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W.P.Nos.37203 and 37213 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.Nos.37203 and 37213 of 2024
and W.M.P.Nos.40205 and 40221 of 2024

KTV Health Food Pvt. Ltd.,
Rep. by the Managing Director
K.T.V.Kannan
No. 7/3, Arul Nagar Salai
R.V. Nagar (Post)
Kodungaiyur, Chennai 600 118 ... Petitioner in W.P.No.37203/2024

Integrated Service Point Pvt. Ltd.
Rep. by the Director
K. Ramnath Apparao
No.6C, Gaiety Palace
Door No. 1/L, Blackers Road
Chennai 600 002 ... Petitioner in W.P.No.37213/2024

vs.

Tamil Nadu Civil Supplies Corporation
Rep. by the Managing Director
TNCSC Head Office
CMRL Office Campus
Poonamallee High Road
Koyambedu, Chennai 600 107 ... Respondent (in both WPs)

PRAYER in W.P.No.37203 of 2024: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in NIT No. BS3/040535/2024 dated 21.11.2024 TNCSC/24-25



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issued by the Respondent and Quash the same.

PRAYER in W.P.No.37213 of 2024: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in NIT No. BS3/040535/2024 dated 21.11.2024 TNCSC/24-25 issued by the Respondent and Quash the same.

For Petitioner	: Mr.T.V.Ramanujam Senior Advocate for M/s.S.Manuraj (in W.P.No.37203/2024)
For Petitioner	: Mr.R.Shanmugasundaram Senior Advocate for M/s.Vadhana Bhaskar (in W.P.No.37213/2024)
For Respondent	: Mr.P.S.Raman Advocate General Assisted by Mr.C.Selvaraj Additional Government Pleader (in both WPs)

COMMON ORDER

By consent of both the learned counsel appearing for the petitioners as well as respondent, these writ petitions are disposed of at the admission stage itself.

2. These Writ Petitions are filed challenging the Tender Conditions



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mentioned in Clause 21 (c) and 22 (b) of the Impugned Tender in NIT No. BS3/040535/2024 dated 21.11.2024 TNCSC/24-25 floated by the respondent for supplying satisfied quantities of Palmolein Oil namely 600 Lakh Numbers of 1 Litre (910 grams) Fortified R.B.D. Palmolein Oil Pouches for the period of January to March 2025.

3. Mr.T.V.Ramanujam, the learned Senior Counsel appearing for the petitioner in W.P.No.37203 of 2024 and Mr.R.Shanmugasundaram, learned Senior Counsel appearing for the petitioner in W.P.No.37213 of 2024 raised two points with regard to Clause 21(c) and 22(b) of impugned tender floated by respondent for supply of specified quantities of Palmolein.

4. The learned Senior Counsel appearing for the petitioner submits that Clause 21(c) of tender gives un-guided discretion to the respondent to delay the payment due to supplier beyond the period of thirty days.

5. As far as Clause 22(b) is concerned, the learned Senior Counsel for the petitioner submits that even in cases the petitioner fails to supply within the stipulated time on justifiable reasons, the respondent is empowered to



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invoke penalty clause and impose a penalty of 5% notwithstanding actual damage caused to respondent. Therefore, Clause 22(b) is also arbitrary and unreasonable.

6. As far as Clause 22 (b) of tender conditions is concerned, the respondent issued a clarification on 06.12.2024 in the website, which reads as follows:-

Tender Reference No.BS3/040535/2024, dated 21.11.2024

Sl. No.	Tender condition No.	Page No.	Existing clause	Clarification.
1.	22(b)	24	A penalty of five percent of the supply cost of the unsupplied quantity of RBD Palmolein Oil of 1 litre pouches will be imposed for the quantity supplied after the due date fixed for supply.	It is clarified that whenever extension of time is sought with reasonable cause by the suppliers, the same will be considered and the extension of time will be granted for the genuine reason alone. In such case no penalty will be imposed.

7. The learned Senior Counsel appearing for the petitioner in both writ petitions are satisfied with the clarification issued by the respondent on 06.12.2024.

8. As far as Clause 21 (c) of tender conditions is concerned, the learned Advocate General appearing for the respondent expressed some



difficulty in deleting the expression 'based on availability of funds' at this stage. The learned Advocate General further submits that for deletion of expression mentioned in Clause 21 (c), the respondent has to convene a board meeting and it is a long drawn process.

9. The learned Senior Counsel appearing for the petitioners submit that in view of inclusion of the expression 'based on availability of funds' wide discretion is given to the respondent to delay the payment and existence of the said expression will disable the petitioners from claiming interest on the delayed payment.

10. In view of the difficulty expressed by the learned Advocate General appearing for the respondent in deleting the expression 'based on availability of funds' at this stage, this Court is inclined to dispose of these writ petitions by clarifying that relying on the said expression, the respondent is not entitled to delay payment perennially. The respondent by Clause 21 (c) agreed to make payment within 30 days and any delay in payment due to non-availability of funds, can be accepted only if it is reasonable. If there is any unreasonable delay on the part of the respondent



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in making payment beyond the period of 30 days, the petitioners are entitled to claim interest and workout their remedy in the manner known to law.

11. With these clarifications, the Writ Petitions are disposed of. No costs. Consequently, the connected writ miscellaneous petitions are closed.

09.12.2024
(2/2)

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm



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To

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The Managing Director
Tamil Nadu Civil Supplies Corporation,
TNCSC Head Office,
CMRL Office Campus,
Poonamallee High Road,
Koyambedu, Chennai 600 107.



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S.SOUNTHAR, J.

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