

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

WP(C).No. 17071 of 2015 (H)

PETITIONER :

**JAMEELA,
W/O.ABDUL AZEEZ, ARD NO.150, THEKKAN HOUSE,
PALLIKKURUP P.O, KARAKURISSI, MANNARKKAD,
PALAKKAD DIST.**

**BY SRI.K.JAJU BABU,SENIOR ADVOCATE
ADV.SMT.M.U.VIJAYALAKSHMI**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT OF KERALA,
FOOD & CIVIL SUPPLIES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001**
- 2. THE TALUK SUPPLY OFFICER,
MANNARKKAD- 678 582, PALAKKAD.**
- 3. THE RATIONING CONTROLLER,
OFFICE OF THE COMMISSIONER OF CIVIL SUPPLIES,
THIRUVANANTHAPURAM -695 001**
- 4. THE DISTRICT SUPPLY OFFICER,
PALAKKAD -678 014**
- 5. SMT. RAYHANATH,
W/O.MOHAMMED SHAFFI, KOLASSERY HOUSE,
KUMARAMPUTHUR GRAMA PANCHAYAT, MANNARKKAD,
PALAKKAD DISTRICT -678 582**
- 6. SRI V.D.JOSEPH, AGED 63 YEARS,
S/O.DEVASSIA, PRESIDENT, KERALA CONGRESS (JACOB),
PALAKKAD DISTRICT COMMITTEE,
RESIDING AT: VELLANATTU HOUSE, KALLAMALA P.O, AGALI,
MANNARKKAD, PALAKKAD -678 581**

**R1 TO R4 BY GOVERNMENT PLEADER SRI. MANOJ P. KUNJACHAN
R5 BY ADVS. SRI.R.SREEHARI
SRI.GEORGE POONTHOTTAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-11-2015 , THE COURT ON 27-11-2015 DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 COPY OF THE ORDER P-1353/12 DATED 29-05-2014 ISSUED BY THE 4TH RESPONDENT
- EXHIBIT P2 COPY OF THE NOTICE NO.(CS) A9-15162/13(1) DATED 26-12-2014 ISSUED BY THE 3RD RESPONDENT ALONG WITH NOTICE NO. 6092/B2/14/F & CSD OF THE 1ST RESPONDENT
- EXHIBIT P3 COPY OF THE REPLY DATED 30-12-2014 GIVEN BY THE PETITIONER EXT.P2
- EXHIBIT P4 COPY OF THE HEARING NOTICE NO.6092/B2/14/F & CSD DATED 11-2-2015 ISSUED BY THE DEPUTY SECRETARY TO GOVERNMENT, FOOD & CIVIL SUPPLIES DEPARTMENT
- EXHIBIT P5 COPY OF CERTIFICATE NO.1118/15 DATED 10-03-2015 ISSUED BY THE SECRETARY OF THE KARAKURISSI GRAMA PANCHAYAT
- EXHIBIT P6 COPY OF THE JUDGMENT DATED 7-4-2015 OF THIS HON'BLE COURT IN WP(C) NO.9521/2015
- EXHIBIT P7 COPY OF THE ORDER NO.GO(MS) NO.182/15/F&CSD DATED 29-05-2015 (WRONGLY TYPED AS 29-05-2014) ISSUED BY THE 1ST RESPONDENT
- EXHIBIT P8 COPY OF THE ORDER NO.CS-3-3518/12 DATED 5-6-2015 ISSUED BY THE 4TH RESPONDENT
- EXHIBIT P9 COPY OF THE RELAVANT PAGES OF WARD NO.10 OF KUMARAMPUTHOOR GRAMA PANCHAYAT PUBLISHED WITH EFFECT FROM 1/1/2015
- EXHIBIT P10 COPY OF THE COMPLAINT BY RESIDENTS OF WARD NO.10 AND REPORT OF THE WARD MEMBER TO THE 4TH RESPONDENT ON 7/8/2014
- EXHIBIT P11 COPY OF THE SALE DEED NO.6187/2009 DATED 13/10/2009 IN RESPECT OF 6 CENTS OF THE PROPERTY AND HOUSE PURCHASED BY PETITIONER AND HER HUSBAND.
- EXHIBIT P12 COPY OF THE RESIDENCE CERTIFICATE ISSUED BY THE VILLAGE OFFICER AS EARLY AS ON 17/6/2013.
- EXHIBIT P13 COPY OF THE LOCATION SKETCH PREPARED BY THE VILLAGE OFFICER DATED 9/10/2013
- EXHIBIT P14 COPY OF THE CERTIFICATE ISSUED BY THE KARAKURISSI GRAMA PANCHAYAT DATED 4/10/2013 TO THE PETITIONER.
- EXHIBIT P15 COPY OF THE EXTRACT OF THE VOTERS LIST OF SHOWING THE NAME OF HUSBAND OF THE PETITIONER OBTAINED ON 13/6/2015.

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- EXHIBIT P16** COPY OF THE EXTRACT OF THE VOTERS LIST SHOWING THE NAME OF THE PETITIONER OBTAINED ON 13/6/2015
- EXHIBIT P17** COPY OF THE CERTIFICATE DATED 18/6/2015 ISSUED FROM THE VILLAGE OFFICE IN FAVOUR OF THE PETITIONER.
- EXHIBIT P18** COPY OF THE IDENTIFICATION CARD ISSUED IN FAVOUR OF THE PETITIONER, BY THE UNIQUE IDENTIFICATION AUTHORITY OF INDIA.
- EXHIBIT P19** COPY OF THE APPOINTMENT ORDER DATED 27/5/2014 ISSUED BY THE DISTRICT SUPPLY OFFICER, IN FAVOUR OF THE PETITIONER.
- EXHIBIT P20** COPY OF THE NOTIFICATION NO.CS/3518/2012 ISSUED BY THE 4TH RESPONDENT
- EXHIBIT P21** COPY OF THE PROCEEDINGS NO.CS/3-3518/2012 ISSUED BY THE 4TH RESPONDENT DATED 27/5/2014
- EXHIBIT P22** COPY OF THE REGISTER SHOWING THE RATION CARDS ATTACHED TO ARD.NO.150 AS ON 30/6/2014.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R5(A)** COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER DATED 21/6/2013.
- EXHIBIT R5(B)** COPY OF THE RATION CARD OF THE PETITIONER.
- EXHIBIT R5(C)** COPY OF THE I.D CARD BEARING NO.OZG1545904
- EXHIBIT R5(D)** COPY OF THE RELAVANT PAGE OF THE VOTERS LIST PERTAINING TO KANJIRAPUZHA GRAMA PANCHAYAT.

/TRUE COPY/

P.A.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C) No.17071 of 2015

Dated this the 27th day of November, 2015

JUDGMENT

This writ petition is filed by a person, who has been appointed as an Authorised Retail Distributor (ARD) No.150 in Ward No.1 of Karakurissi Grama Panchayath, Mannarkkad Taluk, challenging the decision of the Government cancelling her appointment and also ordering appointment of the 5th respondent as the ARD.

2. The issue in this writ petition is revolved around the place of residence of the petitioner which is one of the eligibility conditions for the grant of ARD licence. Under Clause 45 (1) of the Kerala Rationing Order, the District Supply Officer may appoint any person as ARD in respect of any rationed articles. It is stipulated in 3rd proviso to Clause 45(1) as follows:

“Provided also that a person who is a full time employee in any establishment or who is not normally resident in the locality shall not be eligible to hold an authorisation to run the retain

ration depot under this order.”

3. The petitioner along with others applied to operate the ARD No.150 in Ward No.1 of Karakurissi Grama Panchayath.

4. In the application for appointment as ARD, the address of the petitioner is shown as follows:

Jameela, Thekkan house, Pallikkurup P.O., Karakurissi.

5. The petitioner appears to have produced a residence certificate issued by the Village Officer, Karakurissi. It was certified that she is the resident of Karakurissi Village for the last 30 years. In the above residence certificate, the Village Officer certified that the petitioner is the resident at the following address:

House No.3, Ward-2, Karakurissi

Panchayath, Karakurissi Village, Mannarkkad.

6. The entire issue is now based on the validity of the residence certificate issued by the Village Officer. The Government acted in an appeal filed by the 5th respondent namely, Smt.Rayhanath. Ext.P7 is the Order of the Government.

7. The main contention of the 5th respondent is that in the ration card and the voters identity card, the address of the petitioner is as shown in the application. The residence certificate obtained is forged one. It is further contended that the District Supply Officer has appointed the petitioner as ARD No.150 without verifying relevant records.

8. The Government noting the fact that in the election identity card and the ration card, the residence of the petitioner is shown in Kanjirapuzha Panchayath, inferred that the residence certificate issued by the Village Officer has no validity. It is further observed that even if it is valid, the petitioner is not resident of the same Ward. The Government also found that the 5th respondent is also eligible. Accordingly, ordered that the appointment of the petitioner as ARD No.150 shall be cancelled and in the place, the 5th respondent has to be appointed.

9. However, it is to be noted that the crux of the issue, whether the petitioner is a normal resident of the address shown in the residence certificate issued by the Village Officer has not been

adverted by the Government. It is highly improper to infer a fact from documents when actual proof of the fact can be found out by conducting an enquiry. The inference is possible only when fact otherwise cannot be proved. The factum of residence has been reported by the Village officer by issuing a certificate at the address shown in the certificate issued by him. It presuppose, he has conducted an enquiry before issuing such certificates. The Government has no case that the petitioner has not produced the certificate issued by the Village Officer along with the application. The address in the ration card or identity card or shown in the application can be referred as a piece of evidence to corroborate other fact while conducting an enquiry. The question that the certificate issued by the Village Officer is invalid or not or was created for the purpose of the application or not, can be found out only conducting enquiry in this regard. If the certificate issued by the Village Officer is proper and correct, the ration card and other documents and the address shown in the application even if differs from the certificate issued by the Village Officer is of no

consequence for the purpose of determining eligibility.

10. The further finding that the petitioner is not eligible as she is not a resident of the same Ward is legally unsustainable. The 'locality' referred in the context of eligibility as referred in 3rd proviso has to be understood based on serviceable area or based on 'neighbourhood'. The petitioner has a case that the residence shown in the certificate is only 100 metres away from the shop. Therefore, even if the residence is in a different Ward, that will not make her ineligible if the distance is only 100 metres.

In view of the above facts and circumstances, this Court is of the view that Ext.P7 is unsustainable. Accordingly, it is set aside. The Government is directed to reconsider the appeal after hearing the petitioner as well as the 5th respondent afresh. The Government shall also advert to the eligibility of the 5th respondent as well while taking such decision. The Government shall conduct an enquiry through the District Collector or the Tahsildar to find out the veracity of the certificate issued by the Village Officer. Based on such enquiry, the appeal shall be disposed within three months.

The Registry shall return the files produced before this Court to the learned Government Pleader as against acknowledgment.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

After the pronouncement of the judgment, the learned counsel for the petitioner submitted that the petitioner may be permitted to continue till the decision is taken by the Government. In the light of the fact that the petitioner is continuing based on the interim order passed by this Court and the impugned order has been set aside, the interim order will continue till the decision is taken by the Government. If the Government takes a decision to cancel the ARD awarded to the petitioner, the order shall remain kept suspended for a period of two weeks, after communicating the same to the petitioner.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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