

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. 2625 of 2015 (C)

PETITIONER :

**M/S.MERCURY LABORATORIES LIMITED.,
HAVING ITS REGISTERED OFFICE 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,
THAICADU P.O, THIRUVANANTHAPURAM- 695 014**
- 2. SECRETARY TO GOVERNMENT,
HEALTH AND FAMILY WELFARE DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM - 695 001**
- 3. DRUG CONTROLLER OF KERALA,RED CROSS ROAD,
THIRUVANANTHAPURAM- 695 035**

**R1 BY SRI.M.AJAY,SC,KERALA MEDICAL SERV.CORPN
R2 & R3 BY SR 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 TRUE COPY OF TENDER FLOATED BY THE RESPONDENT CORPORATION
- EXHIBIT P2 TRUE COPY LETTER DATED 28-11-2013 ISSUED BY THE RESPONDENT
- EXHIBIT P3 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 07-12-2013
- EXHIBIT P4 TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER DATED 20-12-2013
- EXHIBIT P5 TRUE COPY OF LETTER DATED 15-03-2014 ISSUED BY THE RESPONDENT
- EXHIBIT P6 TRUE COPY OF THE COMMUNICATION DATED 25-10-2014 FROM THE DRUGS CONTROLLER
- EXHIBIT P7 TRUE COPY OF THE TEST REPORT ALONG WITH COVERING LETTER ISSUED BY THE GOVT. ANALYST
- EXHIBIT P8 TRUE COPY OF THE CERTIFICATE WITH COVERING LETTER ISSUED BY THE GOVERNMENT ANALYST
- EXHIBIT P9 TRUE COPY OF CERTIFICATE ISSUED BY THE GOVT. ANALYST
- EXHIBIT P10 TRUE COPY OF THE INFORMATION BY THE DRUG INSPECTOR, TRISSUR

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.2625 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.P5 order.

ii) Issue a writ of certiorari or other appropriate writ or order or direction quashing the offensive clauses in Exhibit P-1 tender notification which is not in conformity with Drugs and Cosmetics Act,1940.

iii) Issue a writ of mandamus or other appropriate writ order or direction directing the respondents to permit the petitioner to participate in tender proceedings for procurement of drugs for the year 2015-2016 for which last date and time of receipt of tender fixed on 31.01.2015.

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 28.11.2013, the 1st respondent issued Ext.P2 letter to the petitioner, intimating that the products supplied by the petitioner were not of standard quality. Subsequent to the issuance of letter, petitioner received Ext.P3 show cause notice dated 07.12.2013 from the respondent Corporation. A detailed reply was sent to the said show cause notice as per Ext.P4. On 15.03.2014 the first respondent issued Ext.P5 letter, whereby the petitioner's drug was black listed. According to the petitioner, Ext.P5 order was issued by the respondent Corporation without hearing the petitioner which hence 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 to reply the show cause notice. However, it is not clear whether the petitioner was given an opportunity of hearing before passing Ext.P5 order. Accordingly, this Court is of the view that the matter requires to be reconsidered at the hands of the 1st respondent. Ext.P5 order stands set aside. The first respondent is directed to reconsider the matter and pass appropriate orders

in accordance with law, after giving an opportunity of hearing to the petitioner at the earliest, at any rate, within a period of two months from the date of receipt of a copy of the judgment. 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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