

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 935 of 2015 (N)

PETITIONER:

**M/S. AGE INDUSTRIES PRIVATE LTD.,
V/58, SINICON HOUSE, IDA,
KANJIKODE WEST, PALAKKAD,
REPRESENTED BY ITS CHIEF FINANCE OFFICER
MR.B.MANOCHARAN**

**BY ADVS.SRI.BIJU BALAKRISHNAN
SMT.V.S.RAKHEE
SMT.PRINCY XAVIER**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.**
- 2. THE SECRETARY,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001.**
- 3. THE KERALA MEDICAL SERVICES CORPORATION LIMITED,
THYCAUD P.O, THIRUVANANTHAPURAM, PIN-695 014,
REPRESENTED BY ITS MANAGING DIRECTOR.**
- 4. MANAGING DIRECTOR (&TENDER INVITING AUTHORITY),
THE KERALA MEDICAL SERVICES CORPORATION LIMITED,
THYCAUD P.O, THIRUVANANTHAPURAM, PIN-695 014.**

**R1 & R2 BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE
R3 & R4 BY SRI.M.AJAY,SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1 - TENDER DOCUMENT NO.KMSCL/DRGED(V)/RC/2013/005
DATED 22-12-2012
- EXT.P2 - PHOTOSTAT COPY OF THE NOTICE NO.KMSCL/QC/BL/15/2013-14
DATED 04-03-2014 BY THE 2ND RESPONDENT TO THE PETITIONER.
- EXT.P3 - PHOTOSTAT COPY OF THE WRITTEN STATEMENT DT.12-3-2014 OF THE
APPELLANT AGAINST EXHIBIT P2.
- EXT.P4 - PHOTOSTAT COPY OF THE ORDER NO.KMSCL/QC/BL/15/2013-14
DT.17-6-2014 OF THE 2ND RESPONDENT.
- EXT.P5 - PHOTOSTAT COPY OF THE MEMORANDUM OF APPEAL DT.4-7-2014
FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P6 - PHOTOSTAT COPY OF THE JUDGMENT DATED 20-8-2014 IN
WPC.NO.21639/2014.
- EXT.P7 - PHOTOSTAT COPY OF THE ORDER NO.G.O(RT)NO.3750/2014/H&FWD
DATED 19-11-2014 PASSED BY THE 1ST RESPONDENT.
- EXT.P8 - PHOTOSTAT COPY OF THE LETTER DT.28-6-2014 SENT BY THE
PETITIONER TO THE DEPUTY DIRECTOR, RUBBER BOARD,
KOTTAYAM.
- EXT.P9 - PHOTOSTAT COPY OF THE EMAIL LETTER DT.3-7-2014 SENT BY THE
DEPUTY DIRECTOR, TECHNICAL CONSULTANCY, RUBBER BOARD,
KOTTAYAM TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

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P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 935 of 2015

Dated this the 14th day of January, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"i. To quash Ext.P4 and P7 by issuing a writ of certiorari or any other appropriate writ, order or direction.

ii. Issue a writ of mandamus or any other appropriate writ order or direction commanding the respondent 3 and 4 to release to the petitioner all the payments withheld by them on the basis of Ext.P4, forthwith.

iii. Issue a writ of mandamus or any other appropriate writ order or direction commanding the respondents to send the product having Drug Code No. S27088, Gloves Surgical Rubber (ISI) - Non Sterile - Size 7.5" for analytical test to the Laboratory which is accredited to the National Accreditation Board for Testing and Calibrating Laboratories (NABL)."

The main grievance of the petitioner is that, without adverting to the contentions of the petitioner and affording an opportunity of being heard, the 4th respondent has passed Ext.P4 order dated 17.06.2014 blacklisting the product - Gloves Surgical Rubber (ISI) Non Sterile Size 7.5" manufactured and supplied by the petitioner for a period up to 31.03.2017 and also declared that the petitioner is ineligible to participate in any of the tenders floated by the 4th respondent for the above said product. The appeal preferred in this regard was also rejected and the 1st respondent, who has passed a non-speaking order

without properly considering the merits and hence the writ petition.

2. Heard the learned Government Pleader as well as the learned Standing Counsel for respondent 3 and 4. It is brought to the notice of this Court by the learned Standing Counsel for respondents 3 and 4 that similar issue had been come up for consideration before this Court and as per judgment dated 18.12.2014 in W.P.(C). No. 33845 of 2014, the 4th respondent was directed to give an opportunity of hearing to the concerned petitioner and to have the proceedings finalized.

3. In the above circumstance, the writ petition is disposed of, directing the 4th respondent to consider the matter afresh, after affording an opportunity of hearing to the petitioner and appropriate orders shall be passed in accordance with law, at the earliest at any rate, within 'two months' from the date of receipt of a copy of this judgment. So as to facilitate such exercise Exts. P4 and P7 are set aside.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps.

**P.R. RAMACHANDRA MENON,
JUDGE.**