

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE**

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYASHTA, 1937

WA.No. 1563 of 2008

AGAINST THE JUDGMENT IN W.P.(C) NO.26481/2006, DATED 12-06-2008

APPELLANT(S)/6TH RESPONDENTW.P.(C) :

**JAYA JOSE, AWD NO.13,
MUKUNDAPURAM TALUK,
CONDUCTING A.W.D.NO.1 AT THRISSUR.**

**BY SRI.NIDHESH GUPTHA (SENIOR ADVOCATE)
ADV. SRI.T.S.RADHAKRISHNA PILLAI**

RESPONDENT(S)/PETITIONER/RESPONDENTS :

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVT.
FOOD & CIVIL SUPPLIES DEPARTMENT,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE COMMISSIONER OF CIVIL SUPPLIES,
KERALA, THIRUVANANTHAPURAM.**
- 3. THE DISTRICT COLLECTOR,
THRISSUR.**
- 4. THE DISTRICT SUPPLY OFFICER,
THRISSUR.**
- 5. THE TALUK SUPPLY OFFICER,
THRISSUR.**
- 6. USHA CHANDRAN, T.C.NO.17/367,
THAIKOOT HOUSE, KIZHAKKUMBATTU KARA,
THRISSUR DISTRICT.**

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**7. P.V.TRESSIA,
PANAMKULAM HOUSE, POONKUNNAM, THRISSUR.**

**8. ROSMY LAZER,
VAZHAPILLY HOUSE, MUNDUR P.O, THRISSUR.**

**9. LEMIN LAWRENCE,
EDEAKALATHUR HOUSE, POONKUNNAM, THRISSUR.**

**10. T.A.JOSE & CO;
AWD NO:6, METHALA, KODUNGALLOOR.**

**11. SIMI JOHN, PANDALATH HOUSE, PARAVATTANY,
THRISSUR.**

**12. LISSY OUSEPH,
KURUTHUKULANGARA HOUSE,
CHEMBUKAVU, THRISSUR.**

**R1 TO R5 BY SR.GOVERNMENT PLEADER SRI.P.IDAVIS
R6 BY SRI.KURIAN GEORGE KANNANTHANAM (SENIOR ADVOCATE)
R6 BY SRI.N.NANDAKUMARA MENON (SENIOR ADVOCATE)
ADV. SRI.T.GOPALAKRISHNAN
R8 BY ADV. SRI.C.S.AJITH PRAKASH
R9 BY ADV. SRI.P.R.VENKETESH
R10 BY ADV. SRI.V.B.HARI NARAYANAN
R12 BY ADV. SRI.A.L.GEORGE**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08-04-2015,
ALONG WITH W.A.NO.1944 OF 2008 AND CONNECTED CASES ,
THE COURT ON 12-06-2015 DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES

- ANNEXURE A:** LETTER DATED 06.04.2004 FROM THE CHAIRMAN & MANAGING DIRECTOR OF THE KERALA STATE CIVIL SUPPLIES CORPORATION.
- ANNEXURE B:** LETTER DATED 09.05.2007 FROM SECRETARY, FOOD, CIVIL SUPPLIES & CONSUMER AFFAIRS (B) DEPARTMENT.
- ANNEXURE B IN I.A.NO.760 OF 2009:** TRUE COPY OF GOVT.LETTER NO.6442/B1/07/FCS & CAD DATED 05.10.2007.
- ANNEXURE C:** TRUE COPY OF LETTER NO.C1-1639/08 DATED 19.08.2008.
- ANNEXURE D:** TRUE COPY OF LETTER NO.C1-5106/08 DATED 16.04.2008 OF THE 3RD RESPONDENT.
- ANNEXURE E:** TRUE COPY OF LETTER NO.C1-16475/08 DATED 04.11.2008 OF THE GENERAL MANAGER TO THE 1ST RESPONDENT.
- ANNEXURE F:** TRUE COPY OF PROCEEDINGS NO.F1.1868/2004 DATED 12.04.2004 OF 3RD RESPONDENT.
- ANNEXURE G:** TRUE COPY OF PROCEEDINGS NO.S1,1473/04 DATED 15.04.2004 OF THE 5TH RESPONDENT.
- ANNEXURE C IN I.A.NO.681/2010:** THEER DEED DATED 29.03.2008 EXECUTED BY KANIMANGALAM CO-OPERATIVE CONSUMER STORE NO.447 IN FAVOUR OF THRISSUR DISTRICT CO-OPERATIVE BANK LTD.NO.60 KOVILAKATHUMPADAM, THRISSUR.

ANNEXURES IN I.A.NO.826/2010

- ANNEXURE D:** TRUE COPY OF THE SOLVENCY CERTIFICATE.
- ANNEXURE E:** TRUE COPY OF THE ENCUMBRANCE CERTIFICATE.
- ANNEXURE F:** TRUE COPY OF THE COMPLAINT FILED TALUK SUPPLY OFFICER, THRISSUR BEFORE THE JUDICIAL 1ST C.M.C NO.3.
- ANNEXURE G:** TRUE COPY OF THE ORDER DATED 19.08.2008 OF THE DISTRICT COLLECTOR, THRISSUR.
- ANNEXURE H:** TRUE COPY OF THE ORDER OF THRISSUR DATED 21.08.2008.

- ANNEXURE I:** TRUE COPY OF THE ORDER OF THE DISTRICT COLLECTOR THRISSUR DATED 21.08.2008.
- ANNEXURE J:** TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 20.01.2009.
- ANNEXURE K:** TRUE COPY OF THE ORDER G.O(COMMON)NO.276/10/FOOD & CIVIL SUPPLIES DEPARTMENT DATED 19.08.2010.
- ANNEXURE L:** TRUE COPY OF THE ORDER G.O(RT)NO.270/06 F.CS & PDS DATED 22.07.2006.
- ANNEXURE M:** TRUE COPY OF THE ORDER NO.F1 1868/2004 DATED 12.04.2008.
- ANNEXURE N:** TRUE COPY OF THE ORDER NO.F1 1868/2004 DATED 27.05.2004.
- ANNEXURE O:** NIL
- ANNEXURE P:** TRUE COPY OF THE JUDGMENT AND DECREE IN O.S.NO.557/2011 DATED 21.01.2014 OF PRINCIPAL SUB-COURT, TRISSUR.

RESPONDENT(S)' ANNEXURES

- ANNEXURE I:** TRUE COPY OF GOVERNMENT ORDER IN G.O.(RT.) NO.295/08/F&CSD DATED 29.07.2008.
- ANNEXURE A1:** TRUE COPY OF THE RECEIPT DATED 12.03.2009.
- ANNEXURE A2:** TRUE COPY OF THE RECEIPT DATED 02.04.2009.
- ANNEXURE A3:** TRUE COPY OF THE RECEIPT DATED 28.06.2010.
- ANNEXURE A4:** TRUE COPY OF THE RECEIPT DATED 04.07.2010.
- ANNEXURE A5:** TRUE COPY OF THE RECEIPT DATED 05.08.2010.
- ANNEXURE R6(A):** TRUE COPY OF THE RECEIPT DATED 22.10.2010.
- ANNEXURE R6(B):** TRUE COPY OF THE RELEASE DEED.
- ANNEXURE R6(C):** TRUE COPY OF THE RECEIPT DATED 26.10.2010.
- ANNEXURE R6(D):** TRUE COPY OF THE SALE DEED DATED 16.07.2008.
- ANNEXURE R6(E):** TRUE COPY OF THE FORM NO.29 DATED 16.07.2008.

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ANNEXURE R6(F): TRUE COPY OF THE FORM NO.30 DATED 16.07.2008.

ANNEXURE R6(G): TRUE COPY OF THE RELEVANT PAGE OF R.C.BOOK.

//TRUE COPY//

PA.TO JUDGE

Msd.

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.A. Nos.1563, 1944 & 2111 of 2008
& 1662 of 2009

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Dated this, the 12th day of June, 2015

J U D G M E N T

Shaffique, J

WA 1662/09 is filed by the petitioner in the writ petition challenging judgment dated 12/6/2008 in WP(C) No.26481/2006 by which the learned Single Judge while upholding the orders passed by the Commissioner of Civil Supplies and Government directed the Government to decide whether the distribution of wholesale ration articles in Trichur Taluk should be entrusted to Civil Supplies Corporation. Government was directed to take a decision within three months and until then the temporary wholesale distribution was permitted to continue. Further directions were also issued to the District Collector to bifurcate the retail shops under two or three wholesalers in Trichur Taluk to have an efficient distribution system.

2. The short facts involved in the writ petition would

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disclose that the petitioner challenged Exts.P8 and P10 orders issued by the Civil Supplies Commissioner and the Government in regard to cancellation of the licence granted in favour of the petitioner as an Authorised Wholesale Distributor (AWD) in Trichur Taluk and attaching the Authorized Retail Dealers (ARD's) to different wholesale dealers. The petitioner was granted a license to operate AWD No.1 of Trichur Taluk, as per order dated 9/6/2005 issued by the District Collector. The matter came to be challenged by respondents 6 to 12 by filing appeal under Clause 51 (10) of the Kerala Rationing Order. It was alleged that the petitioner did not have sufficient storage capacity and that her husband was an ARD. The Commissioner of Civil Supplies, the appellate authority, by order dated 7/2/2006, cancelled the licence granted in favour of the petitioner and issued further directions to attach the 133 ARDs to two or three wholesale dealers. A perusal of Ext.P8 order would indicate that the appellate authority did not go into the correctness or otherwise of the selection of licensee by the District Collector. It was observed that 133 ARDs cannot be attached to a single AWD, as they cannot cater to the requirement, and direction was issued to

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cancel the license granted in favour of the petitioner.

3. The petitioner preferred a revision before the Government as Ext.P9, which also came to be dismissed by Ext.P10 order dated 12/9/2006. However, it was observed that Smt.Jaya Jose, the 6th respondent herein, who has been running the AWD without much complaint and having qualification and facilities, can be entrusted with the distribution of AWD No.1. Para 14 and 15 of the said order reads as under;

“14. In the above circumstances, since Civil Supplies Corporation has expressed inability to run the AWD No.1 having 133 ARDs in Trichur District and no other depot has come forward to run the same, Smt.Jaya Jose who has been running the AWD without much complaint and having qualification and facilities can be entrusted with the same.

15. With a view to make the ration distribution smooth and efficient the District Collector should fix the number of ration shop in an equitable manner. Thereafter the District Collector should complete the proceedings for appointment of permanent AWD licensee by inviting fresh applications within a period of 3 months. Till then the temporary licensee can be allowed to conduct the depot. In the light of the above direction the

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resivion petitions read as reference No.6 to 12 are disposed and orders are passed implementing the judgment of the Hon'ble High Court read as number 13."

4. Counter affidavit was filed by the 1st respondent supporting the stand taken in the matter. It is stated that the policy of the Government is to limit the ARD's attached to AWD by 50. The 6th respondent was permitted to continue to run AWD temporarily and direction was issued to the District Collector to take necessary steps to issue notification after inviting fresh application for the issuance of permanent licence within a period of three months.

5. The above matter was heard along with a batch of other writ petitions and by common judgment dated 12/6/2008, the learned Single Judge issued the directions as stated above without interfering with Exts.P8 and P10.

6. WA No.2111/2008 is filed by the petitioner in WP (C) No.32644/2006 challenging judgment dated 12/6/2008. Petitioner is one of the applicants for AWD No.1 of Trichur Taluk. However, the District Collector as per order dated 9/6/2005 awarded the licence in favour of Smt. Usha Chandran, the

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petitioner in WP(C) No.26481/2006. Though they filed appeal and revision before the competent authorities, the same came to be dismissed. The petitioner challenged the District Collector's order and other orders which were under challenge in WP(C) No.26481/2006. It is *inter alia* contended that the authorities failed to consider the most meritorious candidate among the applicants and therefore, the impugned orders are liable to be set aside.

7. WA No.1944/2008 is filed by the petitioner in WP(C) No.28084/2006 challenging the very same judgment dated 12/6/2008 passed in the batch of cases. He was also an applicant in terms of notification issued for AWD No.1 of Trichur Taluk. According to him, though he had submitted all necessary documents and he was eligible, the District Collector by order dated 9/6/2005 had awarded the license in favour of Smt.Usha Chandran. Petitioner also challenged subsequent orders passed by the Commissioner of Civil Supplies as well as the Government to re-notify the AWD. According to the petitioner, the license ought to have been awarded in his favour as he was the most eligible candidate.

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8. WA No.1563/2008 is filed by Smt.Jaya Jose, who is presently conducting AWD No.1 of Trichur Taluk, challenging the judgment of the learned Single Judge in the very same batch of writ petitions especially WP(C) No.26481/2006, wherein she is the 6th respondent. It is *inter alia* contended that the direction issued by the learned Single Judge to entrust the supply and distribution of ration articles to the Commissioner of Civil Supplies was absolutely bad in law. The Civil Supplies Corporation was permitted to distribute the ration articles on a previous occasion but on account of their inability, they had to discontinue. Further, it was contended that it is possible for an AWD to handle 133 ARDs and the said finding that it is not possible to handle such ARDs is without any study in the matter. Restricting an AWD to cater only to 50 to 60 ARDs is unviable and impracticable is the contention urged in the appeal.

9. Heard the learned counsel appearing for the parties and the learned Government Pleader. Perusal of the impugned orders would indicate the following facts;

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- (1)That Smt.Usha Chandran was appointed as the licensee of AWD No.1 of Trichur Taluk wherein 133 ARDs were attached as per order passed by the District Collector on 9/6/2005.
- (2)In the appeals filed before the Commissioner of Civil Supplies, though the appointment of Smt.Usha Chandran has not been set aside on merits, there was a direction to bifurcate the 133 ARDs attached to AWD No.1 to two or three AWD's in Trichur Taluk. The District Collector was directed to take appropriate measures in the matter.
- (3)The order of the Commissioner of Civil Supplies was challenged in revision before the Government and as an interim measure, Government directed the AWD No.1 to be operated by Smt.Jaya Jose, AWD No.13 of Mukundapuram Taluk and in the meantime, directions were issued to the District Collector to re-notify AWD No.1 after making necessary changes as directed by the Commissioner of Civil Supplies.

10. According to the learned senior counsel Sri.Nandakumara Menon appearing for Smt.Usha Chandran, the appellant in WA No.1662/2009, in the absence of any finding against her qualification to function as AWD No.1 of Trichur Taluk,

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there was no justification to cancel the same. If at all the Commissioner of Civil Supplies thought it necessary to reduce the number of ARDs which are linked to AWD 1, it alone would have been sufficient. Further, even if the Government wanted to make a temporary arrangement, the appellant should have been permitted to operate the AWD until fresh orders were passed.

11. On the other hand, learned counsel appearing for Smt.Jaya Jose contended that there was no reason to delink any of the shops as an AWD is entitled to cater to the requirement of 133 ARDs and that Civil Supplies Corporation cannot be an agency which could be entrusted with the aforesaid purpose as they were entrusted on an earlier occasion and they had discontinued. Learned counsel appearing for the other appellants also challenged the judgment and insisted for renotification of AWD No.1.

12. For easy reference, the parties and documents are referred to as shown in WP(C) No. 26481/2006, which is the subject matter in WA No.1662/2009.

13. Ext.P6 is the order dated 9.6.2005 issued by the District Collector which indicates that the 133 ARDs which was

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linked with Civil Supplies Corporation depot and earlier attached to Kanimangalam Society were delinked and attached to the depot of Smt.Jaya Jose on a temporary basis. Later, by judgment dated 1/6/2004 in WP(C) 14187/2004, this Court directed the District Collector to make permanent appointment within three months from the date of receipt of the order. It is pursuant to the said direction that applications were invited. There were ten applicants. Certain writ petitions came to be filed as WP(C) Nos. 28641/2004 and 29067/2004 alleging deficiency of storage capacity as mentioned in the notification. The said writ petitions were disposed of on 14/12/2004 directing the District Collector to take appropriate decision in the matter. Pursuant to the said direction, it was found that the storage capacity mentioned in the notification was sufficient for distributing ration articles to 133 ARDs. Thereafter, further directions were issued by this Court in WP(C) No. 2313/2005 filed by one of the applicants. However, the matter was heard on 10/3/2005. It was considered whether the storage capacity of 150 M.T was sufficient to distribute ration articles to 133 ARDs. In the meantime, there was a stay granted by the High Court in WP(C) No.12502/2005, which was vacated on

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24/5/2005. After hearing all the applicants, in respect of various contentions urged, the District Collector formed an opinion that the godown suggested by Smt.Usha Chandran was the godown which was being used by Kanimangalam Co-operative Society, which was running AWD No.1 for 13 years. She was self solvent and was having one year experience in AWD No.2 run by Sri.K.V.Subaramanian at Chavakkad Taluk and she was found to be the most eligible applicant to be appointed as the licensee of AWD No.1. In the appeals filed by the dissatisfied applicants, Commissioner of Civil Supplies having referred to the report of the Vigilance Officer formed an opinion that the godown suggested by the appellants were beyond the notified area and in respect of certain other appellants, they were not suitable for conducting the wholesale depot. The Commissioner did not find anything fault with the District Collector's order as far as the choice of Smt.Usha Chandran as an AWD licensee is concerned. But, proceeding further, it was opined that 133 ARDs cannot be attached to one AWD as so much ARDs were not attached to any AWD conducted by any private individual in the State. It was also opined that more than 50 to 60 shops could not be attached to an

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AWD for an effective rationing system. It is in the said background the order passed by the District Collector has been cancelled and it was opined that for the smooth conduct of ration system, 133 ARD's attached to AWD 1 should be bifurcated and given to 2 or 3 AWD's. It was further mentioned that until such time, the present situation will have to continue. The Government while considering the appeal preferred by the appellants did not interfere with the order passed by the Commissioner. However, it confirmed the view expressed that the distribution of ration articles to 133 ARD's from AWD NO.1 at Trichur Taluk will be bifurcated. Further directions were issued to complete the procedure for appointing the wholesale dealer for AWD No.1. Pursuant to the said finding, the Government directed the District Collector to fix the number of ration shops in an equitable manner and invite fresh applications within a period of three months.

14. As rightly argued by the learned senior counsel Sri.Nandakumara Menon on behalf of the appellant in WA No.1662/2009, there is no finding in Exts.P8 and P10 orders regarding the incapacity of the Smt.Usha Chandran in being

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selected as an AWD. She was found to be competent and was having appropriate facility for storage of ration articles. The Commissioner of Civil Supplies had only indicated that 133 ARD's cannot be linked to one AWD, and therefore, it has to be bifurcated and given to 2 or 3 AWDs. This view had been confirmed by the Government also. But it is apparent that there was no reason to cancel the appointment of Smt.Usha Chandran as the AWD. It was found that she was an eligible candidate. Under such circumstances, there was no reason for reconsideration of the grant of licence of AWD No.1 of Trichur Taluk to Smt.Usha Chandran. If at all the number of retail shops are to be bifurcated and restricted to 50 or 60 ARD's, there was no reason to cancel the said licence. It was enough that the licence was restricted to 50 or 60 ARD's as may be decided by the District Collector. When the District Collector has come to such a finding, which was not disturbed by either the Commissioner of Civil Supplies or Government, there was no reason for fresh notification to be issued in the matter.

15. Learned Single Judge also did not go into the merits of the contentions urged on behalf of the appellant in WA

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No.1662/2009. It was observed that the main contention urged was the power exercised by the Commissioner of Civil Supplies in directing delinking of 133 ARD's to different AWDs. It was found that the suggestion made by the Commissioner for Civil Supplies was legally sustainable. Despite that, the Government also approved the said opinion expressed by the Civil Supplies Commissioner and therefore, it is not open for the appellants to challenge the power exercised by Civil Supplies Commissioner or the Government in that regard. To that extent, we confirm the judgment of the learned Single Judge.

16. Another issue considered by the learned Single Judge is in the form of a suggestion that the distribution of wholesale ration articles should be entrusted to Civil Supplies Corporation and in that event, to bifurcate the retail shops under two or three wholesalers in Trichur Taluk. It is pointed out that Civil Supplies Corporation was earlier granted the right to distribute ration articles to ARDs but they discontinued on account of their inability to do so. Under such circumstances, we do not think that the learned Single Judge was justified in making such a suggestion for necessary implementation by the Government. It is purely within

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the realm of jurisdiction of the Government to take policy decisions as to whether AWD's are to be given to Civil Supplies Corporation or any other private agency. It may not be proper for this Court to impose upon the Government the said opinion. Under such circumstances, to the extent, the learned Single Judge directed the Government to consider grant of licence to Civil Supplies Corporation is hereby set aside.

17. As far as the contention raised by the other appellants who were applicants for the licence of AWD No.1 is concerned, there is no material to indicate that they stand in a better footing than Smt.Usha Chandran. A competent authority like the District Collector has after making appropriate enquiry and after considering the available materials, issued an order granting the licence in favour of Smt.Usha Chandran. The said finding of fact has not been disturbed either by the Commissioner of Civil Supplies or the Government. The issues now projected by the appellants are purely questions of fact which cannot be adjudicated by a writ court and therefore their claims are liable to be rejected.

18. Regarding the appeal filed by Smt.Jaya Jose, she

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cannot claim any independent right in respect of continuance of 133 ARD's nor can she challenge the bifurcation of ARD's. Of course, we have already held that the learned Single Judge could not have directed the Government to allot ARD No.1 to Civil Supplies Corporation. At any rate, she is only a person temporarily permitted to continue with ARD No.1 and she cannot claim any separate right to challenge the decision taken by the competent authorities.

Having regard to the aforesaid factual situation, we dispose of the writ appeals as under;

(i)The judgment of the learned Single Judge in the writ petitions are set aside.

(ii)WP(C) No.26481/2006 is allowed. Exts.P8 and P10 to the extent it cancels the licence granted in the name of the petitioner is hereby set aside and the District Collector's order dated 9/6/2005, is upheld. The District Collector shall award the licence of AWD No.1 of Trichur Taluk in favour of the petitioner, but, however, restricting the number of ARD's to 50 or 60, as may be decided by the District Collector. This

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shall be done within a period of one month from the date of receipt of a copy of this judgment.

(iii) In regard to the rest of the ARD's other than what is linked to AWD No.1, appropriate measures shall be taken by the District Collector, to link the same to other ARD's by notification or taking such other steps as permissible under law.

(iv) The claim of the other writ petitioners are rejected.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge