IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WP(C).No. 6859 of 2015 (F)

PETITIONER(S):

ALL KERALA CHEMISTS AND DRUGGIST ASSOCIATION (REGD.), KOLLAM DISTRICT UNIT, CHEMIST BHAVAN, M.C.NO.XXVI/517, CURSON ROAD, KOLLAM -13, REPRESENTED BY ITS SECRETARY.

BY ADVS.SRI.T.B.THANKAPPAN
SRI.T.T.HARIKUMAR
SRI.ASHISH VIDYADHARAN

RESPONDENT(S):
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1. **THE COMMISSIONER OF SALES TAX, COMMERCIAL TAXES DEPARTMENT, KILLIPALAM, THIRUVANANTHAPURAM.**

2. **THE DEPUTY COMMISSIONER (INTELLIGENCE), COMMERCIAL TAXES DEPARTMENT, KILLIPALAM THIRUVANANTHAPURAM.**

3. **THE DRUGS CONTROLLER OF KERALA, DRUGS CONTROLLER OFFICE, THIRUVANANTHAPURAM.**

4. **THE MANAGING DIRECTOR KERALA STATE CO-OPERATIVE CONSUMERS FEDERATION LTD. GANDHI NAGAR, ERNAKULAM, KOCHI 20 KERALA.**

5. **MANAGING DIRECTOR, MEDICAL SERVICES CORPORATION, BEHIND WMC HOSPITAL, THYCAUD, THIRUVANANTHAPURAM - 695 064.**

6. **STATE OF KERALA REPRESENTED BY THE SPECIAL SECRETARY TO GOVT. TAXES DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM - 695001.**

7. **THE HEALTH SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001.**

R1-R3,6 & 7 BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN
R4 BY SRI.K.T.PAULOSE, SC
R5 BY SRI.M.AJAY,SC,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 6859 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE COPY OF THE NEWS PAPER REPORT IN DESHABBIMANI DATED 23.7.14 AS PER THE INVESTIGATION DONE BY 3RD AND 4TH RESPONDENT

P2- TRUE COPY OF THE NEWS PAPER REPORT IN KAUMUDI DATED 24.8.2014 ON THE BASE OF THE INSPECTION BY THE CONTROLLER AND AUDITOR GENERAL

P3- TRUE COPY OF THE LETTER DATED 12.1.2015 BY PETITIONER FORWARDED TO 2ND RESPONDENT

P4- TRUE COPY OF THE BILL ISSUED BY THE ASWAS COMMMUNITY PHARMACY AND HEALTH CARE CENTRE

P5- TRUE COPY OF THE WHOLE SALE BILL OF THE M/S.VANIYAPURACKAL DISTRIBUTORS DATED 16.1.2015

P6- TRUE COPY OF THE WHOLE SALE BILL OF THE M/S.UNI DRUGS DATED 21.1.2015

P7- TRUE COPY RETAIL BILL DATED 16.1.2015 OF ASWAS COMMUNITY PHARMACY AND HEALTH CARE CENTRE, CHINNAKADA

P8- TRUE COPY OF WHOLE SALE OF BILL OF THE AFORESAID PRODUCTS OF VENAD AGENCIES CHINNAKADA DATED 16.1.2015

P9- TRUE COPY OF THE PURCHASE DETAILS OF RETURN PERIOD APRIL OF ASWAS COMMUNITY PHARMACY DISTRIBUTORS

P10- TRUE COPY PURCHASE DETAILS OF RETURN PERIOD MAY OF ASWAS COMMUNITY PHARMACY DISTRIBUTORS

P11- TRUE COPY PURCHASE DETAILS OF RETURN PERIOD JULY OF ASWAS COMMUNITY PHARMACY DISTRIBUTORS

P12- TRUE COPY PURCHASE DETAILS OF RETURN PERIOD AUGUST OF ASWAS COMMUNITY PHARMACY DISTRIBUTORS

P13- TRUE OCPY PURCHASE DETAILS OF RETURN PERIOD SEPTEMBER OF ASWAS COMMUNITY PHARMACY DISTRIBUTORS

P14- TRUE COPY REPRESENTATION DATED 18.12.2014 FILED BY THE PETITIONER BEFORE 3RD RESPONDENT

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A. MUHAMED MUSTAQUE, J.

W.P. (C). No. 6859 of 2015

Dated this the 2nd day of June, 2015

J U D G M E N T

The petitioner is the Secretary of All Kerala Chemists and Druggist Association of Kollam District. The petitioner has filed this writ petition in the larger interest alleging unfair trade practice of medical retail outlets in the State who offer high discount to the customers, despite Drugs (price) Control Order 2013. The case of the petitioner is that, high discount on the sale price of the drugs is also causing huge lose to the Exchequer. Such retail outlets are functioning in the name of Aswas, Akshays and Viswas. In that context the petitioner seeks the following reliefs in this writ petition.

> *"A. A writ in the nature of mandamus directing the respondents to conduct a comprehensive enquiry into the functioning of discount retail medical shops in the state and their sources of supply of medicines in bulk that cause big revenue loss to the state exchequer and posing big threat to legally functioning retail medical shops in the state;*
>
> *B. Grant such other writs, orders or directions as this Hon'ble Court may deem fit and proper in the circumstances of the case."*

2. The 1st respondent has filed a statement. In the statement it is stated that there is actually no revenue loss to the Government Exchequer since the compounded tax at MRP

has been remitted at the first phase of its distribution in the State. It is further stated that Aswas, Viswas, Sevana Medical Shops are functioning under the Societies constituted on the principles of Community Pharmacy. The main aim of the society is to provide relief to the public in a market where the price of medicines are so exorbitant beyond the reach of common man. In fact it appears that the State supports pursuing such activities by the society.

3. Essentially the claim of the petitioner appears to be complaining of unfair practices adopted by certain medical retailers. The monopolic tendency of such retailers indulging unfair practices are highlighted.

4. I am of the view that it is beyond the scope of Commissioner of Sales Tax, to probe. The Statute like Competition Act, 2002 has made a mechanism to deal with such issues. The petitioner has to work out such remedy either by availing the redressal mechanism of such Act or such other mechanism. No relief can be granted by this Court. This writ petition is disposed of, with liberty to the petitioner to avail any other alternate redressal mechanism .

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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