

(2022) 04 KL CK 0032

In the High Court Of Kerala

Case No : Writ Petition (C) No. 1833 Of 2022

Kapila Medical Systems Pvt. Ltd.

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Citation : (2022) 04 KL CK 0032

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : Biju Balakrishnan, V.S.Rakhee, K.J.Gisha, Ajmal P, Parvathy S.R, Appu P S, M. Ajay

Final Decision : Allowed

Judgement

N. Nagaresh, J.

1. The petitioner, a Private Limited Company engaged in the dealership of medicinal and allied products of various reputed manufacturers, is before this Court seeking to command the respondents to pay the entire amount covered by Ext.P10 forthwith less an amount of ₹ 1,33,96,756/-, which has been paid to the petitioner on 10.01.2020.

2. The 2nd respondent-Kerala Medical Services Corporation Limited floated Ext.P1 notice inviting quotations on 04.05.2021 for supply of Low Molecular Weight Heparin Injection 40 MG/0.4 ML (Enoxaparin Injection IP) among other products. The petitioner submitted their quote at the rate of ₹ 170.40 per unit as basic price along with ₹ 8.52 as GST. The total price per unit was ₹ 178.92. The product was manufactured by M/s. Sai Parentals Private Limited.

3. The respondents accepted the price and issued Ext.P2 purchase order dated 08.05.2021 and directed the petitioner to supply 1,50,000 units of the product. The petitioner supplied the same. Thereafter, the 3rd respondent issued a letter dated 14.06.2021 for supply of 2,54,000 units of the product. The petitioner supplied the said quantity. Again, by Ext.P6 letter dated 10.08.2021, the

petitioner was required to supply 1,26,990 units. Surprisingly, the 7th respondent issued Ext.P7 e-mail to the petitioner directing them not to execute the order made on 10.08.2021.

4. When the petitioner contacted the respondents, they asked the petitioner to suggest any alternative product similar to the product manufactured by M/s. Sai Parentrals Private Limited. The petitioner thereupon agreed to supply the product manufactured by M/s. Protech Telelinks. The petitioner was ready to supply the said product inclusive of Insulin Syringe at the rate of ₹ 178.92 (Inclusive of GST). The proposal was accepted and the petitioner was issued Ext.P9 requiring the petitioner to supply 1,26,990 units of the product manufactured by M/s. Protech Telelinks. The petitioner supplied the product in requisite quantity. The total value of the product was ₹ 2,27,21,051/- as per the agreed price.

5. Though the respondents honoured all other bills submitted by the petitioner, the amount payable against the supply of medicines manufactured by M/s. Protech Telelinks under Ext.P10 bill was not paid. Later, an amount of ₹ 1,33,96,753/- was paid to the petitioner deducting a sum of ₹ 93,24,298/- from Ext.P10 bill. On enquiry, the petitioner learnt that the 2nd respondent had in the meanwhile issued notice inviting quotation from direct manufacturers or authorised dealers for supply of the same product as per Ext.P12. Ext.P12 notice inviting quotation was later cancelled as per Ext.P13.

6. The respondents stated that one of the participants in Ext.P12 quotation had quoted an amount of ₹ 108.93 per unit for the product being supplied by the petitioner and therefore the price agreed to between the petitioner and the respondents is exorbitant and cannot be paid to the petitioner. The petitioner states that the action of the respondents in unauthorisedly deducting amounts from the bill of the petitioner, for the reason that another supplier has quoted a lesser price subsequently, is highly arbitrary, unjust and unsustainable.

7. Respondents 2 to 6 resisted the writ petition filing counter affidavit. The respondents stated that the petitioner was required to stop supply of Low Molecular Weight Heparin Injection 40 MG/0.4 ML (Enoxaparin Injection IP) due to shortfalls in the products. The petitioner then offered to supply products manufactured by M/s. Sai Parentrals Private Limited at the rate of ₹ 178.92. After supply was made, the respondents found that the rate quoted by the petitioner is exorbitant and the product was available at a much lower price of ₹ 108.93 per vial. At this rate, the excess amount claimed by the petitioner was ₹ 88,88,030/-. The respondents paid the fair price of the product supplied by the petitioner, which is ₹ 1,33,96,753/-.

8. The drugs are purchased by the respondents for free supply to poor patients. The petitioner has attempted to exploit the respondents. The amount saved by way of deduction from petitioner's bill by the respondents can be used for supply of free medicines to poor patients through Karunya Community Pharmacy. The writ petition filed by the petitioner is therefore without any merit and is liable to

be dismissed, contended respondents 2 to 7.

9. Heard the learned counsel for the petitioner, the learned Government Pleader for the 1st respondent and the learned Standing Counsel for respondents 2 to 7.

10. It is an admitted position that the petitioner responded to Ext.P1 notice inviting quotations and agreed to supply Low Molecular Weight Heparin Injection 40 MG/0.4 ML (Enoxaparin Inj IP) at the rate of ₹ 178.92 inclusive of GST. The petitioner was given supply orders, the petitioner supplied the drugs and was paid for the same. Subsequently, the petitioner was required to stop supply. The petitioner states that when they contacted the respondents, the respondents required the petitioner to supply alternate product. The petitioner agreed to supply the same drug manufactured by M/s. Sai Parenterals Private Limited for ₹ 178.92 inclusive of GST. The offer was accepted by the respondents and at the instance of the respondents, the petitioner supplied the drug worth ₹ 2,27,21,051/-. The respondents paid only an amount of ₹ 1,33,96,753/- and deducted an amount of ₹ 93,24,298/-.

11. The justification advanced by the respondents for short payment is that the same medicine is available in the market at a lesser rate of ₹ 108.93 per vial. After entering into an agreement with the petitioner to supply the drug at the rate of ₹ 178.92, the respondents will not be justified in deducting any amount from the petitioner's Bill on the ground that the same product is available in the market at a lesser price. The respondents accepted the delivery of medicine and appropriated the same. Thereafter, the respondents cannot be heard to contend that the price quoted by the petitioner is excessive and the respondents are entitled to deduct the excess amount from the bills of the petitioner.

12. Another aspect worth noting is that the 3rd respondent required the petitioner to supply the drugs in question on 24.09.2021. The 2nd respondent paid lesser price after effecting the impugned deduction on 10.01.2022, on the ground that the medicine is available in market at the rate of ₹ 108.93 per vial. On 30.03.2022, the respondents themselves issued a Notice in which the respondents have declared that the approved rate of Enoxaparin Injection IP (Low Molecular Weight Heparin Inj.) as ₹ 173.25, which is more or less the same price at which the petitioner had offered and has been supplying the drug. Therefore, the argument of respondents 2 to 7 that the drugs were available at the market at much lower price and the petitioner has been overcharging, is not sustainable.

In the afore circumstances, the writ petition is allowed. Respondents 2 to 7 are directed to pay the petitioner the balance price of the drugs supplied as per Ext.P10 Credit Bill, at the agreed rate. The payment shall be effected within a period of one month.