



COMPETITION COMMISSION OF INDIA

Case No. 02 of 2018

In Re:

**Maheswari Agro Products
No. 47/2A, Mulegoan Tanda,
South Solapur,
Maharashtra – 413 002.**

....Informant

And

**Tamil Nadu Civil Supplies Corporation
No. 12, Thambusamy Road,
Kilpauk, Chennai,
Tamil Nadu – 600 010.**

....Opposite Party

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

**Justice G. P. Mittal
Member**



Appearance:

For Informant Shri A. Selvin Raja, Advocate

For Opposite Party Shri R. Rakesh Sharma, Advocate
Shri P. Rajavel, Manager (Law)

Order under Section 26(2) of the Competition Act, 2002

1. The present information is filed by Maheshwari Agro Products (**Informant**) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter '**the Act**') against Tamil Nadu Civil Supplies Corporation (OP) alleging that the pre-qualification criteria laid down by OP in its tender for procurement of tur dal/ canadian yellow lentil is violative of the provisions of Section 4 of the Act.
2. As per the information, the Informant is a company engaged in the business of supply of pulses and other ancillary and incidental things and it had successfully participated in the tenders floated by OP since 2012.
3. The OP is a state owned Public Sector company registered under the Companies Act. It procures, stocks and distributes essential commodities for Public Distribution System (PDS), Special PDS and Noon Meal Programme. The OP also operates departmental stores as a market intervention measure to control the prices of essential commodities like rice, dal, vegetables like onion, tomato *etc.* in the open market. Further, OP has been the nodal agency for procurement of fan, mixie and grinder for a flagship programme of the State of Tamil Nadu.
4. The Informant has submitted that the Government of Tamil Nadu had issued orders for the supply of dal to cardholders under the Special Public Distribution Scheme (SPDS) and mandated the Tamil Nadu Civil Supplies Corporation (OP) to procure the dal through tender process with the objective of controlling the rise in the price of pulses in the open market.



5. It has been averred that the OP was implementing the above said scheme since the year 2007 by floating tenders. From 2007 till 2012, the stake holders had no grievances against the terms and conditions of the tenders since they created a platform for all eligible bidders to participate equally in the tender process. In the year 2013, the OP introduced drastic changes in the tender conditions which prevented many competitors from participating in the tendering process. However due to certain objections being raised by some directors the tender was not finalized.
6. It is stated that after the year 2013, the OP invited tenders for the year 2014, 2015, 2016 and 2017 with stringent conditions by changing the entire terms and conditions of tender and purchased the stock from the tenderers at a rate higher than that of the open market price. Thus, the stated objective of OP inviting tenders in order to control the rise in the price of pulses was rendered nugatory.
7. Subsequently, the OP issued a tender notification for the year 2017, dated 15.05.2017 for purchase of 20,000 MT of tur dal (Split-Husked & Fatka)/ Canadian yellow lentil (Split-Husked). It has been alleged that in terms of clause 3 of the tender notification, the pre-qualification criteria has been modified arbitrarily without any sound reasoning. The criteria mandates that the bidder should have *executed at least one contract value of not less than Rs. 16 crores* related to the supply of pulses in the last three financial years *i.e.* between 2013-2014 and 2015-2016 and further that the bidder should have reported an average annual turnover of at least Rs. 32 crore in the last three financial years.
8. It is submitted that the OP is taking advantage of its dominant position by changing the norms of the tender in order to favour some particular entities while trying to restrict other stakeholders from participating in the tender process thereby adversely affecting the price of dal in the market. The Informant has averred that since the OP has made the aforesaid changes by abusing its dominant position and the changes made affect both the competitors and consumers, the OP has acted in contravention of Section 4 of the Act.



सत्यमेव जयते



9. The Commission has carefully perused the facts of the present case and the arguments made by the Informant and Opposite Party in the preliminary conference held on 29th May, 2018.
10. The Commission notes that the Informant is primarily aggrieved by the conduct of the OP in modifying the pre-qualification criteria for bidders in the tender process for procurement of tur dal/ Canadian yellow lentil. It is alleged that the OP has arbitrarily changed the eligibility requirement in the aforesaid tender which excluded many stakeholders from participating therein.
11. In the present case, from the information available on the website of the *Government of Tamil Nadu*¹, it is observed that Tamil Nadu Government is implementing Universal Public Distribution System (UPDS) and the OP is the agency mandated for procuring and supplying food grains including pulses at subsidized rates to the card-holders under the said scheme. As per the information available on the website of OP², the OP procures essential commodities such as rice and tur dal *etc.* from Food Corporation of India and stocks them in 226 operational godowns located all over the state. It also procures various other essential commodities for Special Public Distribution System directly from the market through tenders and also through the designated Government of India agencies. Distribution of commodities through fair price shops is being carried out by the OP and through various Cooperative Societies. In order to achieve the objective under these welfare schemes, the OP invites quotations from the suppliers to supply the requisite quantity of the products.
12. At the outset, it is observed that Section 4 of the Act proscribes abuse of dominant position by an enterprise. It defines ‘dominant position’ as a position of strength, enjoyed by an enterprise, in the relevant market which enables it to operate independently of competitive forces prevailing in the relevant market; or affects its competitors or consumers or the relevant market in its favour.

¹ <http://www.consumer.tn.gov.in>

² <http://www.tncsc.tn.gov.in/PDS.html>



सत्यमेव जयते



13. The Commission notes that the Informant has not suggested any relevant market in this case. However, since the allegation is regarding violation of Section 4 of the Act, it would be appropriate to define the relevant product market. As the main grievance in the information relates to changes in the pre-qualification tender conditions for the procurement of tur dal/ Canadian yellow lentil, the relevant product market would be *'market for procurement of tur dal/ Canadian yellow lentil'*.
14. With regard to the relevant geographic market, it is observed that the Informant, who is based in Maharashtra, had participated in the tenders floated for procuring tur dal/ Canadian yellow lentil in the State of Tamil Nadu. Considering the fact that the tender was floated by OP for procurement of tur dal/ Canadian yellow lentil and the bidders/ suppliers could be from anywhere in India provided they satisfied the eligibility conditions, the relevant geographic market in the instant matter would be *'India'*. Thus, the relevant market in the present case, would be *'market for procurement of tur dal/ Canadian yellow lentil in India.'*
15. For examining the alleged violation of Section 4 of the Act, it is necessary to assess the dominance of OP in the relevant market. The Commission notes that the Informant has not provided any material wherefrom the dominance of the OP could be determined. It is further observed from the website of *Department of Consumer Affairs*³ that in the relevant market so delineated, there are many State Agencies/ Corporations, Central Government Corporations with state backing like the OP such as National Agricultural Cooperative Marketing Federation (NAFED), National Dairy Development Board (NDDB), Food Corporation of India (FCI) and Small Farmers' Agribusiness Consortium (SFAC) which are operating in the aforesaid relevant market for the procurement of tur dal/ Canadian yellow lentils. Thus, the OP is also operating under competitive constraints and does not seem to have the ability to operate independently in the aforesaid relevant market.
16. Further, during the preliminary conference, the learned counsel for the OP sought to rebut the aforesaid allegations by submitting the *Minutes of the board sub-*

³ <https://consumeraffairs.nic.in/forms/contentpage.aspx?lid=3187>



committee meeting held on 10.06.2017 – in relation to the purchase of 20,000 MT of tur dal (Split- Husked & Fatka)/ Canadian yellow lentil (Split-Husked). As per the minutes of the meeting, the tender scrutiny committee had observed that the three tenderers M/s Sri Pawan Dal Mill, Telangana, M/s C. P. Foods, Virudhunagar, Tamil Nadu, and M/s Arunachala Impex Pvt. Ltd, Chennai, Tamil Nadu had participated for the supply of both tur dal and Canadian yellow lentil and seven tenderers viz., M/s Natural Food Products, Namakkal, Tamil Nadu, M/s Suvarnabhoomi Enterprises Pvt. Ltd., Coimbatore, Tamil Nadu, M/s Soun Moun Industries, Nagpur, Maharastra, M/s Kendhirya Bhandar, Chennai, Tamil Nadu, M/s Kamatchi & Co., Chennai, Tamil Nadu, M/s Kannan & Sons, Chennai , Tamil Nadu and M/s Best Dhall Mill, Chennai, Tamil Nadu had participated in the supply of tur dal.

17. It has been further stated by the OP that the Board Sub- Committee, in the meeting held on 10.06.2017 had opened the part-II (Price) bid of all the ten eligible tenderers with respect to tur dal/ Canadian yellow lentil in the presence of tenderers/ representative and selected the supplier.
18. Based on the above submission of the learned counsel of OP, the Commission observes that even after altering the pre-tender qualification, ten suppliers submitted their bids for supply of tur dal/ Canadian yellow lentil. Thus, the allegation that the altered tender conditions have reduced the competition resulting in higher rates of supply is not substantiated in the given fact scenario.
19. The learned counsel of OP also submitted that prior to changing the tender conditions, *i.e.*, in case of tenders floated in 2007 -2013, the OP had received many bids from suppliers who were unable to meet the supply requirements of OP. Consequently, the OP had to meet the deficit in the supply by procuring at higher prices from the open market leading to loss to the exchequer. In this regard, the Commission notes that the OP has the obligation to frame eligibility conditions for the tender floated by it in a manner, which would ensure that the supplier participating in the tender has the capacity and the resource to successfully execute the work, so that the OP receives an uninterrupted supply of essential commodities enabling it to distribute the same through the Special Public Distribution System.



20. In view of the foregoing, the Commission is of the opinion that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against the OP and the matter is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.
21. The Secretary is directed to communicate the order to the parties, accordingly.

Sd/-
(Devender Kumar Sikri)
Chairperson

Sd/-
(Sudhir Mital)
Member

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

New Delhi
Date: 04/07/2018

Sd/-
(Justice G. P. Mittal)
Member