

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

WP(C).No. 2611 of 2015 (B)

PETITIONER :

**MERCURY LABORATORIES LIMITED.,
HAVING ITS REGISTERED OFFICE AT 18 SHREEJI BHUVAN,
51 MANGALDAS ROAD, MUMBAI -400 002,
REPRESENTED BY ITS LIAISON AGENT, MADHOOR.S.**

**BY SRI.M.RAMESH CHANDER,SENIOR ADVOCATE
ADVS. SRI.ANEESH JOSEPH
SMT.DENNIS VARGHESE**

RESPONDENT(S):

- 1. KERALA STATE MEDICAL SERVICES CORPORATION LIMITED,M
THAICADU P.O, THIRUVANANTHAPURAM- 695 014.**
- 2. HLL LIFE CARE LIMITED,
AKKULAM PLANT, THIRUVANANTHAPURAM.**
- 3. SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM- 695 001.**

**R1 BY SRI.M.AJAY,SC,KERALA MEDICAL SERV.CORPN
R3 BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE TENDER FLOATED BY THE RESPONDENT CORPORATION.
- EXHIBIT P2. COPY OF THE LETTER ALONG WITH THE LABORATORY PROTOCOL DATED 06.02.14.
- EXHIBIT P3. COPY OF THE LETTER DATED 27.08.14 ISSUED BY THE RESPONDENT.
- EXHIBIT P4. COPY OF THE REPLY LETTER ISSUED BY THE PETITIONER DATED 6.3.14.
- EXHIBIT P5. COPY OF THE LETTER ISSUED BY THE RESPONDENT DATED 07.04.14.
- EXHIBIT P6. COPY OF THE SHOW CAUSE NOTICE DATED 14.10.14 ISSUED BY THE RESPONDENT TO THE PETITIONER.
- EXHIBIT P7. COPY OF THE DETAILED REPLY SENT BY THE PETITIONER ON 29.10.14.
- EXHIBIT P8. COPY OF THE ORDER DATED 31.12.14.
- EXHIBIT P9. COPY OF THE LETTER DATED 24.10.14.
- EXHIBIT P10. COPY OF THE COMMUNICATION FROM CENTRAL DRUGS TESTING LABORATORY AT KOLKATTA DATED 21.11.14.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.2611 of 2015

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Dated this the 27th day of January, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:-

“i) Issue a writ of certiorari or any other appropriate writ order or direction to quash Ext.P8 black listing the petitioner's product.

ii) Issue a writ of mandamus or other appropriate writ order or direction directing the first respondent to permit the petitioner to participate in the tender proceedings for the year 2015-16..

iii) Issue a writ of mandamus or other appropriate writ order or direction directing the first respondent not to recover any amount from the petitioner on the basis of Exhibit P8 order until the due amount is quantified as per law.”

2. The petitioner is a company incorporated under the Companies Act and is engaged in manufacturing and sales of medical drugs, having license under the Drugs and Cosmetics Act. The petitioner submits that the 1st respondent Corporation issued tender for supply of certain drugs across the state in the year 2012-13 . The petitioner company also participated in the

tender and was successful in bidding and had supplied the drugs to the 1st respondent. On 06.02.2014, the 1st respondent issued Ext.P2 letter to the petitioner, intimating that the products supplied by the petitioner were not of standard quality. On receipt of the same, the petitioner issued Ext.P4 reply, requesting the 1st respondent to give representative samples from the same batch, so as to send for referee analysis. The 1st respondent issued Ext.P5 letter rejecting the said request and issued Ext.P6 show cause notice. A detailed reply was sent to the said show cause notice as per Ext.P7. According to the petitioner, no personal hearing was conducted on the basis of Ext.P6 and Ext.P8 order was passed, black listing the product, which is under challenge before this Court.

3. Heard both the sides and perused the records.

4. It is true that the petitioner was given a chance reply to the show cause notice. However, it is not clear whether the petitioner was given an opportunity of hearing before passing Ext.P8 order. Accordingly, this Court is of the view that the matter requires to be reconsidered at the hands of the 1st respondent. Ext.P8 order stands set aside. The first respondent

is directed to reconsider the matter and pass appropriate orders in accordance with law, at the earliest, at any rate, within a period of two months from the date of receipt of a copy of the judgment, after giving an opportunity of hearing to the petitioner. 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**

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