



WEB COPY

W.P.No.7357 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.7357 of 2024

and

W.M.P.No.8252 of 2024

M/S.Sri Sairam Impex,
Rep. by its Authorised Signatory
M.Arumugam,
No.83/34, Venkatesan Street,
Royapuram, Chennai-600 013.

... Petitioner

Vs.

1.The Additional Chief Secretary
Co-Operation, Food And Consumer Protection Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Additional Chief Secretary of Government,
Finance Department,
Fort St. George,
Chennai-600 009.

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

4.The Commissioner of Civil Supplies
and Consumer Protection,
Chepauk, Chennai-600 005

....Respondents



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Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for the records of the Impugned order dated 14.03.2024 passed by the 1st respondent bearing Letter No. 5936453/ F1/ 2023-4 and quash the same as illegal and to direct the respondents to include the Red Lentil (Masoor Dhal) in the E-tender Notification No.BS6/ 016713/2024-TNCSC.24-25 dated 18.04.2024.

(Prayer amended as per order dated 23.04.2024 in WMP.12476/2024 in WP.7357/2024 by SMSJ).

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.M.Venkadesh Kumar

For Respondents : Mr.K.Surendran, AGP [for R.1 & R.2]
: Mr.J.Ravindran, AAG, assisted by
Mr.C.Selvaraj, AGP [for R.3 and R.4]

ORDER

The writ on hand has been instituted challenging the impugned order dated 14.03.2024 passed by the 1st respondent bearing Letter No. 5936453/ F1/ 2023-4 and quash the same as illegal and to direct the respondents to include the Red Lentil (Masoor Dhal) in the E-tender Notification No.BS6/ 016713/2024-TNCSC.24-25 dated 18.04.2024.



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2. The cause for the institution of the writ petition arose based on the representations submitted by the writ petitioner to purchase Masoor Dal for the Public Distribution System and to supply it to fair price shops. Since the representation of the petitioner was not considered and decided, the petitioner was constrained to move W.P.No.5685 of 2024 and this Court passed an order on 06.03.2024, directing the Government to decide the representation submitted by the petitioner regarding the purchase of Masoor Dal and for inclusion of Masoor Dal in the Tender notification to be issued by the Government for procurement. Pursuant to the directions of this Court, the Government considered the representation and rejected the same in proceeding dated 14.03.2024 and the said proceeding came to be challenged in the present writ petition.

3. The learned Senior Counsel Mr.B.Kumar, appearing on behalf of the petitioner would submit that non-inclusion of Masoor Dal is arbitrary and running counter to the judgement of the Hon'ble Division Bench of this Court, holding that Masoor Dal is safe and more rich in protein, minerals etc. Though Masoor Dal is a safe food product, the Government of Tamil Nadu has decided to purchase Canadian Yellow Lentil and Toor Dal, which would cost more and the Government would suffer a financial loss to



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the tune of Rs.150 Cores per month. Since the public interest is in prejudice, the petitioner has chosen to file the writ petition.

4. Mr.B.Kumar, learned Senior counsel would further contend that there is no reason for exclusion of Masoor Dal from the list and the reason stated in the impugned order are neither candid nor convincing and running counter to the statistical data and the food standards determined for Masoor Dal. In this context, the learned senior counsel solicit the attention of this Court with reference to the observations made by the Division Bench of Madurai Bench of Madras High Court in W.P. (MD). No.12658 of 2017 dated 11.08.2017.

5. The Division Bench considered the positive factors of Masoor Dal and held that Masoor Dal has never been prohibited. Masoor Dal is grown in more than nine major states including Uttar Pradesh, Madhya Pradesh, Bihar, West Bengal, Rajasthan etc. and the overall production is around 10 Lakh metric tonnes.

6. Measures taken to eliminate Kesari Dal has been observed since there is a possibility of mixing of Kesari Dal with the Masoor Dal, which can be identified and segregated in sealing. The quality control measures



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taken as per protocol has been considered by the Division Bench. Relying

on the said observations, the learned Senior Counsel would contend that exclusion of Masoor Dal in the forthcoming tender notification by the Government of Tamil Nadu is untenable and therefore, the order impugned is to be quashed and directions are to be issued to include Masoor Dal along with Canadian Lentil and Toor Dal for procurement for the benefit of public distribution, across the State of Tamil Nadu.

7. The learned Additional Advocate General, Mr.J.Ravindaran, would oppose by stating that it is a policy decision taken by the Government. The petitioner is a supplier of Masoor Dal. Therefore, the present writ petition has been instituted on private interest and the Government has taken a decision considering the public interest. Thus, the writ petition is not entertainable and to be rejected.

8. The learned Additional Advocate General would further contend that the Government has examined the food safety and standards with reference to Canadian Yellow Lentil, Toor Dal and Masoor Dal. In this context, the Government received several complaints that the Masoor Dal supplied for Noon Meal Program in Karur District by the Tamil Nadu Civil



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Supply Corporation contains Beta Oxalyl Alanine a neuro toxin, which on sustained consumption can cause neuro lathyrism and affect the nervous system and cause various deformities. A sample of Masoor Dal being supplied in Karur District was taken and sent for analysis to the public health laboratory in Chennai, and the report confirmed the presence of the toxin in the Dal test. It is therefore, requested to the Government to withdraw the supply of Masoor Dal in the Noon Meal Programme and consider using Toor Dal at the earliest.

9. The Government vide G.O.Ms.No.28 of the Social Welfare and Nutritious Meal Programme Department dated 01.03.2007 had permitted the supply of Toor Dal instead of Masoor Dal for the purpose of Nutritious Meal Programme with immediate effect. The third respondent was requested to withdraw Masoor Dal from the Nutritious Meal Programme in Schools and Anganwadi Centers and supply Toor Dal only. Based on the above order, the third respondent had stopped the supply of Masoor Dal for the Nutritious Meal Programme Scheme. It is further contended that as Kesari Dal is a weed plant that mostly grows along with Masoor Dal. As the size of the Dal is similar to Masoor Dal, it is very difficult to remove the Kesari Dal from the Masoor Dal and hence, the the presence of Kesari



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Dal of at least about 0.02% - 0.03% in Masoor Dal is inevitable. In 2007, the modern technology of Grader (separator) and colour sorter machine for grading and sorting of pulses was introduced. However, practically, it is very difficult to sort out and remove the Kesari Dal from the Masoor Dal and if such mixed Dal is supplied, it can have adverse health implications.

10. During the year 2017, the first respondent made an attempt to procure Masoor Dal and issued G.O.Ms.No.33, Cooperation, Food and Consumer Protection Department dated 06.03.2017 and permitted the third respondent to decide on the verities of the Dal to be procured from among Toor Dal/ Canadian Yellow Lentil/ Masoor Dal, depending on the seasonality, availability and economic cost of procurement for distribution under the Special Public Distribution System. The said Government order was challenged before the Madurai Bench of Madras High Court as public Interest Litigation in W.P.(MD)No.12658 of 2017 and the writ petition was disposed of with a direction to ensure that Masoor Dal be supplied without any mixture of Kesari Dal. However, the cases referred on the side of the petitioners are relating to tender notifications issued. In the present case, there is no such tender has been issued. The petitioner cannot be construed as an aggrieved person as on today since no tender notification has been



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flouted. The tender notification issued in the first instance was cancelled and subsequent tender notification was issued. However, the petitioner has not participated in the said tender process since the petitioner is a supplier of Masoor Dal and Masoor Dal has been excluded in the tender notification.

11. No doubt, policy decision of the Government must be in the larger public interest. Policy of the Government can be challenged on limited grounds. High Court cannot act as an expert body with reference to the laboratory reports relied on by the Government. The Government previously purchased the Masoor Dal and supplied the same through Public Distribution System. The Government experienced certain negative aspects and various instances referred in the counter would reveal that certain adverse health effects are noticed and more specifically the District Collector, Karur District, in a letter dated 28.07.2006 had stated that Masoor Dal being supplied for the Noon Meal Program in Karur District by the Tamil Nadu Civil Supplies Corporation contains Beta Oxalyl Alanine a neuro toxin, which on sustained consumption can cause neuro lathyrism and affect the nervous system and cause various deformities. Further, it is stated that it is very difficult to segregate Kesari Dal from the Masoor Dal



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as the size of the Dal is similar to that of the Masoor Dal. The presence of

Kesari Dal of at least about 0.02 % - 0.03 % in Masoor Dal is inevitable.

The Government has considered the adverse health implications on the Masoor Dal and the District Collector, Karur District, also submitted a report and further supply of Masoor Dal had been stopped by the Government.

12. Therefore, this Court is of the considered opinion that the decision to exclude the Masoor Dal has been taken based on certain health grounds and such health grounds relied on by the Government need not be interfered with by the Court. That apart, the Court cannot direct the Government to adopt a policy decision to include the Masoor Dal in the Tender notifications. For all these reasons, this Court do not find any reason to interfere.

13. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(sha)
Index : Yes
Speaking Order

30.04.2024



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Neutral Citation : Yes

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To

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Co-Operation, Food And Consumer Protection Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

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Finance Department,
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S.M.SUBRAMANIAM. J.,

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