

CASE NO.:
Appeal (civil) 1512 of 2008

PETITIONER:
M.P.Ayyappankutty

RESPONDENT:
The State of Kerala & Ors

DATE OF JUDGMENT: 22/02/2008

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO 1512 / 2008
(arising out of S.L.P.(C) No. 22587/2004)

HARJIT SINGH BEDI, J.

1. Special leave granted.

2. The Central Purchase Committee of the State Government of Kerala floated tenders for the supply of anti-rabies vaccine for various Government Hospitals in the State for the year 2002-03. The 7th respondent, the Human Biological Institute amongst others submitted the tenders and quoted its price of Rs.148/- per vial. This rate was accepted by the State Government in its order of 30th March 2002. On 11th October 2002, Dr. Binu Upendran, Assistant Surgeon, District Hospital, Kollan reported that four patients had developed severe reactions after taking a second dose of the vaccine from Batch No. AYB 90/2001. The Director, Health Services accordingly vide his order dated 22nd October, 2002 directed the purchase officer to freeze the utilization of the vaccine until further orders. The Drug Controller also sent a sample of the vaccine for analysis to the Central Research Institute, Kasauli for examination. It appears that one Ramachandran who had allegedly been administered the vaccine on 17th November 2002 died on 9th December 2002. The Joint Director, Central Drugs Laboratory in his letter dated 3rd February 2003 also reported that the vaccine had failed in all four parameters fixed for its evaluation. The District Medical Officer, Kannur vide his letter dated 25th March 2003 also informed the Director, Health Services that the vaccine supplied in Batch No.90/2001 had been declared as sub-standard by the Central Drugs Laboratory. A committee was thereafter appointed by the Govt. of Kerala to examine the reasons as to why the samples taken had been found to have failed and on enquiry it transpired that the vaccine had not been stored in a proper way. While this investigation/enquiry was going on, respondent No.7 submitted its tender for the year 2003-04 as well. In the meanwhile, the Director, Health Services also invited tenders for the supply of the said vaccine by short tender Notice dated 20th March 2004. The present petition was filed on 6th April 2004 in public interest seeking a direction to the State Government that the 7th respondent should not be allowed to submit a tender for the vaccine. A reply was filed by the State Government of Kerala as well as by the 7th respondent. The High Court in its judgment dated 10th August 2004 dismissed

the Writ Petition holding that there were no extraneous considerations in the award of the supply contract to the 7th respondent. It is in this background that the present appeal has been filed. When the matter first came up for hearing on 16th November 2004, this Court issued a limited notice only with regard to the quality of the vaccine supplied by the 7th respondent. Replies, affidavits and counter affidavits etc. have been filed by the parties. In the affidavit filed by the State Government it has been deposed that the contract had been awarded to the 7th respondent keeping in view the quality of the vaccine and that prima facie no adverse reactions to the vaccine had been reported from any quarter. It was also pleaded that the allegation that Ramachandran had expired on 9th December 2002 after the administration of anti-rabies vaccine was incorrect as subsequent enquiries had identified his death on account of clinical rabies and not because of the adverse reaction of the vaccine. The Union of India has also filed its affidavit to indicate that the vaccine had passed three parameters and that only one batch i.e. Batch No. AYB 90/2001 had failed in the fourth i.e. physical test.

3. We have heard the learned counsel for the parties. As would be clear from the facts given above, the dispute pertains only to one batch of the vaccine supplied in the year 2002-03. There is no dispute whatsoever with regard to any other batch or subsequent tender. In the light of the positive stand taken by the Union of India and the State of Kerala and the limited notice given in these proceedings, we are of the opinion that no relief can be granted to the appellant at this stage. The learned counsel for the 7th respondent has emphasized that the Writ Petition was manipulated and the public interest raised was only a camouflage for the interests of a rival manufacturer. In the absence of any material on this score, we are unable to give a finding either way. We however dismiss the appeal with the observations that the State Government shall take adequate measures to ensure that the quality of the anti-rabies vaccine, which is the only preventive in a case of a bite from a rabid animal, is maintained.