



IN THE HIGH COURT OF JUDICATURE AT MADRAS
ORDERS RESERVED ON : 13.05.2022
PRONOUNCING ORDERS ON : 01.06.2022

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CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.No.10989 of 2022
and W.M.P.Nos.10578 & 10579 of 2022

Arunnachala Impex Private Limited
Represented by its Managing Director
No.192/237, Thambu Chetty Street
Parrys, Chennai 600 001.

... Petitioner

..Vs..

1. The Managing Director
Tamil Nadu Civil Supplies Corporation
No.12, Thambusamy Road, Kilpauk
Chennai 600 010.

2.Tender Sub-Committee
Rep.by its Members
No.12, Thambusamy Road, Kilpauk
Chennai 600 010.

3. Tamil Nadu Civil Supplies Corporation
Represented by its Board of Directors
No.12, Thambusamy Road, Kilpauk
Chennai 600 010.

4.State of Tamil Nadu
Rep.by the Principal Secretary
Cooperation, Food and Consumer Protection
Department, St.George Fort, Chennai. ... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records culminating in the impugned order namely email dated 28.03.2022 bearing RC.No.BS6/062314/2021 sent by the first respondent to the petitioner directing to supply an additional quantity of 5000 metric tonnes of Tur Dhal (Split-Husked and Fatka) and quash the same.

For Petitioner : Mr.A.L.Somayaji, Senior Counsel
for Ms.Pushpa Menon



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For Respondents 1-3 : Mr.R.Shunmugasundaram
Advocate General, Assisted by
Ms.A.G.Shakeenaa

For Respondent No.4: Mr.R.Shunmugasundaram
Advocate General, Assisted by
Mr.D.Ravichander, Special Government Pleader

O R D E R

Heard the learned Senior Counsel appearing for the writ petitioner and the learned Advocate General assisted by the learned Standing Counsel for the Tamil Nadu Civil Supplies Corporation and the learned Special Government Pleader appearing for the State of Tamil Nadu.

2. The petitioner is a Private Limited Company engaged in the business of processing and distributing Dals and Lentils. The respondent Corporation issued tender notification dated 06.01.2022 for supply of 40,000 metric tonnes of Toor Dal. The petitioner emerged as one of the successful tenderers and its offer for the supply of 20,000 metric tonnes of Toor Dal was accepted by the respondent Corporation. The petitioner was to supply the same in two different spells of 10,000 metric tonnes each. Vide communication dated 20.01.2022, the first respondent directed the petitioner to supply 10,000 metric tonnes of Dal as the first spell; vide communication dated 14.02.2022, the petitioner was directed to commence the supply of Dal for the second spell. While the supply of first spell quantity had been fully completed, the petitioner was yet to supply the balance second spell quantity of 5142.043 metric tonnes of Dal. At this juncture, by the impugned communication dated 28.03.2022, the petitioner was called upon to supply an additional quantity of 5000 metric tonnes. This demand for supply of additional quantity of Toor Dal is put to challenge in this writ petition.

3. The first respondent has filed a detailed counter affidavit opposing the prayer made in the writ petition. After carefully considering the rival contentions and going through the materials on record, I cannot help remarking that this writ petition is more like a gate crasher. It was taken up along with a batch of eight other writ petitions involving the supply of Palmolein to the respondent Corporation by the various tenderers. Interim orders had been granted in those writ petitions. While there is some merit in the contention of the other writ petitioners that on account of various factors such as the outbreak of Russia-Ukraine war and the ban on exports imposed by Indonesia, serious difficulties have arisen in the matter of supply of Palmolein, the petitioner cannot claim any such justification.



4. As pointed out in the counter affidavit, Toor Dal is grown in India in Uttar Pradesh, Madhya Pradesh, Gujarat, Bihar, Tamil Nadu and Karnataka. It is very much available in the Indian market. The claim that the Ukraine war has affected the procurement of Toor Dal and has caused price fluctuation in the open market is too far fetched. It is of course possible that the cost of transportation has gone up. But, these are purely commercial difficulties and cannot constitute a force majeure event. It is not the case of the writ petitioner that the contract had been rendered impossible of performance on account of the conditions referred to in the affidavit filed in support of the writ petition. The product is very much available and the demand for supplying 25% additional quantity is well within the terms of the agreement entered into between the parties. No case has been made out for the grant of relief and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(Vacation Officer)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Managing Director
Tamil Nadu Civil Supplies Corporation
No.12, Thambusamy Road, Kilpauk, Chennai 600 010.

2. Tender Sub-Committee
Rep. by its Members
No.12, Thambusamy Road, Kilpauk
Chennai 600 010.

3. Tamil Nadu Civil Supplies Corporation
Represented by its Board of Directors
No.12, Thambusamy Road, Kilpauk
Chennai 600 010.

4. State of Tamil Nadu
Rep. by the Principal Secretary
Cooperation, Food and Consumer Protection
Department, St. George Fort, Chennai.

+1 cc to Ms. Pushpa Menon, Advocate Sr. NO. 32046(15/06/2022)

W.P.No.10989 of 2022

SSV(CO)

A.SK(06/06/2022)