

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 2045 of 2015 (E)

PETITIONER(S):

**B.SURESH KUMAR,
PROPRIETOR, NEW LIFE HEALTH CARE CENTRE, 39/1245(24)
ATTAKKULANGARA, MANACAUD
THIRUVANANTHAPURAM - 695 009.**

**BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.M.R.RAJESH
SMT.E.S.SANDHYA
SRI.S.SURESH**

RESPONDENT(S):

- 1. THE CENTRAL DRUGS STANDARD CONTROL ORGANIZATION
DIRECTORATE GENERAL OF HEALTH SERVICES,
MINISTRY OF HEALTH AND FAMILY WELFARE (MEDICAL DEVICES
AND DIAGNOSTICS DIVISION)
FOOD AND DRUGS ADMINISTRATION BHAVAN, KOTLA ROAD
NEW DELHI - 110002
REPRESENTED BY THE DRUGS CONTROLLER.**
- 2. THE STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY TO
GOVERNMENT DEPARTMENT
OF HEALTH AND FAMILY WELFARE
GOVERNMENT SECRETARIAT, STATUE,
THIRUVANANTHAPURAMPIN - 695 001.**
- 3. THE DISTRICT COLLECTOR
THIRUVANANTHAPURAM DISTRICT, CIVIL STATION
KUDAPPANAKKUNNU, THIRUVANANTHAPURAM PIN- 695 043.**
- 4. THE DIRECTOR OF HEALTH SERVICES
DIRECTORATE OF HEALTH SERVICES
GENERAL HOSPITAL CAMPUS
THIRUVANANTHAPURAM. PIN 695 035.**

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5. THE DISTRICT MEDICAL OFFICER
OFFICE OF THE DISTRICT MEDICAL OFFICE
GENERALHOSPITAL CAMPUS
THIRUVANANTHAPURAM PIN695 035.
6. THE COMMISSIONER OF POLICE
THIRUVANANTHAPURAM CITY, OFFICE OF THE COMMISSIONER
VAZHUTHAKKADU, THYCAUD P.O.
THIRUVANANTHAPURAMPIN - 694 014.
7. THE SUB INSPECTOR OF POLICE
FORT POLICE STATION, THIRUVANANTHAPURAM 695 023.

* ADDL.R8 IMPEADED

8. HE THIRUVANANTHAPURAM MUNICIPAL CORPORATION,
REPRESENTED BY ITS SECRETARY,
CORPORATION BUILDING, PALAYAM,
THIRUVANANTHAPURAM-695033.

ADDL.R8 IMPEADED AS PER ORDER DATED 2/3/2015 IN IA 2762/2015

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2-R7 BY GOVERNMENT PLEADER SRI.T.P.SAJID
R8 BY ADVS. SRI.N.NANDAKUMARA MENON (SR.)
SRI.P.K.MANOJKUMAR,SC,TVPM CORPORATION

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1:** A TRUE COPY OF THE CERTIFICATE OF INCORPORATION OF CERAGEM INDIA (P) LTD
- EXT.P-2:** A TRUE COPY OF THE PICTURE OF THE CERAGEM MASSAGER
- EXT.P-3:** A TRUE COPY OF THE LETTER DATED 19.4.2010 GIVEN TO THE DRUGS CONTROLLER.
- EXT.P-4:** A TRUE COPY OF THE COMMUNICATION NO.29/MISC/3/2010-DC DATED 3.5.2010 ISSUED BY THE IST RESPONDENT
- EXT.P-5:** A TRUE COPY OF THE CERTIFICATE OF REGISTRATION UNDER THE TAMIL NADU VALUE ADDED TAX ACT, OF CERAGEM INDIA (P) LTD. IN FORM NO.B AND D.
- EXT.P-6:** A TRUE COPY OF THE CERTIFICATE OF REGISTRATION UNDER THE KERALA VALUE ADDED TAX ACT, 2003, OF THE PETITIONER.
- EXT.P-7:** A TRUE COPY OF THE RECEIPT DATED 6.3.2014 ISSUED FROM THE CORPORATION OF THIRUVANANTHAPURAM EVIDENCING PAYMENT OF THE LICENSE FEE STARTING A NEW TRADE.
- EXT.P-8:** A TRUE COPY OF THE RECEIPT DATED 6.3.2014 ISSUED FROM THE CORPORATION OF THIRUVANANTHAPURAM EVIDENCING PAYMENT OF THE LICENSE FEE.
- EXT.P-9:** A TRUE COPY OF THE ISO CERTIFICATE OF REGISTRATION.
- EXT.P-10:** A TRUE COPY OF THE PETITION DATED 8.1.2015 SUBMITTED TO THE DISTRICT COLLECTOR.
- EXT.P-11:** A TRUE COPY OF THE ORDER DATED 9.10.2013 IN WRIT PETITION NO. 46470/2013(GM-RES) THE HON'BLE HIGH COURT OF KARNATAKA
- EXT.P-12:** A TRUE COPY OF THE ORDER DATED 10.01.2014 OF THE SHIVAMOGA, DISTRICT HEALTH AND FAMILY WELFARE OFFICER.

RESPONDENT(S)' EXHIBITS

- EXT.R3(A):** TRUE COPY OF NEWS PAPER REPORT APPEARED IN THE KERALA KAUMUDI DATED 6/1/15
- EXT.R3(B):** TRUE COPY OF THE CERTIFICATE OF BUSINESS REGISTRATION DATED 11/4/11

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**EXT.R3(C): TRUE COPY OF LETTER DT.13/1/15 OF DISTRICT MEDICAL OFFICER
(HEALTH) THIRUVANANTHAPURAM.**

/ TRUE COPY /

P.S. TO JUDGE

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P.R. RAMACHANDRA MENON, J.

W.P(C). No. 2045 of 2015

Dated this the 2nd day of March, 2015

J U D G M E N T

The petitioner has approached this Court with the following prayers:

"i) issue a Writ in the nature of mandamus or other appropriate writ direction or order commanding the respondents 3 and 5, not to interfere with the business of the petitioner in the Free Trial marketing and Sale of the products of the Company M/s. Ceragem India Pvt. Ltd. run by him under the name and style New Life Health Care Centre at 39/1245(24), Attakkulangara, Manacaud, Thiruvananthapuram-695009;

ii) issue a Writ in the nature of mandamus or other appropriate writ direction or order commanding the respondents 3 and 5, commanding them to remove the lock put by them in the business premises of the petitioner under the name and style New Life Health Care Centre at 39/1245(24), Attakkulangara, Manacaud, Thiruvananthapuram-695009;

iii) issue such other appropriate writ, direction or order as the case may be."

2. The case of the petitioner is that, the establishment of the petitioner, which is functioning in the building bearing No.39/1245(24) at Thiruvananthapuram has been caused to be closed down by the 5th respondent quite in an arbitrary and illegal manner, without having any authority, either on facts or on law to have had such an exercise. The petitioner is the Proprietor of the

establishment, which is dealing with distribution and sale of various equipments mainly 'Automatic Thermal Massager Machines'. It is stated that, a free trial is given to every customer for nearly 40 minutes and the customer is free to place order for sale of the equipments, cost of which ranges from 1.5 lakh to 2.5 lakhs. It is stated that, no treatment is being extended from the establishment of the petitioner, nor is there any invitation by considering the same as a medical equipment. It is stated that, the very same course of marketing is being pursued by the Company in different States based on all the requisite licences. In Kerala, the petitioner has started a unit at Thiruvananthapuram and the operations are on the strength of valid registration under the KVAT Act and such other documents. On a fine morning, intervention was made from the part of the respondents based on some false news appeared in some dailies, as if the petitioners' establishment were pursuing some dubious activities to defraud the general public. It is in the course of such proceedings, that the shop room of the petitioner was inspected by the 3rd respondents and the same was closed down, which is totally high handed and hence the challenge.

3. Ext.P2 is a photograph of the equipment. Ext.P4 issued by the competent authority under the Directorate General of Health Services certifies that, the equipment does not come within the purview of the Drugs and Cosmetics Act. In fact the said apparatus is specifically shown in the Annexure to the 'Certificate of Registration' forming part of Ext.P6. The case projected by the petitioner, particularly as contained in paragraph 25 of the writ petition, is that the petitioner is having all the requisite licences.

4. A counter affidavit has been filed from the part of the 3rd respondent, paragraph 9 of which reads as follows;

“9. The District Collector endorses with the above opinion of the Doctors team. It is humbly prayed that the District Administration is willing to remove the stop memo if they comply with the following instructions.

- a. The valid license from corporation under Shop and Consumer Establishment Act.*
- b. The list of persons with address to whom the cots were sold so far so as to verify by a medical team on the efficacy of the equipments as they claim and also to get the statements of the buyers to verify whether they were cheated or not.”*

The petitioner has filed reply affidavit as well; paragraph 8 of which is relevant and hence extracted below;

“8. The allegation regarding the functioning of the said sales outlet without requisite license from the Govt. Departments is denied. The petitioner has all the requisite licenses for running his business except the license under the Shops and Commercial Establishments Act which is merely an irregularity. At any rate the petitioner had already filed the necessary application for getting the Registration under the Kerala Shops and Commercial Establishments Act. The petitioner had applied online. It is for the Authority under the said Act to take any action in case of any breach of the statutory provisions. The 3rd respondent is not a statutory authority under the said Act and he has absolutely no jurisdiction in the said matter.”

In response to the averments raised by the petitioner, the 3rd respondent has filed an additional counter affidavit as well.

5. Heard Sri.S.Sreekumar, Senior counsel appearing for the petitioner, the learned Government Pleader appearing for the respondents 2 to 7 and the learned standing counsel appearing for the Corporation, TVM.

6. The learned counsel for the petitioner points out that, the petitioner has already paid the licence fee to the Corporation as borne by Exts.P7 & P8.

7. This version is rebutted by the learned standing counsel appearing for the Corporation pointing out that, Exts.7 & P8 are only the application fees and no licence has been issued to the petitioner to run the Establishment in the concerned premises. The factual position that the petitioner is yet to obtain necessary licence under the Kerala Shops and Commercial Establishments Act, is conceded in the reply affidavit (paragraph 8). In the said circumstances, the petitioner can continue to operate the Establishment only on the strength of valid licence/permit to be obtained from the concerned authorities particularly, in terms of paragraph 9 of the counter affidavit filed by the 3rd respondent and also after procuring the licence from the authorities under the Kerala Shops and Commercial Establishments Act and also the licence from the Local Authorities ie, Thiruvananthapuram Corporation.

8. Subject to this, the writ petition is disposed of, directing the 3rd respondent to hand over the key of the establishment to the petitioner forthwith, so as to enable the petitioner to open the room and make it available for inspection by the concerned authorities. It is also made clear that, if any

infringement of the statutory requirements is noticed, it is always open for the concerned respondent to intervene and take appropriate proceedings in accordance with law.

The writ petition stand disposed of.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.

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