

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.25807 & 25808 of 2017

and

W.M.P.Nos.27235 & 23236 of 2017

Agni Trading Corporation
Rep. by its Proprietor
254 A, Pilliaiyar Kovil Street,
Amedkar Nagar,
Thiruvottiyur,
Thiruvallur District 60019

... Petitioner in
both W.Ps'

Vs.

1.Government of Tamil Nadu,
Rep. by its Principal Secretary
Co-operation, Food and Consumer
Protection Department,
Secretariat, Fort St. George,
Chennai 600 009.

2.Tamil Nadu Civil Supplies Corporation
Rep. by its Managing Director,
No.12, Thambuswamy Road,
Kilpauk, Chennai 637001

... Respondents 1 & 2 in
both W.Ps'

3.M/s.Rasi Nuti Foods,
No.1/67-A & 1/67-B, Salem Main Road,
Ayeepalayam, Athanur, Rasipuram,
Namakkal.

4.M/s.Christy Friedgram Industry,
A-2, A-3 SIDCO Industrial Estate,
Andiplayam, Tiruchengode - 637 214. ... Respondents 3 & 4
in W.P.No.25807/2017

3.M/s.Suvarnabhoomi Enterprises Pvt. Ltd.,
No.2, Amman Nagar,
Karayampalayam,
Mylampatti Post
Coimbatore 641 062.

4.Natural Food Products,
3/234, Kuttakadu,
Muthukalipatti Post,
Rasipuram - 637 401
Namakkal District.

.. Respondents 3 & 4
in W.P.No.25808/2017

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 2nd respondent to call for future tender after revisiting and setting right the arbitrary, irrational and manipulated tender conditions as per the provisions of Tamil Nadu Tender Transparency Act, 1998 and Rules thereunder for the scrutiny of such revised conditions by this Hon'ble Court for procuring the commodity of Tur dal/Canadian Yellow Lentil/Masoor Dal at the lowest price and consequently direct the 2nd respondent to apply the said lowest price as the benchmark to re-negotiate and arrive at a reasonable price instead of the price already fixed in the tender and for the supplies already made by the respondents 3 & 4 or to any other suppliers for the tender in Tender Ref. No.BS6/08139/2017 dated 15.09.2017 and Ref. No.BS6/028448/2017 dated 10.07.2017 floated by the 2nd Respondent.

For Petitioner : Mr.P.Wilson, Senior Counsel
for Mr.T.Sellapandian

For Respondents: Mr.C.Manishankar,
Addl, Advocate General, Assisted by
Mr.L.P.Shanmugasundaram for R1
Ms.T.Girija, Govt. Advocate for R2

COMMON ORDER

The petitioner has come forward with these writ petitions, praying for issuance of a Writ of Mandamus, directing the 2nd respondent to call for future tender after revisiting and setting right the arbitrary, irrational and manipulated tender conditions as per the provisions of Tamil Nadu Tender Transparency Act, 1998 and Rules thereunder for the scrutiny of such revised conditions by this Hon'ble Court for procuring the commodity of Tur dal/Canadian Yellow Lentil/Masoor Dal at the lowest price and consequently direct the 2nd respondent to apply the said lowest price as the benchmark to re-negotiate and arrive at a reasonable price instead of the price already fixed in the tender and for the supplies already made by the respondents 3 & 4 or to any other suppliers for the tender in

Tender Ref. No.BS6/08139/2017 dated 15.09.2017 and Ref. No.BS6/028448/2017 dated 10.07.2017 floated by the 2nd Respondent.

2. The case of the petitioner is that the Government of Tamil Nadu in order to control rise in the price of pulses in open market have issued orders for supply of Dal to cardholders under Special Public distribution system and mandated Tamil Nadu Civil Supplies Corporation to procure Dal through tendering process. The first respondent has issued G.O.Ms.No.130, Co-operation, Food and Consumer Protection (F1) Department, dated 28.08.2017, by which, the scheme of Special Public Distribution System was extended from September 2017 to February 2018 for the supply of one Dal i.e, Tur Dal/Canadian Yellow Lentil/Masoor Dal and Palmolien Oil to meet 100% requirement of the existing family cardholders.

3. According to the petitioner, the second respondent had floated tender with regard to the supply of Dal mentioned supra and the same was also published in the website on 15.09.2017. According to the petitioner, he is a prospective bidder engaged in the supply of Tur Dal and Masoor Dal and he could not participate in the tender process, due to shorter time given by the second respondent.

4. According to the petitioner, the respondents 3 and 4 are the successful bidders and that due to wrong fixation of the value amount, there is a loss to the tune of Rs.34 crores. According to the petitioner, the action of the public authority is detrimental to the interest of the card holders and that the second respondent has no power to increase the rate more than that of the market rate that is prevalent as can be seen from AGMARK website. The petitioner drew the attention of this Court with regard to the daily report dated 15.09.2017, wherein the price of the Mysore Dal was fixed as Rs.5550/- per quintal, which means Rs.55.50ps. Per Kg. According to him, more than the value fixed in the website, the price has been fixed at Rs.63.50 ps., per Kg.

5. The learned Senior Counsel appearing for the petitioner submitted that apart from the loss to the public exchequer, as per Rule 20 of the Tamil Nadu Transparency in Tenders Rules, 2000, for tenders in excess of rupees two crores in value, the minimum time for submission of tenders is 30 days and admittedly, in this case 15 days is given and the value is more than two crores. He further submitted that in terms of Section 10 of the Tamil Nadu Transparency in Tenders Act, 1998, the tender Accepting Authority shall cause an objection evaluation of the tenders taking into consideration the schedule of rates as mentioned in the tender document and the prevailing market for procurement and comparison of the tenders in accordance with the procedure and criteria satisfied in the tender document.

6. The learned Senior Counsel appearing for the petitioner, drew the attention of this Court to G.O.Ms.No.130, Co-operation, Food and Consumer Protection (F1) Department, dated 28.08.2017 and submitted that the Government also permitted the Managing Director, Tamil Nadu Civil Supplies Corporation to decide on the variety of Dal from among Tur Dal/Canadian Yellow Lentil/Masoor Dal depending on seasonality, availability and economic cost of procurement and that fixing the amount of Rs.63.50p per Kg, which is more than what is prescribed in the website is barred. It is submitted that in future, the second respondent has to call for future tender after revisiting and setting right the arbitrary, irrational and manipulated tender conditions as per the provisions of the Tamil Nadu Tender Transparency Act, 1998 and Rules thereunder for the scrutiny of such revised conditions by this Court for procuring the commodity of Tur dal/Canadian Yellow Lentil/Masoor Dal at the lowest price and also direct the 2nd respondent to apply the said lowest price as the benchmark to re-negotiate and arrive at a reasonable price instead of the price already fixed in the tender.

7. Mr.C.Mani Sankar, learned Additional Advocate General appearing for the respondents would submit that the writ petition itself is not maintainable in law as admittedly, the petitioner has not participated in the tender and already two persons have been awarded tender. He further submitted that the reference in the website, dated 15.09.2017, is only with regard to the State of Maharashtra and it will not be applicable to the State of Tamil Nadu. He further submitted that the reference of the decision of this Court dated 21.03.2017 in W.P.No.6823 of 2017 will not be applicable to the facts of this case. It is submitted that in terms of Rule 20 (2), the time prescribed in Rule 20(1)(b) referred to by the petitioner can be shortened by the Authority by recording reasons in writing and that taking note of the festive season, the period has been reduced invoking the said provision and the said proceedings in B.S.No.6/038139/2017 has been produced before this Court.

8. Heard the learned senior counsel appearing for the petitioner and the learned Additional Advocate General and the respective counsel appearing for the respondents.

9. For the sake of convenience, Section 10(1) and Rule 20 (2) Tamil Nadu Tender Transparency Act, 1998 and Rules is extracted below:

Section 10(1):The Tender Accepting Authority shall cause an objective evaluation of the tenders taking into consideration the schedule of rates as mentioned in the tender document and the prevailing market rate for procurement and comparison of the tenders in accordance with the

procedure and criteria specified in the tender document.

Rule 20:Withdrawal of Tenders before Opening: (1)
No tenderer shall be allowed to withdraw the tenders after submitting the tender.

(2) A Tenderer may submit a modified tender before the last date for receipt of tender:

Provided that where more than one tender is submitted by the same tenderer, the lowest eligible financial tender shall be considered for evaluation.

10. The petitioner challenges the act of the respondents in fixing the higher value for Dal at Rs.63.50ps, which, according to the petitioner, is more than the value prescribed in Agriwatch website. Though it has been specifically mentioned as State of Maharashtra, admittedly, there are more website and in the earlier order, this Court has followed with the website of Agriwatch website, wherein, the Tur Dal was fixed as Rs.60,000/- Metric Tonne. Admittedly, in the present case, the Agriwatch website has mentioned as Rs.7,000/- per quintal and if the contention of the petitioner is accepted, the Government will have to increase the value of Dal to Rs.70 per kg. Hence, I find that the rate fixed in the website produced by the petitioner is only with regard to the State of Maharashtra. As rightly pointed out by the learned Additional Advocate General, the Agmarknet connecting Farmer to Market is only a website containing frequently asked questions and this cannot be taken note of for fixing the rate for the value of Dal as contended by the petitioner, as in this case, invoking Rule 20(2), the period of 30 days has been reduced to 15 days, which cannot be found fault with, as it is in consonance with Rule 20(2).

11. That apart, the order produced by Mr.Wilson, learned Senior Counsel, appearing for the petitioner is only an interim order and not a final order. Even assuming that it is a final order, when more than one website is available, this Court cannot come to a conclusion as to which value has to be taken based on the website. The value that is fixed is only a decision of the Government and the Court cannot go into the question as stated supra, unless it smacks arbitrariness or against any statutory provisions. If this Court is to accept the contention of the petitioner, then the Court will have to refer to Agriwatch website and direct the Government to increase the value of Mysore Dal to Rs.70 per kg. Last but not the least, admittedly, the petitioner has not participated in the tender. The reasons given by the petitioner for not participating in the tender and that he is a prospective bidder cannot be accepted

and having not participated in the tender, the petitioner cannot question the allotment made to the other two respondents i.e., respondents 3 and 4, who are the successful bidders.

12. Hence, I find no merits in the writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsm/sai

To:

- 1.The Principal Secretary,
Government of Tamil Nadu
Co-operation, Food and Consumer
Protection Department,
Secretariat, Fort St. George,
Chennai 600 009.
- 2.The Managing Director,
Tamil Nadu Civil Supplies Corporation
No.12, Thambuswamy Road,
Kilpauk, Chennai 637001

+2cc to Mr.T.Sella pandian, Advocate, S.R.No.70922,70923
+1cc to the Government Pleader, S.R.No.70948

सत्यमेव जयते

W.P.Nos.25807 & 25808 of 2017

RK(CO)
GN(02/11/2017)

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