

## IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

Monday, the 29<sup>th</sup> day of March 2021/8<sup>th</sup> Chaithra, 1943WP(C) No.8237/2021PETITIONER

THE STATE OF KERALA

REPRESENTED BY THE ADDITIONAL SECRETARY TO THE GOVERNMENT  
OF KERALA, FOOD AND CIVIL SUPPLIES DEPARTMENT, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM.RESPONDENT

1. THE ELECTION COMMISSION OF INDIA

REPRESENTED BY ITS SECRETARY GENERAL NIRAVACHAN SADAN,  
ASOKA ROAD, NEW DELHI-110 001.

2. THE CHIEF ELECTORAL OFFICER OF KERALA,

NIYAMASABHA COMPLEX, THIRUVANANTHAPURAM-695 033.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the operation of Exhibit P7 communication, in so far as it defers the proposal for distribution of 10 kg rice at the rate of Rs 15/kg to Non Priority Ration Card Holders of the Petitioner State during the months of March and April , 2021, pending final disposal of this writ petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.RANJITH THAMPAN, ADDITIONAL ADVOCATE GENERAL for the petitioner and of SRI.DEEPULAL MOHAN, COUNSEL for the respondents, the court passed the following:

P.V.ASHA, J.

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W.P. (C) No.8237 of 2021  
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Dated this the 29<sup>th</sup> day of March, 2021

O R D E R

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Admit.

Adv.Sri.Deepu Lal Mohan takes notice for the respondents.

2. Petitioner challenges Ext.P7 order to the extent it deferred the proposal submitted in Ext.P6 relating to distribution of 10 kg rice to non-prioritised categories of ration card holders in March and April, 2021. According to the petitioner, item 17 was based on Ext.P4 order issued on 04.02.2021 on the basis of Ext.P3 budget speech of the Finance Minister, at a time when an Election in the month of April, 2021 was not in contemplation. Moreover, in Paragraph No.9 of the writ petition it is stated as follows:

*"9. As would be revealed from Ext.P4 Order, the Government had also ordered that the additional rice required for such distribution must be procured from the OMSS of the FCI.*

*The State, thereafter, successfully got in auction acceptance offer for rice worth Rupees 84 crores from the OMSS of the FCI. If the scheme is not materialised by 30.03.2021, the auctioned lot not lifted by the State and not paid for will be re-appropriated by the FCI and the State will have to make good the same by fresh auction, which may entail additional burden on the State."*

3. Heard Sri.Ranjith Thampan, learned Additional Advocate General appearing for the petitioner and Adv.Sri.Deepu Lal Mohan, learned Counsel appearing for the respondents.

4. A copy of the proceedings relating to acceptance of offer under OMSS(D) issued by the Regional Office - (FCI-Kerala), Food Corporation of India was made available for perusal. The said proceedings relate to auction for distribution of rice for 14 depots across Kerala for a sum of Rs.50,72,00,000/- and for another 19 depots for a sum of Rs.33,34,00,000/-. As per Ext.P6 letter,

the Principal Secretary to Government, General Administration(Co-ordination) Department forwarded a circular resolution dated 16.03.2021 to the Chief Electoral Officer to examine and to recommend urgent proposals from various departments for the clearance from Election Commission of India in respect of Model Code of Conduct 2021. Item No.17 reads as follows:

17	95/D2/2020/ F&CSD Food and CivilSuppli es Department	Distribution of 10Kg of rice at the rate of Rs.15Kg to Non- Priority card holders in the month of March & April 2021.	10Kg rice & ASL were distributed to Non-Priority card holders previously(June, July & August 2020), on account ofCovid 19 pandemic. Government have decided to continue the same for the months of March & April 2021. This special rice is essential to the Non-Priority ration card holders in view of the increase in unemployment and financial distress and consequential income loss to people due tothe spread of Covid, as they are getting
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			only less ration under NFSA.
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5. As per Ext.P7 order dated 23.03.2021, the Chief Electoral Officer informed that out of the 27 proposals submitted as per Ext.P6, only the proposal at Sl.Nos.10, 14 & 21 are conceded. With respect to Serial No.25 it was stated that concurrence of the Election Commission of India was necessary and all other proposals are deferred until the Model Code of Conduct is over. Thus item 17 is also deferred. The petitioner challenges the order deferring the proposal at item No.17.

6. Relying on the judgment of the Division Bench in W.P.(C).No.8178/2011(Ext.P8) as well as the judgment of the Division Bench reported in 2006 KHC 364 in K.M.Babu v. Election Commission of India and Others(Ext.P10) and the judgment in 2018(5)KHC 627 in Joy Issac P. and others v. Pharmaceutical Corporation (Indian Medicines) Kerala Ltd.(Oushadhi) and Others, the learned Additional Advocate General argued that implementation of decision which was taken as

early as on 04.02.2021, at a time when an election which was not in contemplation in the month of April, 2021 cannot attract the Model Code of Conduct. The learned Advocate General also referred to the compendium of instructions on Model Code of Conduct and argued that the restrictions would not apply to the State Utility schemes which have already been brought up.

7. On the other hand, the learned Standing Counsel, Sri.Deepu Lal Mohan pointed out that a screening committee has been constituted for submitting proposals before the Election Commission for clearance and the said screening committee consisting of the Chief Secretary and other Secretaries of two Departments had submitted Ext.P6 proposal, based on which Ext.P7 order was issued. It is pointed out that Ext.P6 would not reveal that a decision was taken for distribution of rice to the non-priority Ration card holders in March and April, 2021 on the basis of any decision taken in February 2021, or on the basis of the implementation of Budget Speech and the

circumstances pointed out in the Writ Petition have not been brought to the notice of the Election Commission. It was also pointed out that there was nothing in the proposal to show anything relating to the auction or the averments in Paragraph No.9 of the Writ petition also.

8. The learned Standing counsel submits that Clause 4 of the Code of Conduct would attract the proposal made in item No.17, according to which, there shall not be any fresh sanction for the Government scheme and it also provides that even if the schemes are on-going it should be stopped till completion of election.

9. At the same time it was also pointed out that under Clause 5.4.1, the Election Commission would take humanitarian view on the works that are necessitated due to man made and natural calamities and in case the purpose behind the proposal at serial No.17 for decision was brought to the notice of the Election Commission, that would have been considered in accordance with clause 5.4.1.

10. As pointed out by the learned Standing Counsel it is true that item no.17 in Ext.P6 proposal does not refer to Ext.P4 order though it refers to Covid-19 pandemic and the necessity for distribution of rice @ Rs15 per kg.

11. In view of the fact that the proposal in item no.17 for implementation of a decision was taken as per Ext.P4 order as early as on 04.02.2021, the said proposal cannot be one prohibited by model code of conduct in the light of the judgments in Exts.P8, P10, etc. In **Babu v. Election Commission of India: 2006 (2) KLT 137**, this Court held that in view of the budget speech and announcement of the Government that recommendations of the Pay Commission will be implemented on 10-2-2006, it cannot be stated that the decision to implement the recommendations of the Pay Commission was made after the Model Code of Conduct came into force. In the subsequent judgment in **Rajaji Mathew Thomas'** case also the very same dicta was reiterated.

12. Moreover, the proceedings relating to



auction made available to me in support of the contention made in Paragraph No.9 of the Writ Petition would show that the last date for payment towards the auction for the purpose of distribution of rice falls on 30.03.2021. Unnecessary and huge expenditure will be incurred on the State in the event of any hindrance to it. Due to paucity of time it would be practically impossible for the petitioner to approach the respondents with another proposal pointing out the decision taken on the basis of the Budget Proposal as well as Ext.P4 decision.

13. In these circumstances, I am of the view that Ext.P7 order requires interference. Accordingly, there shall be a stay of Ext.P7 order to the extent it relates to item No.17.

14. The petitioner shall see that all ostentatious functions relating to the same should be strictly avoided and no impression should be given or allowed to be created that such welfare measures or relief and rehabilitation works are being undertaken by the Government in office so as

to influence the electors in favour of the party  
in power.

Hand over.

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**P . V . ASHA**  
**JUDGE**

DM

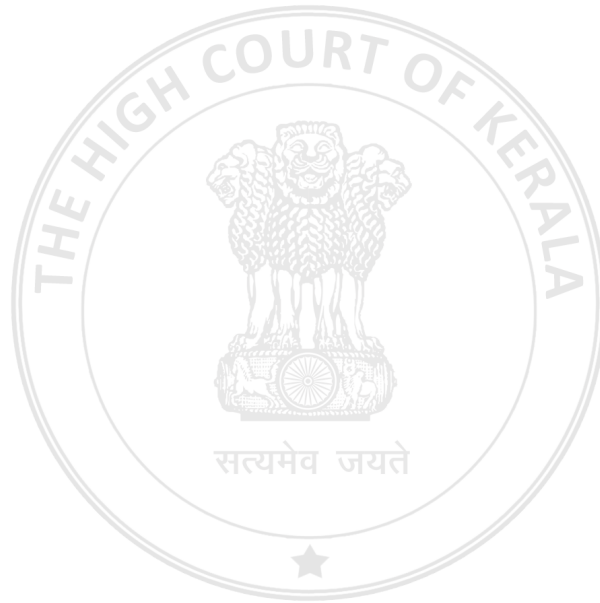


EXHIBIT P3 - A TRUE PHOTOCOPY OF THE RELEVANT PAGES OF THE BUDGET SPEECH 2021 PRESENTED BY THE MINISTER FOR FINANCE, GOVERNMENT OF KERALA, IN RELATION TO "FOOD SECURITY".

EXHIBIT P4 - A TRUE PHOTOCOPY OF GO(MS) NO.5/2021/F & CSD DATED 04.02.2021.

EXHIBIT P6 - A TRUE PHOTOCOPY OF THE LETTER NUMBER CDN4/53/2021/GAD DATED 16.03.2021 ISSUED BY THE SECRETARY, GENERAL ADMINISTRATION DEPARTMENT, GOVERNMENT OF KERALA TO THE SECOND RESPONDENT, TOGETHER WITH THE PAGE CONTAINING THE PROPOSALS 16 TO 19.

EXHIBIT P7 - A TRUE PHOTOCOPY OF LETTER NO.1540(188)EL4/2021/ELEC DATED 23.03.2021 OF THE SECOND RESPONDENT, TOGETHER WITH THE PROPOSALS 16 TO 19.

EXHIBIT P8 -A TRUE COPY PHOTOCOPY OF THE JUDGMENT DATED 21-03-2011 OF THIS HONOURABLE COURT IN WRIT PETITION (CIVIL) NO.8178 OF 2011

EXHIBIT P10- A TRUE PHOTOCOPY OF THE JUDGEMENT OF THIS HONOURABLE COURT IN KM BABU V. ELECTION COMMISSION OF INDIA AND OTHERS (2006 KHC 364).

