

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 5304 of 2015 (K)

PETITIONER(S):

**M/S.HANS SYRINGES PRIVATE LIMITED,
3/531, NAMBIKODI ELAPPULLY, PALAKKAD- 678 622,
REPRESENTED BY ITS CHIEF FINANCIAL OFFICER,
MR. UNNIKRISHNAN H.K.**

**BY ADVS.SRI.K.N.SIVASANKARAN
SRI.SUNIL SHANKER**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
SECRETARIAT, THIRUVANANTHAPURAM - 01.**
- 2. KERALA MEDICAL SERVICES CORPORATION LIMITED,
(UNDER THE DEPARTMENT OF HEALTH AND FAMILY WELFARE
GOVT. OF KERALA), THYCAUD P.O., THIRUVANANTHAPURAM - 14,
REPRESENTED BY ITS MANAGING DIRECTOR.**

**R1 BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT
R2 BY ADV. SRI.M.AJAY, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 5304 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1 A TRUE COPY OF THE TENDER DOCUMENT (TENDER NO KMSCL/DRGED/
III/VIII/RC/2014/008) DATED 11-03-2014.**

**EXHIBIT P1(a) TRUE COPY OF THE LETTER OF INTENT ISSUED BY THE
2ND RESPONDENT DATED 28-05-2014.**

**EXHIBIT P2 TRUE COPY OF THE INTERIM ORDER OF THIS HON'BLE COURT IN
WPC NO 12320 OF 2014 DATED 16-05-2014.**

**EXHIBIT P3 TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO 721 OF 2014
DATED 28-05-2014.**

EXHIBIT P4 TRUE COPY OF THE LETTER OF THE PETITIONER DATED 07-07-2014.

EXHIBIT P5 TRUE COPY OF THE LETTER OF THE PETITIONER DATED 18-08-2014.

**EXHIBIT P6 TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE
2ND RESPONDENT DATED 20-08-2014.**

EXHIBIT P7 TRUE COPY OF THE LETTER OF THE PETITIONER DATED 22-08-2014.

**EXHIBIT P8 TRUE COPY OF THE LETTER OF THE 2ND RESPONDENT
DATED 25-09-2014.**

**EXHIBIT P9 TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER
DATED 27-09-2014.**

**EXHIBIT P10 TRUE COPY OF THE COMMUNICATION NO 41596/J1/2014/H& FWD OF
THE 1ST RESPONDENT TO THE 2ND RESPONDENT DATED 11-11-2014.**

EXHIBIT P11 TRUE COPY OF THE LETTER OF THE PETITIONER DATED 25-11-2014.

**EXHIBIT P12 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN
WPC NO 32284 OF 2014 DATED 10-12-2014.**

EXHIBIT P13 TRUE COPY OF THE LETTER OF THE PETITIONER DATED 08-01-2015.

**EXHIBIT P14 TRUE COPY OF THE TENDER DOCUMENT(TENDER NO KMSCL/DRGED/
III-VIII/RC/2015/002) ISSUED BY THE 2ND RESPONDENT DATED 08-01-2015.**

**EXHIBIT P15 TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT
DATED 29-01-2015.**

msv/

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RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 5304 of 2015

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Dated, this the 19th day of February, 2015

JUDGMENT

The petitioner has approached this Court challenging correctness and sustainability of Ext. P15, whereby the second respondent has blacklisted the petitioner from participating in further tenders to be floated by the said respondent for a period of three years till 31.03.2018. The case of the petitioner is that the said course has been pursued by the second respondent with a malafide intent and to keep the petitioner away from the field of Ext. P14 tender for the year 2015 - '16.

2. Heard the learned counsel for the petitioner as well as the learned standing counsel appearing for the second respondent Corporation.

3. The learned counsel for the petitioner points out that the case has got a long history. According to the petitioner when steps were taken to oust the petitioner from the field, the petitioner approached this Court by filing W.P.(C) No. 12320 of 2014, wherein an interim order was passed, as borne by Ext. P2, permitting the

petitioner to operate the unit without being intervened by the Bank under the SARFAESI Act, subject to satisfaction of Rs. 10,00,000/- (Rupees Ten lakhs only) within a period of ten days and another ten lakhs on or before the 15th June, 2014. It is stated that the said order has been complied with by the petitioner. But the matter was taken up in appeal by way of W.A. No. 721 of 2014, at the instance of the Bank, whereby the observation made by the learned single Judge in paragraph 2 of the interim order dated 16.05.2014 in W.P.(C) No. 12320 of 2014 was deleted in toto and the matter was required to be dealt with as specified therein. In the course of further proceedings, the second respondent issued Ext. P6 order dated 20.08.2015 to the petitioner, to show cause why the petitioner shall not be blacklisted for the insinuation made therein, which was duly replied as per Ext. P7. Subsequently, purchase order was cancelled by the second respondent as per Ext. P8 order dated 25.09.2014. The petitioner moved the respondent Bank as well as Government by submitting Ext. P9, pursuant to which, the Government passed Ext. P10 order, directing the second respondent Company to clear the pending bills of the petitioner. Instead of complying the same, the second respondent proceeded

with steps to issue fresh tender for the year 2014 - '15, when the petitioner approached this Court by filing W.P.(C) No. 32284 of 2014. The said writ petition was disposed of, as per Ext. P12 judgment dated 10.12.2014 in the following terms :

"I am of the view that the second respondent - Kerala Medical Services Corporation Limited is owned by the Government and the Health Secretary is the Chairman and also considering that the petitioner is the only SSI Unit in the State of Kerala, the issue can be thrashed out if a meeting is convened between the petitioner and the officials of the second respondent by the first respondent. Needful shall be done by the first respondent within ten days. Till then, all proceedings pursuant to Ext. P11 shall be kept in abeyance and the re-tender will depend upon any decision to be made in the meeting. All issues in this writ petition are left open."

4. The learned counsel for the petitioner submits that, instead of complying with the direction given by this Court, as per Ext. P12 judgment, the second respondent sought to pass Ext. P15 order dated 29.01.2015, whereby the petitioner has been blacklisted as mentioned aforesaid, which in turn is under challenge in this writ petition. It is also pointed out that the said course was

pursued on the eve of the last day for submitting the tender pursuant to Ext. P14 notification for the year 2015 - '16 and this is only to keep the petitioner away from arena.

5. Heard the learned counsel appearing for the second respondent as well as the learned Government Pleader appearing for the first respondent.

6. During the course of hearing, it is brought to the notice of this Court that Ext. P15 order has been passed without affording any opportunity for hearing. On going through the impugned proceedings, it is seen that no reference is made anywhere in Ext.P15 as to issuance of any notice. No doubt Ext. P15 order has caused serious adverse consequences upon the rights and interests of the petitioner in proceeding with the business and there is violation of the fundamental principle of '*audi alteram partem*'.

In the said circumstances, this Court does not require any second thought to set aside Ext. P15. It is ordered accordingly. The second respondent is directed to reconsider the matter, after affording an opportunity of hearing to the petitioner and also taking note of the observations contained in Ext. P12 judgment, as expeditiously as possible. It is made clear that, if the proceedings

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pursuant to Ext. P12 are still to be finalized, it shall be finalized forthwith as ordered by this Court. It is also made clear that the tender, if at all any submitted by the petitioner pursuant to Ext. P14 shall be considered on merit and Ext. P15 order passed by the second respondent, which now stands set aside, will not be a bar in considering the credentials of the petitioner.

The Writ Petition stands disposed of.

Sd/-

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

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