

(2022) 02 KL CK 0018

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.17562, 17739, 18487, 25197 Of 2021

P.G.Raghavan Pillai @ Priyankumar

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 02-02-2022

Acts Referred:

Citation : (2022) 02 KL CK 0018

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : Reshmi Jacob, Priyadarsini Vincent, Bobby Thomas, K.Jaju Babu, Brijesh Mohan, M.U.Vijayalakshmi, M.V.Bose, Vinod Madhavan, Sharath S.Puthenparampan, Aslem Sanjid.M., K.P.Jayachandran, R.Lakshmi Narayan, K.Jaju Babu, Brijesh Mohan, Antony Thomas, M.U.Vijayalakshmi, Alisha Chalakal, Jagadeesh Lakshman, S.Manu

Final Decision : Disposed Of

Judgement

N. Nagaresh, J.

1. Petitioners in these writ petitions are Authorised Retail Distributors (ARD) appointed under Clause 45 of the Kerala Rationing Order, 1966. The

petitioners seek to declare that the ARDs appointed under the Kerala Rationing Order, 1966 are eligible and entitled for commission towards

distribution of the Free Food-Kits pursuant to Government Order dated 06.04.2020. Consequential and incidental reliefs are also sought for.

2. The petitioners state that as per the provisions of the Food Safety Act, for public distribution of food articles, permissible commission is ☐ 220/- per

quintal. The Government of Kerala issued Ext.P3 order dated 30.11.2018 (in W.P. (C) No.17739/2021) in tune with the Food Safety Act, fixing

commission for ARDs at the rate of ☐ 220/- per quintal. Therefore, from the year

2018, the ARDs are entitled to commission as prescribed under Ext.P3.

3. The Government issued Ext.P4 order dated 06.04.2020 (in W.P.(C) No.17739/2021) deciding to supply free Food-Kits of 17 food articles to all ration card holders and also to those not having ration cards. The decision was taken in the context of Covid-19 pandemic. The distribution of free Food-Kits was to be done by ARDs and the expenditure was to be met from the Chief Minister's Relief Fund. Ext.P5 instructions dated 08.04.2020 (in W.P.(C) No.17739/2021) made it clear that any delay or latches on the part of the ARDs in distributing free Food-Kits would be seriously dealt with. Ext.P5 did not refer to any commission payable.

4. The petitioners state that on 23.07.2020, the Government proposed commission at the rate of ₹ 5/- per free Food-Kit. The All Kerala Retail Ration Dealers' Association objected to the rate and consequently, the rate was revised to ₹ 7/- per free Food-Kit as per Ext.P6 order dated 30.07.2020 (in W.P.(C) No.17739/2021). The petitioners state that the free Food-Kits ordered to be supplied as per Ext.P4 were of 10 Kg. each and therefore going by Ext.P3, the petitioners are eligible to get commission at the rate of ₹ 22/- per kit. However, the petitioners were paid only ₹ 7/- per kit. Even the said commission was discontinued during the months of May, June and July, 2020.

5. Distribution of Free Food-Kit was resumed in August, 2020 and the Kits weighed 5.100 to 5.400 Kg. The Government ordered to collect ₹ 500/- to ₹ 700/- from the ARDs as donation to the Chief Minister's Relief Fund, as per Ext.P7(a). The Government has been collecting from the ARDs One Rupee per Quintal of Rice and Wheat towards Covid Relief Fund. The Government as per Ext.P7 Order directed to pay ₹ 1,000/- as honorarium to ARDs. The so-called honorarium was paid to ARDs from the amounts collected from the ARDs. At the same time, by Ext.P8 order dated 19.02.2021, the commission was reduced from ₹ 7/- to ₹ 5/- per kit.

6. The said commission at the rate of ₹ 5/- was paid only for the month of August, 2020. For the month of September, 2020, no commission has been paid. The Government, however, made payments for packing charges, sealing charges and transporting charges, promptly. By G.O. dated 17.05.2021, the Government decided to continue to give Covid-19 Free Food Kits in May, 2021 also. The All Kerala Retail Ration Dealers' Association submitted

Ext.P10 representation dated 25.05.2021 demanding sanction and disbursement of commission pending from September, 2020. Pursuant thereto,

Ext.P11 G.O. was issued permitting the Director of Civil Supplies to disburse ₹ 4.25 Crores towards ARD commission. However, arrears of commission for the last 11 months remain yet to be paid.

7. The learned counsel for the petitioners argued that the ARDs are eligible and entitled to commission towards supply of rationed articles under the

Public Distribution System in accordance with the time limit prescribed in Ext.P1 and the rate fixed by the Government in Ext.P3. The ARDs have

supplied Free Food-Kit along with other rationed articles as a sincere service, in implementation of Ext.P4 in the wake of spread of Covid-19

pandemic. The Government has paid charges incurred for preparation and distribution of Free Food-Kits in the fields of Packing, Sealing,

Transportation, etc. The ARDs, who have supplied the Kits to end-users alone, are discriminated against.

8. The 1st respondent-State of Kerala resisted the writ petition filing counter affidavit. The 1st respondent contended that the disbursement of

commission and price fixing for the free distribution of Food-Kits is a policy decision of the Government, not covered by any statute. Hence, a writ

petition is not maintainable. The State is responsible to ensure that every household get adequate food at fair price. The decision to distribute Free

Food-Kits was taken in the wake of Covid-19 Lockdown. Seventeen essential grocery items were purchased by Supplyco. The ARDs only did

personal distribution. Government initially decided to pay at the rate of ₹ 5/- to ARDs which was enhanced to ₹ 7/- later. For Onam Kit distribution

consisting of 11 food items also, amounts were sanctioned at the rate of ₹ 5/-.

9. The Director, Civil Supplies disbursed ₹ 5,91,36,112/- for supply of subsistence kit. Unfortunately, the ARDs's Association demanded

commission for distribution of Free Food-Kits to the general public. As a goodwill gesture, the Government offered ₹ 5/- per kit which was later

enhanced to ₹ 7/-. The petitioners have no legal right to claim commission for distribution of Free Food-Kits. The ARDs were supplied with Food-Kits

at door step. They only had to distribute the same. No efforts were needed at the end of ARDs. During difficult times, all agencies including

Government servants, came forward giving physical and other supports to aid

the Government in its Herculean efforts to keep the pandemic situation under control. Every citizen, Agency and Organisation in Kerala took it as their duty and obligation to help the State's efforts without expecting or demanding anything in return.

10. Still, considering the demands of ARDs, the Government sanctioned honorarium of ₹ 1,000/- to them. Covid Insurance of ₹ 7.5 lakhs was provided to 28398 ARD Dealers and Salesmen during pandemic period spending ₹ 3,01,02,000/-. The ARDs were receiving commission at the rate of ₹ 220/- per Quintal for the additional food grains distributed under various schemes like PMGKAY and ANB of Government of India and also OMSS

scheme. The ARDs were placed in a financially stable condition even when all other traders and labourers suffered. The respondents urged that it is

unfair to demand commission for service rendered by the ARDs during the pandemic period which is against the humanity and spirit of brotherhood.

11. I have heard the learned counsel for the petitioners, the learned Additional Advocate General and Government Pleader representing the State of

Kerala and the learned Standing Counsel for Kerala State Civil Supplies Corporation.

12. The ARDs of the petitioners were governed by the Kerala Rationing Order, 1966 and are now governed by the Kerala Targeted Public

Distribution System (Control) Order, 2021. The petitioners were appointed under the Kerala Rationing Order, 1966. The commission/margin payable

to the ARDs/Fair Price Shops appointed under the Kerala Rationing Order, 1966 and the Kerala Targeted Public Distribution System (Control) Order,

2021 for distribution of rationed articles, is governed by the packages and orders issued by the Government from time to time.

13. Ext.P3 G.O. dated 30.11.2018 was issued in the context of implementation of the Food Safety Act, 2013 in Kerala. Ext.P3 provided that ration

dealers who distribute pulses up to 44 Quintal are eligible to receive commission at the rate of ₹ 220/- per Quintal. Distribution of Free Food-Kits

undertaken by the Government during Covid-19 pandemic stands on different footing. The Free Food-Kits weighed, prepared and packed are supplied

at the door of ARDs and the ARDs were to only distribute the prepared Food-Kits to eligible citizens.

14. The Free Food-Kit distribution was a special case requiring much lesser

efforts on the part of ARDs. The Government therefore originally fixed

□ 5/- per Kit as commission, as per a G.O. dated 23.07.2020 and taking into consideration the request of the All Kerala Retail Ration Dealers'

Association, the commission was enhanced to □ 7/-per Kit as per Ext.P6 G.O. dated 30.07.2020. The petitioners are entitled to receive commission at

the rates prescribed under Ext.P6 G.O. The petitioners have no legal right to claim commission prescribed under Ext.P3 G.O., which was not intended

to apply to special cases like Free Food-Kit distribution.

15. The stand of the Government is that since the Free Food-Kit distribution is a humanitarian service and since a large number of NGOs and common

public came forward to render free service in the massive efforts of the Government to combat Covid-19 pandemic, the supply of 'free food' kit

through ration shops shall be treated as voluntary service and not a paid job. A service becomes voluntary only when the person performs it willingly

without pay. In the case of Free Food-Kit distribution, neither willingness was called for from the ARDs nor the ARDs have come forward

themselves expressing willingness to do the service without payment. The Government required the ARDs to distribute Free Food-Kits and even

indicated that non-distribution of Kits in time will be viewed seriously. In the circumstances, the Government will not be justified in treating the Free

Food-Kit distribution as voluntary service by ARDs.

16. Yet another fact projected by the Government is that the Government has sanctioned an amount of □ 1,000/-as honorarium to the ration dealers

towards distribution of Free Food-Kits, as per G.O. dated 09.09.2020 and has provided Covid Insurance of □ 7.5 lakhs for one year. Such benefits

extended by the Government cannot be treated as benefits in lieu of commission/margin payable to the ARDs. Furthermore, after issuing Ext.P6 G.O.,

the Government would not be justified in denying declared commission to the ARDs in view of the principles of estoppel. The defence of the

Government based on payment of Honorarium and Covid Insurance, is therefore only to be rejected.

17. As far as distribution of Onam Kits are concerned, the Onam Kits contained only 11 items and the Government has fixed □ 5/- per Kit as

commission as is evident from Ext.P8 G.O. dated 19.02.2021. As the Onam Kits contain lesser number of items, there is no illegality or arbitrariness in

fixing a lesser rate for distribution. The petitioners cannot as of right claim that they should be paid at a higher rate for distribution of Onam Kit.

The writ petitions are accordingly disposed of holding that the petitioners are not legally entitled to claim commission for distribution of Covid-19 Free

Food-Kits and Onam Kits at the rates prescribed in Ext.P3 G.O. dated 30.11.2018. The respondents are directed to disburse arrears of commission, if any, payable to the petitioners for distribution of Covid-19 Free Food-Kits and Onam Kits at the rates specified in Exts.P6 and Ext.P8, within a period of two months.