

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

PIL No.11 of 2020

1. The Human Rights Alert, a registered trust under the Indian Trust Act being registration No. 748 Of 2002 dated 15-05-2002 represented by its Executive Director, Babloo Loitongbam, having its registered office at Kwakeithel Thyam Leikai, P.O Imphal, P.S Lamphel, Imphal West, Manipur, PIN-795001.
2. Shri Babloo Loitongbam, aged about 50 years, S/O Dr. Loitongbam Gouragopal Singh, a resident of Kwakeithel Thyam Leikai, P.O Imphal, P.S Lamphel, Imphal West District, Manipur, PIN-795001.

... Petitioners

Versus.

1. The State of Manipur represented by the Chief Secretary, Government of Manipur, Manipur Secretariat, South Block, P.O & P.S Imphal, Imphal West District, Manipur, PIN-795001.
2. The Principal Secretary/ Commissioner (CAF & PD), Government of Manipur, Manipur Secretariat, South Block, P.O & P.S Imphal, Imphal West District, Manipur, PIN-795001.
3. The Director, Consumer Affairs, Food and Public Distribution Department, Government of Manipur, Sangaiprou, P.O Imphal, P.S Lamphel, Imphal West District, Manipur, PIN-795001.
4. The Principal Secretary/ Commissioner, Social Welfare, Government of Manipur, Manipur Secretariat, South Block, P.O & P.S Imphal, Imphal West District, Manipur, PIN-795001.
5. The Director, Department of Education (S), Government of Manipur, Lamphelpat, P.O & P.S Lamphel, Imphal West District, Manipur, PIN-795004.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Petitioners :: Shri O. Kiranjit, Advocate.

For the Respondents :: Shri Lenin Hijam, Addl. Advocate General.

Date of Hearing :: 11-05-2020

Date of Judgment & Order :: 13-05-2020

JUDGMENT AND ORDER

Kh. Nobin Singh, J.

Heard Shri O. Kiranjit, learned Advocate for the petitioners and Shri Lenin Hijam, learned Addl. Advocate General for the respondents.

[1] The above PIL has been filed by the petitioners, of which the petitioner No.1 is a Trust registered under the India Trust Act represented by the Petitioner No.2 who is its Executive Director, with the following prayer:

"In view of the facts and circumstances stated above, the petitioners beg to pray that the Hon'ble Court may graciously be pleased to:-

- i. to admit this writ petition and issue Rule Nis;
- ii. to issue a writ in the nature of Mandamus or any other appropriate writ directing the respondents to ensure proper distribution of the essential commodities at the prices fixed by the government and also to make necessary arrangement for availability of the essential commodities to the public;
- iii. to direct the respondents to make necessary arrangement ensuring that the relief for essential commodities reaches the entire population including students, children homes, non-card holders of NFSA, migrant labourers and other economically weaker section of the society;

iv. *to pass any order/ further order/writ/directions, which the Hon'ble Court may deem fit and proper and just for the ends of justice and equity,*

And, for this act of kindness, your humble petitioners as in duty bound, shall ever pray."

[2.1] Facts and circumstances as narrated in the PIL are, in short, that after the nationwide lockdown being announced by the Hon'ble Prime Minister of India, the Government of Manipur issued an order closing schools, colleges, hospital etc. as a precautionary measure and in consequence thereof, the Chief Minister, Manipur made an announcement that PDS rice for the month of April, 2020 would be distributed to all free of costs.

[2.2] The instant PIL has been filed by the petitioners based on the information collected by them from various sources. According to them, on 28-03-2020 the Manipur Alliance for Child Rights approached the Manipur Human Rights Commission with a prayer to direct that various schemes including Mid-Day Meal, ICDS etc. be implemented during the period of lockdown. The Secretary, Hill Tribal Tenants' Committee, Imphal filed a complaint dated 03-04-2020 to the Manipur Human Rights Commission contending that there are about 1168 tribal tenants at Imphal who have been left out from the distribution of essential commodities. The Khullakpa of Ramgailong Village, Senapati submitted a representation dated 03-04-2020 to the Hon'ble Chief Minister, Manipur stating that the essential commodities have not been made available to his villagers. On 11-04-2020, the All Tribal Rights Protection Forum, in a press release, made an appeal that the

authorities concerned should distribute the rice and dal to the entitled persons, at the earliest possible, in terms of the order dated 02-04-2020 issued by the Chief Secretary, Manipur. A similar press release was issued on 11-04-2020 by the Federation of All Tribal Youth Club, Manipur demanding that the Government shall reach all tribal populace staying at the valley of Manipur while distributing essential items during the period of lockdown. The villagers of Lanthuangching village, Kangchup also filed a petition dated 16-04-2020 before the Manipur Human Rights Commission complaining that they have been left out from the distribution of rice.

[2.3] On 16th and 17th April, 2020, the Human Rights Law Network, Manipur Unit conducted a fact finding at Senapati, Manipur in connection with the hardship faced by various Children Homes and it was found that the authority had failed to provide basic needs to them, despite the fact that the State authority is under an obligation to ensure that the children in these homes are given due care and attention with adequate food. In the Children Home run by ACARDO, Langathel, Thoubal District for boys who are mentally ill, no relief was provided by the State Government during the ongoing lockdown, because of which the Chairperson, CWC, Thoubal wrote a letter to the Registrar, High Court informing about it. It has also been stated it was very difficult for the people residing in rent and Government quarters to arrange their day to day needs and maintain their livelihood, as they could not move to their homes. According to Shri Majabung Gangmei, no relief materials were provided by the State Government to the residents of Langol Game Village.

[2.4] The main grievance of the petitioners is that poor persons including migrant workers, farmers, building and construction worker etc. are not provided with essential items, even though the State Government has announced that they will be provided with 5 kg of rice and 1 kg of dal free of costs. On top of that, the CEO, National Institution of Transforming India, Niti Aayog wrote a letter dated 16-04-2020 to all the Chief Secretaries to ensure that such people should not suffer for want of food or shelter and that no one should remain hungry in the country. When such people have exhausted their savings, the prices of essential commodities also have skyrocketed at the retail shops.

[3] The above PIL was listed on 24-04-2020 before this Court for motion and after hearing the counsels appearing for the parties, this Court was pleased to issue notice to the respondents. On the basis of the averments made in the PIL, this Court formulated certain issues for consideration with a rider that any other issue arising out of the PIL shall also be considered by this Court. Keeping in mind the importance of the issues involved herein, this Court directed that the notice be given to general public inviting their views/ suggestions.

[4.1] An affidavit has been filed on behalf of the respondent Nos.3 & 5 stating that there are, at present, 24,56,781 persons, identified under the provisions of the National Food Security Act, 2013 (hereinafter referred to "**the Food Act, 2013**"), who are entitled to foodgrains or meals thereunder. They are to be given additional rice @ 5 kg /person/month and Dal @ 1 kg per household for three months. The Open Market Sales Scheme

(Domestic) rice is used for distribution of free relief to non-NFSA population including migrants to tide over the deprivation caused by COVID-19 lockdown in the State. Fair Price Shops Agents are the ones authorized to distribute PDS items under Section 10 of the PDS Control Order, 2015. All the people who are residing in Manipur, have been given rice free of cost-ration card holders have been given rice @ 5 Kg under the NFSA and PMGKAY, while the remaining, ie., the non-card holders have been given rice @ 5 Kg from the rice procured under OMS Scheme. Adequate mechanism to regulate and monitor the distribution of PDS items as required under the provisions of the Food Act, 2013, has been put in place as stated in the affidavit. Relying upon the order dated 30-04-2020 passed by the Hon'ble Supreme Court, it has been stated that this Court may be pleased to close the PIL on the ground that the issues involved herein pertain to policy decision of the Central and State Government. So far as the recommendations made by the Manipur Human Rights Commission are concerned, it has been stated that appropriate actions have been taken in compliance thereof as shown in the affidavit.

[4.2] After the notice being published in the newspapers, some people sent their responses to the Registry of this Court through WhatsApp and e-mail which can be categorized into two groups-one, complaints that no rice was received or rice received at less quantity and two, suggestions, some of which are that the involvement of MLAs in the distribution of PDS rice should be completely banned or in other words, the political interference needs to be eliminated; that the selection of fair price shop owners must be through a process, which eliminates political interference; that an effective mechanism

to monitor the distribution of PDS items shall be put in place; that all the ration cards shall be handed over to the respective households within a short time and that the distribution of PDS items shall be made transparent.

[5] Before this Court proceeds with the consideration of the issues formulated herein, this Court deems it appropriate to deal with a misconception which appears to have crept in the minds of some of the officials in the State Government from the day on which this High Court was established in Manipur. This misconception that the High Court interferes with any action taken by the State Government, appears to have crept in their minds due to lack of understanding of the Constitution of India. To understand the provisions of the Constitution of India clearly by the people in the country is paramount and is, in fact, the need of the hour. India is considered to be the largest democratic country in the world. A country is like a big family and in other words, India is a big family consisting of more than 130 crore population. In a family of five members, any decision can be taken by them sitting together after due deliberation and such a decision need not be reduced into writing all the time. But it cannot be done so in respect of a country. There can be no occasion where all the citizens of a country can sit together at one place and take a decision, because of which the need of having a constitution arises. A constitution is nothing but a statement of the basic principles and laws of a Nation, State or Group. The noun 'constitution' is from Latin, from *constitutus*, "set up, established", plus suffix-ion, meaning "act, state, or condition." A Constitution is a legal document setting forth rules governing a particular kind of activity. In short, a Constitution means the law determining the fundamental political principles of a Government.

The Constitution of India came into force on 26-01-1950 and the expression “we, the people of India” as stipulated in the preamble, emphasizes the republican and democratic character of the polity and that all power ultimately stems from the people. Indian Constitution is basically federal in form and unitary in character. It contemplates two kinds of Government-one, at the centre and others at the States. Indian Constitution is supreme and is the source of power of all authorities. As we all know, there are three organs of the Government-Executive, Legislature and Judiciary which derive their authority, jurisdiction and power from the Constitution and owe allegiance to it. Only one organ of the Government without the others will have no meaning at all and consequently, the Constitution will be rendered meaningless. The Legislature makes the law which is implemented by the Executive, while the Judiciary interprets it. In Indian Judiciary, there is a hierarchy of courts-Subordinate Courts, High Courts and the Supreme Court. A Court decides a lis between the parties on the basis of the materials placed before it by them. An order passed by the Subordinate Court can be questioned by an aggrieved party before the High Court and similarly, an order passed by the High Court can be challenged before the Hon'ble Supreme Court, whose decision is final and the parties are bound by it. Therefore, any person or for that matter, the State Government, if aggrieved by any order of the High Court, can prefer appeal before the Hon'ble Supreme Court. This is what is contemplated in the Constitution of India and all persons will have to understand and follow it.

[6.1] Coming to the merit of the PIL, the issues formulated by this Court will have to be considered and decided in terms of the provisions of the Food

Act, 2013 under which legal rights have been conferred upon eligible beneficiaries to receive entitled quantities of foodgrains at highly subsidized prices. The expression “**eligible households**” is defined in Section 2(3) as households covered under the priority households and the Antyodaya Anna Yojna referred to in Section 3(1). The word “**foodgrains**” as defined in Section 2(5) means rice, wheat or coarse grains or any combination thereof conforming to such quality norms as may be determined, by order, by the Central Government from time to time. The expression “**fair price shop**” as defined in Section 2(4), means a shop which has been licensed to distribute essential commodities by an order issued under Section 3 of the Essential Commodities Act, 1955, to the card holders under Targeted Public Distribution System. The expression “**other welfare schemes**” as defined in Section 2(12) means such Government schemes, in addition to the Targeted Public Distribution System, under which foodgrains or meals are supplied as part of the scheme. Section 3 provides for right to receive foodgrains by persons belonging to eligible households under the Targeted Public Distribution System at subsidized prices. Every person belonging to priority households shall be entitled to receive five kilograms of foodgrains **per person per month** from the State Government at prices specified in Schedule-I. As per first proviso thereof, the households covered under the Antyodaya Anna Yojna shall be entitled to thirty-five kilograms of foodgrains **per household per month** at prices specified in Schedule-I. The entitlement of the eligible households shall extend upto seventy-five per cent of the rural population and upto fifty per cent of the urban population. In case of non-supply of entitled foodgrains or meals, Section 8 provides that the entitled

persons shall be entitled to receive food security allowance from the State Government, within such time and manner as may be prescribed by the Central Government.

[6.2] Section 9 provides that subject to Section 3(2), the percentage coverage under the Targeted Public Distribution System in rural and urban areas for each State shall be determined by the Central Government and the total number of persons to be covered shall be calculated on the basis of population as per census of which relevant figures have been published. Section 10 provides that the State Government shall prepare guidelines on the basis of which it shall identify the households to be covered under the Antyodaya Anna Yojna and the remaining households as priority households to be covered under the Targeted Public Distribution System. Within the number of persons determined under Section 9 for rural and urban areas, the list of eligible households shall be updated by the State Government in accordance with the guidelines framed by it for this purpose. Section 12 provides for reforms in the Targeted Public Distribution System for which endeavour shall be made by both the Central and State Government in accordance with the role envisaged for them in the proposed legislation. Section 11 provides for publication and display of list of eligible households and it is incumbent upon the State Government to place the list of eligible households in public domain and display it prominently. Similar is the Section 27 which provides that all records relating to the Targeted Public Distribution System shall be placed in the public domain and be kept open for inspection to the public.

[6.3] Section 14 provides that every State Government shall put in place an internal grievance redressal mechanism which may include call centres, help lines, designation of nodal officers or such other mechanism as may be prescribed by it. As mandated by Section 15, the State Government shall appoint or designate, for each district, an officer to be the District Grievance Redressal Officer for expeditious and effective redressal of grievances who shall hear complaints regarding non-distribution of entitled foodgrains or meals and take necessary action in such manner and within such time as may be prescribed by the State Government. Any complainant or the officer or the authority who is not satisfied with redressal of grievance, may file an appeal against such order before the State Food Commission which is constituted under the provisions of Section 16 of the Food Act, 2013. The functions to be undertaken by the State Commission are specified in Section 16(6) which includes the monitoring and evaluation of implementation; giving advice to the State Government; hearing appeals; taking suo motu enquiry etc., one of which is also that it shall prepare annual reports which shall be laid before the State Legislature by the State Government.

[6.4] Section 24 provides that the State Government shall be responsible for implementation and monitoring of the schemes of various Ministries and Departments of the Central Government in accordance with the guidelines issued by the Central Government for each scheme and their own scheme for ensuring food security to the targeted beneficiaries in their State. Sub-section (2) provides that under the Targeted Public Distribution System, it shall be the duty of the State Government to-(a) take delivery of foodgrains from the designated depots of the Central Government in the

State, at the prices specified in the Schedule-I, organize intra-state allocation for delivery of the allocated foodgrains through their authorized agencies at the door-step of each fair price shop; and (b) ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in the Schedule-I. In case of non-supply of the entitled quantities of foodgrains or meals to the entitled persons, the State Government shall be responsible for payment of food security allowance. In order to operate the Targeted Public Distribution System effectively, the State Government shall create and maintain scientific storage facilities at the State, District and Block levels; suitably strengthen capacities of their Food and Civil Supplies Corporation and other designated agencies and establish institutionalized licensing arrangements for fair price shops in accordance with the provisions of the PDS (Control) Order, 2001 made under the Essential Commodities Act, 1955 as amended from time to time.

[7] The issue relating to non-implementation of the Targeted Public Distribution System cannot be said to be a new one and cannot be said to have arisen, now only, in the State of Manipur. It has been there in the country and in particular, the State of Manipur, for the last about two decades. A writ petition being **WP(C) No.196 of 2001** came to be filed before the Hon'ble Supreme Court by the People's Union for Civil Liberties making several assertions that despite availability of large stock foodgrains in the country over the years and despite huge subsidies which the Central Government provides on foodgrains or meals for distribution among the poorer sections of the society, there is large scale diversion, misappropriation, wastage and mis-utilization of such foodgrains mainly on

account of rampant corruption that afflicts the system. Notice was issued by the Hon'ble Supreme Court to all the State Governments including the State of Manipur and after having considered several affidavits filed on behalf of the State Governments, the Hon'ble Supreme Court used to pass various orders from time to time. One of the issues which was strongly emphasized by the petitioner therein, at that point of time, was that in order to streamline it, the Targeted Public Distribution System should be computerized at the earliest possible. While it was pending for final consideration, it was felt by the Hon'ble Supreme Court that a committee be constituted to look into the matter and accordingly, a High Powered Committee headed by Hon'ble Mr. Justice D.P. Wadhwa, a former Judge of the Hon'ble Supreme Court of India was constituted in the year, 2006 which submitted 22 reports covering an equal number of States in the country including the State of Manipur. The High Powered Committee extensively dealt with the ills that were prevailing in the system and the reforms that would possibly improve the same for the benefit of the common man. The report of the High Powered Committee in respect of the State of Manipur appears to be not favourable to it. Interestingly and in addition thereto, a writ petition being **WP(C) No.14 of 2008** was filed by Shri Naorem Prafullo against the State of Manipur & ors contending inter-alia that most of the households at Heirangoithong West Naoriya Pakhanglakpa Leikai were not given PDS essential commodities like rice, sugar etc., as they had been left out by the State Government for about 7/8 years from the issuance of ration cards. However, the said writ petition was dismissed by the Hon'ble Gauhati High Court, Imphal Bench on 15-12-2008. Being aggrieved by the order passed by the High Court, a petition for

special leave to appeal being **SLP(C) No.1538 of 2009** was preferred by him before the Hon'ble Supreme Court wherein a copy of the report prepared by the CAG, New Delhi sometime in the year prior to 2008 in respect of the State of Manipur was produced. The report of the CAG, New Delhi also appears to be not in favour of the State Government, because of which the Hon'ble Supreme Court, during the course of hearing, asked a question as to 'what is the use/ need of allocation of foodgrains by the Central Government to the State of Manipur, when the same are to be pocketed by someone without the same being made available to the needy persons'. Before the said SLP could be considered and decided finally, it was tagged with WP(C) No.196 of 2001 vide order dated 26-11-2013 passed by the Hon'ble Supreme Court. After the Food Act, 2013 came to be enacted by the Parliament, the issues involved in WP(C) No.196 of 2001 became academic and consequently, it was disposed of on 10-02-2017 with a rider that it was open to the petitioner to approach the Court if aggrieved by it. Since the WP(C) No.196 of 2001 having been disposed of, the SLP (C) No.1538 of 2009 was dismissed by the Hon'ble Supreme Court. In the meantime, two writ petitions being **PIL No.8 of 2009, Km K. Anita Devi & anr Vs. State of Manipur & ors** and **PIL No. 11 of 2009, Smt. A. Ranita Devi Vs. State of Manipur & ors** were filed before the Hon'ble Gauhati High Court, Imphal Bench in respect of Langathel, Pundrei and Wangoo Laipham villages and their common grievances were that despite repeated request being made by them, ration cards were not issued in their favour with the result that they were deprived of essential commodities under the Targeted Public Distribution System.

[8] The provisions of the Food Act, 2013 are very clear and unambiguous and require no interpretation at all and moreover, since the constitutional validity and correctness thereof, is not the subject matter in issue herein, this Court is not required to make any observation thereon. Under the provisions of the Food Act, 2013 and in particular, the provisions of Section 24(2), it is the sole duty of the State Government to take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in the Schedule-I; to organize intra-state allocation for delivery of the allocated foodgrains through their authorized agencies at the door-step of each fair price shop and to ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in the Schedule-I. It is nowhere contemplated in the Food Act, 2013 that any other person can also be allowed to discharge the duty assigned to the State Government. The only exception as provided in the Food Act, 2013 is the provision contained in Section 35 which provides that the State Government can delegate its power, exercisable by it, to an officer subordinate to it, for which a Notification shall be issued by it. The subordinate officer to whom the power of the State Government has been delegated, is not known to many but from the averment made in the affidavit, the Deputy Commissioner appears to be the officer upon whom the power of the State Government has been delegated. But a copy of the Notification is not placed on record. Section 7 of the PDS (Control) Order, 2015 talks about lifting of foodgrains by the State Government through its authorized agency. The details of the authorized agencies appear to have not been made known to the public. Over and above, Section 25 provides that the

local authorities shall be responsible for the proper implementation of the Food Act, 2013 in their respective areas and under sub-section (2), the State Government may assign additional responsibilities to the local authorities for the implementation of the Targeted Public Distribution System. No any person other than the State Government or the officer delegated with its power through the fair price shop owners, can distribute or participate in the distribution of rice under the Targeted Public Distribution System. If any person other than the State Government or the officer delegated with its power in this regard, does distribute or participate in the distribution of rice under the Targeted Public Distribution System, his action will be rendered illegal and liable to be punished in accordance with law.

[9] It is not in dispute that the Food Act, 2013 was enacted by the Parliament after the assent being received from the President on 10-09-2013 and it was published in the Gazette of India on the same day. It was deemed to have come into force on 05-07-2013. One of the questions that call for consideration by this Court, is as to whether the provisions of the Food Act, 2013 have been fully and effectively implemented in the State of Manipur. It is a big question mark. If the answer to the said question is in the affirmative, the issues formulated by this Court would not have arisen at all. In terms of the provisions of the Food Act, 2013, the main thing to be done by the Central Government, at the outset, was to determine the percentage coverage under the Targeted Public Distribution System in rural and urban areas for each State and the total number of persons to be covered was to be calculated on the basis of population. Within the number of persons so determined, the State Government was to prepare guidelines and identify,

accordingly, the households to be covered under the Antyodaya Anna Yojna and the remaining households as priority households to be covered under the Targeted Public Distribution System. The list of the identified eligible households was/ is to be and ought to be placed in the public domain and displayed prominently. The Central Government allocates foodgrains depending upon the number of eligible households identified by the State Government which shall take the delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in the Schedule-I; to organize intra-state allocation for delivery of the allocated foodgrains through their authorized agencies at the door-step of each fair price shop and to ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in the Schedule-I. It is the duty of the State Government to put in place an internal grievance redressal mechanism which may include call centres, help lines etc., for which an officer is to be appointed or designated at the District level who shall hear complaints regarding non-distribution of entitled foodgrains/ meals. A State Food Commission is to be constituted by the State Government for the purpose of monitoring and review of implementation of the Act. It is not clear as to whether the above exercises have been effectively carried out by the State Government or not and the materials placed on record by the State Government along with their affidavit are not sufficient to verify them.

In Re: Issue (a):

[10] As regards the first issue, the stand of the State Government as indicated in the affidavit filed on behalf of the respondent Nos.3 & 5, is that

the fair price shop agents are the ones authorized in law to distribute the PDS items. The expression “**fair price shop agents**” is not defined either in the Food Act, 2013 or in the PDS (Control) Rules, 2015. The said expression appears to have been used inadvertently in place of the expression “**fair price shop owner**” which is defined in the PDS (Control) Rules, 2015. Their stand to that extent appears to be correct, as the fair price shop owners have been selected and granted licence by the State Government but whether they do really distribute the PDS items to all the card holders every month in accordance with the rules, is the question commonly asked for by many persons. The answer to this question appears to be in the negative for the simple reason that the PDS items and in particular, rice is said to be available outside the fair rice shops. The validity and correctness of the Government orders granting licence to the fair price shop owners is not the subject matter in issue and moreover, such Government orders cannot be agitated and questioned before this Court in a PIL. Any person aggrieved by such Government orders can approach the appropriate fora including this Court by way of an application/ petition as prescribed in law. But the problem leading to alleged non-distribution or distribution of less quantity of PDS items appears to lie in the manner in which the fair price shop owners are selected by the State Government. It is commonly said that the fair price shop owners are granted licence from amongst the persons who are known to or have some sort of understanding with the local MLAs and therefore, no card holder dare to speak or raise a voice against them, even though no rice is received by him. Such a saying cannot be completely ruled out for the reason that some of the persons who did respond to the notice, have relied

upon the newspaper reports to substantiate their allegations. While sending their complaints that they have not received their entitled rice, they desire that their names should not be made known to the public. This is a glare example of their apprehension of any untoward incident. Whenever there is a change of guards in the Government, the State Government through the Deputy Commissioner appears to take steps to change the fair price shop owners, as is evident from the facts narrated in **WP(C) No.469 of 2017, Shri N.D Kadenbou & ors Vs. State of Manipur & ors**. Therefore, the attention of the State Government is drawn towards such allegation or saying by the public and any action taken by it in this regard will be highly appreciated by all and moreover, it will be in the interest of public. It may be noted that any action taken by the State Government towards implementation of an Act or any scheme without taking into account the ground realities, the object sought to be achieved therein, will never be achieved by it. It is therefore expected that the State Government may be introspective and re-look into the manner of selection of the fair price shop owners in the interest of the public.

In re: Issue (b), (c) & (d):

[11] It has been categorically averred in the affidavit filed on behalf of the respondent Nos.3 & 5 that the PDS items and in particular, rice has been distributed to all who are residing in Manipur. In order to substantiate their averment, some copies of the allocation orders issued by the Department of CAF & PD, Government of Manipur have been annexed to the affidavit. It may be noted that the said allocation orders do not indicate as to when,

where and who shall lift the foodgrains from the FCI depots and deliver the same to the fair price shops. Here lies the problem. Foodgrains can be classified into two groups-one, foodgrains as commonly known as NFSA rice and rice under PMGKAY and two, rice available under OMS scheme. NFSA rice and rice under PMGKAY are to be distributed to the card holders only by the fair price shop owners in the manner as prescribed in law. In the affidavit filed on behalf of the State Government, it has been stated that the fair price shops are controlled by the Deputy Commissioners of their respective Districts and that the Deputy Commissioners are the overall supervisory/controlling authority of PDS items under the Food Act, 2013, although any notification delegating the power of the State Government upon him, is not placed on record. It is not clear to the public as to who shall lift NFSA rice and rice under PMGKAY from the FCI depots and deliver the same to the fair price shops. There is no categorical statement in the affidavit that it shall be done by the Deputy Commissioners concerned. The only thing that can be seen from their affidavit, is that during the COVID lockdown, the Deputy Commissioners have also been directed to actively engage in the transportation and distribution of essential commodities, especially rice and dal supplied under the PDS. From this statement, it can be easily inferred that somebody else does the transportation of the PDS items and the Deputy Commissioners have also been directed to actively engage in that. Public is kept in the dark in this regard and no material has been placed on record by the State Government for clarifying it. It is not known to the public as to who are the authorized agencies/ contractors whose vehicles are being used for the transportation of rice from the FCI depots to the fair price shops and how

are they received by the fair price shop owners. What is important, is not the allocation of rice by the Central Government for which there is no dispute at all. What is important to be noted, is the factum of lifting rice from the FCI depots, delivery thereof to the fair price shops and distribution of the same to the card holders by the fair price shop owners. The State Government being an institution dealing with public properties, this chain is required to be documented properly and reduced into writing and kept in the public domain for inspection by the public as mandated in Section 27 of the Food Act, 2013. There is no material on record to show that at the time of distribution of rice to the card holders by the fair price shop owners, an entry is made in the card or a receipt is obtained from the card holder or an endorsement is made for having received rice by the card holder. But in respect of rice distributed to 757 Hill Tribal Tenants, Imphal East, their signatures were obtained on paper sheets which are filed before this Court along with the affidavit. One aspect which needs to be noted at this juncture, is that in the affidavit filed on behalf of the State Government, it has been stated that in addition to NFSA rice and rice under PMGKAY being distributed to the card holders, some persons including MLAs, Social Workers, NGOs, Clubs etc. do really buy rice available under OMS scheme and distribute the same to the general public. This averment has been made in the affidavit to give an impression to the public that MLAs are not involved in the distribution of PDS rice. This averment appears to be prima facie incorrect for the reason that the incidents that took place recently at Uripok and Thangmeiband and got flashed in the electronic and print media, do not appear to be in respect of the distribution of rice available under OMS scheme. Since rice available

under OMS scheme is to be purchased for distribution or consumption, there is no question of such incidents having arisen at all. Therefore, the said incidents appear to have something to do with the distribution of NFSA rice or rice under PMGKAY. On top of that, some of the MLAs are alleged to have stated recently in the public through the electronic and print media that rice to be distributed by them to the people, are not commensurate with the population in their respective constituencies. The statements made by them in the public cannot be said to be in respect of the distribution of rice available under OMS scheme but are definitely made in respect of NFSA rice or rice under PMGKAY. The involvement of MLAs in the distribution of NFSA rice or rice under PMGKAY is prima facie implicit in their statements. Over and above, it has been stated by a person in his response to the notice that each MLA appoints a nominee who will take monthly quota from the go-down of the CAF & PD and keep it in his go-down and thereafter, hand over the same to the fair price shops in accordance with the direction of the MLA, for which he has relied upon the newspaper reports. It is thus seen that the averments made in the affidavit do not reflect the correct picture or for that matter, the facts and therefore, the same cannot be countenanced fully by this Court. It may be noted that more than two hundred documents namely various letters issued by the Department of CAF & PDs for issuance of ROs regarding rice under the OMS scheme being purchased by the MLAs, CSOs, police/ MR personnel etc. have been filed along with the affidavit and on perusal thereof, only some MLAs/ MP namely Shri R.K. Ranjan Singh, MP; Hon'ble Minister, Shri Th. Biswajt Singh; Shri Th. Shyamkumar Singh, Ex-Minister, Shri M.K Preshow Shimray, MLA; Hon'ble MLA, Lamlai Assembly

Constituency; Shri A.K Arthur, MLA with few CSOs and police personnel are found to have purchased it and there is no material on record to demonstrate that the remaining MLAs also have purchased rice under the OMS scheme for distribution to the general public. It is well known that MLAs being the representatives of the people, their role is significant and it is indubitably true that they do render important and valuable service for the welfare of the people. It is, however, nowhere contemplated in the Food Act, 2013 that MLAs shall be allowed or involved in the distribution of the PDS items. But it may not be appropriate for this Court to pass any order in this regard in the absence of MLAs or without giving them an opportunity of being heard, as they are not arrayed as party in the PIL. If the State Government is desirous of getting MLAs involved in the distribution of the PDS item, it is open to it to approach the Central Government for amendment of the Food Act, 2013.

In Re: Issue (e):

[12] In the affidavit filed on behalf of the State Government, it has been stated that a mechanism has been put in place to monitor the distribution of the PDS rice. It appears to be correct to some extent for the reason that one of the functions of the State Food Commission is to monitor and evaluate the implementation of the Act. But for want of materials placed on record, it is not clear as to whether the distribution of PDS items including rice is being monitored regularly by the State Food Commission. There is no, at present, an independent State Food Commission in the State and the State Consumers Grievances Redressal Commission, Manipur has been designated as the State Food Commission. Section 11 of the PDS (Control) Order, 2015 also provides for monitoring mechanism. It provides that the

State Government shall ensure regular inspections of fair price shops not less than once in three months by designated authority which means any officer not below the rank Food and Civil Supplies Inspector in the State Government, for which the State Government shall issue orders specifying the inspection schedule. There is no material on record to show that the provisions relating to monitoring provisions as aforesaid have been fully implemented by the State Government. Over and above, copies of the inspection reports submitted by the designated authority are not placed on record for perusal by this Court. It is stated by some persons in their response that since the monitoring mechanism as envisaged in the Food Act, 2103 and the PDS (Control) Order, 2015 is found to be ineffective, it is the right time that an effective one shall be put in place by the State Government in the interest of public. Section 24 (2) of the Food Act, 2013 specifically provides that it shall be duty of the State Government to ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule-I and in case of non-supply of the entitled quantities of foodgrains or meals to the entitled persons, the State Government shall be responsible for payment of food security allowance. Such a provision is indispensable because rights have been conferred upon the card holders under the Food Act, 2013. The State Government needs to take appropriate steps to ensure that the mechanism, put in place by it, becomes an effective one so that public may not have any grievance.

In Re: Issue (f):

[13] As regards this issue, it has been stated that an internal grievance redressal mechanism has been put in place. Online complaints can be

lodged at www.mngrams.nic.in. This seems to be a new one because the online portal as mentioned in the Manipur Food Security Rules, 2019 is www.pdsmanipur.nic.in. The Vigilance Committees have been formed and District Grievance Redressal Officers have been appointed by the State Government and in addition thereto, the State Consumer Grievances Redressal Commission has been designated as the State Food Commission in the State. Copies of the Government orders dated 03-10-2015 and 25-09-2017 issued by the Department of CAF & PD, Manipur have been placed on record. A person whose right conferred under provisions of the Food Act, 2013 has been infringed by the State or its instrumentalities, is open to him to come forward and assert his right in accordance with law. Innumerable schemes have been launched by the Central Government for the welfare of the people and the Central Government is not oblivious of the fact that unless citizens are aware of their rights, the implementation of the schemes meant for them may remain a dream. The schemes like PDS, ICDS, PMGKAY etc. are considered to be some of the largest welfare schemes not only in India but in the world in terms of the number of beneficiaries involved and a large amount of money being spent thereon. Keeping in mind thereof and other factors, the Central Government has enacted the Legal services Authorities Act, 1987, the purpose of which is to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The Judiciary in the country has been entrusted the task of making the citizens aware of their rights and providing legal aids to eligible persons subject to the terms and conditions mentioned

therein. The Manipur Legal Services Authority (MASLSA) has been constituted and in addition thereto, District Legal Services Authorities have also been constituted in all the districts in Manipur. As many as 132 Legal Aid Clinics have been opened in different parts of the State for which about 700 Para Legal Volunteers have been engaged. Every front office is led by an Advocate. Many advocates have been engaged as the Legal Aid Counsels to provide legal aid to the needy persons. Awareness programmes are being organized by the Manipur Legal Services Authority, from time to time, in different districts but the unfortunate part is that the attendance of the public in such functions is very thin with the result that as and when they confront with any problem, they do not know how to approach the MASLSA. Any card holder who is aggrieved by any act of omission/ commission of the fair price shop owner due to non-supply or supply of less quantity of foodgrain, may lodge his complaint at the official online portal or to the District Grievance Redressal Officers. If such a person needs assistance for lodging a complaint, he may approach any Legal Aid Clinic or the front office/ the Secretary, District Legal Services Authority or the Member Secretary, Manipur Legal Services Authority for it and the details thereof can be had from its website-www.maslsa.nic.in.

[14] Law is made by the legislature. Such law cannot be said to be enough to deal with all kinds of situation and therefore, while making the law, the legislature always endeavours to ensure that a proviso or an exception is incorporated therein. Section 44 is one of such provisions which provides that the Central Government or as the case may be, the State Government, shall be liable for any claim by any person entitled under the Food Act, 2013

except in the case of war, flood, fire, cyclone or earthquake affecting the regular supply of food grains or meals to such person under the Act. It is not clear as to whether the Central Government, in consultation with the Planning Commission (Niti Aayog), has declared whether or not any situation affecting the regular supply of foodgrains to such person has arisen, as provided in the proviso thereto. Due to the outbreak of COVID-19, the State Government appears to have announced that every person residing in Manipur shall be given 5 kg of rice free of cost. It is a good gesture and is highly appreciable & commendable and moreover, no one appears to be aggrieved by such an announcement. But there appears to be no announcement that the method of distribution of rice as envisaged in the Food Act, 2013, will not be followed to implement this policy decision or in other words, the manner in which rice will be distributed, is not made known to the public. In any case, the grievances of the petitioners and the persons who submitted their complaints/ suggestions to this Court pursuant to the notice given by this Court to the general public, are that many persons including themselves have been left out from the distribution of rice. It is unfortunate, provided it is true and the State Government needs to pay its immediate attention. Foodgrains being public properties like Government employees being public servants and money held by the Government being public money, the State Government is duty bound to ensure that PDS items including rice, are in fact distributed to the needy persons. In order to implement the provisions of the Food Act, 2013 fully and effectively, the involvement of the public in general and in particular, CSOs, Local Clubs, Student's Organisations, Meirapaibi etc. is a must and indispensable.

Section 11 provides that the list of identified eligible households shall be placed in the public domain and displayed prominently. Section 27 provides that all Targeted PDS related records shall be placed in the public domain and kept open for inspection to public. The aforesaid list of eligible households needs to be checked by the public to find out, if any ineligible household has been included therein. It is nothing but a check by the public to prevent misuse of their properties. As has been observed hereinabove, foodgrains being public properties, the factum of lifting, delivery and distribution thereof is to be duly recorded in black and white so that the public can inspect it. In order to obviate such lodging of complaints in future, Public is expected to be vigilant and well informed by inspecting the records regularly. Many persons, say philanthropist, including the members of different CSOs, Clubs, NGOs, Women's Organization (Meirapaibi) etc. are seen, in this time of COVID-19 crisis, in the news to have extended their help in the form of relief items. It is highly appreciable and is a good sign of living together harmoniously in the society by helping each other. It is an undeniable fact that many CSOs, in the past and in the present as well, have rendered incredible services towards solving the problems faced by the people in Manipur. We hope and trust that they will definitely come forward and extend their valuable help in uprooting the ills relating to the distribution of PDS items in Manipur once and for all.

[15] In view of the above and for the reasons stated hereinabove, the instant PIL stands disposed of with the following directions:

- (a) The Secretary/ Commissioner/ Principal Secretary, Department of CAF & PD, Government of Manipur is directed to upload the list of

identified eligible households (district-wise) at its official website within a week from the date of receipt of a copy of this judgment and order and inform, thereafter, the public about it;

- (b) The Registrar General, High Court of Manipur is directed to furnish the list of complainants, along with their complaints received by this Court, to the Secretary/ Commissioner/ Principal Secretary, Department of CAF & PD, Government of Manipur who shall get it verified within two days from the date of receipt thereof and if any of the complaints is found to be correct, rice shall be given to them, forthwith, with receipts to be obtained from them;
- (c) The State Government and in particular, the Secretary/ Commissioner/ Principal Secretary, Department of CAF & PD, Government of Manipur shall disclose and notify to the public, through the print and electronic media, the details of the **authorized agencies** like names and addresses etc. as defined in PDS (Control) Order, 2015 or the contractors through whom foodgrains will be lifted by it within three days from the date of receipt of a copy of this judgment and order;
- (d) The State Government and in particular, the Secretary/ Commissioner/ Principal Secretary, Department of CAF & PD, Government of Manipur shall inform the public through the print and electronic media, the name and designation of the **authorized officers/ subordinate officers** to whom the power of the State Government has been delegated as provided in Section 35 of the

Food Act, 2013 within three days from the date of receipt of a copy of this judgment and order;

- (e) No any person other than the authorized officer/ subordinate officer delegated with the power by the State Government, through the authorized agencies or the contractors duly disclosed and notified by the State Government as per direction (c) above, shall be permitted to lift PDS items including rice from the FCI depots or from the depots of the Food & Civil Supplies Department. If any person other than the authorized officer/ officer delegated with power by the State Government, through the authorized agencies/ contractors duly notified by the State Government, is found by the public including CSOs, Clubs, Student's Organizations, Meirapaibi etc. to be lifting or to have lifted foodgrains from the FCI depots or depots of the Food & Civil Supplies Department, the Secretary/ Commissioner/ Principal Secretary (CAF & PD), Government of Manipur shall be responsible for it;
- (f) The General Manger, FCI, Manipur Branch is directed not to allow lifting of foodgrains by any person other than the authorized officer/ officer delegated with the power by the State Government as provided in Section 35 of the Food Act, 2013 through the authorized agencies or the contractors whose names have been duly notified by the State Government, failing which he shall be responsible for it;
- (g) The fair price shop owners are directed to maintain records in the form of receipts or entries made in the ration cards to show the

factum of having duly distributed PDS items including rice to the card holders. If any fair price shop owner is found not maintaining such records by any CSO or Local Club or Student's Organisation or Meirapaibi etc. or it is reported by the card holder that no such receipt is issued to him, the concerned authority shall enquire into it within a week and, if found correct, shall take immediate actions against the fair price shop owner including the cancellation of licence. Such an enquiry report shall be made known to the public through print and electronic media or by uploading it in the official website, failing which the concerned authority shall be responsible for it.

- (h) Any entitled person/ card holder who is aggrieved due to non-supply or supply of less quantity of PDS items including rice by the fair price shop owner, may approach any Legal Aid Clinic or the front office/the Secretary, District Legal Services Authority or the Member Secretary, Manipur Legal Services Authority for assistance towards lodging a complaint;
- (i) Any entitled person/ card holder who is aggrieved due to non-supply or supply of less quantity of PDS rice by the fair price shop owner, may approach any CSO or Local Club or Student's organization or Meirapaibi etc. operating in that area for assistance and in the event of any request being made by him, such organization is humbly requested to extend its valuable help;
- (j) All CSOs or Local Clubs or Student's Organisations or Meirapaibis etc. are requested to inspect the records relating to Targeted

Public Distribution System which are alleged to have been placed by the State Government in the public domain and during the course of inspection, if any irregularity/ illegality is found or detected by them, the same may please be informed to the concerned Vigilance Committee or the District Grievance Redressal Officer or the State Food Commission for appropriate action. Any decision/ action taken by any of the above mentioned authorities shall be made known to the public, failing which they shall be responsible for it;

- (k) The authorized officer/ subordinate officer delegated with the State Government's power as provided in Section 35 of the Food Act, 2013 and all the fair price shop owners are directed to hand over the ration cards, if not already done, to the identified and eligible households within a week from the date of receipt of a copy of this judgment and order by the State Government which shall, in turn, inform all the fair price shop owners about this order. In case they fail to hand over the same as directed above, they shall be responsible for it;
- (l) The State Government and in particular, the Secretary/ Commissioner/ Principal Secretary (CAF & PD), Government of Manipur is directed to take immediate and appropriate steps, if not already taken, to introduce a system by which a web-based data capturing of all transactions which involve digitization of data of beneficiaries, linking of beneficiaries data with Adhar, up-loading of data on the national portal etc. is ensured;

- (m) The authorized officer/ subordinate officer delegated with the State Government's power as provided in Section 35 of the Food Act, 2013 or for that matter, the Deputy Commissioner, if State's power happens to be delegated upon him, shall inform the public, well in advance, the date and time when foodgrains will be lifted either from the FCI depots or from the State Civil Supplies go-down and delivered to the fair price shops so that public will have the opportunity to inspect the fair price shops. Foodgrains so lifted, shall be delivered to the fair price shops on the same day in respect of the valley areas and latest by the next day in respect of the hill areas. It is made clear that no foodgrains shall be lifted without informing the public as aforesaid;
- (n) There are thousands of households which keep their paddy reserved for a year and in addition thereto, there are many Class-I officers, Income Tax Payees including contractors, businessmen etc. in the State. Keeping in mind the uncertainty of the COVID-19 crisis coming to an end in the near future, the State Government may identify them and persuade them to desist from accepting relief items free of cost so that the same can be given to the needy persons;
- (o) Many persons including MLAs, CSOs, Clubs, Social Workers etc., are seen quite often in the print and electronic media extending help to the people in the form of donation or distribution of essential commodity with the result that one person, sometimes, might have received it from different persons, while other might

have received it from one person only. The State Government may consider this aspect and lay down the guideline so that such situation can be obviated in future;

(p) The Secretary/ Commissioner/ Principal Secretary (CAF & PD), Government of Manipur is directed to examine the correctness of the allegation as mentioned in para 11 above that MLAs are involved, in some manner, in the lifting, delivery and distribution of PDS items including rice and if it is true, an immediate action shall be taken to ensure that they are not involved at all, an affidavit of compliance thereof shall be filed within two weeks from the date of receipt of a copy of this judgment and order;

(q) All Non-card holders also shall be given rice free of cost as announced by the Hon'ble Chief Minister, Manipur and any non-card holder is aggrieved due to the non-supply or supply of less quantity of rice may lodge a complaint in the same manner as has been directed by this Court at direction (h) & (i) above. On receipt of such a complaint, it is the duty of the State Government to ensure that the needful is done immediately without fail.

Copies of this judgment and order shall be sent to the counsels appearing for the parties through their WhatsApp or e-mail and to the General Manager, FCI, Manipur Branch for doing the needful. A copy of the judgment and order shall also be sent to the State Government by the Registry immediately.

JUDGE

JUDGE

Devananda