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W.P(MD)No.15378 of 2014, etc.,

EFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2022

Pronounced on : 30.01.2024

CORAM

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**W.P(MD)No.15378, 16042, 16197, 18312,
18956 and 18957 of 2014**

WP(MD)No.15378 of 2014

M/s.Star Modern Rice Mill,
Represented by its Managing Partner,
P.Thayakal Batcha
S/o.K.Pakir Masthan
No.24, North Chetty Street,
Vallam, Thanjavur.

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.

2.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Thanjavur Region,
Thanjavur.

3.M.Mohamed Badusha

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified mandamus calling for the records relating to the impugned order of the 2nd respondent in RC.No.G2/11309/2014, dated 05.08.2014 and the consequent impugned order of the 2nd respondent in



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RC.No.G2/11309/2014 dated 06.08.2014, quash the same and consequently direct the respondents herein to supply paddy to the petitioner rice mill as hulling agent in accordance with the terms and conditions of the hulling agreement between the petitioner and the respondent corporation, with exemplary costs.

For Petitioner : Mr.B.Saravanan
Senior Counsel
for Mr.A.Rahul
For Respondent : Mr.G.Mohan Kumar
Nos.1 and 2 Additional Government Pleader

COMMON ORDER

These writ petitioners are hulling agents engaged by the Tamil Nadu Civil Supplies Corporation for hulling the paddy for the supply of rice under the public distribution system. By the order impugned in WP(MD)Nos.15378, 16042, 16197 and 18956 of 2014, the petitioners the hulling agencies were terminated and they have also been blacklisted and by the order impugned in WP(MD)No.18312 and 18957 of 2014 the petitioners were directed to pay the cost of the loss caused to the Tamil Nadu Civil Supplies Corporation.

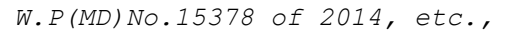
2.The Senior Regional Manager of Tamil Nadu Civil Supplies Corporation, Thajavur Region [herein after shall be referred to as 'TNCSC'] has passed these impugned orders terminating the contract of these hulling agents, blacklisting them and also



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directing them to pay the cost of the rice as per the terms and conditions of the agreement. Clause 12 of the agreement enables TNCSC to terminate the contract, blacklist the mill and also to recover the cost of the rice, in the event if the hulling agents involve in any malpractice in hulling the paddy / resultant rice. The TNCSC procures paddy from the farmers and converts it into as rice by engaging private hulling agents and also through its modern rice mills.

3.The petitioners are such hulling agents engaged by the TNCSC. The respondent corporation officials have taken resultant rice samples from the petitioners' rice mills, subjected them for analysis and initiated action against them that the resultant rice, supplied by these petitioners, were already distributed under the public distribution system to the cardholders and it is not the resultant rice of the paddy supplied by the TNCSC to these petitioners. Therefore, the TNCSC issued show cause notice, which was challenged by the petitioners, wherein this Court allowed the writ petitions in their favour and the appeal preferred by the TNCSC was allowed by the Division Bench of this Court. Subsequent to the orders passed in WA(MD)Nos.1123 and 1174 to 1177 of 2013 dated 02.07.2014, the impugned orders came to be passed.



5. The learned Senior Counsel appearing for the petitioners has raised the following points in support of these writ petitions.

ii. The paddy supplied to them was of 5 different qualities and species and the same will reflect in the resultant rice and therefore, respondent Corporation cannot dispute the quality of the resultant rice, without subjecting the paddy, which was supplied to them to the quality test.



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iii.The paddy purchased by the respondent Corporation is of different qualities, without any quality test, they procure the paddy and directly send it to the hulling agents. The different qualities of paddy will have a bearing on the quality of the rice.

iv.The samples were not taken in the presence of the petitioners or in the presence of their representatives. There is no explanation for not taking samples in their presence. There is no serious defect in the quality of rice and even according to the quality control report, resultant rice is consumable.

v.The period of blacklisting is not mentioned in the impugned order.

6.The learned Standing Counsel for the respondent Tamil Nadu Civil Supplies Corporation has raised objection on the maintainability of the writ petitions on the ground that the petitioners are having appeal remedy before the 1st respondent as per the clause 42 of the terms of the agreement and the agreement also provides for arbitration under clause 44 of the



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agreement. He also submits that the agreement between the corporation and the petitioners is not statutory and it is a commercial agreement. In such commercial agreements as there exists only a contractual right and obligation, the parties are governed by the terms and conditions as agreed and therefore the writ petitions are not maintainable.

7.The learned Standing Counsel further submits that while analysing the resultant rice supplied by the petitioners, it was found that the moisture content of the rice was very low than the required moisture content and it also emanated musty smell and therefore, the officials came to the conclusion that the rice analysed was an old rice and not the resultant rice of the paddy supplied to these petitioners for hulling. Therefore the petitioners were issued with a show cause notice and it was challenged before this Court. In the writ appeal, the Division Bench of this Court in WA(MD)Nos.1123 of 2013, etc., batch by order dated 02.07.2014 had permitted the respondent Corporation to recover the loss caused by these hulling agents. In pursuance of the same, the order of recovery came to be passed only after following the principles of natural justice by affording an opportunity of hearing to the petitioners. Apart from the recovery of the cost of rice, gunny bags,



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re-processing charge, transporting charge and audit objection amount is also sought to be recovered.

8.He further submits that the petitioner in WP(MD)No.15378 of 2014 had obtained interim order restraining the respondent from enforcing the bank guarantee. Having obtained the interim order, it is the responsibility of the petitioner to keep the said bank guarantee alive, however, the petitioner had allowed the bank guarantee to expire by misusing the interim order of this Court. Therefore, suitable direction has to be issued as against the petitioner in WP(MD)No.15378 of 2014 to pay the amount specified in the recovery order. Similarly, the petitioners in WP(MD)No.18956 of 2014 and 1957 of 2014 have also not kept their bank guarantee alive.

9.This Court considered the rival submissions made on either side and perused the materials placed on record.

“தனி ஒரு மனிதனுக்கு உணவு இல்லையெனில் இந்த
ஜகத்தினை அழித்திடுவோம்”

--மகாகவி பாரதியார்--



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10.The fundamental right to life under Article 21 of the Constitution includes right to Food and other basis necessities. The right to food implies the right to food at appropriate nutritional levels and it is the responsibility of the government to ensure the same.

11.The Government of India and the Government of Tamil Nadu are spending huge amount to supply the rice under the Public Distribution System to the poor and the needy. The paddy is procured by the Government for a sum of Rs.40/-per kg, processed through these hulling agents, supplied at free of cost through PDS to the card holders. Around 2.25 crores cardholders in the State of Tamil Nadu are provided with free rice by the government. Maximum of 5 kgs rice are provided to each member of the family per month. This PDS rice is a double boiled rice, which has more nutritional value than the single boiled rice.

12.Normally the paddy is converted into raw rice and par-boiled rice. The boiled rice is prepared by steaming the paddy. The TNCSC is adopting the double steaming process by steaming the raw paddy and this steamed paddy is soaked in water and soaked paddy is again steamed. The TNCSC claims that by this



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type of double boiling process, the nutritive value of the paddy is retained. Due to the double boiling, the colour of the rice is brown. By following this colour variation, the respondent Corporation identifies the PDS rice and the normal rice.

13.In all these cases, action has been taken by the TNCSC that the moisture content of the rice of 12%, instead of 14% and the rice had a sticky smell and the rice was not the resultant rice of the paddy supplied to these petitioners.

14.According to the learned Standing Counsel the PDS rice, which was already distributed by the Corporation was purchased by the petitioners and was re-circulated as the resultant rice. Therefore, the moisture content of the rice supplied by the petitioners was 12% and this 12% moisture content will be present only in the old rice.

15.The hulling agent is expected to deliver the rice at the prescribed outline fixed by the TNCSC. In case if there is any incident of old rice in the fresh resultant rice, the Regional Manager is entitled to conduct a detailed investigation by verifying the actual electricity consumption of the particular



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mill, performance of the miller and the deposit of rice at various storage points in the mills.

16.Chapter 5 of the Manual on Processing of Paddy issued by the TNCSC deals with the penal provisions and the legal consequences, arising out of such offences and the relevant clause is extracted hereunder:

"11.The Miller is liable for penalty in case,

(i)the resultant rice is not deposited within 15 godown working days from the date of issue of paddy for hulling.

(ii)the resultant rice is not agreeing to the variety of paddy issued for hulling.

(iii)the resultant rice delivered does not conform to the uniform specification and the rejections are exceeding the maximum rejections limit

(iv)the resultant rice is not supplied as per the outturn fixed by the Government of India, which is fixed from time to time.

(v)the resultant rice delivered in excess in lower variety and shortage in higher variety (besides



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the recovery of differential cost at the economic cost relevant to the procurement season)

(vi)the resultant rice is not that of paddy issued or found to be old rice, (besides stopping issue of paddy for further hulling)

(vii)there is shortage in the stock of paddy issued for hulling, resultant rice, gunnies, etc.,

(viii)the consumption of electricity in the hulling centre does not commensurate with the performance of the mill to hull TNCSE paddy."

17.As against the punishment imposed as per Clause 11, an appeal provision is available with the Managing Director, however, appeal has to be filed within a period of 60 days from the receipt of the order of the Senior Regional Manager. By referring this clause 11, the learned Counsel for the respondent Corporation has raised objections on the maintainability of these writ petitions.



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18.The respondents have proceeded and terminated the contract based on the sticky smell and the moisture content of the rice. The concerned Regional Manager has not conducted any investigation with regard to the actual electricity consumption of the mill, as contemplated under Clause 5 of the Chapter 5 of the Manual on Processing of Paddy.

19.These hulling agents are all from Thanjavur region. The major portion of the procurement of the paddy is done from Thanjavur region. During the peak procurement season, due to insufficient storage space, the procured paddy is sent to various other districts. Chapter -3 of the Manual states that in order to ensure regular and uninterrupted supply of rice under PDS and other welfare schemes, the activities such as movement of paddy, storage, hulling of paddy, storage of rice have to be carefully planned and carried out. Therefore, the paddy supplied to hulling agents are not supplied directly from the procurement centre. The procured paddy are stored and depending upon its requirement, it is disbursed to the hulling agents.

20.Clause 12 of Chapter 3 of the Manual reads as under:

"12.While releasing the paddy from the



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storage / CAP, the quality control staff in charge should carefully analyse the moisture content and record the same including the variety, season, and condition of gunnies in accordance with the instructions. If the moisture content recorded at the despatching end is found less than the recorded, it should be immediately brought to the notice of the Regional head concerned for necessary reconciliation. Care should be taken to guard against complaints of discrimination, favouritism or preferential treatment to particular millers either with regard to variety and sort or quality of paddy allotted."

21.Clause 17 of the Chapter 12 reads as follows:

"17.The Regional head and the quality control head shall inspect the hulling centres at frequent intervals and verify the proper accounting of paddy issued for hulling. The inspection shall be critical and on the various stages of processing to avoid misappropriation of the corporation paddy and substitution of PDS rice by the Miller. The electricity consumption shall also be verified by the officials during the inspection to ensure actual hulling of corporation paddy in the hulling centres. Instructions should be issued to all the private hulling agents to fix digital tamper proof electrical metre in all the mills one for electricity and one fore Genset. Also the availability of digital tamper proof electric metre should be ensured by periodical



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inspection and report submitted to head office. The Senior Regional Managers / Regional Managers are allowed to permit the hulling agents of TNCSC for private hulling only in extraordinary circumstances of shortage of paddy in TNCSE supply on prior request from them after completely hulling of the TNCSC stock of paddy already lifted and after depositing the entire resultant rice due by the private huller."

22.The paddy which is procured and stocked in the direct purchase centre and in some of the godowns owned by the TNCSC using CAP storage method. The CAP storage is a method of storing grains on the plinth and covering them with polythene cover. If the procured paddy was stored at CAP storage point and supplied to the hulling agents, it is not safe to come to the conclusion that the resultant rice supplied by the hulling agents as old rice based on the moisture content. The paddy which is stored in the open place cannot retain its moisture content due to the uncertain whether condition. It is to be noted that the respondent Corporation has not mentioned the moisture content of the paddy, when it was released from the storage point to the hulling agents.



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23.The case of the respondent is that the rice which has been found in the petitioners mill is old rice, which was supplied under the PDS, has been obtained by them and was re-supplied the same as the resultant rice. The Government of India and the Government of Tamil Nadu are procuring the paddy in the open market, hulling it and supplying the rice to the card holders at free of cost. The government incurs Rs.40/- per kg for the rice which is supplied under the PDS.

24.The data which is available for the year 2021-2022 itself reveals that 90,122 quintals of PDS rice smuggled were recovered and 12,721/- persons have been arrested for illegal transportation of the PDS rice. This PDS rice, which was recovered is only a tip of an iceberg.

25.A separate department has been constituted to prevent the illegal transportation of the PDS rice in the name of civil supplies-CID. This CS-CID is also having 34 units. Through this force this 12,721 persons have been arrested and a portion of PDS rice which was smuggled have been recovered.



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26.The government in order to enhance the quality of essential commodities supplied under the PDS and to prevent the irregularities in the distribution system of essential commodities, constituted a committee headed by the Commissioner of Civil Supplies and vide GO.Ms.No.84 Co-Operation, Food and Consumer Protection (F1) Department, dated 20.10.2021. This committee is expected to meet periodically and has to suggest measures to the TNCSC and to the government to enhance the quality of essential commodities supplied under the PDS and the steps to be taken to prevent irregularities.

27.It appears that on the request of this committee, the Government has installed CCTV cameras in all the hulling mills and they have also implemented several monitoring system to monitor the movement of vehicles fitted with GPS device and CCTV cameras are also installed in the godowns.

28.According to the report dated 20.03.2023 in Thanjavur region alone there are about 37 hulling agents and about 28 hulling agents have installed CCTV in their premises. However, TNCSC is not having any access to the same.



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29. In this case at the stage of show cause notice, the petitioners have filed the writ petitions before this Court and this Court allowed those writ petitions that the procedures contemplated under the TNCSC manual have not been strictly complied with as per Clause 25 of Chapter 4 and the same is extracted as under:

"12. As per the above clauses, the sample is to be collected from the delivery point, when the huller delivers the processed rice. Clause 25 of Chapter 4 of the Manual on Processing of Paddy gives the details as to how the procedures have to be followed for sending the sample for analysis and the said clauses are usefully extracted as follows:-

25. On receipt of samples from the godowns within 24 hours from the date of deposit, the Quality Control staff in charge of the regional lab shall analyse the sample by observing coding/decoding systems through the Quality Inspector/Asst. Quality Inspector and issue quality certificate to the Miller. The Miller on receipt of the quality certificate if aggrieved of the analysis results can apply for re-analysis within 15 days from the date of receipt and the regional head should ensure proper reanalysis in the presence of the re-analysis committee constituted by the Head Office."



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From the above, it is very clear that within 24 hours from the date of deposit, the Quality Control Staff in-charge shall analysis the sample and thereafter, issue Certificate to the Miller."

30.However the same was negatived in the writ appeal. Thereafter the impugned orders have been passed in the same fashion without conducting proper investigation as per their manual. The corporation is not having any data of the moisture content of the paddy which was supplied to the petitioners / hulling agents at the time of supplying the same and they have also not verified the electricity consumption of the respondent mills.

31.The respondent Corporation has not only terminated the contract but also blacklisted them without mentioning any specific period. The Hon'ble Supreme Court in M/s.Chauhan Builders Raibareli Vs the State of Uttar Pradesh and Ors, [Special Leave to Appeal (C) No.32840 of 2018) has held that one cannot be blacklisted for life. The order of blacklisting to the extent does not specify the period cannot be sustained. Therefore, the respondent Corporation is not justified in terminating the contract and blacklisting them for life, when they did not comply with the procedures as per their manual.



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32. Further, a Division Bench of this Court while allowing the writ appeals filed by the respondent Corporation has permitted the Corporation to use the rice, which was found to be fit for human consumption and if it was unfit for human consumption, the same shall be sold in auction for animal feed, after issuing notice to the petitioners' hulling agents. The respondents in their written submission have stated that the even though the rice deposited by the petitioners was found to be fit for human consumption, it cannot be considered as the resultant rice of the paddy supplied to them. It is seen that the respondent corporation has used the rice found to be fit for consumption for the supply under the PDS. Therefore, the question of recovery does not arise at all. Hence, the orders of recovery of the cost from the petitioners are not sustainable.

33. In view of the above discussion, the writ petitions are allowed and the impugned orders are set aside.

34. Before parting with these writ petitions, it is to be noted that the Government of India is spending huge amount for the supply of PDS rice to poor and marginalised sector and providing it at Rs.2 per KG. The Tamil Nadu Government is not



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even charging this two rupees and is providing the rice at free of cost to the card holders. 5Kgs rice is provided to each person by the Government of Tamil Nadu to each card holder and nearly 2 crore and 25 lakh card holders are benefited under this scheme.

35.The government with a noble object of providing food to its citizens is supplying 5 Kgs rice to each person by spending around Rs.40/- per Kg per month and supplying it at free of cost. Thus the government incurs a whopping sum every month. However, it is sad that this rice supplied to the card holders is smuggled and illegally transported to various states, polished, recirculated in the open market at higher price and also used for several other purposes like feeding animals, preparing flour, batter, etc.,. The available data for the year 2021-2022 itself reveals that 90,122 quintals of rice is smuggled and 12,721 persons have been arrested. The seized quantum of rice is only 10% to 20% of the illegally transported rice. The present strength of 34 units of the CS-CID in the state is not sufficient to monitor and prevent the illegal transportation of PDS rice.



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36.To ensure the quality of rice, the government has taken several measures such as compulsory installation of the colour sorter machine in the hulling agents modern rice mills to weed out the black rice and the finger print method in the fair price shops, to ensure the PDS rice reaches the card holders properly and also implementing other various measures. Even then huge quantities of PDS rice is smuggled / illegally transported. The government took a stand in CrI.OP(MD)Nos.9086, 10075, 10092, 10127, 11198 and 11872 of 2021, etc., batch that the card holders themselves sell the PDS rice supplied to them for Rs.5/- to the brokers and the same is either recirculated, polished and circulated in the open market at higher price. The paddy which is purchased at a cost of Rs.40/- by the government, is sold out by the cardholders for Rs.5/- and the same is recirculated through the hulling agents. All the cardholders are not eligible for PDS rice, only poor and marginalised sector are provided even these people are not consuming the rice and selling it to brokers.

37.It appears in order to preserve the rice for a longer period and to meet out any emergency situation, the respondent Corporation is adopting the double boiling method. In this process the rice gets some odour and a brown tint, which may be



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a reason for the cardholders in not using the rice and selling it to brokers.

38.The Tamil Nadu Civil Supplies Corporation has issued a circular on 31.10.1990 that the rice received from the Food Corporation of India/ hulling agents are brought back by certain unscrupulous elements for deposit under levy / hulling and therefore, the Civil Supplies Corporation has issued guidelines to identify the old stock of rice, with the following factors:

- i.age of the rice
- ii.Moisture
- iii.Gunny
- iv.Old lot markings
- v.Deviation in priority while issues
- vi.infestation - live or dead
- vii. Musty smell
- viii.Encrustation
- ix.Loose Bran

Another circular was issued on 28.02.2007 that the rice received in some of the PDS outlets are containing encrusted grains, discoloured grains and also rice variety not confirming the paddy issued that there had been possibility of recycling of the



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old rice in the PDS by hulling agents. These circulars reveal the recirculation of PDS rice in the system, which needs to be addressed by the Government.

39.The available process to identify the PDS rice from the normal rice appears to have been formulated at the time of introduction of the scheme that too on the directions of the Food Corporation of India, is not sufficient and effective and it needs to be reviewed. In the modern scientific age, the government shall find out the possibility of utilising the scientific developments, such as monitoring through CCTV, tracking the rice bags with bar code, etc.,.

40.To ensure the quality of PDS rice, the civil service corporation has issued direction to the hulling agents to install the colour sorter machine in all the rice mills. It appears that this direction of the Corporation has been duly complied with by the hulling agents by investing Rs.8 to Rs.10 Lakh. Similarly directions were also issued to install CCTV in the hulling rice mills, but there is no specific direction for the hulling agents to install the CCTV covering the entire hulling process of paddy right from entry of paddy



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and exit of rice. If CCTV is installed in such a manner, it can be monitored from the Regional Office as well as from the Central Office of the respondent corporation. As on date there is no mechanism available to monitor the mills by the officers. It needs to be monitored by the officials.

41.The circular issued by the department and the stand taken by the government in a previous round of litigation reveal that some of the card holders are selling the PDS rice to brokers, who in turn sell it to the hulling agents and the same is recirculated as PDS rice. The hulling agents are making more money by selling the paddy or by selling the single boiled rice. The double boiled method adopted now is one of the reasons, the consumers are not using this rice. Even a good product if given at free of cost, is loosing its value, the Committee constituted as per G.O.Ms.No.84, Co-operation, Food and Consumer Protection (F1) Department, dated 20.10.2021 has to work out a modality to prevent this type of loss.

42.Considering the volume of money used for procuring the paddy and supplying the rice, the government has to sensitise the cardholders about the amount spent by the government for 1Kg of rice and shall obtain an undertaking from the cardholders



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that the rice supplied through the public distribution system would not be misused or sold. In the event of any such involvement is detected then the ration card has to be cancelled. The CS-CID monitoring the illegal transportation of PDS rice needs to investigate the source points and shall recommend for cancellation of ration card.

43.It is also brought to the notice of this Court that vide government order in GO.Ms.No.63 dated 17.06.2022 Co-operation, Food and Consumer Protection (F1) Department, the government has introduced providing of Ragi to the family cardholders through fair price shops in the Nilgiris and Dharmapuri Districts at the rate of 2 Kg per family per month in lieu of rice on pilot basis. This needs to be extended to all the districts.

44.Considering the importance of the millets, the whole world is celebrating the International Millets Year 2023 and also the government is implementing the Tamil Nadu Millet Mission for a period of 5 years, the Civil Supplies Corporation shall also find out the possibility of providing millets instead of rice, which shall give more health benefits. At least 25% of rice can be substituted with millets. By doing so, the government can support the small and medium farmers, who are not having adequate water facility.



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45. Accordingly all the writ petitions are allowed.

No costs. Consequently connected miscellaneous petitions are closed.

30.01.2024

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Index: Yes / No

To

1. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.
2. The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Thanjavur Region,
Thanjavur.

Copy to:

the Committee constituted vide G.O.Ms.No.84, Co-Operation,
Food and Consumer Protection (F1) Department, dated 20.10.2021,
viz.,

1. The Commissioner,
Civil Supplies and
Consumer Protection,
Chennai.
2. The Registrar of Co-operative Societies,
Chennai - 10.
3. The Managing Director,
Tamil Nadu Civil Supplies Corporation,
Chennai - 10.
4. The Additional Director General of Police,
Civil Supplies CID,
Chennai - 35.

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