IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No.22765 of 2014 (U)

PETITIONERS:
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1. MALAPPURAM DISTRICT RATION WHOLESALE DISTRIBUTORS
FEDERATION,SUKAPURAM P.O.,EDAPPAL,
MALAPURAM DISTRICT - 679 576
REPRESENTED BY ITS PRESIDENT.

2. THIRUR CO-OP RURAL BANK,
AWD NO.10,THIRUR P.O - 676 101,
REPRESENTED BY ITS SECRETARY.

3. M/S.M.VASUDEVAN,AWD NO.9,
PRAKASH MILL,KUTTIPURAM - 679 571.

4. TIRUR FARMERS CO-OPERATIVE CREDIT & MARKETING SOCIETY,
AWD NO.4,TALAKADATHUR,TIRUR - 676 103,
REPRESENTED BY ITS SECRETARY.

5. K.SAKEER HUSSAIN,AWD NO.4,SUKAPURAM P.O.,
EDAPPAL,MALAPURAM DISTRICT - 679 576.

6. THE PONNANI CO-OP RURAL SOCIETY LTD,
AWD - 15,THRIKKAVU,PONNANI - 679 577,
REPRESENED BY ITS SECRETARY.

7. ANDATHODE SERVICE CO-OPERATIVE BAK LTD,
AWD- 15,P.O.ARAMANGALAM,PONNANI - 679 587,
REPRESETED BY ITS SECRETARY.

BY ADVS.SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

RESPONDENTS:
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1. THE FOOD CORPORATION OF INDIA,
BARAKAMBA LANE,HEAD QUARTERS,16-20,
NEW DELHI - 1.

2. THE GENERAL MANAGER,
FOOD CORPORATION F INDIA,TRIVANDRUM.

3. THE DIRECTOR OF CIVIL SUPPLIES,TRIVANDRUM.

Pto

WP(C).No.22765 of 2014 (U)
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4. DISTRICT COLLECTOR,MALAPPURAM.

5. THE DISTRICT SUPPLY OFFICER,MALAPPURAM.

6. THE GOVERNMET OF KERALA,
FOOD AND SUPPLIES OF CONSUMER AFFAIRS DEPARTMENT,
TRIVANDRUM,REPRESENTED BY ITS SECRETARY.

7. UNION OF INDIA,MINISTRY OF AGRICULTRUE AND
CONSUMER AFFAIRS,FOOD & PUBLIC INSTRUCTIONS,
KRISHI BHAVAN,NEW DELHI.

R1-R2 BY ADV. SRI.MATHEW GEORGE VADAKKEL, SC,FCI
BY SRI.VARGHESE M.EASO,SC,FOOD CORPORATION OF INDIA
R3-R6 BY SENIOR GOVT. PLEADER SRI.M.A.FAYAZ
R7 BY SRI.N.NAGARESH,ASSISTANT SOLICITOR GENERAL OF INDIA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-02-2015, ALONG WITH W.P.(C) NO.29416/2014 THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

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<u>APPENDIX</u>

PETITIONER'S EXHIBITS:

EXT.P1-TRUE COPY OF THE AGREEMENT DT. 26.8.92 EXECUTED BY THE 3RD PETITIONER & 6TH RESPONDENT.

EXT.P2-TRUE COPY OF THE STATEMENT SHOWING THE DETAILS OF EXCESS TRANSPORTATION CHARGES INCURRED BY THE PETITIONERS.

EXT.P3-TRUE COPY OF THE REPRESENTATION SENT BY THE PETITIOERS TO THE HON'BLE MINISTER FOR FOOD, CIVIL SUPPLIES & CONSUMER AFFAIRS.

EXT.P4-TRUE COPY OF THE AGREEMENT 29.11.1960 BETWEEN THE 6TH RESPONDENT AND THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS/ANNEXURES:
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EXT.R2(a):TRUE COPY OF THE LETTER NO.1-2/2007-BP.III DATED 21.2.2008 ISSUED BY THE MINISTRY OF CONSUMER AFFAIRS,FOOD AND PUBLIC DISTRIBUTION,GOVERNMENT OF INDIA TO THE STATE GOVERNMENTS/FOOD CORPORATION OF INDIA (F.C.I).

EXT.R2(b):TRUE COPY OF THE LETTER NO.S & S.3(1) 07-08 VOL.V DATED 1.3.2008 ISSUED BY THE REGIONAL OFFICE,F.C.I. TRIVANDRUM TO THE GOVERNMENT OF KERALA.

EXT.R2(c):TRUE COPY OF THE LETTER NO.3 & S.3 (1) 2009-10 DATED 3.7.2009 ISSUED BY THE REGIONAL OFFICE,F.C.I,TRIVANDRUM TO THE GOVERNMENT OF KERALA.

ANNEXURE R1(a):TRUE COPY OF THE COMMON JUDGMENT DATED 6.7.2009 IN W.P(C) NOS.1264/2009 AND 6449/2009 OF THE HONOURABLE HIGH COURT OF KERALA.

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C).Nos.22765 & 29416 of 2014

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Dated this the 10th day of February, 2015

JUDGMENT **"C.R."**

These writ petitions are filed by Authorised Wholesale Distributors (for short, "AWDs") of rationed articles in Malappuram District and Kannur District feeling aggrieved by non-payment of additional transportation charges incurred by them consequent upon re-allocation of the depots of the Food Corporation of India (for short, "FCI") for lifting rationed articles in accordance with the terms in their respective agreements.

2. FCI is engaged by the State Government by virtue of the agreement entered in the year 1969. By the above said agreement, the Government has decided to

entrust the work of distribution of rationed articles and other commodities through FCI. AWDs are appointed by the State Government under the Kerala Rationing Order for distribution of rationed articles. They are also attached to different sub depots in the area which are located under the FCI. AWDs are to lift the rationed articles from the pre-assigned depots/godowns of FCI.

3. The issue arisen in these cases is owing to the reason that the sub depots to which the petitioners were attached could not supply rationed articles authorised to be lifted by them. They were redirected to be lifted from other alternative godowns/depot belonged to FCI. This resulted in additional transportation expenditure to AWDs.

4. This issue is no longer *res integra*. This Court by a common judgment in W.P.(C).Nos.1264/2009 and 6449/2009 directed the State Government to pay the additional transportation charges at first instance and obtain reimbursement from the FCI. This judgment was

also affirmed by the Division Bench of this Court in W.A.Nos.2426/2009 and 2808/2009. However, the learned counsel for the petitioners would urge that FCI has the liability to reimburse the cost as FCI is bound by the terms of the agreement entered into with the State Government to reimburse such costs.

5. There is no dispute to the fact that the petitioners are entitled for reimbursement of costs for lifting. Statement filed on behalf of the State also would show that FCI is liable to pay the additional transportation charges incurred by the petitioners. The additional charges incurred by the petitioners have to be certified by the supply officer concerned after verification of the distance covered by them.

6. The agreement entered into with the Government by FCI is produced as Ext.P4 in W.P.(C).No.22765/2014. In clause 8 of the agreement, it is agreed by the Corporation as follows:

> “The Corporation shall reimburse to Government all additional expenses incurred by

> Government for making the above said other arrangements."

This arrangement is referred to movement of rationed articles to the retailers attached to the sub depots concerned. Petitioners' case is that though they are not party to the Ext.P4 agreement in W.P.(C). No.22765/2014 nevertheless being a beneficiary they are entitled for enforcement of such terms of the agreement.

7. It is to be noted that in the agreement between the Government and FCI, at various places reference has been made authorising the Corporation to collect expenses from the retail distributors, establishments and other persons authorized by the Government. This agreement clearly shows that even though petitioners are not party to the contract nevertheless agreed between the Government and Corporation that they are the subject of their contract and performance of the agreement is impossible without they being form part of it.

8. It is settled principle of law that strangers cannot sue under a contract. However, there are exceptions to this principle when a trust is created by the contract, the beneficiary can sue under the contract. The enforcement of the contract is not contractual but equitable {See M**.C.Chacko v. State Bank of Travancore [AIR 1970 SC 504]**}. The Hon’ble Supreme Court held in paras.9 and 10 as follows:

> “9. The Kottayam Bank was being a party to the deed was not bound by the covenants in the deed, nor could it enforce the covenants. It is settled law that a person not a party to a contract cannot subject to certain well recognised exceptions, enforce the terms of the contract; the recognised exceptions are that beneficiaries under the terms of the contract or where the contract is a part of the family arrangement may enforce the covenant. In Krishna Lal Sadhu v. Pramila Bala Dosi, ILR 55 Cal 1315 = (AIR 1928 Cal 518) Rankin, C. J. observed:
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> "Clause (d) of Section 2 of the Contract Act widens the definition of 'consideration' so as to enable a party to a contract to

enforce the same in India in certain cases in which the English Law would regard that party as the recipient of a purely voluntary promise and would refuse to him a right of action on the ground of nudum pactum. Not only, however, is there nothing in Section 2 to encourage the idea that contracts can be enforced by a person who is not a party to the contract but this notion is rigidly excluded by the definition of 'promisor' and 'promisee' .

Under the English Common Law only a person who is a party to a contract can sue on it and that the law knows nothing of a right gained by a third party arising out of a contract: Dunlop Pneumatic Tyre Co. v. Seltridge and Co., 1915 AC 847. It has however been recognised that where a trust is created by a contract, a beneficiary may enforce the rights which the trust so created has given him. The basis of that rule is that though he is not a party to the contract his rights are equitable and not contractual. The Judicial Committee applied that rule to an Indian case Khwaja Muhammad Khan v. Husaini Begam, (1910) 37 Ind App 152. In a later case Jamna Das v. Ram Autar, (1911) 39 Ind App 7 the Judicial Committee pointed out that the purchaser' s

> contract to pay off a mortgage debt could not be enforce by the mortgagee who was not a party to the contract. It must therefore be taken as well settled that except in the case of a beneficiary under a trust created by a contract or in the case of a family arrangement, no right may be enforced by a person who is not a party to the contract.
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> 10. Even if it be granted that there was an intention to create a charge, the Kottayam Bank not being a party to the deed enforce the charge only if it was a beneficiary under the terms of the contract, and it is not claimed that the Bank was a beneficiary under the deed Ex. D-1. The suit against M. C. Chacko must therefore be dismissed."

The beneficiary need not be understood as limited to the beneficiary of a trust alone. This principle clearly indicates that whoever be the beneficiary whether agent or AWD or such other affiliates to whom benefits have been intended by the terms of the agreement would fall within the meaning beneficiary.

9. The Calcutta High Court in **Bhujendra Nath Biswas and others vs. Sushamoyee Basu and another [AIR**

1936 Calcutta 67] and the Punjab-Haryana High Court in **Babu Ram Budhu Mal and others. Vs. Dhan Singh Bishan Singh and others [AIR 1957 Punjab 169]** have held that strangers to the contract being beneficiary is entitled to enforce contract.

10. The Delhi High Court in **Utair Aviation v. Jagson Airlines Limited and another** (order on I.A.No.8381/2008 in CS(OS).No.203/2009 dated 203/2009) held in para.28 as follows:

> "28. A reading of the aforementioned judicial opinion coupled with well recognized exceptions that the privity can be created by virtue of conduct acknowledgment and admission, it becomes clear that any case where one party is made aware about the relationship of the other party with that of a stranger and the said party proceeds to contract out only with other party in question, knowing fully well the participation and role of the said stranger, further, it corresponds with the said third party/stranger, and conduct suggests kind of relationship, then there can be said to be a nexus or a privity which can be said to have

> been created by virtue of conduct. The said question essentially becomes a question of fact and basing upon the said fact finding, the law has to be necessarily applied as to whether the said person is a complete stranger to a contract or whether the privity can be said to have been created by way of conduct."

11. This case clearly indicates that by long established practice under the Contract, FCI have acknowledged AWDs attached to the sub depots for lifting rationed articles for the Government, which necessarily indicates that clause (8) of Ext.P4 agreement, produced in W.P.(C).No.22765/2014, would enure to the benefit of the AWDs as well. The reimbursement under clause (8) thus not only would benefit the Government but also the AWDs appointed by the Government as well.

12. In view of the discussions as above, the Taluk Supply Officer or the District Supply Officer as the case may be, shall certify the additional distance covered by the AWDs and the rate payable to them and forward the same to FCI within one month from the date

of receipt of a copy of this judgment. Thereafter, FCI shall pay the amount to the District Supply Officer within a further period of one month. If there is any dispute regarding rate payable, FCI need to pay the amount only at admitted rate and indicate to the District Supply Officer concerned why amount is inadmissible. The parties are at liberty to challenge any decision of FCI declining any of their claims.

The writ petitions are disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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