



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Friday, the Ninth day of June Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

WMP(MD) Nos.7747, 7748 and 7846 of 2017
IN
WP(MD) No.10104 of 2017

M/S MATURITY MATERIALS
ENTERPRISES, REPRESENTED BY ITS PROPRIETOR,
B.KARUPPIAH, S/O. BALUCHAMY,
1/16, INDRA COLONY, PUDUTHAMARAIPATTI POST,
MADURAI - 625 706. ... PETITIONER/PETITIONER IN
WMP(MD) Nos.7747, 7748 of 2017
IN WP(MD) No.10104 of 2017

THE MANAGING DIRECTION,
TAMIL NADU CIVIL SUPPLIES CORPORATION,
NO.12, THAMBUSAMY ROAD,
KILPAUK, CHENNAI ... PETITIONER/RESPONDENT/RESPONDENT IN
WMP(MD) No.7846 of 2017
IN WP(MD) No.10104 of 2017

Vs

1 THE MANAGING DIRECTOR
TAMILNADU CIVIL SUPPLIES CORPORATION,
NO.12, THAMBUSAMY ROAD,
KILPAUK, CHENNAI 600 113.

(*)R2 M/S.ARUNACHALA IMPEX PVT.LTD.,
REP BY ITS CHIEF EXECUTIVE OFFICER,
NO.192/237, THAMBU CHETTY STREET,
PARRYS, CHENNAI-600 001.

R3 THE PRINCIPAL SECRETARY TO GOVERNMENT,
CO-OPERATION, FOOD AND CONSUMER
PROTECTION (F1) DEPARTMENT,
SECRETARIAT, CHENNAI ... RESPONDENTS/RESPONDENTS IN
WMP(MD) Nos.7747, 7748 of 2017
IN WP(MD) No.10104 of 2017

(R2 & R3 ARE IMPEADED VIDE COURT ORDER
DATED 09/06/2017 IN WMP(MD) NOS.7984 & 8014/17)



M/S MATURITY MATERIALS

ENTERPRISES, REPRESENTED BY ITS PROPRIETOR,
B.KARUPPIAH, S/O. BALUCHAMY,
1/16, INDRA COLONY, PUDUTHAMARAIPATTI POST,
MADURAI - 625 706.

...RESPONDENT/PETITIONER/PETITIONER
IN WMP(MD) No.7846 of 2017
IN WP(MD) No.10104 of 2017

Prayer in WMP(MD) . 7748/ 2017 IN WP(MD) No.10104 of 2017:

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to be pleased to grant an ad-interim direction directing the respondents to maintain status quo prior to the current tender no.bs6/014225/2017 dated ; 15.05.2017 with respect to procurement and distribution of dhal to crores of card holders until the finalization of new tender in the manner as prayed for in the writ petition and thus render justice.

Prayer in WMP(MD) . 7748/ 2017 IN WP(MD) No.10104 of 2017 :

To be pleased to grant an ad-interim injunction restraining of dhal or procuring the dhal under tender reference no bs6/014225/2017 dated 15.05.2017 until the method of procurement and the terms of the tender is finalized in consultation with experts such as central food technical research institute (CFTRI) or defence food research laboratory (DFRL) and scrutinized by this Honourable High Court as prayed in the writ petition.

Prayer in WMP(MD) . 7846/ 2017 IN WP(MD) No.10104 of 2017:

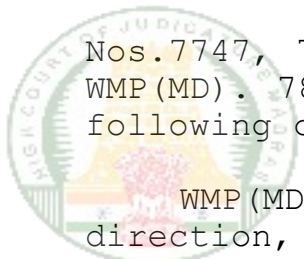
To vacate the status quo direction order in WMP(MD)No.7747 of 2017 in WP(MD)No.10104 of 2017 dated 26.05.2017.

(*)Prayer in WP(MD) No.10104 of 2017:

Writ of Certiorarified Mandamus or any other appropriate Writ or Order or Direction in the nature of Writ by calling the records relating to the proceedings of the Respondent inviting Short Tender dated 15.05.2017 and quash the same and consequently direct the Respondent to consult experts such as Central Food Technical Research Institute (CFTRI) or Defence Food Research Laboratory (DFRL) for deciding the method of procurement and terms of the tender and on finalization of such method of procurement and the terms of the tender, the same may be submitted for the scrutiny of this Hon'ble Court and there upon fresh tenders may be invited and finalized by the Government for the procurement of dhal to distribute under the Public Distribution System.

(prayer amended vide court order dated 09.06.2017 in WMP(MD)8012/17)

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavit filed in support thereof and upon hearing the arguments of MR.T.MOHAN for M/S.R.MURALI, Advocate for the petitioner in WMP(MD) Nos.7747, 7748 of 2017 IN WP(MD) No.10104 of 2017 and Respondent in WMP(MD) . 7846/ 2017 IN WP(MD) No.10104 of 2017 and of MR.B.PUGALANDHI, Additional Advocate General Assisted by MR.A.K.BASKARAPANDIAN, Advocate for the Respondents in WMP(MD)



Nos.7747, 7748 of 2017 IN WP(MD) No.10104 of 2017 and Petitioner in WMP(MD). 7846/ 2017 IN WP(MD) No.10104 of 2017, the court made the following order:-

WMP(MD)No.7747 of 2017 is filed to grant an ad-interim direction, directing the respondent to maintain status quo prior to the current tender No.BS6/014225/2017, dated 15.05.2017 with respect to procurement and distribution of Dal to crores of cardholders until the finalisation of new tender. WMP(MD)No.7748 of 2017 is filed to grant ad-interim injunction restraining the Dal or procuring the Dal under tender reference No.BS6/014225/2017, dated 15.05.2017 until the method of procurement and the terms of the tender is finalised in consultation with experts such as Central Food Technical Research Institute (CFTRI) or Defence Food Research Laboratory (DFRL), whereas WMP(MD)No.7846 of 2017 has been filed to vacate the status quo direction order in WMP(MD)No.7747 of 2017 in W.P(MD)No.10104 of 2017, dated 26.05.2017.

2.The brief facts, which are necessary for the disposal of the petitions, are as follows:-

The Government of Tamil Nadu has issued a Government Order in G.O.Ms.No.33, Co-operation, Food and Consumer Protection Department, dated 06.03.2017 extending the scheme of Special Public Distribution System for a further period of six months from March 2017 to August 2017 with 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 and 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.

Pursuant to the said Government Order, a short tender notification was issued on 29.04.2017 inviting tender under two cover system to purchase 20,000 MTs of Tur Dal, fixing the date of opening the tender on 15.05.2017.

3.The petitioner has filed the above writ petition for issuance of Writ of Mandamus directing the respondents to consult experts such as Central Food Technical Research Institute (CFTRI) or Defence Food Research Laboratory (DFRL) for deciding the method of procurement and terms of the tender and thereupon issue fresh tender to procure Dal.

4.The petitioner would state that the Government of Tamil Nadu is procuring approximately 20,000 MTs of Dal per month and providing the same through fair price shops to the cardholders. As per the conditions, some of the traders/suppliers like the petitioner are not able to participate. Further, the respondent is relaxing the conditions, during the process of evaluation, in order to include some particular bidders. The action of the respondent is restricting the competition and thereby favouring only a few and hence, this needs to be revisited.

5.It is further alleged that the respondent is acting contrary to the terms of the Government Order. The respondent has neither



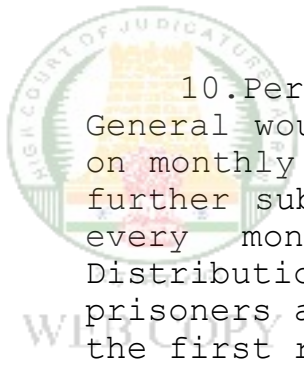
analyzed the availability of all the Dal, nor consulted any experts for fixing the terms and conditions for procuring the commodities. The Central Food Technical Research Institute (CFTRI) and Defence Food Research Laboratory (DFRL), Mysore are having technical experts as well as financial experts for offering the advise to stipulate the terms of the procurement at a competitive rate.

6. When the writ petition came up for admission on 26.05.2017, this court has granted interim direction as prayed for.

7. The respondent (The Principal Secretary/Managing Director of Tamil Nadu Civil Supplies Corporation, Chennai) has filed a counter affidavit stating that the petitioner has no locus standi to file the present writ petition, as he is neither a supplier nor participated in the tender process; that the present system of procurement is being adopted since 2007; that the tender is being floated for every month, since the price of Dal are volatile and subject to the vagaries in the market condition; that the Tamil Nadu Civil Supplies Corporation is expected to ensure the availability of pulses in the first week of every month to enable supply to the cardholders and if sufficient quantity of pulses is not made available in the ration shops, it would result in law and order problem; that the technical experts of the Tamil Nadu Civil Supplies Corporation is procuring the raw pulses for more than 10 years without any problem and there is no violation of G.O., while issuing the tender and therefore, the technical assistance is not needed as contended by the petitioners and that the writ petition is filed with a malicious and motivated intention and if the interim order continues, it would affect 2 crores card holding public and hence, interim order is liable to be vacated.

8. Mr. T. Mohan, learned counsel appearing for the petitioner would submit that the conditions imposed in the tender is only to favour to some few persons. They are anomalies found in the tender conditions. The first respondent is acting contrary to the terms of G.O. Ms. No. 33, dated 06.03.2017 and that before floating the tender, the first respondent has not known the availability of the Dal and he should have consulted with the technical experts, who are available in the Central Food Technical Research Institute (CFTRI) and the Defence Food Research Laboratory (DFRL), Mysore and thereafter, fixed the terms for procurement of Dal.

9. It is further submitted pointing out the anomalies in the tender conditions, a writ petition came to be filed before the Principal Seat of this court in W.P. No. 8048 of 2017, in which the learned learned Additional Advocate General, who appeared for the first respondent has conceded the anomalies and this court directed the respondent to consider the anomalies in future tenders, by order, dated 19.04.2017. However, while issuing this tender, on 29.04.2017, they did not consider the order passed in that writ petition and the same conditions are containing the present tender. So, in the interest of general public, till the first respondent gets opinion from the experts, status quo has to be maintained.



10. Per contra, Mr. B. Pugalendhi, learned Additional Advocate General would submit that the tender is floated to purchase the Dal on monthly basis, due to sudden changes in the price of Dal. It is further submitted that the first respondent needs 20,000 Mts of Dal every month to supply the cardholders through the Public Distribution System, for beneficiaries of noon-meals scheme, prisoners and for the persons, who are observing Ramzan fasting, but the first respondent is presently having only 2500 MTs.

11. It is further submitted that the petitioner is neither a supplier nor having any financial capacity to participate in the tender process, but he has filed this writ petition with an evil motive. It is further submitted that after filing of the present writ petition, it came to light that the deponent does not own any patta land and he is residing in a rented house and his monthly earning is Rs.48,000/- by doing daily coolie and to that effect, the Village Administrative Officer of 85, Kodikulam II Bit, Madurai East Taluk, has issued a certificate, dated 06.06.2017 and that no material has been produced to establish the deponent is the proprietor of the petitioner. In view of the above facts, if the interim order is not vacated, it will paralyze the entire public distribution system and eventually the public will suffer.

12. Mr. A. L. Somayaji, learned Senior counsel appearing for the proposed 2nd respondent in the writ petition (Arunachala Implex Private Limited) would urge that the petitioner has no locus standi to file the instant writ petition as he neither participated in the tender process nor filed this writ petition at an appropriate stage. It is further submitted that the first respondent has floated the tender at Chennai and as per the conditions, the tenderers have to submit the documents in the office of the first respondent at Chennai and the successful bidder has to supply materials at Chennai. Since no part of cause of action had arisen within the territorial jurisdiction of this court, the writ petition itself is not maintainable in law. In support of his contention, the learned Senior counsel has placed reliance upon the decision reported in (2017) 4 SCC 318 [Tamil Nadu Generation and Distribution Corporation Ltd vs. CSEPDI-TRISHE Consortium], wherein the Hon'ble Apex court has held as follows:-

"37. Before parting with the case we are constrained to add something. We do so with immense pain. The respondent, before finalisation of the financial bid submitted series of representations and seeing the silence of the owner it knocked at the doors of the writ court which directed for consideration of the representations. We are disposed to think that the High Court at that stage should have exercised caution. If the courts would exercise power of judicial review in such a manner it is most likely to cause confusion and also bring jeopardy in public interest. An aggrieved party can approach the Court at the appropriate stage,



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not when the bids are being considered. We do not intend to specify. It is appreciable the owner in certain kind of tenders call the bidders for negotiations to show fairness transparently. But the present case is not one of such nature. Once the price bid was opened, a bidder could not have submitted representations on his own and seek a mandamus from the Court to take certain aspects into consideration. We have stressed this aspect only to highlight the role of the Court keeping in mind the established principle of restraint."

13.The learned Senior counsel would further submit that the technical bid has already been opened on 15.05.2017 and when the first respondent has decided to fix the date of opening the price bid on 27.05.2017, the present writ petition came to be filed and at this juncture, this court cannot interfere in the tender process in the light of the decision of the Hon'ble Apex Court.

14.After the first respondent filed his counter and pointed out that the writ petition itself is not maintainable, the petitioner has filed applications seeking permission of this court to raise additional grounds, impleading the Government as first respondent and for amendment of the prayer in the writ petition.

15.Keeping in view of the observations made by the Hon'ble Supreme Court in the decision cited supra and taking into consideration the facts and circumstances of the case, this court is of the considered opinion that the petitioner has not made out prima facie case for grant of interim order and in the interest of larger public, the interim order already granted is liable to be vacated.

16.In the result, the Miscellaneous Petition in WMP(MD)No.7846 of 2017 is allowed and the status quo direction made in WMP(MD) No.7747 of 2017 in W.P(MD)No.10104 of 2017 is hereby vacated. In view of the order passed vacating the status quo order, WMP(MD) Nos.7747 and 7748 of 2017 are dismissed.

sd/-

09/06/2017

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

THE MANAGING DIRECTOR
TAMILNADU CIVIL SUPPLIES CORPORATION,
NO.12, THAMBUSAMY ROAD,
KILPAUK, CHENNAI 600 113.

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+2. C.C. to M/S.K.PRATAP SUDARSAN, Advocate SR.No.23788

ORDER

IN

WMP (MD) Nos.7747, 7748 and
7846 of 2017 IN

WP (MD) No.10104 of 2017

Date :09/06/2017

SMA/CM.MSA/SAR.1/9.6.2017/7P.4C