by various factors that evolve. While exercising the power of judicial review of the State action seeking to achieve the larger good and its statutory duty to improve nutrition outcomes, it must be kept in mind that the State, within the bounds of law, has the freedom to try new methods and technologies. Such experimentation will permit the State to explore alternative solutions that may lead to superior results in reducing malnutrition rates and improving public health. The focus should be on what works best in addressing the immediate needs of the target group. The mere fact that a different approach is also possible will not automatically warrant Court's intervention. Instead, it will have to be assessed whether the State's actions are reasonable, justifiable, and aimed at achieving the public good. The Petitioners have no inherent legal right to insist that the distribution of Take Home Ration must be exclusively through their channels. Having found that there is no illegality or arbitrariness in the impugned action of the State, we must acknowledge the flexibility available to it in choosing the approach that, according to it, is the most efficient and results- oriented in meeting the urgent health needs of children and mothers. Nutritional support to vulnerable populations must remain the paramount consideration in this litigation, and the role Trupti 103 Writ Petition No- 5942-2023 and Group.docx of the Self-Help Groups, such as the Petitioners, must be subservient to this overarching goal. It may be that the State in future change the methodology and may even give an emphasis to Self-Help Groups, but that decision must be left to the State as long it does not violate established norms. The central focus of the policy is to provide supplementary nutrition to children, pregnant women, and lactating mothers. This focus should not be diluted by diverting attention to other areas, such as engaging in contracts with Self-Help Groups.

95. To conclude, taking an overall view of the matter, we find no case for interference in writ jurisdiction. The Writ Petitions are dismissed. Rule stands discharged. No order as to costs.

(ARIF DOCTOR, J.) (NITIN JAMDAR, J.)

96. At this stage, the Petitioners make a request that the present position that financial bids are yet to be opened be continued for some time. They state that currently the process is being monitored through the Corporation. The learned Advocate General opposes the request.

97. In view of our conclusion that the Petitioners are eligible to bid in the Tender, but do not have vested right, we are not inclined to hold up the tender process further. Due to this Trupti 104 Writ Petition No- 5942-2023 and Group.docx litigation, the new methodology by which the State seeks to improve nutritional delivery has been delayed ultimately affecting the real beneficiaries of the tender, the children, pregnant women, and lactating mothers. This position cannot continue. The prayer is rejected.

(ARIF DOCTOR, J.)

(NITIN JAMDAR, J.)

