IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.2377 of 2023
and
W.M.P.No.2456 of 2023

M/s.C.P.Foods,
A Partnership Firm represented by its Authorised Signatory,
M.Arumugam,
Having office at No.52, South Car Street,
Virudhunagar – 626 123.

.. Petitioner

Vs.

1.The Government of Tamilnadu,
Represented by the Secretary to Government,
Cooperation, Food and Consumer Protection Department,
St.George Fort, Chennai.

2.The Commissioner of Civil Supplies and Consumer Protection,
Opposite to Chepauk Railway Station,
Chennai – 600 005.

3.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambu samy Road, Kilpauk,
Chennai – 600 010.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 3rd respondent to amend the E.Tender No.TNCSC/22-23/ET-58 dated 24.01.2023 inconsonance with G.O.(Ms).No.123, Cooperation, Food and Consumer Protection (F1) Department dated 15.11.2022 of the 1st respondent by including Canadian Yellow Lentil and permit the petitioner to participate in the tender.

For Petitioner	.. Mr.P.R.Raman, Senior Advocate For Ms.R.Revathi
For R1 to R2	.. Mr.J.Ravindran, Additional Advocate General For Mr.T.Seenivasan, Special Government Pleader
For R3	.. Mr.C.Selvaraj, Additional Government Pleader

ORDER

This Writ Petition has been filed in the nature of a Mandamus seeking a direction to the 3rd respondent / the Managing Director, Tamil Nadu Civil Supplies Corporation, to amend the E-Tender No.TNCSC/22-23/ET-58 dated 24.01.2023 inconsonance with GO (Ms) No.123, Cooperation, Food and Consumer Protection (F1) Department dated 15.11.2022 of the 1st respondent / the Secretary to Government, Cooperation, Food and Consumer Protection Department, Government of Tamil Nadu, Chennai by including Canadian Yellow Lentil and permit the petitioner to participate in the tender.

2.In the affidavit filed in support of the writ petition, it had been stated that the petitioner, M/s.C.P.Foods, a Partnership Firm with office at Virudhunagar had commenced business in the year 2001. They are in the business of supply of pulses, spices and other essential commodities including oil. They had been supplying various products to the 3rd respondent for the past 15 years through tenders floated by the 3rd respondent. It had been stated that, from the year 2017, only one Dal namely, Tur Dal / Canadian Yellow Lentil and Palmolein Oil were supplied to the family cardholders / public. The Special Public Distribution Scheme had been introduced to control the price of Dal and Oil in the market.

3.It had been stated that thereafter, the 1st respondent had issued

G.O.Ms.No.123 dated 15.11.2022, wherein the Government had extended the Special Public Distribution System for a further period from 01.10.2022 to 31.03.2023 to supply any one dal namely, Tur Dal/Canadian Yellow Lentil as well as Palmolein Oil.

4.The petitioner claimed that the firm had participated in earlier tenders floated by the 2nd and 3rd respondents from the year 2007 and had supplied Canadian Yellow Lentil to the respondents. It was also stated that the petitioner had also participated in the previous tender floated by the 3rd respondent on 14.12.2022 for supply of Tul Dal / Canadian Yellow Lentil. The petitioner had valued the cost 6000 Metric tones of Canadian Yellow Lentil at Rs.1,02,400/- per Metric Ton. It is claimed by the petitioner that their bid was declared as best deal. However, the 3rd respondent had not placed the order. The 1st respondent had however purchased the Tur Dal at Rs.1,03,080 per metric ton which was Rs.1,501/- over and above the price quoted by the petitioner herein. It had been stated that the 1st respondent had thus purchased 6000 Metric Ton of Tur Dal at more than Rs.2,00,00,000/- over and above, the rate quoted by the petitioner herein.

5.The petitioner claimed that both Canadian Yellow Lentil and Tur Dal as available in the local market are practically the same and have the same nutritious value. They have been interchangeably purchased by the 3rd respondent for supply through the Public Distribution System. For this purpose G.O (Ms) No.123 had actually been passed by the Government on 15.11.2022.

6.It had been further stated that the 3rd respondent had placed a short e-tender notice on 24.01.2023 for purchase of 20,000 Metric Tones of Tur Dal alone. Claiming that the 3rd respondent should also included Canadian Yellow Lentil in accordance with the scheme as projected in G.O (Ms) No.123 dated 15.11.2022, the writ petition has been filed.

7.It had been stated that omission to invite bids for supply of Canadian Yellow Lentil had directly affected the petitioner as the petitioner had purchased substantial quantities of Canadian Yellow Lentil in the hope that bids would be called for supply of Canadian Yellow Lentil by the respondents herein. The petitioner placed reliance on G.O.(Ms).No.123 dated 15.11.2022 and stated that there cannot be a variation from the policy of the Government as reflected in the above Government order.

8.Heard arguments by Mr.P.R.Raman, learned Senior Counsel for the petitioner and by Mr.J.Ravindran, learned Additional Advocate General on behalf of the respondents.

9.The matter had been heard earlier and had been listed under the caption 'for orders' today. When orders were being dictated, the learned counsel for the 3rd respondent stated that the counter is ready but it is still in his hands. The said counter not taken on record, however the arguments had been heard even earlier.

10.This Court will have to record its extreme dismay, that the counter affidavit was held over by the counsel and then it is stated that the counter affidavit is ready when the orders are being dictated.

11.The facts are straight. The facts are simple.

12.The Government had passed G.O.Ms.No.123 Cooperation Food and Consumer Protection (F1) Department dated 15.11.2022. Let me extract the Government Order in entirety.

"Co-operation, Food and Consumer Protection (F1) Department

G.O.(Ms).No.123 *Dated: 15.11.2022*

1. *G.O.(Ms) No.106, Co-operation, Food and Consumer Protection (F1) Department, dated 04.04.2007.*
2. *G.O.(Ms) No.35, Co-operation, Food and Consumer Protection (F1) Department, dated 22.03.2022.*
3. *From the Managing Director, Tamil Nadu Civil Supplies Corporation, Chennai-10, Lr.No.BS6/3797/2014, dated 29.06.2022.*
4. *From the Commissioner of Civil Supplies and Consumer Protection, Chennai-5 Letter R.C.No.C2/17441/2022, dated 26.07.2022.*

ORDER:-

In the Government Order first read above, the Government had introduced the scheme of distribution of Tur Dal, Urad Dal and Palmolein Oil to the family cardholders. The State Government extended the scheme periodically. From March 2017 onwards only only Dal i.e. Tur Dal / Canadian Yellow Lentil and Palmolein Oil are being supplied to the family cardholders.

2.In the Government Order second read above, the Government have extended the scheme of Special Public distribution System for a period of six months from April 2022 to September 20222 with supply of one Dal i.e. Tur Dal / Canadian Yellow Lentil and Palmolein Oil to meet cent percent *requirement of the existing family cardholders. The Government also permitted the commissioner of Civil Supplies and Consumer Protection to allot Palmolein Oil issued under Special Public Distribution System to the extent of cent percent requirement, after adjusting the Closing Stock of Palmolein Oil of the previous month, so as to cover all the eligible family cardholders for the extended period.*

3.In the letter third read above, the Managing Director, Tamil Nadu Civil Supplies Corporation has stated that the implementation of the scheme of Special Public Distribution System in the State achieves its objective of controlling the prices of Dal and Oil in the market, apart from safeguarding the poor and vulnerable from inflation. The Managing Director, Tamil Nadu Civil Supplies Corporation has therefore requested orders on the further continuance of the scheme of Special Public Distribution System beyond 30.09.2022.

4.In the letter fourth read above, the commissioner of Civil Supplies and Consumer Protection has requested to extend the scheme of Special Public Distribution System beyond 30.09.2022.

5.The Government after careful examination, extend the scheme of

Special Public Distribution System for a further period of six months from 01.10.2022 to 31.03.2023 with supply of one dal i.e., Tur Dal / Canadian Yellow Lentil as well as Palmolein Oil to meet cent percent requirement of the existing family cardholders. The Government also permit the Commissioner of Civil Supplies and Consumer Protection to allot Palmolein Oil to the extent of the cent percent requirement, after adjusting the Closing Stock of Palmolein Oil of the previous month, so as to cover all the eligible family cardholders for the extended period.

6.This order issues with the concurrence of Finance Department vide its U.O.No.49327/Finance (CF & CP)/2022, dated 15.11.2022.

(BY ORDER OF THE GOVERNOR)

J.RADHAKRISHNAN

PRINCIPAL SECRETARY TO GOVERNMENT"

13.In the Government order it had been stated that the Government had extended the scheme of Special Public Distribution System for a period of six months from April 2022 to September 2022 for supply of one Dal i.e. Tur Dal / Canadian Yellow Lentil and Palmolein Oil to meet cent percent requirement of the existing family cardholders.

14.Calling attention to the references, it had been stated that the 3rd respondent / Managing Director, Tamil Nadu Civil Supplies Corporation, had stated that the implementation of the scheme of Special Public Distribution System in the State achieves its object to control the prices of Dal and Oil in the market, apart from safeguarding the poor and vulnerable from effects of inflation. The 3rd respondent, had therefore requested for orders to be passed on the further continuance of the scheme of the Special Public Distribution System beyond 30.09.2022.

15.Thereafter, placing reliance on the letter of the Commissioner of Civil Supplies and Consumer Protection dated 26.07.2022 which had been given as the 4th reference in the Government Order, it had been stated that the Government after careful examination has taken a decision to extend the scheme of Special Public Distribution System for a further period of six months from 01.10.2022 till 31.03.2023 with supply of one dal i.e., Tur Dal / Canadian Yellow Lentil as well as Palmolein Oil to meet cent percent requirement of the existing family cardholders.

16.It is thus seen that the Government, on the basis of such recommendations by the 3rd respondent and also by the 2nd respondent / Commissioner of Civil Supplies and Consumer Protection, had with the laudable object to achieve cent percent distribution of Dal and Palmolein Oil stated that the scheme to so supply any one dal, either Tur Dal / Canadian Yellow Lentil, be extended for supply till March 2023.

17.In the meanwhile, the Government had issued the tender for supply of Dal and in that they had omitted Canadian Yellow Lentil and added only the offer for supply of Tur Dal alone. This is the reason for filing of the writ petition.

18.During the course of arguments, the learned Additional Advocate General placed reliance on the minutes of a Board Sub-Committee. The Sub-Committee consisted of the Deputy Secretary to Government (Budget), Finance Department, the Managing Director, Tamil Nadu Civil Supplies Corporation and the Commissioner, Civil Supplies & Consumer Protection Department. The three officials constituted what may be called the Board Sub-Committee. In their minutes dated 19.01.2023, they stated that they had taken a decision for inviting tenders only for the supply of Tur Dal alone. They had given their reasons. Let me extract the reasons in entirety:

> *“The tentative monthly requirement of Dal for NMP/PM POSHAN), ICDS and Special Public Distribution System for one month requirement is 20,000 MTs as on 10.01.2023. TNCSC is having stock of 9,676 of Dal in godowns and a quantity of 23,618 MT of dal is to be received from the suppliers. As such the approximate total availability of Dal on hand up to the month of January 2023 would be 33,294 MT. Out of which a quantity of 7,866 MT is to be lifted to the shops for Public Distribution purpose for the month of January 2023 and 2,000 MT is to be lifted to the ICDS and Noon Meal Centres during January 2023 itself. The balance available quantity is worked out to 25,428 MT. The total requirement of dal for NMP, ICDS and Special Public Distribution System for the month of February 2023 is arrived as 20,000 MTs. The balance available quantity of 5,428 MT and the total requirement of dal for NMP, ICDS and Special Public Distribution System for the month of March 2023 is arrived as 20,000 MTs. The balance available quantity of 14,572 MT cannot cater the need for the month of March 2023 as the requirement for the month of March 2023 is 20,000 MTs. for NMP, ICDS and Public Distribution System.*

According, to ensure uninterrupted supply of Tur Dal to the beneficiaries under Special PDS and to meet out the expected short fall for the month of March 2023 there is a need to float Short E-Tender.

As the rate finalized in the tender held on 30.12.2022 at Rs.103.80/- per Kg for Tur Dal and Rs.101.50/- per Kg for Canadian Yellow Lentil there is also only a marginal rate difference between Tur Dal and Canadian Yellow Lentil and also most of the consumers prefer to consume Tur Dal over Canadian Yellow Lentil, and there is the need to provide Tur Dal alone to the ICDS/NMP Schemes. Considering the slight higher quality, we may procure Tur Dal only in the future tenders.

Although, the Government in its G.O.(Ms) No.123, Co-operation, Food and Consumer Protection (F1) Dept., dated 15.11.2022 have accorded permission to purchase one Dal i.e., Tur Dal/Canadian Yellow Lentil, the tender shall be floated for the purchase of Tur Dal (Indigenous) as per AGMARK standards by excluding Canadian Yellow Lentil.

The proposed amendment to the Tender title is as follows:

Existing Title	*Proposed Title Modification*
Short E-Tender for the purchase of 20,000 Metric Tonnes of any one Dal among varieties viz., Tur Dal (Split – Husked & Fatka) (Indigenous) / Lentil locally known as Canadian Yellow Lentil (Split – Husked & Laired No.2) / Lentil locally known as Canadian Yellow Lentil (Whole – Husked & Laired No.2) as per AGMARK specification for issue under Special PDS.	*Short E-Tender for the purchase of 20,000 Metric Tonnes of Tur Dal (Split – Husked & Fatka) (Indigenous) as per AGMARK specification for issue under Special PDS, ICDS AND NMP (MDM / PM POSHAN) throughout the State of Tamil Nadu*

The approximate value for the purchase of Tur Dal is worked to Rs.207.60 crores.”

19.After taking that decision, they had taken a further decision to float tender for supply of Tur Dal alone in accordance with the provisions of the Tamil Nadu Transparency in Tenders Rules. The time limit for floating of the tender and other conditions in accordance with the rules had also been extracted by them in their minutes. Finally, they had approved the decision of the Managing Director, Tamil Nadu Civil Supplies Corporation and stated as follows:

"Therefore, the subject was placed before Board Sub-Committee for approval to

i) Amend the title of tender document as Short E-Tender for the purchase of 20,000 Metric Tonnes of Tur Dal (Split-Husked & Fatka) (Indigenous) as per AGMARK specification for issue under Special PDS, ICDS AND NMP (MDM / PM POSHAN) throughout the Sate of Tamil Nadu and to make related changes in the tender document wherever necessary and get ratification from the board.

ii) Invite Short E-tender (7 Days) for the purchase of 20,000 MT of Tur Dal (Split-Husked & Fatka) (Indigenous) as per AGMARK Specification to build up stock and to ensure continuity in supply of dal through NMP, ICDS and Special Public Distribution System, as provided in 20(2) of Tamil Nadu Transparency in Tender Rules 2000, to ensure uninterrupted supply of Tur Dal through Special Public Distribution System, ICDS and NMP (MDM/PM POSHAN) scheme.

The Board Sub-Committee approved the decision of the Managing Director, TNCSC to

iii) Amend the title of tender document as Short E-Tender for the purchase of 20,000 Metric Tonnes of Tur Dal (Split-Husked & Fatka) (Indigenous) as per AGMARK specification for issue under Special PDS, ICDS AND NMP (MDM/PM POSHAN) throughout the Sate of Tamil Nadu and to make related changes in the tender document wherever necessary and get ratification from the board.

iv) Invite Short E-tender (7 Days) for the purchase of 20,000 MT of Tur Dal (Split-Husked & Fatka) (Indigenous) as per AGMARK Specification to build up stock and to ensure continuity / uninterrupted supply of Tur Dal through Special Public Distribution System, ICDS and NMP (MDM/PM POSHAN) as provided in 20(2) of Tamil Nadu Transparency in Tender Rules 2000."

20.The only issue which now arises for consideration is whether a Government order can be interfered with by a Board Sub-Committee and the authority of such a Board Sub-Committee to alter the policy which had already been determined by the Government and had achieved statutory status by passing of the Government order.

21.It must be kept in mind that a Government Order is issued by the Principal Secretary to the Government by order of the Governor. It reflects the policy of the Government. The Government in its vision introduces welfare schemes and policies for the benefit and welfare of the general public. The Legislature has a right to introduce such policies. The Court cannot sit in the arm chair of the legislature and determine the policies to be advanced by the Government. The executive is the arm of the Government, which projects the policies.

22.The one manner in which the policies are projected is by issuing a Government order. The Government order is issued as stated by an order of the Governor. The Governor cannot independently issue such order. The Governor acts on the advise of the Chief Minister and the Council of Ministers, in short the Cabinet or the State Cabinet. The State Cabinet in turn also takes into account the views of the Legislature. Thus, as a whole, the elected representatives express their views and their views are reduced as a policy and put forth to the Governor and in the name of the Governor, the

Principal Secretary to Government issues a Government Order. This Government Order, if it is rescinded, can be so done by the Government by passing another Government order.

23.The Board or Committee of three officials cannot sit and decide that the policy of the Government can be changed by them or interfered with by them. This cannot be permitted. If it is done so, then it would only indicate that though there is an elected Government in place, the executives are independently functioning as the Government or against the wishes of the Legislature. That cannot be permitted in any democracy. The Legislature and the Executive, will have to function in tandem.

24.The Legislature understands the pulse of the people. They formulate the schemes for the welfare of the general public. Those schemes are finally approved, as a whole, by the Governor on advises from the Cabinet and the Governor passes what is known as Government Order. That Government order is issued in the name of the Governor by the Principal Secretary to the Government. That reflects the wishes of the Government for the welfare of the people.

25.In ***(2009) 5 SCC 404, Association of Residents of MHOW (ROM) and Another Vs. Delimitation Commission of India and others***, the Hon'ble Supreme Court was concerned with the Delimitation of Constituencies. The issue there was with respect to the Delimitation Act, 2002. The issue there was also with respect to judicial review of the final publication of such delimitation. The Hon'ble Supreme Court had held that there is bar for such judicial review. It had been very specifically stated that any order published under Section 10 of the Delimitation Act, 2002 is law under Article 327 of the Constitution of India and cannot be called in question in any Court by virtue of Article 329 of the Constitution of India.

26.That being the position the Hon'ble Supreme Court also had an occasion to examine further the authority of the executive, to further interfere with such delimitation. It had been held that the orders published under Section 10(1) of the Act, put them "in the same street as a law made by Parliament itself". It was further held that consequently that notification is to be treated as law and is required to be given effect to. In that case, after that proposal had been given, the Commissioner had given his own proposal independently. The Hon'ble Supreme Court held that was interference with the established view of the Government.

27.In the instant case, the view projected by the Government was to provide both Tur Dal and Canadian Yellow Lintel when the tender is floated. Thereafter, the Government has an option to chose the best bidder. But the three member Board Sub-Committee, had no right, had no authority and had no business to interfere with the Government Order as they do not act for the Government or under the advise of the Government. They cannot interfere with a Government Order passed in the name of the Governor who had issued the same on the advises being given by the Cabinet Ministers of the State. That advise is supreme. The State Legislature and the Ministers headed by the Chief Minister project the actual vision of the Government

28.In effect, these three members have directly challenged the advise of the Cabinet, which had been forwarded to the Governor for inviting tender of both Canadian Yellow Lintel and Tur Dal. This is a dangerous precedent and should not and must not be encouraged. It would only result in the creation of what can be termed as a Frankenstein Monster. The little liberty given today could be exercised for any purpose by the Executive.

29.Therefore, the supremacy of the Legislature in determining the policy for the welfare for the people has to be upheld by the Court. Any decision of the Board Sub-Committee has to be struck down.

30.Let me not examine the reasons of the Board Sub-Committee, but it is very obvious that the price of the Canadian Yellow Lintel is lesser than the price of Tur Dal. It is stated that the difference is negligible, but when calculated for 20000 metric tons, the difference runs into crores of rupees and that amount is actually public money. Saving that money was the vision of the Cabinet when they had stated that either Canadian Yellow Lentil or Tur Dal could be purchased and had given the choice to the Committee which invited the tender. This Sub-Committee which restricted the supply to only Tur Dal had actually worked against the interest of the Government. They had caused additional expense to be incurred by the Government. This cannot be permitted. This is struck down. It is set aside.

31.The Writ Petition stands allowed. A Mandamus is issued that not withstanding the decision of the Sub-Committee, the Government order in G.O.(Ms).No.123, Cooperation, Food and Consumer Protection (F1) Department dated 15.11.2022 has to hold the field and has to be adhered to as it projects the public policy as stated by the State Government. A Mandamus is issued to the respondents to act in accordance with the Government Order and not contrary to the said Government Order. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

32.Mr.C.Selvaraj, learned Additional Government Pleader for the 3rd respondent on record stated that the arguments of the learned Additional Advocate General that the Board Sub-Committee has a right to issue its recommendation contrary to the Government Order is recorded. These views act directly against the policy of the Government as projected in the Government Order. I am confident that it was not what the learned Additional Advocate General meant, when he represented that the Government has a right to chose either Tur Dal or Canadian Yellow Lentil. That right always exists. But they must invite tenders for both as is projected in the Government Order in G.O.(Ms).No.123 dated 15.11.2022.

03.03.2023

Index:Yes/No
Internet:Yes/No
Speaking Order / Non-Speaking Order
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To

1.The Secretary to Government
Government of Tamilnadu,
Cooperation, Food and Consumer Protection Department,
St.George Fort, Chennai.

2.The Commissioner
Civil Supplies and Consumer Protection Department,
Opposite to Chepauk Railway Station,
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3.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
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