

(1992) 11 KAR CK 0048
In the Karnataka High Court
Case No : W.A. No. 1693 of 1992

Mahendra Labs Pvt. Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 12-11-1992

Acts Referred:

Citation : (1992) ILR (Kar) 3629

Hon'ble Judges : K.A. Swami, Acting C.J.; N.D.V. Bhat, J

Bench : Division Bench

Advocate : G.S. Visveswara, for the Appellant; N.K. Gupta, for R-1 to R-3, D. Prabhakar, for R-4 and R-5 and K.S. Desai, for R-5, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, Ag. C.J.

1. This Appeal is preferred against the order dated 21st August 1992 passed by the learned Single Judge in Writ Petition No. 18617/1992 dismissing the Writ Petition.

2. In the Writ Petition, the appellant/petitioner sought for a declaration that the Rate Contracts for five items mentioned in the order in favour of respondents 4 and 5 are illegal and for other reliefs. The five items in respect of which rate contract was granted in favour of respondents 4 and 5 are as follows:

- (1) Sulphadiazine Tablets 500 mg,
- (2) Sulphamethoxazole and Trimethoprim Tablets.
- (3) Glibenclamide Tablets.
- (4) Amoxycillin caps., 250 mg., and
- (5) Salbutamol Syrup.

Out of the aforesaid five items the appellant/petitioner has confined his Writ

Petition to items 1 and 3 viz., Sulphadiazine tablets and Glibenclamide tablets.

3. The contention urged before the learned Single Judge and also before us is that the Expert Committee has not given any reasons for rejecting the samples submitted by the appellant/petitioner therefore, their decision is arbitrary as it is not informed by any reason.

4. The learned Single Judge has held that second respondent has acted on the report made by the Expert Committee and on the basis of their report he has accepted the tenders on rate contracts submitted by respondents 4 and 5 therefore, the second respondent cannot be held to have acted arbitrarily.

5. Whenever a report of an Expert Committee is sought on a particular item which is the subject matter of contract or tender and that Expert Committee submits its report and as long as the bonafides of the members of the Expert Committee are not challenged and no motive or negligence or incompetency is attributed to them, the fact that the Experts have not given detailed reasons of their decision by itself cannot be made a ground to invalidate their decision or to characterise their decision as arbitrary. They are not expected to perform the judicial functions so as to give reasons for every conclusion they arrive at. As such, the fact that the report of the experts does not give any reason by itself cannot be made a ground. In order to satisfy ourselves as to whether in what manner the experts have acted in coming to the conclusion that the samples submitted by the petitioner are inferior to those submitted by respondents 4 and 5, we directed the Expert Committee to file affidavit. Accordingly, the counter affidavit of Sri T.Ranganathachar, the Director of Health and Family Welfare Services has been filed. He was the Chairman of the Expert Committee. The Expert Committee consisted of 12 members including the Chairman as stated in the Counter affidavit. It also consisted of Professors, Drug Controller, Joint Director of Medical Stores, Head of the Department of Medicine, Superintendent of B & L.C. Hospital and also the Additional Director and Joint Director of Medical Education.

6. In the counter affidavit it is also stated on what basis the decision was arrived at. Paragraphs 4 and 5 of the counter affidavit state the procedure followed by the experts. Of course, the appellant/petitioner has filed his affidavit stating that the samples submitted by him were not subjected to any chemical tests.

7. We see no reason to disbelieve the statement made on oath by Sri Ranganathachar, the Director of Health and Family Welfare Services who was the Chairman of the Expert Committee. However, Sri Visweswara, learned Counsel appearing for the appellant placed reliance on a Decision of the Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, in support of his submission that it is not open to the Expert Committee or to the second respondent to justify its decision by adducing additional evidence or material at a subsequent stage. No doubt in the aforesaid Decision it has been held that "when a statutory functionary makes an order

based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise."

We may point out at once that the Committee concerned here is not a statutory committee. They were not performing any statutory functions. The Committee was constituted by the Government in order to know whether the rate contract submitted by the petitioner/ appellant and others for supply of medicines should be accepted and if so, on what basis. The Expert Committee went into the matter and gave its report. That being so, the aforesaid Decision cannot be applied to the case on hand. Even otherwise, we have already pointed out that there is no reason whatsoever to doubt the decision of the Expert Committee. We called for the affidavit only to satisfy ourselves. Hence, we find no ground to admit this Appeal. It is accordingly rejected.