

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

TUESDAY, THE 31ST DAY OF JANUARY 2023 / 11TH MAGHA, 1944

WA NO. 1965 OF 2022

AGAINST THE ORDER/JUDGMENTWP(C) 17562/2021 OF HIGH COURT OF KERALA

APPELLANT/S:

- 1 THE STATE OF KERALA REPRESENTED BY SECRETARY TO
GOVERNMENT
FOOD & CIVIL SUPPLIES DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM., PIN - 695001
- 2 THE CHIEF SECRETARY
GOVERNMENT SECRETARIAT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM., PIN - 695001
- 3 DEPARTMENT OF FINANCE REPRESENTED BY SECRETARY TO
GOVERNMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM., PIN -
695001
- 4 COMMISSIONER OF CIVIL SUPPLIES
DEPARTMENT OF CIVIL SUPPLIES, PUBLIC OFFICE BUILDING,
MUSEUM ROAD, VIKASBHAVAN S.O., THIRUVANANTHAPURAM., PIN
- 695001
- 5 DIRECTOR OF CIVIL SUPPLIES
PUBLIC OFFICE BUILDING, MUSEUM ROAD, VIKASBHAVAN S.O.,
THIRUVANANTHAPURAM., PIN - 695001

BY ADVS.

ADVOCATE GENERAL OFFICE KERALA

SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL()

SPL GOVERNMENT PLEADER SHRI RANJITH S.

RESPONDENT/S:

P.G.RAGHAVAN PILLAI @ PRIYANKUMAR
S/O. GOVINDAPILLAI, PAINAGATTAZHICATHUVEEDU,
NADUVILEMURI, CHATHAKULAM P.O., KOLLAM., PIN - 690520

BY ADV RESHMI JACOB

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31.01.2023,
ALONG WITH WA.1975/2022 AND CONNECTED CASES, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

TUESDAY, THE 31ST DAY OF JANUARY 2023 / 11TH MAGHA, 1944

WA NO. 1975 OF 2022

AGAINST THE JUDGMENTWP (C) 25197/2021 OF HIGH COURT OF KERALA

APPELLANT/S:

1 STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT
FOOD & CIVIL SUPPLIES DEPARTMENT, THIRUVANANTHAPURAM.,
PIN - 695001

2 THE DIRECTOR OF CIVIL SUPPLIES
OFFICE OF THE COMMISSIONER OF CIVIL SUPPLIES, PUBLIC
OFFICE COMPLEX, THIRUVANANTHAPURAM., PIN - 695033

BY ADVS.

ADVOCATE GENERAL OFFICE KERALA

SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL()

SPL GOVERNMENT PLEADER SHRI RANJITH S.

RESPONDENT/S:

1 T MUHAMMED ALI
ARD NO. 143, PALANGAD, KANNIPPARAMBU, MAVOOR, KOZHIKODE
(ALSO THE GENERAL SECRETARY, ALL KERALA RETAIL RATION
DEALERS ASSOCIATION), RESIDING AT NOUFAL NIVAS,
CHEROOPPA, KOZHIKODE., PIN - 673661

2 BABY THOMAS
ARD NO. 213, THRIPUNITHURA, ERNAKULAM - 682 301, (ALSO
THE ORGANIZING SECRETARY ALL KERALA RETAILS RATION
DEALERS ASSOCIATION) RESIDING AT
NADUVILAVEETILTHEKKUMBHAGAM, MARKET ROAD,
THRIPUNITHURA., PIN - 682301

WA NO. 1975 OF 2022

-2-

3 KERALA STATE CIVIL SUPPLIES CORPORATION (SUPPLYCO)
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR
MAVELIBHAVAN, MAVELI ROAD, GANDHI NAGAR, COCHIN,, PIN -
682020

4 UNION OF INDIA REPRESENTED BY SECRETARY TO GOVERNMENT
MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC
DISTRIBUTION, NEW DELHI., PIN - 110006

BY ADVS.
M.U.VIJAYALAKSHMI
SMT.MOLLY JACOB, SC, SUPPLYCO
ASSISTANT SOLICITOR GENERAL
K.JAJU BABU (SR.) (K/116/1981)
BRIJESH MOHAN (K/1851/1999)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31.01.2023,
ALONG WITH WA.1965/2022, 1976/2022 AND CONNECTED CASES, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

TUESDAY, THE 31ST DAY OF JANUARY 2023 / 11TH MAGHA, 1944

WA NO. 1976 OF 2022

AGAINST THE ORDER/JUDGMENTWP(C) 18487/2021 OF HIGH COURT OF KERALA

APPELLANT/S:

- 1 THE STATE OF KERALA REPRESENTED BY SECRETARY
DEPARTMENT OF FOOD & CIVIL SUPPLIES, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM., PIN - 695001
- 2 THE STATE OF KERALA REPRESENTED BY SECRETARY
DEPARTMENT OF FINANCE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM., PIN - 695001
- 3 THE CHIEF SECRETARY
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM., PIN - 695001
- 4 THE COMMISSIONER OF CIVIL SUPPLIES
DEPARTMENT OF CIVIL SUPPLIES, PUBLIC OFFICE BUILDING,
MUSEUM, VIKASBHAVAN P.O., THIRUVANANTHAPURAM., PIN -
695033
- 5 THE DIRECTOR OF CIVIL SUPPLIES
DEPARTMENT OF CIVIL SUPPLIES, PUBLIC OFFICE BUILDING,
MUSEUM, VIKASBHAVAN P.O., THIRUVANANTHAPURAM., PIN -
695033

BY ADVS.

ADVOCATE GENERAL OFFICE KERALA

SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL()

SPL GOVERNMENT PLEADER SHRI RANJITH S.

RESPONDENT/S:

1 AJITH
 ARD NO. 5 (FPS-1949005), KATTUKULAM, ALANELLUR,
 MANNARKKADTALUK, PALAKKAD DISTRICT., PIN - 678601

2 SIVADASAN P.
 ARD NO. 142 (EPS-1946142), VELIKKAD P.O., MUNDUR,
 PALAKKAD TALUK, PALAKKAD DISTRICT., PIN - 678592

BY ADVS.
SHRI M.V.BOSE
SHRI VINOD MADHAVAN
SHRI BIJU VARGHESE ERUMALA(B-197)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31.01.2023,
ALONG WITH WA.1975/2022 AND CONNECTED CASES, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

TUESDAY, THE 31ST DAY OF JANUARY 2023 / 11TH MAGHA, 1944

WA NO. 2002 OF 2022

AGAINST THE ORDER/JUDGMENTWP(C) 17739/2021 OF HIGH COURT OF KERALA
APPELLANT/S:

- 1 THE STATE OF KERALA REPRESENTED BY SECRETARY TO
GOVERNMENT
FOOD & CIVIL SUPPLIES DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM., PIN - 695001
- 2 THE DIRECTOR OF CIVIL SUPPLIES
OFFICE OF THE COMMISSIONER OF CIVIL SUPPLIES, PUBLIC
OFFICE COMPLEX, THIRUVANANTHAPURAM., PIN - 695033

BY ADVS.

ADVOCATE GENERAL OFFICE KERALA

SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL()

SPL GOVERNMENT PLEADER SHRI RANJITH S.

RESPONDENT/S:

- 1 P.A.NOUSHAD
ARD NO. 1732044, STATE SECRETARY - ALL KERALA RETAIL
RATION DEALERS ASSOCIATION, REG. NO. 540/89, PARAKKATTU
BUILDING, PULLEPPADY ROAD, ERNAKULAM, RESIDING AT
48/1837, PEEBEESPARAKKATTU HOUSE, PUTHENPURA ROAD,
ELAMAKKARA, COCHIN., PIN - 682026

WA NO. 2002 OF 2022

-2-

2 KERALA STATE CIVIL SUPPLIES CORPORATION (SUPPLYCO)
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR
MAVELIBHAVAN, MAVELIRAOD, GANDHI NAGAR, COCHIN., PIN -
682020

BY ADVS.
M.U.VIJAYALAKSHMI M U
K.JAJU BABU (SR.) (K/116/1981)
BRIJESH MOHAN (K/1851/1999)

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 31.01.2023,
ALONG WITH WA.1975/2022 AND CONNECTED CASES, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

A.MUHAMED MUSTAQUE & SHOBA ANNAMMA EAPEN, JJ.

W.A.Nos.1965, 1975, 1976 & 2002 of 2022

Dated this the 31st day of January, 2023

J U D G M E N T

A.Muhamed Mustaque, J.

This appeal by the State arises out of a writ petition filed by Authorised Retail Distributors (ARDs) claiming commission charges for the free food-kit supplied by the State during the pandemic period. The learned Single Judge who heard the matter allowed the claim.

2. The Government in the wake of the covid pandemic in the State decided to distribute a few free food-kits through ARDs as per its order dated 6/4/2020. The Government also cautioned ARDs on 8/4/2020 that any lethargy and laches on the part of ARDs in distributing free food-kits would face adverse consequences. The individual petitioners,

who are ARDs appointed under the Kerala Rationing Order, 1966 admittedly distributed free food-kits pursuant to the Government Order dated 6/4/2020, even though this distribution is not the one contemplated under the Kerala Rationing Order. On 23/7/2020, the Government proposed ARD commission at the rate of Rs.5/- per free food-kit. Consequent upon the demand raised by the All Kerala Retail Ration Dealers Association, the commissioned rate was revised to Rs.7/- per food-kit on 30/7/2020. Again, the Government revised and reduced the rate of Rs.7/- to Rs.5/- per food-kit on 19/2/2021.

3. The Government paid commission rate, at the rate of Rs.5/- per food-kit only during the month of August 2020. The Government, however, did not stop the distribution of free food-kits and decided to continue distribution of food-kits as per its order dated 17/5/2021.

4. ARDs demanded commission from September 2020, totalling 11 months; there is no dispute as to the distribution of food-kits for 11 months from September 2020 and non payment of commission.

5. The Government takes the stand that ARDs are not entitled to claim commission charges as a matter of right and they cannot claim commission charges for humanitarian service rendered by them during the pandemic. Further, it is claimed that initial charges were paid by the Government based on the Government orders and those Government orders do not cover the distribution made during subsequent periods.

6. Distribution of free food-kits was not based on any written contract nor was it based on any rationing order. Nobody has a case that ARDs have agreed to distribute without any compensation or payment. It is to be noted that the Government threatened ARDs with severe consequences if they failed to distribute food-kits in a proper manner.

Quasi contract is not alien to our laws. Section 70 of the Indian Contract Act, 1872 states as follows:

70. Obligation of person enjoying benefit of non-gratuitous act.

—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

7. This is not a case where the State Government had not fixed any rate at all as a commission for distribution of food-kits. If the Government had not fixed any rate, the proper remedy of ARDs would have been before the civil court. The Government having fixed a rate initially, it cannot wriggle out from the promise made from paying the commission. This aspect can be dealt in a writ jurisdiction. The denial can be classified as an arbitrary action. The learned Single Judge only allowed the claim for commission at the rate of Rs.5/- per food-kit.

8. In **State of West v. M/s. B. K. Mondal And Sons [1962 AIR 779]**, the Apex Court held that if the State Government enjoyed the benefit of gratuitous work, it is bound to pay compensation.

In the above circumstances, we do not find any reason to interfere with the impugned judgment. However, we make it clear that only those ARDs who have approached this Court alone can demand the claim for commission as above. We also grant the Government time to comply with the directions of the learned Single Judge, till 31/3/2023. With the observation as above, the writ appeals are dismissed. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

SHOBA ANNAMMA EAPEN, JUDGE

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