
(2013) 09 KAR CK 0325

In the Karnataka High Court

Case No : Writ Petition No. 10928 of 2011 (GM-RES)

Dr. Vanahalli Homeo Pharmaceuticals

APPELLANT

Vs

Karnataka State Drug Logistics and Warehousing Society
Regd. and The Commissioner for Health and Family Welfare
Services

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 09 KAR CK 0325

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Vivek S. Reddy, for K.N. Subba Reddy, for the Appellant; Jagadish Mundargi, G.A., for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the notice dated 26.02.2010 (Annexure-F) on the ground that the same does not provide opportunity to the petitioner to put forth their case. In that regard the petitioner is seeking for issue of mandamus to direct the respondents to release the entire amount due to the petitioner in pursuance of the drugs supplied. The petitioner is also seeking for a direction to the respondents to consider the representation of the petitioner and pass necessary orders. The petitioner is the supplier of drugs to the Government of Karnataka for the purpose of use in various Medical Centers run by the State. Pursuant to the tender notification, the order for supply of drugs was awarded to the petitioner on 17.02.2009 and an agreement was entered into between the parties on the same day. Subsequent thereto, the petitioner is said to have supplied Ointment and Calendula powder.

2. The issue presently is with regard to the payment of amount for the supply said to have been made by the petitioner. Since, the petitioner contends that the supply made is as per the requirement and the same has been accepted by the respondents, the payment due towards the cost of the supplies made is to be

released in favour of the petitioner. In that regard, since the respondent No. 1 has issued show cause notice dated 26.02.2010 directing the petitioner to replace the stock supplied with appropriate stocks, the petitioner is before this Court.

3. It is the contention on behalf of the petitioner that though supplies have been made and the same had been accepted and the notice dated 26.02.2010 at Annexure-F is styled as a show cause notice, the concluding portion of the same would indicate that the respondent No. 1 has already taken a decision that the supply made by the petitioner does not conform to the order placed and as such the conclusion reached therein without opportunity to the petitioner would not be sustainable. The learned counsel would also refer to the order dated 06.11.2009 passed in W.A. No. 1777/2009 to contend that in respect of another supplier relating to certain actions taken by the respondent No. 1 herein, a Division Bench of this Court was of the view that opportunity is to be provided and a decision is to be taken in that regard.

4. Having taken these aspects into consideration, a perusal of the show cause notice dated 26.02.2010 in fact would indicate that the respondent No. 1 has referred to the reference at Sl. Nos. 7 and 9 of the said show cause notice and has arrived at the conclusion that supplies made is not as per the specification and a decision has been taken to direct the petitioner to supply appropriate stocks within 30 days. This in fact is the conclusion reached by the respondent No. 1 without providing opportunity to the petitioner. Hence, that portion of the show cause notice dated 26.02.2010 would not be sustainable and the same is set aside. The respondent No. 1 is directed to treat the same barely as a show cause notice to the petitioner and provide opportunity to them.

5. Since, at this juncture it is contended in the petition that 80% of the supplies made by the petitioner have already been consumed by the respondents, the same shall also be kept in view by the respondent No. 1 and only seek for necessary compliance by the petitioner to indicate that the supply which had been made was as per the terms of the order. On such opportunity being granted to the petitioner, if the respondents are satisfied that the supply made was as per the requirement, needless to mention that the respondent No. 1 is duty bound to release the payment. On the other hand, from the definite material available on record, if it is put to the petitioner that the supply made is not as per law, the petitioner would controvert the same in accordance with law to indicate that the supply made and accepted is as per law. The said process in any event shall be completed by the respondent No. 1 within 30 days from the date of receipt of a copy of this order. All contentions of the petitioner to justify the correctness of the supply made by them including filing a detailed reply to Annexure-E which is now treated only as a show cause notice is left open to be urged before the respondent No. 1. In terms of the above, the petition stands disposed of.