

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR JUSTICE P. VELMURUGAN

W.A. NO. 3172 of 2019
&
C.M.P. No. 20037 of 2019

National Federation of Farmers Procurement
Processing and Retailing Cooperatives of
India Limited (NACOF)
rep. by its Manager,
Mr.Ramjeet Satyarthi ..Appellant/Petitioner

Vs.

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/Respondents

Prayer: Writ Appeal as against the order dated 09.09.2019 in
W.P. No. 26946 of 2019.

Prayer in W.P. No. 26946 of 2019: 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 Appellant :: Mr.V. Lakshmi Narayanan for
Ms.R. Sripriya

For Respondents:: Mr.L.P.Shanmugasundaram
Special Govt.Pleader for R1
Mr.Vijay Narayan,
Advocate General,
assisted by
Mr.L.P.Shanmugasundaram
Special Govt. Pleader for R2

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN,J.)

The writ appeal has been preferred by the unsuccessful bidder for supply of 75000 MTs of S-30 Grade Sugar as per the specifications for the season 2010-2011 to be supplied to the 2nd respondent, namely, Tamil Nadu Civil Supplies Corporation. The appellant who wanted to participate in the tender took samples of sugar as required in the tender documents and presented before the 2nd respondent on 31.07.2019, but the 2nd respondent refused to receive the same. Therefore, the appellant was compelled to lodge a complaint on 31.07.2019 giving the details. Thereafter, on 02.08.2019, a complaint was made to the 1st respondent pointing out the unfair practice. There was no reply and the appellant was compelled to send another communication on 05.08.2019 to the official respondents requesting to offer the contract to supply 15000 MTs of S-30 sugar @ Rs.39,500/-per MT which could be delivered at points of delivery. A communication dated 09.08.2019 was received from the 1st respondent stating that necessary action would be taken based on the petitioner's complaint. In the meanwhile, the 2nd respondent awarded the tender in favour of the 3rd respondent for supply of 30, 000 MTs of S-30 Sugar @ Rs.47,500/- per MT. The award of the said contract to the 3rd respondent was challenged before the learned Single Judge by way of a writ petition. The learned Single Judge, after considering the contentions of both parties dismissed the writ petition and therefore, the petitioner is before this Court by way of this intra court appeal.

2. Heard Mr.V.Lakshmi Narayanan, learned counsel for the appellant and Mr.Vijay Narayan, learned Advocate General for the respondents.

3. Though Mr.V.Lakshmi Narayanan, learned counsel for the appellant would point out that the appellant complied with the time schedule as per the tender by giving two samples of sugar on 31.07.2019, it was refused to be received. A perusal of the

tender document would make it clear that two samples of 1Kg packet of S-30 Grade Sugar as per the specifications indicated in Annexure A should be submitted at Tamil Nadu Civil Supplies Corporation Head Office before two working days from the date of opening the tender. The tender was opened on 02.08.2019 and therefore, it is clear that the sample should have been submitted on 30.07.2019 i.e, two days prior to the opening of tender on 02.08.2019 whereas the appellant tried to give the samples only on 31.07.2019, which is not in conformity with the tender schedule. Therefore, the appellant has not complied with the time schedule given in the tender.

4. Mr.V. Lakshmi Narayanan, learned counsel for the appellant would point out that the rate quoted by the appellant is Rs.38 per kg including GST and transportation charges whereas the 3rd respondent was already awarded the contract @ Rs.47.50 per kg which is almost Rs.9 more than the price offered by the appellant. Further, he would submit that as on 30.07.2019, the market rate is only Rs.32.25 per kg whereas the award of contract is for Rs.47.50 per kg, which is almost Rs.15 more than the market rate. In this regard, he referred to Section 10(1) of Tamil Nadu (Transparency in Tenders) Act, 1998 stating that prices offered by the tenderer should have been compared with the prevailing market rate for procurement and only thereafter, the tender should have been accepted. In this case, the market rate is very much on the lower side whereas the award of contract is for a higher price i.e, Rs. 47.50 per kg.

5. However, the learned Advocate General would point out that from the Daily Sugar and Gur Fundamental Report in Agri Watch the details of domestic prices and arrival of sugar in India at Key Spot Markets are found reflected which shows that in Chennai, the basic rate of S Grade Sugar per MT is Rs.39100, along with GST @ 5% comes to Rs.1955/- and transport charges and PP Bags charges (Rs.4600 + 500), the total cost of sugar comes to Rs.46,155/- per MT whereas the original price offered by the 3rd respondent is Rs.49,500/-, which after negotiation was reduced to Rs.47,500/- per MT. Therefore, the principles of law also have been complied with. The rate quoted by the 3rd respondent is in consonance with the market rate and there is not much variation in the price.

6. Further, it is also pointed out by the official respondents that the rate quoted by the appellant does not include GST and PP Bag charges and if those charges are included, the rate quoted by the appellant would be even higher. Therefore, this Court rejects the contention made by the learned counsel for the appellant by placing reliance on Sections 10(1) and (3) of Tamil Nadu (Transparency in Tenders) Act, 1998 as the

price quoted by the 3rd respondent which is accepted by the 2nd respondent is in consonance or in tune with the market price.

7. The supply of sugar is only for a period of three months, that too, 75000 MTs, out of which 25000 MTs of sugar have been supplied. Therefore, the contract awarded has been acted upon and any interference by this Court, at this stage, would go against public interest as the Government is duty bound to distribute or supply sugar through Public Distribution System and moreover, the festive season is in the offing.

8. The appellant had been negligent and he has approached this Court belatedly. When the tender was opened on 02.08.2019 and the contract was awarded to the 3rd respondent on 16.08.2019, the appellant has chosen to approach this Court only on 05.09.2019 i.e, nearly after two or three weeks, which renders the appellant guilty of laches. Therefore, we are of the view that the learned Single Judge was right in dismissing the writ petition.

9. In the result, the writ appeal fails and the same is dismissed. No costs. Connected W.M.P. is closed.

Sd/-
Assistant Registrar (CS-IX)

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To

Sub Assistant Registrar

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.

+1 cc to Mr.V.Raghavachari, Advocate, S.R.No.79089
+1 cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.78999

W.A.No. 3172 of 2019

CA(CO)
SSM(16/09/2019)