

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.A.NOS.1463, 1513 AND 1514 OF 2022
AND
C.M.P.NOS.9908, 9536 AND 9902 OF 2022

M/s.Ruchi Soya Industries Limited,
Rep. by its Authorized Signatory,
R.Venkatraman,
40-41, East Mada Church Road,
Royapuram, Chennai - 600 013.

... Appellant in
W.A.No.1463 of 2022

Ganesan Chandran
Proprietor, M/s.Kamatchi and Co.

.. Appellant in
W.A.No.1513 of 2022

M/s.Starshine Logistics (Regd. Firm),
Rep. by its Partner/Authorised Signatory,
Suresh Gattreddi, No.6C, Sixth Floor,
Gaiety Palace, No.1/L, Blackers Road,
Chennai - 600 002.

... Appellant in
W.A.No.1514 of 2022

.Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Corporation Food & Consumer
Protection Department,
Fort St. George,
Chennai - 600 009.

.. 1st Respondent in
W.A.No.1463 of 2022

2. The Tamil Nadu Civil Supplies Corporation,
Rep. by its Managing Director,
12, Thambusamy Road, Kilpauk,
Chennai - 600 010.

.. 2nd Respondent in
W.A.No.1463 of 2022 and
Sole Respondent in
W.A.Nos.1513 & 1514 of 2022

PRAYER:-

Appeal filed under Clause 15 of the Letters Patent against the common order dated 01.06.2022 passed in W.P.Nos.7681, 8521 and 8522 of 2022 on the file of this Court.

PRAYER IN W.P.NO.7681 OF 2022:-

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records relating to the confirmation order by the 2nd Respondent dated 02.03.2022 through E-Mail for Supply of additional 25% quantity of 22,50,000 Nos. of RBD Palmolein Oil 1- Litre Pouches at the rate of Rs.120.25 net per pouch and quash the same.

PRAYER IN W.P.NO.8521 OF 2022:-

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records relating to the E-Mail confirmation order dated 02.03.2022 bearing Rc.No.BS3/062350/2021-2 on the file of the Respondent instructing the Petitioner to supply an additional quantity of 20 00 000 numbers of R.B.D Palmolein in 1-Litre pouches on or before 03.05.2022 and quash the same.

PRAYER IN W.P.NO.8522 OF 2022:-

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records relating to the E-Mail confirmation order dated 02.03.2022 bearing R.C.No.BS3/062350/2021-5 on the file of the respondent and quash the same.

For Appellants : Mr.AR.L.Sundaresan
Senior Counsel
For M/s.AL.Ganthimathi
in W.A.No.1463 of 2022

Mr.Ashok Chakravarthy
in W.A.No.1513 of 2022

Mr.G.Masilamani
Senior Counsel
for Mr.M.Sundargopal
in W.A.No.1514 of 2022

For Respondents : Mr.R.Shunmugasundaram
in all W.A's Advocate General
Assisted by
Dr.K.Thirugnanam
Standing Counsel for TNCSC
and
M/s.A.A.Shakeena
Government Advocate

COMMON JUDGMENT

(Judgment of the Court was delivered by
the Hon'ble Chief Justice)

The writ appeals have been filed to challenge the order dated 01.06.2022 passed by the learned Single Judge dismissing the writ petitions on a challenge to the order dated 02.03.2022 of the respondent Corporation.

2. It was in a case where the writ appellants executed an agreement to make a supply of Palmolein within the time period given therein with a supply of additional quantity. Due to certain circumstances explained by the writ appellants, the supply could not be completed and therefore, a writ petition was filed. Therein, justification for non-supply of additional and other quantities was given in reference to the situation arising out of Ukraine war. The learned Single Judge, finding no ground to interfere with the communications issued by the respondent Corporation, dismissed the writ petitions, as against which some of the writ petitioners have come on appeal.

3. We heard the submissions of the learned counsel for the parties at length. On the previous hearing, it was submitted that the position out of Ukraine war has been eased in the international market, therefore, the supply of Palmolein could be made and accordingly, the learned Advocate General was asked to take instructions in the matter as to whether they accept the supply. Pursuant to which, a letter of the respondents dated 05.07.2022 has been produced and taken on record. As per the letter, the respondents are willing to take the supply of Palmolein to the extent of additional 25% of the quantity on the rate of supply disclosed therein. It is, however, subject to a condition of imposition of penalty as per Clause 22 of the tender condition on account of default of the writ appellants to execute the order in time.

4. The learned counsel for the writ appellants submit that the appellants are willing to accept the letter dated 05.07.2022 to make the supply of additional 25% of the quantity. However, they raised an objection on the imposition of penalty because the situation at the relevant time was such when either Palmolein was not available or it was available at a higher rate in the international market. The prayer is, accordingly, to direct the respondents not to impose penalty while accepting the supply.

5. The learned Advocate General submits that one of the similar defaulting parties has agreed to make supply with the imposition of penalty, therefore, they cannot make a distinction between the similarly placed parties.

6. The learned counsel for the writ appellants submit that in a case where delay may be justified, the imposition of penalty can be relaxed and in any case, if the supply of Palmolein should be subject to imposition of penalty, then a liberty may be given to the writ appellants to raise a dispute before the Arbitrator in that regard and accordingly, imposition of penalty may be made under protest from the side of the appellants as otherwise they are eager to make supply of the additional quantity of Palmolein.

7. Taking the facts into consideration, we find that there exists an agreement between the parties as otherwise the subject matter before the learned Single Judge was failure of the writ appellants to make supply of additional quantity of Palmolein as per the agreement. The appellants had given reasons for non-supply of Palmolein which may be in reference to the Ukraine war or any other reason, but now pursuant to the instructions sent to the learned Advocate General and also agreed by the writ appellants, the supply of additional quantity is permitted and accordingly, the appellants would supply the additional quantity of 25% of Palmolein within a period of 45 days from tomorrow (07.07.2022).

8. So far as the issue of penalty is concerned, since the letter refers to imposition of penalty as per Clause 22, we make it clear that if penalty is imposed, the writ appellants would be at liberty to raise a dispute or challenge it by resorting to the remedy of Arbitration. The issue is thus kept open only in regard to the penalty and if raised before the Arbitrator, it would be open for the writ appellants to justify their act and at the same time, for the respondents to defend their case.

With the aforesaid, the writ appeals are disposed of. The order of the learned Single Judge would not come in the way of either of parties to rule this order.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Secretary to Government of Tamil Nadu,
Corporation Food & Consumer Protection
Department, Fort St. George,
Chennai - 600 009.
2. The Managing Director,
The Tamil Nadu Civil Supplies Corporation,
12, Thambusamy Road, Kilpauk,
Chennai - 600 010.

+1cc to Mr.T.Sathiya Moorthy, Advocate, S.R.No.43920
+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.43798
+1cc to the Government Pleader, S.R.No.44095

W.A.NOS.1463, 1513 AND
1514 OF 2022

SR-II (CO)
PBS/20/07/2022