

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.19448 of 2017
and
W.M.P.Nos.20972 & 20973 of 2017

M/s.K.T.V.Health Food Private Limited,
Represented by its Authorized Signatory, No.7/3,
Arul Nagar Salai, Kodungaiyur,
Chennai - 600 118.

..Petitioner

Vs

The Principal Secretary / Managing Director,
Tamil Nadu Civil Supplies Corporation,
(Tamil Nadu Government Undertaking),
No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, calling for the records relating to the proceedings in Lr.Rc.No.BS3/011210/2017, dated 09.05.2017 of the respondent, quash the same.

For Petitioner : Mr.P.Wilson
Senior Counsel for
Mr.R.Saravanakumar

For Respondent : Mr.STS.Murthy
Additional Advocate General
assisted by
Mr.L.P.Shanmugasundaram
Additional Government Pleader

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The petitioner has come forward with this writ petition to quash the proceedings in Lr.Rc.No.BS3/011210/2017, dated 09.05.2017 issued by the respondent Corporation.

2. The brief facts, in a nutshell, are thus:-

The petitioner firm participated in the tender conducted by the respondent, with regard to the supply of one litre (910 grams) of RBD Palmolein oil pouches, which was confirmed in their favour. Since the tender notification No.B53/50415, dated 01.11.2016, stipulates that the materials to be supplied / supplied by the tenderer should be enriched with Vitamin A (one gram should contain 25 IU) and Vitamin D (one gram should contain 2 IU), samples were drawn from the petitioner firm and were sent to the Laboratory for testing. Thereafter, the respondent issued a show cause notice dated 02.05.2017, stating that the test report received from the Laboratory revealed that the samples did not meet out the specifications prescribed by the respondent Corporation, to which the petitioner sent a detailed reply. Being not satisfied with the same, the respondent Corporation blacklisted the petitioner firm for a period of one year vide communication dated 09.05.2017, which is impugned herein.

3. Upon notice, the respondent filed a counter affidavit, wherein at paragraph no.9, it has been averred as follows:

"9. I respectfully submit that with regard to averments made in para No.5 & 6 of the affidavit, it is submitted that the samples of Refined, Bleached, Deodourised Palmolein Oil pouches collected from the quantity dispatched by the petitioner M/s.KTV Health Food Pvt., Ltd., were sent for testing. The test report obtained from SGS Lab revealed that as against the specification of Vitamin A IU/100g and Vitamin D IU/100g the presence of Vitamin A and D was Nil. As such the specification regarding fortification of Vitamin A & D has not been followed in the supply made by the petitioner. Based on the test report of SGS Lab show cause notice was issued to them vide Rc.No.BS3/50415/2016 dated 09.12.2016 requesting to give their explanation within 3 days from the date of receipt of the notice. The explanation offered by the petitioner was not convincing. However, giving a chance to correct themselves by rectifying their error in future, taking a lenient view orders were passed to impose penalty of 1% on the overall quantity supplied to the Tamil Nadu Civil Supplies Corporation by the petitioner without Vitamin A & D fortification as per the specification at the end point of distribution."

4. In reply, the petitioner filed a rejoinder, wherein at paragraph no.7, it has been averred as follows:

" 7.The petitioner further submits that however, from October 2016 onwards, the issue with regard to the fortification of Vitamin A and D arose due to the reason that the tender was not confirmed as on date

of the tender, but 4 to 5 days later. Only after the confirmation of the tender the region-wise quantity was allotted for supply by the petitioner/bidders. As a result, the petitioner/bidders would do the fortification of vitamin, packing and despatching, one after the other quickly under pressure and simultaneously, the samples were drawn and sent for testing. Since the fortification of Vitamin A and D are done only after confirmation, a few days after finalization of the tender, the homogenous dispersion of Vitamin A and D in the oil took time and hence there was a possibility for variation in the level of presence of Vitamin A and D from the specification given by the respondent. The petitioner further submits that in the test report dated 05.04.2017, issued by SGS lab, where the respondent did the testing, it could be seen that the oil sample quantity was received on 27.03.2017 and the test was also done on the same day, which showed that Vitamin A was found and Vitamin D was found as below detectable quantity, which is due to the fact that the fortification of Vitamin A and D and packing is done immediately and the homogenous dispersion of Vitamins in the oil required time."

5. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner submitted that the petitioner has been supplying the Palmolein for more than ten years and no complaints have been received against them from any quarters so far. According to him, the allegation raised against the petitioner that their samples did not meet out the specifications made by the respondent, cannot stand in the eye of law, since the same samples were tested before the Fare Labs Private Limited, which clearly states that the parameters of Vitamin A as well as Vitamin D are very much found in the same. However, the impugned order without appreciating the details of the lab report, had simply stated that the specifications viz., (i) Vitamin A (one gram should contain 25 IU); (ii) Vitamin D (one gram should contain 2 IU), were not maintained, which is patently improper and without application of mind. The learned Senior Counsel further submitted that the blacklisting of the petitioner firm causes great prejudice to their interest and damages to their reputation. He also submitted that the petitioner undertakes to supply the goods upon complying with all the specifications made by the authorities.

6. In view of the undertaking given by the learned Senior Counsel appearing for the petitioner, Mr.STS.Murthy, learned Additional Advocate General appearing for the respondent, on instructions, submitted that the petitioner is permitted to

continue to supply, provided they fulfill all the specifications made by the authorities.

7. In view of the submissions so made by the learned Senior Counsel appearing for the petitioner as well as the learned Additional Advocate General appearing for the respondent, the impugned order does not survive. Accordingly, the order dated 09.05.2017, issued by the respondent Corporation is set aside and the writ petition stands allowed to the extent as indicated above. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Principal Secretary / Managing Director,
Tamil Nadu Civil Supplies Corporation,
(Tamil Nadu Government Undertaking),
No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.

+1cc to Mr.R.Saravanakumar, Advocate, S.R.No.72497

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.72364

W.P.No.19448 of 2017
and

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SSD(CO)
CS/20/11/2018

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