



2024:KER:90269

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

**WEDNESDAY, THE 27TH DAY OF NOVEMBER 2024 / 6TH AGRAHAYANA,
1946**

WP(C) NO. 19941 OF 2023

PETITIONER:

**PRASANNA E.V., AGED 53 YEARS
W/O. LATE NARAYANAN, RESIDING AT 'PADMAM',
MATTALAYI, P.O. CHERUVATHUR, KASARAGOD
DISTRICT, PIN - 671313**

**BY ADVS.
S.S.ARAVIND
M.V.AMARESAN
PREMANAND E.
KARTHIK V**

RESPONDENTS:

- 1 STATE OF KERALA REPRESENTED BY SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVERNMENT SECRETARIATE, THIRUVANATHAPURAM.,
PIN - 695036**
- 2 FOOD SAFETY COMMISSIONER, OFFICE OF
COMMISSIONER OF FOOD SAFETY, THYCAUD,
THIRUVANATHAPURAM, PIN - 695014**
- 3 ASSISTANT COMMISSIONER OF FOOD SAFETY
OFFICE OF THE ASSISTANT COMMISSIONER OF FOOD
SAFETY, COLLECTORATE 'F' QUARTER, VIDYA
NAGAR, KASARAGOD, PIN - 671123**
- 4 FOOD SAFETY OFFICER, THRIKARIPUR CIRCLE,
NEAR VILLAGE OFFICE, NEELESWARAM, KASARAGOD,
PIN - 671314**
- 5 CHERUVATHUR GRAMA PANCHAYAT, REPRESENTED BY
SECRETARY, GRAMA PANCHAYAT OFFICE,
CHERUVATHUR P.O., KASARGOD, PIN - 671313**



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- 6 HEALTH INSPECTOR, CHC CHERUVATHUR
V.V. SMARAKA COMMUNITY HEALTH CENTRE
CHERUVATHUR, KASARGODE, PIN - 671313
- 7 MULLOLI ANEXGAR @ ANEXGAR, AGED 59 YEARS
S/O. LATE MULLOLI MOYI, SAHAYA, 1ST KOLLYA,
KOTTEKKAR P.O., ULLAL, MANGALAPURAM,
KARNATAKA DISTRICT, PIN - 575022
- 8 AHAMED.T., AGED 46 YEARS, S/O. ABDUL RAZAK,
BISMILLAH HOUSE, OTTAPADAVU, BHEEMANADI VILLAGE,
NOW RESIDING AT NEAR RAHMANIYA MADRASSA, PADANNA
VILLAGE, KASARAGOD DISTRICT, PIN - 671312

BY ADVS.
M.SASINDRAN
T MADHU
C.R.SARADAMANI(S-891)
RENJISH S. MENON(K/001486/2021)
VRINDA T.S.(K/237/2022)
AISWARYA JAYAPAL(K/001566/2023)

SRI GRASHIOUS KURIAKOSE-ADGP
SRI P M SHAMEER-GP
SRI T MADHU-R7 &R8

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27.11.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**CR****JUDGMENT**

The Memorandum of this Writ Petition begins with the famous quotation of the Father of our Nation – Mahatma Gandhiji, that *“there are people in the world so hungry, that God cannot appear to them except in the form of bread”*.

2. This Court is fully aware why the petitioner began her pleadings in such manner because, she is the hapless mother of a 16 year old girl, who succumbed to food poisoning, after having consumed a proprietary food article by name “Shawarma”, allegedly sold by respondents 7 and 8.

3. It is horrifically tragic that what Mahatmaji saw as God, should rob a life.

4. The petitioner – mother alleges that it is the insouciant regulatory regime – having failed to conduct necessary inspections and evaluations in time, which is the primary cause for the horrible accident; and thus seeks compensation, under the



principles of Constitutional Tort, to a sum of Rs,1,00,000/-. In addition, she also pleads that respondents 1 to 6 be directed to ensure strict and systematic enforcement of the provisions of the Food Safety and Standards Act, 2006 ('Act' for short); and Regulations, 2011 ('Regulations' for short), *including by conducting periodical and recurring inspections and supervisions on the food business ensuring stringent penal action against preparators, in the interest of justice*"(sic).

5. That can be no ways about the indescribable pathos of a mother who has lost her young daughter, and that too on account of food poisoning. The apprehension of the society at large is also kindled because, the love of the younger generation for the food article in question is well-known; and therefore, something that can be taken judicial note of.

6. In fact, after hearing the parties earlier on 14.11.2023, this Court issued a very detailed order, specifying the protocol to be strictly enforced and adopted for the sale of the food in



question; and to avoid repetition and prolixity, I extract the same as under:

The petitioner has lost her child of a mere 16 years, all because she chose to relish a dish which she enjoyed – ‘Shawarma’.

2. There are allegations made by the petitioner, which this Court takes very seriously, including that the food manufacturer in question was operating without licence; and that there were no inspections conducted on them, for at least two years by the competent Authorities.

3. This Court is aware that the petitioner has sought compensation under the constitutional Tort Principles, which, obviously, the State will have to answer through appropriate counter pleadings, advertng to the materials on record, particularly Ext.P6 and the Medical Records of the child.

4. However, as matters now stand, the endeavour of this Court is to ensure that such incidents never happen in future. There is a particular reason why I am saying this because, though this Court is aware that there was an Order of Ban issued by the Food Safety Commissioner on 12.01.2023, disallowing the use of raw eggs in the production and storage of mayonnaise, it is brought to my notice through the Press and by the counsel appearing, that there was an incident of death by suspected consumption of ‘Shawarma’ in the recent past.

5. Smt.Afsana Parveen, IAS - Food Safety Commissioner, was present in person online today as per the earlier orders of this Court. She gave a very detailed explication of the steps taken by her Department, though she confessed that she had joined the post only in the last two weeks. She mentioned that there are ‘Shawarma Guidelines’ issued on 25.09.2022, as also the



aforementioned 'Order of Ban' dated 12.01.2023; and added that there are enforcement drives and inspections being conducted on regular basis, in which several eateries have been issued notices.

6. Smt.Afsana Parveen, however, pointed out that, in the case of 'Shawarma', one major cause of accident was that it was being consumed by customers much after the time frame it was safe for consumption. She submitted that, therefore, there are also now orders relating to the labelling of parcels, requiring the eateries to mention the specific date and time of manufacture; and that awareness is now required to be given to the customers to consume it strictly within the said timelines.

7. Smt.Afsana Parveen, thereafter, submitted that, in the particular case at hand, not only the daughter of the petitioner, but various other students were also found to have been infected, though unfortunately none of them had very serious complications thereafter. She added that, therefore, full details about this will also be made available in the affidavit to be filed by the State in this matter.

8. The actions taken by the Food Safety Commissioner certainly are in the right direction and are a welcome beginning. However, the battle is far from being won, because, unless the eateries and consumers are made aware of the pitfalls of consuming 'Shawarma', except in the manner as governed by the applicable Regulations, Rules and Circulars, such accidents may continue to happen, as we have seen in the recent past.

9. This Court, therefore, certainly proposes to maintain this writ petition on file for some more time, to ensure that all the orders and Regulations are implemented; in public interest, and to make sure that another mother will not have to approach this Court in the same manner as the petitioner is being constrained to.



In the afore circumstances,

(a) The Official respondents are directed to file a counter affidavit, detailing their response to the allegations of the petitioner; with specific reference to relief No.1 in this writ petition. This shall be done within a period of three weeks from today.

(b) The afore affidavit will also contain all the details relating to the steps taken and enumerated by Smt.Afsan Parveen recorded above, along with all orders, Guidelines and other relevant and germane documents.

(c) The competent Authorities of the Food Safety Commissionerate shall ensure that the 'Shawarma Guidelines' of the year 2022 and the 'Order of Ban' dated 12.01.2023, mentioned afore by Smt.Afsana Parveen, are incorporated into the Statutory Licences of all the eateries, so that they cannot henceforth take the stand that they were not aware of it.

(d) Necessary instructions shall also be given to all the eateries to exhibit the date and time of the preparation of the food article on its packaging - whether it be issued across the counter or through parcels; and necessary steps will also be taken to create awareness in the minds of the citizens as to the absolute imperative of confining to such timelines, while consuming it. This shall be overseen by the Food Safety Commissioner, through the Authorities under her command, on a regular basis.

(e) Any violation of directions (c) and (d) above should visit the eatery/manufacturer with all necessary consequences under the applicable Statues, and details of the same shall be made available to this Court in due course.

(f) Coming back to the case at hand, the details of the prosecution and steps taken against the eatery in question shall also be made available, either along with the affidavit as ordered in direction (a) above, or as a separate one, so as to allow this Court to decide if the



actions taken are in proper perspective.

List on 05.12.2023 at 1.45 p.m.

(Emphasis supplied)

7. Thereafter, on 05.12.2023, the learned Additional Director General of Prosecutions, Sri.Gracious Kuriakose, instructed by the learned Government Pleader, assured this Court that all requisite and essential steps and measures for enforcement will be continued; and further that the Food Safety Department would bring every violator to the book as per law, to its fullest warrant. He had added that, many a time, food poisoning incidents happen on account of a combination of ignorance, as also deliberate defiance from the part of the persons who sell them; and that the Food Safety Department will look into every issue very carefully; assuring this Court that measures like raids will continue all over the State, as also the conduct of awareness programs for the consumers.

8. I recorded the afore submissions in the order of the day and adjourned this matter to be called on 19.12.2023,



intending to deliver judgment; but was alerted by the learned counsel for the petitioner – Sri.Sandeep, that the official respondents have not responded to the steps taken to have averted the food poisoning at the relevant time; and this was crucial because of the plea for compensation under the Constitutional Tort doctrine, impelled in the Writ Petition.

9. Thereafter, time was taken by the official respondents to file detailed objections to the aforesaid plea; and on 17.01.2024, the Food Safety Commissioner appeared online and briefed this Court about the various measures taken. The record of interaction with the said Officer was indited in the order of the said date, which is reproduced *ut infra*:

Sri.Jaffer Malik I.A.S., who is holding charge as the Food Safety Commissioner, appeared today and briefed this Court about the various steps taken by the Department to avert food poisoning, particularly of the food article by name ‘shawarma’. He explained that ‘special drives’ in all eateries were conducted in Trivandrum, Ernakulam, Calicut and various other places, to a number of over 450 inspections; and that several instances of violations were found, leading to fines being imposed. He further submitted that awareness classes are



now being conducted for all the stakeholders and that no incident of food poisoning have been reported in the State of Kerala in the past few months, even during the Christmas and New Year seasons, when the consumption of such articles were at the highest.

2. If the afore submissions of Sri.Jaffer Malik are true, then certainly it is a commendable effort by the Department and its officers. However, we cannot stop because the war is yet to be won.

3. As has been earlier indited by this Court, one of the main reasons why the food articles in question become poisonous is because those are not consumed within the time frames it is intended for. The prescription of this Court – that there should be a marking on the article specifying the time, within which it must be consumed – is certainly very vital. I can only assume, at this point, that adherence to this perhaps averted other instances, coupled by the efforts taken by the officers.

4. The number of eateries in Kerala is very large, which fact can be taken judicial notice of. Therefore, inspections have to be done consistently and without fail, because any relaxation would give an impression to the manufacturers that action would be lax.

5. Since the Food Safety Commissioner in Charge submits that inspections will be continued and violators dealt with, to the highest warrant in law, I am of the view that this Court will be justified in adjourning this matter for further reports.

6. That apart, in one of the afore Writ Petitions, there is also a prayer for compensation, which will also depend upon the pleadings to be made by the respondents and the submissions to be made on their behalf.

I, therefore, adjourn these matters to be called on 12.02.2024; within which time, all pleadings shall be completed.



10. Today, the learned Additional Director General of Prosecution – Sri.Gracious Kuriakose, submitted that an affidavit has been filed by the 2nd respondent, in response to the assertions of the petitioner-mother; and argued that there have been no deliberate lapses from the Authorities, though conceding that, on account of the intervening COVID-19 pandemic scenario, necessary vigil could not be maintained at all eateries. He added that the Authorities concerned have full empathy for the hapless mother; but that unless it is fully established that the incident in question happened solely on account of lack of enforcement, or lacunae in it, it may not be possible for this Court to offer compensation under the Constitutional Tort doctrine.

11. I have examined the affidavit mentioned above, namely that of the 2nd respondent, which contains the steps and measures taken and enforced exhaustively. In order to obtain a full reading including for purposes in future, I extract the most relevant of the



averments below:

The department is conducting routine inspections to ensure that the Food business operators are adhering to the shawarma guidelines issued by the Government.

**Enforcement Activities related to Shawarma in the year 2024
April to October**

Number of inspections conducted	2196
Notice issued	496
Amount Compounded	Rs.1243580

In addition to this routine inspections Department is conducting special squad - inspections to strengthen the enforcement activities related to shawarma preparation. Shawarma Special Squad inspections were conducted on 23/05/2024 to ensure that the Food Business Operators are adhering to the shawarma guidelines issued by the Government. The details of the inspections are given below.

Inspections conducted	512
Rectification notices issued	56
Compounding notice issued	108
Closure notice issued	52

Operation Monsoon

The risk of water-borne diseases increases during Monsoon season. To combat this, the Food Safety Department launched operation Monsoon. a special initiative to ensure Food Safety across the State. The department officials are conducting inspections in restaurants, cafes and eateries to ensure proper hygiene practices, focusing on clean and safe water usage for cooking and washing. By implementing operation Monsoon, the department aims to minimize the chances of food borne illnesses during the monsoon.



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Inspections conducted	12381
Rectification notices issued	1638
Compounding notice issued	1586
Closure notice issued	335
Statutory samples lifted	928
Surveillance samples lifted	6008

Operation life

As part of Operation life, day state wide special drive was conducted on 17.07.2024 and 18.07.2024 to prevent food borne and water borne diseases.

Inspections conducted	2645
Rectification notices issued	369
Compounding notice issued	458
Closure notice issued	107

Special drive to check medical certificate of food handlers

Inspections conducted	1154
No. of food handlers present	4249
Food handlers with valid medical fitness certificate	3335
Precentage of Food handlers with valid medical fitness certificate	78.5

Operation Thattukada

State wide special drive was conducted on 11.11.2024 and 12.11.2024 to ensure hygiene, sanitation and good food handling practices in way side eateries and to verify whether these eateries possess a valid food safety license/registration and to verify adherence to Food Safety Regulations and guidelines.

Inspections conducted	1414
Rectification notices issued	270
Compounding notice issued	189



Closure notice issued	38
Statutory samples lifted	5
Surveillance samples lifted	165

11. Action taken for IEC Activities

As per section 30(c) of Food Safety and Standards Act 2006, The Commissioner of Food Safety shall "conduct or organize training programmes for the personnel of the Office of the Commissioner of Food Safety and, on a wider scale, for different segments of food chain for generating awareness on food safety". To comply with this, various Information. Education and Communication (IEC) activities are being conducted throughout the state as given below.

IEC Activities conducted by the department in the year 2023-24

Eat Right Places of Worship	38
Street Food Hub	15
Clean Fruits & Vegetables market	20
Eat Right Station	23
Eat Right School & Campus	182
Hygiene Rating	2331
RUCO	960605
	litres of oil collected
Model Food Safety Panchayat	26
SNF @ School	85
SNF @ Workplace	10
Safe Kitchen initiative	32
Food Safety Town	5

Kerala Secures First Rank in the 2024 State Food Safety Index for the Second Consecutive Year

As a remarkable achievement, Kerala has once again secured the first rank in the State Food Safety Index (SFSI) 2024, continuing its leadership in food safety standards for the second consecutive year. This consistent top performance underscores the tireless efforts and strategic initiatives of the Kerala Food Safety Department, which has worked diligently to improve food safety measures across



the state. This achievement also reflects the commitment of the state government toward ensuring the health and well-being of its citizens through safe and nutritious food. By maintaining this momentum, Kerala is well-positioned to continue leading the way in food safety for years to come.

In short, the Department of Food Safety is putting an earnest effort using all its available resources to ensure a system of control to avoid food safety risks to the general public at large.

What is stated above in paragraph 2 to 11 is true to my knowledge and what is stated in paragraphs 2 to 11 stated on information and belief derived from records and/or obtained from the office COUR Safety, and I believe the same to be true.

12. Thus, as per the situation available today, the order of this Court dated 14.11.2023, with respect to the manner in which the food article namely 'Shawarma', can be sold and the protocols to be enforced for such purpose, fully governs the field; and the steps stated to have been taken by the State, as evident from the affidavit extracted above, requires to be fully confirmed and ensured to be implemented in future at all times.

13. The above, surely takes care of the apprehensions regarding the food article and its sale; but the question remains whether this Court will be justified, or should be persuaded, to



offer compensation to the petitioner under the Constitutional Tort principles.

14. It is now well settled, through the catena of judgments of the Honourable Supreme Court, that it is in cases where failure on the part of the Officers of the State in ensuring the safety and health of citizens is established, that the former would stand liable to compensate the victim or his/her family.

15. In this case, it is with little doubt that the petitioner's daughter died of food poisoning, but the Criminal Case with respect to the sale of the food article is pending against respondents 7 and 8, and others, before the competent Court. The question whether the said persons had sold the article, or whether they did so under proper licenses as mandated by the applicable Statute, Rules and Regulations, are issues which are certainly engaging the attention of the competent Court; and it would not be prudent for this Court to speak on it in any manner, lest it interfere with the same.



16. Furthermore, even the Statutory provisions, namely Section 65 of the Food Safety and Standards Act, 2006, provides for compensation to the victim or his/her family; but shockingly, am told by the learned counsel for the petitioner – as is admitted by the official respondents also – that the eligible sums have not yet been offered to the petitioner. Sri.Gracious Kuriakose explained that this is because the trial is still pending; but even if this is so, it does not justify that compensation has not been paid to the petitioner. This is more so when, as per Section 65 of the Act, the adjudicating officer or the Court – as the case may be, is obligated to offer the sums as are mentioned therein to the victim or his/her legal representative, not later than six months from the date of occurrence. It is without beyond the pale of contest that the death of the petitioner's daughter happened as early as on 01.05.2022; and hence, the Statutory mandate of Section 65 appears to be in violation now. Surely, this Court must step in and ensure that the petitioner is properly reparated,



at least statutorily. Her liberty to invoke any other remedy under law for compensation, also deserves to be fully left open; for which, the period – during when this Writ Petition has been pending, will require to be factored in.

17. When I conclude as afore, it is necessary that this Court offer commendation to the petitioner because, even when she was drowned in the depth of angst, having lost her daughter, she found the fortitude to come forward and file this Writ Petition, exposing a public cause of great relevance in the present times. Her plea for compensation surely is not for money; and as her learned counsel explained to me, she intends to use any such for supporting and espousing causes in public good, particularly through apposite measures and interventions to avoid for others what she has had to endure.

18. This Court is not inclined to grant compensation to the petitioner under the Constitutional Tort principles only for the reasons above; and also because, at least as at now, there is



scarce evidence before me to establish conclusively that the incident was solely on account of regulatory enforcement lapses. But, if the petitioner is able to prove so through a proper process of law, there is no reason why she should be denied such remedy. This Court offers accolades to her for the effort taken, particularly because it is only consequent to it that protocols, as stipulated in the interim order of this Court dated 14.11.2023 – which are perhaps the most basic – were able to be thought of. The true worth of the litigative intervention by the petitioner is that, by the enforcement of such protocols the number of incidents of food poisoning, on account of ‘Shawarma’, has come down considerably, if not substantially – as is unequivocally admitted by Sri.Gracious Kuriakose also.

19. I, therefore, propose to award the expenses for this Writ Petition to the petitioner; and asked Sri.Gracious Kuriakose whether the State would oppose it. He fairly submitted that, acknowledging the effort by the petitioner in the eye of great



adversity, the State would agree to a reasonable amount of not more than Rs.25,000/-.

In the afore circumstances;

a) I allow this Writ Petition, confirming the interim order of this Court dated 14.11.2023; and directing the official respondents to ensure, on a continuous basis, that the protocols mentioned therein (available in the emphasised portion in para 9 thereof) are enforced without fail against all eateries, hotels and other vendors.

b) I further order that if, through any inspection or information received, it is established that any vendor/hotel/restaurant is selling 'Shawarma' in violation of the directions of this Court, immediate and swift action be taken to cancel their license and to subject such person/entity to the processes of law, without any avoidable delay.

c) The official respondents are also hereby ordered to ensure that the provisions of the Food Safety and Standards Act,



2006; ‘Shawarma Guidelines’ of the year 2022; and the ‘Order of Ban’ dated 12.01.2023, are scrupulously implemented and adhered to; and that all necessary and periodical inspections/supervisions on the food businesses are ensured; with every violator subjected to the fullest warrant of law, without fail.

d) I direct the learned Additional Sessions Court I, Kasaragod - before which it is conceded that the Criminal Trial with respect to the incident is pending, as S.C.No.665/2023 – to forthwith consider the grant of compensation to the petitioner under Section 65 of the Food Safety and Standards Act, 2006, following due process, but without any delay. This shall, in any case, be done, not later than two months from the date of receipt of a copy of this judgment.

e) Needless to say, the petitioner will also be entitled to any further statutory compensation as per the Act, which shall be ensured by the official respondents and the Court concerned.

f) I leave full liberty to the petitioner to invoke any



other remedy, including before the Civil Court, for any other relief, including compensation; for which, the time spent by her before this Court – namely from 19.12.2023, till the certified copy of this judgment is received – will be eligible to be factored in as being the period during which she had pursued a legitimate cause.

g) Finally, I award an amount of Rs.25,000/- to the petitioner, being the expenses for this Writ Petition, which shall be paid by the State of Kerala, by way of a Demand Draft/Pay order, to be handed over to her learned counsel, within a period of one month from the date of receipt of a copy of this judgment.

I close, thanking the petitioner again for having shown the courage for espousing a cause, which is so dear and important to the public at large; and salute her for having done so, in spite of her irreparable personal loss, leading to several lives having been saved as a consequence thereto.



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Even though this judgment disposes of the Writ Petition, I deem it necessary – owing to the acme importance of the cause – to call for periodical reports from the official respondents, as to the actions taken in compliance of the directions herein.

The first of such shall be filed on record on or before 10.01.2025; and the Registry shall place it for my consideration on 11.01.2025.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

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APPENDIX OF WP(C) 19941/2023

PETITIONER EXHIBITS

Exhibit-P1	TRUE COPY OF THE FIR NO.432/2022 OF CHANDERA POLICE STATION DATED 1-5-2022
Exhibit-P2	TRUE COPY OF THE POST-MORTEM CERTIFICATE ISSUED BY GOVERNMENT MEDICAL COLLEGE, KANNUR SATED 2-5-2022
Exhibit - P3	TRUE COPY OF THE CERTIFICATE OF EXAMINATION OF FOOD ANALYST DATED 07/05/2022
Exhibit-P4	TRUE COPY OF THE REPORT DATED 25/05/2022 FORWARDED BY THE 3RD RESPONDENT TO THE INSPECTOR CHANDRA POLICE STATION
Exhibit-P5	TRUE COPY OF ORDER DATED 12/08/2022 ISSUED FROM THE CHIEF MINISTERS DISTRESS RELIEF FUND(NP
Exhibit-P6	TRUE COPY OF THE LETTER DATED 16/11/2022 UNDER THE RTI, ACT,2005 ISSUED BY 4TH RESPONDENT TO THE PETITIONER
Exhibit-P7	TRUE COPY OF LETTER DATED 12/12/2022 ISSUED BY 3RD RESPONDENT TO THE PETITIONER
Exhibit-P8	TRUE COPY OF THE LETTER DATED 26/12/2022 ISSUED BY THE 5TH RESPONDENT TO THE PETITIONER IS PRODUCED HERewith AND MARKED AS

RESPONDENT ANNEXURES

ANNEXURE R2 (a)	Copy of the order No.B1-74/2023/CFS dated 20.01.2023
ANNEXURE R2 (c)	Copy of G.O.(Rt)No.2113/2022/H and FWD



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dated 25.08.2022

ANNEXURE R2(b)

Copy of the order No.CFS/73/2023-B1
dated 12.01.2023