

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.26946 of 2019
and

W.M.P.Nos.26328 and 26329 of 2019

National Federation of Farmers Procurement
Processing and Retailing
Cooperatives of India Limited (NACOF)
Rep. by its Manager
Mr.Ramjeet Satyarthi

.. Petitioner

/Versus/

1.The Commissioner,
Civil Supplies and Consumer Protection Department,
Government of Tamil Nadu,
Chepauk, Chennai-600 005.

2.Tamil Nadu Civil supplies Corporation,
rep.by its Managing Director,
No.10, Thambusamy Road,
Kilpauk, Chennai-600 010.

3.M/s.Kendriya Bhandar,
Central Revenue Quarters,
15th Main Road,
Anna Nagar West,
Chennai-600 040.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of Writ of Certiorarified Mandamus, to call for the records in proceedings nil, dated 16.08.2019 on the file of second respondent awarding the supply of S-30 grade sugar as per IS498:2003 to the third respondent and quash the same and consequential direct the second respondent to award the tender to the petitioner in pursuance to their offer dated 05.08.2019.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.Vijay Narayan
Advocate General
Assisted by
Mr.L.P.Shanmugasundaram
Spl.G.P. for R1 & R2

O R D E R

Heard the learned counsel for the petitioner.

2. The case of the petitioner is that it is the Federation of Farmers Procurement Processing and Retailing Cooperative Society. Pursuant to the tender notification issued by the Tamil Nadu Civil supplies Corporation on 01.07.2019 inviting e-tender for supply of 75,000 MTs of S-30 Grade Sugar as per the specification for the season 2018-2019, the petitioner with an intention to participate in the tender took samples of sugar as required under the tender documents and presented before the 2nd respondent on 31.07.2019 but the 2nd respondent refused to receive it. As a result, they sent a communication on the same day (31.07.2019) narrating the events and expected the respondent to act upon it. Thereafter, on 02.08.2019 a complaint was sent to the 1st respondent pointing out the unfair practice. There was no response from the official respondents for the said communication, which prompted the petitioner to send another communication on 05.08.2019 to the official respondents as well as the other statutory authorities requesting to offer the contract to supply 15,000 MTs of S-30 sugar at the rate of Rs.39,500/- per MT which could be delivered at the designated delivery points. To the said communication dated 05.08.2019, the 1st respondent caused a letter dated 09.08.2019, forwarding a copy of the petitioner's letter for necessary action. While the representation was pending for consideration with the official respondents, the 2nd respondent has awarded the tender in favour of the 3rd respondent for supply of 30,000 MTs of S-30 sugar at the rate of Rs.47,500/- per MTs.

3. The grievance of the petitioner is that the 2nd respondent arbitrarily refused to receive the samples submitted for testing as required under the tender documents. Further the representation of the petitioner dated 05.08.2019 was taken note by the 1st respondent and explanation was sought from the 2nd respondent. Even before the representation could be disposed, the 2nd respondent has hurriedly confirmed the tender in favour of the 3rd respondent and awarded the tender for a price higher than what the petitioner has offered. The act of the 2nd respondent in accepting the bid of the 3rd respondent who has quoted higher rate than what quoted by the petitioner would amount to dereliction of duties and responsibilities as a

responsible public servant. The 2nd respondent ought to have accepted the offer of the petitioner to avoid wrongful loss to the public ex-chequer. Contrarily, in spite of less rate offered by the petitioner, the 2nd respondent has given the tender in favour of the 3rd respondent for higher rate, which is even higher than the retail price prevailing in the market.

4. The learned Advocate General took notice at the time of admission itself and submitted that the petitioner is not a participant in the tender. For the first time on 31.07.2019, he gave a representation to the 2nd respondent expressing his intention to participate in the tender. By the time the cut off date fixed for submitting the sample sugar expired. Further, the learned Advocate General would also submit that, it is not correct to say the tender was given to one single person for higher rate and wrongful loss caused by the 2nd respondent. From among the bidders for supply of 75,000 MTs S-30 grade sugar, for supply of 30,000 MTs of sugar awarded to the 3rd respondent and remaining 45,000 MTs of sugar supply awarded to one Natural Food Products, Namakkal.

5. The learned Advocate General pointing out the tender clause specified different dates for submission of Transaction Fee, date of Starting of e-Tender, date for submission of on-line Techno-Commercial Bid and Price Bid. The last date for closing on-line e-Tender for submitting Techno e-Tender Commercial Bid and Price Bid was on 02.08.2019 at 11.00 a.m. The Price Bid of the tenders supposed to be opened, provided, the bidders satisfy the standard criteria laid down by Tamil Nadu Civil Supplies Corporation. The bidders were asked to produce two samples of 1 Kg packet of S-30 grade sugar as per the specification indicated in the Annexure A. The sample should have been submitted at TNCSC, Head office before two working days from the date of opening the tender.

6. According to the learned Advocate General, the last date for submission of 1 Kg of S-30 grade sugar fall on 30.07.2019, 5.00 p.m. Admittedly, the petitioner has reported to the 2nd respondent only on 31.07.2019 expressing his willingness to participate in the e-tender for supply of sugar. Therefore, having failed to deposit the Earnest Money Deposit and failed to submit two samples of sugar, before the date prescribed, the present writ petition is filed with ulterior motive one month after confirmation of the tender and commencement of the supply. The learned Advocate General would also submit that the supply as per the tender has commenced and so far the bidders have supplied 1/3rd of the requirements namely 25,000 MTs.

7. The learned counsel appearing for the petitioner would submit that the last date for submitting of two samples was not

specifically mentioned in the tender document and it is very ambiguous. It is also submitted by the learned counsel for the petitioner that the letter dated 31.07.2019 was the communication sent by the petitioner to the 2nd respondent after attempts of the petitioner to participate in the tender failed and deliberately denied by the 2nd respondent. It is also submitted by the petitioner that the rate accepted by the 2nd respondent for supply of sugar is Rs.9 more than the prevailing market price of sugar. Per se, it shows the malafide in finalising the tender in favour of the 3rd respondent and reason for preventing the petitioner from participating in the tender process.

8. In response to the submissions, the learned Advocate General would submit that the price accepted is inclusive of GST, Transport Charges and P.P. Bags. The rate accepted by the 2nd respondent cannot be construed as exorbitant comparing to the market price. Further, the learned Advocate General would submit that this tender was invited only to meet the urgent requirements and the notice inviting tender has made clear that the supply should commence within 30 days from the confirmation of the tender and completed in 3 phases of 30 days each.

9. This Court to ensure whether really the petitioner herein was deprived of his opportunity from participating in the tender process asked the petitioner counsel to show any document or record that the petitioner made attempts to participate in the tender before the expiry of the cut off date. But the petitioner could not show any documents to that effect to convince this Court. Further in the affidavit itself the petitioner has contended that only on 31.07.2019 he took samples to the office of the 2nd respondent, but the 2nd respondent has refused to receive it. The clause in the tender document regarding submission of sample packets read as below:

"Two samples of 1 Kg packets of S-30 grade Sugar as per the specifications indicated in Annexure-A should be submitted at TNCSC, Head Office before two working days from the date of opening of the e-tender."

10. The date of opening of the e-tender is specified as 02.08.2019 at 11.30 a.m. On the reading of these two clauses makes clear that two samples of sugar ought to have been submitted on or before 30.07.2019. The petitioner having admittedly presented the sugar packets a day later and that to without depositing the Earnest Money cannot now try to get entry in the tender process by quoting lesser price much after knowing the price of the successful bidders.

11. Hence, for want of locus standi to interfere the tender process, this Court is unable to entertain the plea of the petitioner and the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

rpl

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Civil Supplies and Consumer Protection Department,
Government of Tamil Nadu,
Chepauk, Chennai-600 005.
2. The Managing Director,
Tamil Nadu Civil supplies Corporation,
No.10, Thambusamy Road,
Kilpauk, Chennai-600 010.
3. M/s. Kendriya Bhandar,
Central Revenue Quarters,
15th Main Road,
Anna Nagar West,
Chennai-600 040.

+1cc to Mr.V.Raghavachari, Advocate, SR.No.77665

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