

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No.6429 of 2015 (C)

PETITIONER:

**M/S.DATA VOICE NETWORK PVT. LTD.,PLOT NO.43A,
F BLOCK,COCCHIN SPECIAL ECONOMIC ZONE,
KAKKANAD,KOCHI-682 037(REGISTERED OFFICE AT MULLOTHU
BUILDINGS,RAVIPURAM,KOCHI-16) REPRESENTED BY IT'S
ADMINISTRATIVE MANAGER,SIVAKRISHNA PILLAI.**

**BY ADVS.SRI.S.SANTHOSH KUMAR
SMT.P.LISSY JOSE.**

RESPONDENTS:

- 1. THE DEVELOPMENT COMMISSIONER,
COCHIN SPECIAL ECONOMIC ZONE(CSEZ),
MINISTRY OF COMMERCE AND INDUSTRY,
GOVERNMENT OF INDIA,ADMINISTRATIVE BUILDING,
KAKKANAD,KOCHI-682 037.**
- 2. THE UNION OF INDIA,REPRESENTED BY THE SECRETARY OF
GOVERNMENT,MINISTRY OF COMMERCE AND INDUSTRY,
UDYOG BHAVAN,NEW DELHI-110 107.**

R1 & R2 BY SRI.N.NAGARESH,ASGI

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF CERTIFICATE OF IMPORTER-EXPORTER CODE
DATED 3.11.2003 ISSUED TO THE PETITIONER.

EXT.P2:TRUE COPY OF BOND-CUM-LEGAL UNDERTAKING DATED 2.1.2007
EXECUTED BY THE PETITIONER.

EXT.P3:TRUE COPY OF RENEWAL OF APPROVAL DATED 15.9.2009 ISSUED TO
THE PETITIONER.

EXT.P4:A TRUE COPY OF APPLICATION FOR RENEWAL DATED 1.8.2014 FILED BY
THE PETITIONER.

EXT.P5:A TRUE COPY OF SHOW CAUSE NOTICE DATED 21.11.2014 ISSUEDBY
THE 1ST RESPONDENT.

EXT.P6:A TRUE COPY OF ORDER DATED 28.1.2015 PASSED BY THE 1ST
RESPONDENT.

EXT.P7:A TRUE COPY OF PETITION DATED 25.2.2015 FILED BY THE PETITIONER
BEFORE THE 1ST RESPONDENT.

EXT.P8:TRUE COPY OF ANNUAL PERFORMANCE REPORT DATED 14.8.2012 FOR
THE PERIOD 2011-12 FILED BEFORE THE 1ST RESPONDENT
ON 14.8.2012.

EXT.P8(a):TRUE COPY OF ANNUAL PERFORMANCE REPORT DATED 30.6.2013
FOR THE PERIOD 2012-13 FILED BEFORE THE 1ST RESPONDENT
ON 5.7.2013.

EXT.P9:TRUE COPIES OF FOREIGN INWARD REMITTANCE STATEMENT
DATED 10.7.2014 ISSUED BY THE ICICI BANK TO THE PETITIONER.

EXT.P9(a):TRUE COPY OF FOREIGN INWARD STATEMENT DATED 4.3.2015
ISSUED BY THE ICICI BANK TO THE PETITIONER.

EXT.P10:TRUE COPY OF THE ANNUAL PERFORMANCE REPORT FOR THE
PERIOD 2013-14 FILED BEFORE THE 1ST RESPONDENT ON 5.3.2015
ALONG WITH COVERING LETTER DATED 5.3.2015.

RESPONDENT'S EXHIBITS:

EXT.R1(a):TRUE COPY OF LETTER DATED 8.9.2011 ISSUED FROM THE OFFICE
OF THE DEVELOPMENT COMMISSIONER,CSEZ.

EXT.R1(b):TRUE COPY OF LETTER DATED 31.10.2011 ISSUED TO THE
DEVELOPMENT COMMISSIONER,CSEZ.

WP(C).No.6429 of 2015 (C)

**EXT.R1(c):TRUE COPY OF ORDER DATED 2.11.2011 ISSUED FROM THE OFFICE
OF THE DEVELOPMENT COMMISSIONER,CSEZ.**

**EXT.R1(d):TRUE COPY OF CIRCULAR DATED 13.9.2013 ISSUED BY CHIEF
GENERAL MANAGER,RESERVE BANK OF INDIA.**

//TRUE COPY//

P.S. TO JUDGE

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P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 6429 of 2015

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Dated, this the 20th day of March, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers :

"(i) To issue a writ of mandamus or any other appropriate writ or order directing the 1st respondent to permit the functioning of petitioner's Unit in Cochin Special Economic Zone granting them one month to file Annal Performance Report (APR) and other required documents for procession Ext. P4 application for renewal of approval.

(ii) To issue a writ of mandamus or any other appropriate writ or order directing the 1st respondent to consider and pass orders on Ext. P4 application for renewal of approval under Rule 19 (6) of the Special Economic Zone Rule 2006 granting one month time to the petitioner to cure the defects.

(iii) To issue a writ or mandamus or any other appropriate writ order directing the 1st respondent to consider and pass orders on Ext. P7 petition;

and

(iv) to issue such other appropriate writ, order or direction as this Hon'ble Court may deem just and proper to issue in the circumstances of the case.

2. The relief sought for by the petitioner is opposed from the part of the respondent by filing a statement referring to the sequence of events and lapses on the part of the petitioner in submitting Annual Performance Report (APR). It is also pointed out that in view of the admitted failure, there was no other alternative for the concerned respondent, but to have issued the relevant proceedings, also imposing penalty, which according to the respondents is perfectly within the four walls of law and not assailable under any circumstances.

3. The learned counsel for the petitioner points out that 'APR' could not be submitted on time, because of some compelling circumstances, including the death of the present Director, who was in station. It is stated that the other two Directors were residing abroad. However, considering the need of the hour, all requirements are being satisfied and a period of one month was sought for, for submitting the APR, as revealed from Ext. P7. In the meanwhile, the petitioner was served with Ext. P5 show cause

notice dated 21.11.2014 and the proceedings were finalized as per Ext. P6 order dated 28.01.2015, whereby a penalty of **Rs. 2 lakhs** has been imposed upon the petitioner. It is stated that separate proceedings are being pursued, challenging the order imposing penalty.

4. During the course of hearing, the learned counsel for the petitioner brings to the notice of this Court that the 'APR' has already been submitted for the year 2013 - 14 and a copy of the same is sought to be produced as Ext. P10 along with I.A. No. 370 of 2015. It is stated that the petitioner has cleared entire rent arrears on the day before yesterday (18.03.2015), apart from remitting the water charges and electricity charges. The prayer is only to cause Ext. P4 application for renewal to be considered by the first respondent. The learned counsel for the petitioner also submits that the petitioner, to prove the bonafides, is ready to satisfy the penalty of **Rs. 2 lakhs** covered by Ext. P6 for the time being, without prejudice to the appeal stated as preferred against Ext. P6. It is also stated that the petitioner might be given an opportunity to have *on line* access, so as to rectify the mistake, if at all any that may be pointed out by the respondents.

5. The learned standing counsel for the respondents points out that by virtue of Ext. P6, the proceedings have become final and as such, no online access can be given to the petitioner, except on renewal.

6. In view of the changed circumstances, as to the satisfaction of entire rent arrears, water and electricity charges and also in view of the willingness expressed from the part of the petitioner to satisfy penalty of Rs. 2 lakhs (subject to the fate of appeal) and submission of APR for the year 2013 - '14, this Court finds that an opportunity has to be given to the petitioner with regard to the application for renewal. Accordingly, the first respondent is directed to consider Ext. P4 application for renewal, subject to the satisfaction of penalty under protest as aforesaid and appropriate orders shall be passed in accordance with law, after hearing the petitioner, at any rate within one month. If there is any technical defect in considering Ext. P4, the same shall be let known the petitioner in writing (by registered post), as the petitioner, for the time being is denied online access. Further proceedings shall be subject to the orders to be passed by the first respondent on Ext. P4 as aforesaid.

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The petitioner shall produce a copy of this judgment along with copy of the writ petition before the first respondent for further steps.

The Writ Petition is disposed of.

Sd/-

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

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