

**CR****JUDGMENT**

[WP(C) Nos.35538/2023, 243/2024, 259/2024, 288/2024, 322/2024, 966/2024, 35700/2023, 35941/2023, 36265/2023, 36427/2023, 36499/2023, 36999/2023, 38038/2023, 38884/2023, 40193/2023, 41302/2023, 41715/2023, 41847/2023, 42214/2023, 42846/2023, 42854/2023, 43163/2023, 43452/2023, 44050/2023]

Prefatorily, these writ petitions are virtually a sequel - claiming the same reliefs - to a set of ones that were filed earlier by certain others, which culminated in the judgment of this Court in WP(C)No.17739/2021 and connected matters. It must also be recorded that this judgment was confirmed by a learned Division Bench of this Court in W.A.No.1965/2022 and connected matters; and that the Special Leave Petitions attempted by the State before the Hon'ble Supreme Court against them, stand dismissed.

2. The afore facts are not in dispute and is expressly conceded by the learned counsel on both sides.

3. Compendiously, the petitioners in these cases – which have been heard together, adverting to the analogous facts and circumstances presented and the identical tenor of the reliefs sought



for – are all Authorised Retail Distributors (ARD), within the ambit of the Kerala Rationing Order, 1966, now called the ‘Kerala Targeted Public Distribution System (Control) Order, 2021’ (which will hereinafter be referred to as ‘Order’ for short); and they assert that they complied with the directives of the Government – as they are bound to do under the statutory Scheme – to distribute “Kits of Food Articles” to citizens suffering from the COVID-19 pandemic disruption and during the “Onam Season”. They say that they were promised “Commission” at specified rates, as stipulated under two Government orders - namely G.O.(R.t)No.211/2020/F&CSD dated 30.07.2020 and G.O(Rt.)No.98/2021/F&CSD dated 19.02.2021; but that they were denied the same subsequently by the Government, however, without citing any reason at all.

4. The petitioners point out that, it is an identical factual scenario that the petitioners in WP(C)No.17562/2021 and connected matters approached this Court, to obtain judgment dated 02.02.2022, wherein, after analysing and evaluating all rival positions, directions were issued to the Government to disburse to them arrears of Commission if any, payable as per Exts.P6 and P8



therein (Exts.P1 and P2 in the lead case in this batch, namely WP(C)No.35700/2023), within a period of two months. They assert that these directions have been subsequently complied with by the Government, after the appeals against it were confirmed by a learned Division Bench of this Court, as said above, in W.A.No.1965/2022 and connected appeals. They argue that, since they are identically situated as the petitioners in the afore said litigations, they are also entitled to be treated similarly and thus to be granted and awarded the same benefits by this Court.

5. I have heard the learned Senior Counsel and the learned counsel for the petitioners; as also Sri.S.Renjith – learned Special Government Pleader for the respondents, in all these matters.

6. Sri.Jaju Babu – learned Senior Counsel, instructed by Smt.Athira.T.S – learned counsel in WP(C)No.35538/2023 began his submissions relying upon the judgment of the Hon'ble Supreme Court in *State of Uttar Pradesh v. Arunkumar Srivastava* [2015(1)SCC 347] wherein, according to him, the law has been now declared that, when a particular set of persons is given a relief by Court, all other identically situated persons should be treated alike, by



extending to them the same benefit, since otherwise, it would amount to discrimination, which is anathema to the constitutional imperatives under Article 14.

7. Sri.Jaiju Babu, however, conceded that the said precedent recognizes a well entrenched exemption, namely, that if laches, delay or acquiescence is established in persons impelling their claims, it would enjoin this Court to dismiss them, especially when the judgment relied upon is delivered *in personam*. He then argued that, even going by the counter pleadings of the respondents, they do not even whisperingly state that any of the petitioners are guilty of laches, delay or acquiescence; and hence that the State cannot stand against their claims made in these Writ Petitions.

8. Sri.Jaju Babu concluded saying that, when the sole ground protected by the respondents in their counter pleadings – namely, that the distribution of the Food Kits must be seen and construed to be a ‘free service’ by the ARDs – has been found against by learned Benches in the earlier rounds of litigation, such a contention ought not to have been even impelled in these cases, since the State is fully aware that such have already been rejected



up to the Honourable Supreme Court.

9. The learned counsel for the other petitioners adopted the afore submissions of Sri.Jaju Babu, also asserting that their clients are entitled to be treated on par with the petitioners in WP(C)No.17562/2021 and connected cases.

10. The learned Special Government Pleader – Sri.Ranjith, very interestingly, conceded, to a pointed question from this Court – and as is evident from the pleadings filed by the respondents – that there is no allegation impelled against the petitioners in these cases of being guilty of laches, delay or acquiescence. He submitted that, however, they are not entitled to the benefits claimed for in this Writ Petition because, in the judgment of a learned Division Bench of this Court in W.A.No.1965/2022, it has been clarified that the benefits as ordered by the learned Single Judge in the judgment in WP(C)No.17562/2021 and connected cases, would apply only to the petitioners therein. He argued that, therefore, no other person could have come to this Court thereafter, seeking similar relief; since it stands prohibited and proscribed by the declarations of the learned Division Bench, which, can only be construed to be *in personam* and



not *in rem*. He, therefore, prayed that this Writ Petition be dismissed.

11. It is thus manifest from the afore rival recorded dialectical positions of the parties that the State does not even suggest, much less impute, that the petitioners are guilty of laches, delay or acquiescence in seeking benefits in law, *qua* the declarations in the judgment in WP(C)No.17562/2021 and connected cases – which remain approved by a learned Division Bench in W.A.No.1965/2022 and connected Appeals, against which, though SLPs were attempted, they concededly were dismissed.

12. Axiomatically, therefore, all which this Court is now concerned about are the arguments of the respondents that, notwithstanding the afore declarations, the petitioners in these cases cannot seek the benefit of Exts.P1 and P2 Government Orders (produced along with WP(C)Nos.35700/2023) because, the distribution of Food Kits by them must be construed to be ‘free service’.

13. I do not propose to expatiate on the afore argument for the sole reason that this aspect has been meticulously considered by



the learned Single Judge in his judgment in WP(C)No.17562/2021 and connected cases, as are available in paragraphs 15 and 16 thereof, which are extracted as under for ease of reading:

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.

14. Pertinently, the learned Division Bench, in fact, went one step forward, in the judgment in W.A.No.1965/2022 and connected Appeals, while confirming the findings of the learned Single Judge,



saying as under:

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.

15. No doubt, the learned Division Bench thereafter clarified that *‘only those ARDs who have approached this Court alone can demand the claim as above’* (sic).

16. It is on the afore one line of the judgment, that the State now tries to underpin their defence in these cases.

17. As noticed above, the argument of the learned Special Government Pleader is that the aforementioned precedents operate only *in personam* and not *in rem*; and therefore, that no one else can get the benefit of the same.

18. I am afraid that this is an argument which is wholly far-fetched in part and incredulous in the other because, it is now well



established – without requirement for restatement – that every claim made by an individual, particularly monetarily, can only be construed to be one *in personam*; and that directions issued by this Court, allowing it, also operates in such hue. However, when judgments declare law, it generally would operate *in rem*, in contradistinction to decisions taken on individual claims, which would depend upon the intricacies of the factual scenario presented, on a case to case basis.

19. Therefore, the argument that the earlier judgments of the learned Division and Single Benches operated only *in personam* – which is a normative Rule with respect to any claim impelled by any person, particularly for fiscal benefits – cannot appeal to a Court, as a defence to deny such benefits to identically placed persons, solely for the reason that they chose to come at a later stage of time, but within the periods of limitation – even if applicable – without any imputation, even *sotto voce*, that they are guilty of laches, delay or acquiescence. In fact, as I have already said above, the learned Special Government Pleader very fairly conceded unequivocally that there are no such allegations against



the petitioners.

20. However, it cannot be lost sight of – which appears to be conveniently disregarded by the respondents – that the earlier judgments of this Court has made certain very specific declarations – which surely operates in *rem* – qua the question whether the ‘ARDs’ should be taken to have acted in ‘Public Service’, in distributing the ‘Food Kits’ and thus being disentitled to commission earlier offered to them.

21. One, therefore, fails to fathom the argument of the respondents that, merely because the petitioners did not choose to approach this Court along with those in the earlier set of Writ Petitions, they would stand denuded of their right to claim their entitled benefits, even when no allegation – even peripherally – of laches, delay or acquiescence is made against them.

22. It is indubitable from the judgments aforementioned that the argument of the State – that the ARDs must be construed to have distributed the food kits as a ‘free service’ – has been expressly found to be untenable and it was so unambiguously declared; and obviously, therefore, it certainly is open to identically



situated persons to approach this Court, taking advantage of that declaration – which surely operates *in rem*.

23. To paraphrase, all which the learned Division Bench said was that the benefits of the judgment of the learned Single Judge would apply only to the petitioners therein – which certainly is a normal rule in cases of monetary claims; but this does not, by any stretch, mean that the rights of persons who are yet to approach Courts, are proscribed in any manner, when there is not a semblance of limitation operating against their claims – even assuming it is applicable.

24. My opinion as afore is fully fortified and guided by **Arunkumar Srivastava** (supra), which renders the position inescapable that when a certain section of litigants are given a particular relief by Courts, it cannot be denied to identically situated persons, except for the reasons already enumerated above, namely, if it is established that they are guilty of laches, delay or acquiescence. In the absence of any such vitiating factors being even passingly mentioned in the counter pleadings filed by the respondents, or argued by the learned Special Government Pleader, I am left without



any doubt that the said judgment would apply in all its force to the facts of these cases.

25. In the afore circumstances, it becomes apodictic that the counter pleadings and the defence of the respondents, seeking to barricade the claims of the petitioners, cannot find judicial approval; and that they thus become entitled to relief, since the sole contention against them is that they must forgo the amounts and accept it as 'Free Service' – it having been expressly found against by this Court in the earlier rounds of litigation.

Resultantly, I allow these Writ Petitions and direct the competent Authority of the Government to disburse the arrears of commission, if any, as entitled to the petitioners for the distribution of 'COVID-19 Free Food Kits' and 'Onam Kits', at the rates specified in Exts.P1 and P2 Government Orders (produced along with WP(C)No.35700/2023), within a period of four months from the date of receipt of a copy of this judgment.

I clarify that this time frame has been fixed – though lesser one was ordered in the earlier precedents – acknowledging the request of the learned Special Government Pleader, who cited fiscal



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constraints for the State at this point of time.

RR

Sd/ -

DEVAN RAMACHANDRAN

JUDGE