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W.P.No.26003 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.26003 of 2022
and W.M.P.No.25085 of 2022

Starshine Logistics
Rep.by its Partner Suresh Gatreddi
No.6-C, 6th Floor, Gaiety Palace
No.1/L, Blackers Road, Chennai 600 002.

.... Petitioner

-Vs-

1.State of Tamil Nadu
rep.by the Principal Secretary to Government
Co-operation, Food and Consumer
Protection Department, Secretariat
Fort St.George, Chennai 600 009.

2.Tamil Nadu Civil Supplies Corporation
Rep.by the Managing Director
No.12, Thambusamy Road
Kilpauk, Chennai – 600 010.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct respondents 1 and 2 to consider the representations dated 08.09.2022 and 19.09.2022 given by the petitioner herein and consequently direct the respondent nos.1 and 2 to incorporate the provision for fixing time limit for payment in all subsequent tenders floated by respondent no.2 for the purchase of Fortified R.B.D.Palmolein Oil Pouches.



W.P.No.26003 of 2022

For Petitioner : Mr.N.R.Elango
Senior Counsel for Ms.Vadhna Bhaskar

For Respondent 1 : Mr.P.Sathish,
Additional Government Pleader

Respondent No.2 : Mr.J.Ravindran
Additional Advocate General, assisted by
Mr.C.Selvaraj, Additional Government Pleader

ORDER

The prayer sought for herein is for a Writ of Mandamus to direct respondents 1 and 2 to consider the representations dated 08.09.2022 and 19.09.2022 given by the petitioner herein and consequently direct the respondent nos.1 and 2 to incorporate the provision for fixing time limit for payment in all subsequent tenders floated by respondent no.2 for the purchase of Fortified R.B.D.Palmolein Oil Pouches.

2. The petitioner is an existing Contractor after being declared successful in the contract for supplying essential items like pulses to the respondent Tamil Nadu Civil Supplies Corporation, who purchase such items on behalf of the State of Tamil Nadu for distribution to the fair price shops across the State.



W.P.No.26003 of 2022

WEB COPY

3. As per the conditions imposed in the said Contract, whenever the persons like the petitioner supply the goods and raises the bill, within 15 days from the date of submission of the bill after deducting the applicable commission, the amount would be paid by the second respondent.

4. When that being so, now a tender has been floated on 29.09.2022 for supply of 200 lakh numbers of Fortified R.B.D.Palmolein Oil 1 litre pouches. In this contract, a condition viz., time frame for making the payment after supplying and raising of the bill by the successful contractor is missing or that time frame for payment schedule is not part and parcel of the conditions imposed by the respondents if the petitioner or any other successful tenderer entering into contract for supply of Palmolein.

5. Therefore, in this regard, the petitioner after having given a representation on 19.09.2022 to incorporate such a time frame in the present contract, had approached this Court by filing the present writ petition.

6. Heard Mr.N.R.Elango, Senior Counsel appearing for the petitioner who would submit that, the condition already imposed in the earlier contract under Clause 19 (iv) reads thus,



W.P.No.26003 of 2022

WEB COPY

"(iv) The payment shall be made by means of ECS / RTGS / NEFT payment in favour of the tenderer within 15 days from the date of submission of bill after deducting applicable commission. The tenderer should furnish the details required for electronic transfer of funds."

7. As per the said condition, the time limit for payment after the raising of the bill by the contractor / supplier is within 15 days. However, no such time frame is stipulated by the respondents in the present tender. Learned Senior Counsel submits that only if such a rigid time frame is fixed for payment, the successful tenderer will be able to continue to supply the goods without any hindrance as per the tender conditions. Therefore, the learned Senior Counsel appearing for the petitioner wants this Court to issue a direction to the respondents to consider the representation of the petitioner dated 19.09.2022 for incorporating such a time frame in the present tender also and if that direction is issued, the petitioner would be satisfied, he contended.

8. Heard P.Sathish learned Additional Government Pleader for the first respondent and Mr.J.Ravindran, learned Additional Advocate General appearing for the second respondent.



W.P.No.26003 of 2022

WEB COPY

9. Learned Additional Advocate General, on instructions would submit that, it is the prerogative of the Government or the second respondent to impose whatever conditions they deem it appropriate and in this arena, there are a number of judgments holding that no external agency can impose any conditions to be incorporated in the tenders which are floated by any agency or Government.

10. In this regard, the respondents wanted to do away with such clause fixing a rigid time frame for making payment after receiving the bill because sometimes where the bill raised by the contractor based on the shortcomings if any supply will have to be valued and then only the payment can be cleared, it takes some reasonable time. Hence, if such rigid time frame is fixed by the respondents to the tenderers for making the payment for the supply, if it is delayed for the aforesaid reasons, there may be chances that the tenderers may raise a dispute with regard to interest as well as compensation and in that case the respondents having the sovereign duty of supplying essential commodities to the public at large in the State would be landed in trouble.

10. Therefore, prerogative of fixing the time limit should always be left with the respondents and in this regard the Courts must always be slow in giving



W.P.No.26003 of 2022

any such directions to the respondents. Hence, the learned Additional Advocate General would submit that this writ petition can be rejected except to give a direction to consider the representation of the petitioner and in this regard it is purely the discretion of the respondents to consider the said representation of the petitioner and decide the same in accordance with law based on the practical difficulties which are being faced by the respondents by taking into account of the yesteryears supply of the goods / essential commodities under various circumstances.

11. I have considered the submissions made by the learned counsel for both sides and have perused the materials placed on record.

12. As has been rightly pointed out by the learned Additional Advocate General that it is purely the discretion or prerogative of the respondents to impose any condition in the tender and only accepting the tender conditions, any tenderer can make their tender confirmed and after abiding to such conditions only they become successful. In this regard, even though such a condition is prevailing, insofar as the making of payment against the bill raised by the supplier after supplying the goods as per the tender conditions is concerned, if any rigid time frame as has been quoted in the earlier tender conditions ie., 15 days from the date of submission of the bill, this Court feels that there must be



W.P.No.26003 of 2022

some time frame that may be fixed by the respondents so that if any dispute arises, that can be resolved amicably under law either before any other legal forum or before an arbitrator as there is arbitration clause also in the tender conditions, so that both the parties when being deprived of such right would be benefitted.

13. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

“That there shall be a direction to the respondents to consider the representation of the petitioner dated 19.09.2022 and pass orders thereon on merits and in accordance with law with regard to the plea raised by the petitioner to fix a time limit for making the payment after raising the bill for supply of goods covered under the contract, as discussed herein above within a period of two weeks from the date of receipt of a copy of this order.”

14. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2022

Index : Yes/No
Internet : Yes/No
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To

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- 2.The Managing Director
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W.P.No.26003 of 2022

R. SURESH KUMAR, J.

KST

W.P.No. 26003 of 2022

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