

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 6192 of 2014 (Y)

PETITIONERS:

1. THE NILAMBUR PANCHAYATH VANITHA SAHAKARANA SANGHAM LTD
NO.M.555
NILAMBUR.P.O., NILAMBUR TALUK, MALAPPURAM DISTRICT
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY
NILAMBUR PANCHAYATH VANITHA SAHAKARANA SANGHAM LTD NO.M.555
NILAMBUR.P.O., NILAMBUR TALUK, MALAPPURAM DISTRICT.

BY ADVS.SRI.P.SAMSUDIN
SMT.NIMA JACOB
SRI.K.C.ANTONY MATHEW

RESPONDENTS:

1. THE SUPERINTENDENT
GOVERNMENT TALUK HEAD QUARTERS HOSPITAL, NILAMBUR
NILAMBUR.P.O.-679 329, MALAPPURAM DISTRICT.
2. THE DISTRICT MEDICAL OFFICER
MANJERI-676 121, MALAPPURAM DISTRICT.
3. EXECUTIVE DIRECTOR(NODAL OFFICER)
COMPREHENSIVE HEALTH INSURANCE AGENCY OF KERALA(CHIAK)
7TH FLOOR, TRANS TOWERS, VAZHUTHACAUD
THIRUVANANTHAPURAM-695 014.
4. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE FINANCE DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.695 001.

R1 to R3 BY ADV. SRI.ASHIK K.MOHAMED ALI, SC, CHIAK
R4 BY GOVERNMENT PLEADER SRI.A.MOHAMMED SAVED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

- P1- TRUE COPY OF THE NOTICE INVITING QUOTATIONS DATED 27.06.2012 ISSUED BY THE 1ST RESPONDENT.
- P2- TRUE COPY OF THE QUOTATION AND THE UNDETAKING GIVEN BY THE SOCIETY.
- P3- TRUE COPY OF THE UNDERSTANDING SIGNED BETWEEN THE 2ND PETITIONER AND THE 1ST RESPONDENT DATED 18.08.2012.
- P4- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 2ND PETITIONER TO THE 1ST RESPONDENT DATED 9.7.2013.
- P5- TRUE COPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT TO THE 2ND PETITIONER.
- P6- TRUE COPY OF THE QUESTIONNAIRE DATED 12.7.2013 SUBMITTED TO THE ASSISTANT DRUGS CONTROLLER KOZHIKODE UNDER RTI ACT.
- P7- TRUE COPY OF THE ANSWER DATED 17.7.2013 UNDER THE RTI ACT.
- P8- TRUE COPY OF THE COMMUNICATION ISSUED TO THE 2ND PETITIONER BY THE 2ND RESPONDENT DATED 25.04.2013.
- P9- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 2ND PETITIONER TO THE 1ST RESPONDENT DATED 22.07.2013.
- P10- TRUE COPY OF THE JUDGMENT DATED 07.10.2013 IN W.P[C]NO.24474/2013 OF THIS HON'BLE COURT.
- P11- TRUE COPY OF THE ORDER DATED 03.01.2014 ISSUED BY THE 1ST RESPONDENT.
- P12- TRUE COPY OF THE QUESTIONNAIRE AND ANSWERS GIVEN BY THE 1ST RESPONDENT UNDER THE RIGHT TO INFORMATION ACT.

RESPONDENTS' EXHIBITS

- EXHIBIT R1(A): TRUE COPY OF THE COMPARATIVE STATEMENT AND AGREEMENT.
- EXHIBIT R1(B): TRUE COPY OF THE DECISION OF HOSPITAL MANAGEMENT COMMITTEE.
- EXHIBIT R1(C): TRUE COPY OF THE LETTER NO.C1-4676/2013 DATED 9.12.2013.
- EXHIBIT R2(D): TRUE COPY OF THE LETTER NO.C1-4353/2013 DATED 06.12.2013.

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.
= = = = =
W.P.(C).No.6192 of 2014
= = = = =
Dated this the 13th day of July, 2015

JUDGMENT

The 1st petitioner is a co-operative society which had entered into Ext.P3 agreement with the Superintendent of the Government Taluk Head Quarters Hospital, Nilambur, the 1st respondent herein, for supply of medicines under the Rashtriya Swasthya Bhima Yojana (RSBY) Scheme providing for health insurance to needy citizens. The 3rd respondent is the Nodal Agency for implementing the Scheme. It is alleged that though medicines were supplied by the petitioner to the 1st respondent in pursuance to the agreement, amounts due to the Society from August 2012 to June 2013 were withheld by the 1st respondent. The petitioner had approached the 1st respondent by filing Ext.P4 representation stating that it proposed to discontinue the supply of the medicines since the amounts due under bills raised by it had not been met. By Ext.P5 reply dated 12.07.2013 the 1st respondent informed the petitioner that amounts due under the bills except from August 2012 to June 2013 would be paid to the

petitioner at the earliest. The petitioner was requested to continue supply of medicines without interruption.

2. It is the case of the petitioner that though there were allegations regarding the supply of certain medicines by a pharmaceutical company by name 'Lenec Pharmaceuticals' by changing the labels of the medicines, the petitioner was in no way involved with the alleged offences. The petitioner relies on Ext.P7 reply given under the Right to Information Act and states that the Society or its employees are in no way involved in the alleged malpractices. The petitioner had approached this Court by filing W.P.(C).No.24474 of 2013 and by Ext.P10 judgment dated 07.10.2013, the 1st respondent was directed to consider Ext.P9 representation preferred by the petitioner and pass orders thereon after hearing the petitioner within two months from the date of receipt of a copy of the judgment. Pursuant thereto, Ext.P11 order has been passed by the 1st respondent on 03.01.2014, stating that the amounts covered by bills for medicines supplied from August 2012 to June 2013 which amounted to Rs.76,32,680/- has been paid to the petitioner and

an amount of Rs.20,99,209.69 has been withheld. It is further stated that the amounts have been withheld because the medicine "Lactum SB injection" has been included in the bills. An enquiry is going on with regard to the supply of that medicine by Lenec Pharmaceuticals and the bill which included the medicines supplied by this company have been withheld and it is decided that those bills will be cleared only after the connected cases are disposed of. However the decision No.4 of the Hospital Management Committee relied on in Ext.P11 is extracted below:-

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3. It is clear from the above that the decision taken by the Hospital Management Committee is not to withhold all the bills which contains the medicines in question but only to withhold the cost of the medicines of the company involved in the

vigilance case. That is the gist of the decision extracted in the order.

4. Heard Sri.P.Samsudin, learned counsel appearing for the petitioner and learned Government Pleader appearing for respondents 1, 2 and 4 and Sri.Ashik K Mohamed Ali, learned counsel appearing for the 3rd respondent.

5. Having gone through the pleadings and the materials on record, I am of the opinion that the vigilance case allegedly pending with regard to the supply of medicines is with regard to the medicines supplied by 'Lenac Pharmaceuticals', particularly with respect to one brand, which apparently has been supplied by the petitioner society also. It is seen that an amount of Rs.20,99,209/- has been withheld from the bills due to the society by the 1st respondent. From a reading of paragraph 3 of Ext.P11 order issued by the 1st respondent, it is clear that all the bills containing the medicine in question have been withheld by the 1st respondent. But going by the decision extracted in the order itself, what has been decided is only to retain payments with regard to the medicines of that particular pharmaceutical

company which is pending in a vigilance enquiry. Going by Ext.P7, it is clear that complicity of the petitioner or its employees is also not alleged as at present.

6. In any view of the matter, since the dispute is with regard to the payment in respect of medicines of the specified company only, I am of the opinion that the bills retained by the 1st respondent allegedly in a bank deposit can be released to the petitioner after retaining those bills of Lenac Pharmaceuticals specified in paragraph 3 of Ext.P11 alone. The retention of the entire amounts covered by bills containing those medicines will work out injustice and undue hardship to the first respondent which is a Co-operative Society.

In the above circumstances, the writ petition is disposed of directing the 1st respondent to release the amounts due under the bills raised by the petitioner Society from August 2012 to June 2013 less amounts included in those bills towards "Lactum SB injection" or other banned medicines of Lenec Pharmaceuticals. The above amounts shall be computed and released to the petitioner society within a period of two months

from the date of receipt of a copy of this judgment. The petitioner shall also provide a computation showing the amounts due under this order. The balance amount involving the medicines involved in the enquiry need be paid only after finalisation of the cases pending in the matter.

Anu Sivaraman, Judge

sj