



COMPETITION COMMISSION OF INDIA

Case No. 18 of 2018

In Re:

**M. Kaja Peer Mohamed,
Proprietor of Star Export,
No. 13, Nadu Street,
Mylapore, Chennai – 600 004
Tamil Nadu.**

....Informant

And

**The Principal Secretary,
Social Welfare and Nutritious Meal Program Department
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009
Tamil Nadu.**

....Opposite Party-1

**The Principal Secretary,
Co-operation, Food and Consumer Protection Department
Government of Tamil Nadu,
Fort St. George, Chennai – 600 009
Tamil Nadu.**

....Opposite Party-2

CORAM

**Mr. Sudhir Mital
Chairperson**

**Mr. Augustine Peter
Member**



Mr. U. C. Nahta
Member

Justice G. P. Mittal
Member

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

1. The present information has been filed by M. Kaja Peer Mohamed (**Informant**), Proprietor of Star Export under Section 19(1)(a) of the Competition Act, 2002 (hereinafter '**the Act**') against the Principal Secretary, Social Welfare and Nutritious Meal Program Department, Government of Tamil Nadu (**OP-1**) and the Principal Secretary, Co-operation, Food and Consumer protection Department, Government of Tamil Nadu (**OP-2**) (collectively referred to as **Opposite Parties/ OPs**) *inter alia* alleging that the pre-qualification criteria laid down by OPs in their tender for procurement of tur dal/ Canadian yellow lentil, palmolein oil and eggs, is violative of the provisions of Section 4 of the Act.
2. As per the information, the Informant is the Proprietor of a company engaged in the business of export and supply of pulses, oil, rice and other food grains.
3. OP-1 is the Principal Secretary, Department of Social Welfare and Nutritious Meal Program, Government of Tamil Nadu and is responsible for implementing various social welfare schemes including noon meal scheme/ mid-day meal program. OP-2 is the Principal Secretary, Department of Co-operation, Food and Consumer Protection, Government of Tamil Nadu and is responsible for policy formulation and decision making in the field of co-operative credit, co-operative marketing, processing/ storage, consumer co-operatives and Public Distribution System (PDS) in the State of Tamil Nadu.



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4. The Informant has stated that the Government of Tamil Nadu had issued orders for supply of tur dal and palmolein oil to family cardholders under Special Public Distribution Scheme (SPDS). It has been further stated that Government of Tamil Nadu had mandated TNCSC to procure tur dal/ Canadian yellow lentil and palmolein oil through tender process for distribution to the said card holders at subsidised rates with the objective to control the rise in the price of pulses/ oil in the open market.
5. It has been stated that during the period 2007 to 2012, the stakeholders had no grievance against the tender norms and conditions as it created a mere platform for all the suppliers to participate equally in the tender process. However, post 2012, TNCSC floated tenders for the years 2014, 2015, 2016 and 2017 with anomalous and arbitrary conditions by changing the entire terms and conditions of past tenders which resulted in purchases to happen at higher rates than the market price. To substantiate further, it is submitted that in the last tender issued on 15.05.2017 for purchase of 20,000 MT of tur dal/ Canadian yellow lentil (Split-Husked), clause 3 of the tender condition provided 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.* from 2013-2014, 2014- 2015 and 2015-2016 and also that the bidder should have reported an average annual turnover of at least Rs. 32 crores in the last three financial years. This resulted in restricting the numbers of suppliers participating in the tenders.
6. With regard to purchase of palmolein oil by TNCSC, it has been alleged that during the period from 2011 to 2016, the pre-qualification criteria was only that the bidders should have an experience for the supply of palmolein oil to the Government/ Government organization/ institution/firms in the last three financial years and the same procedure was adopted by TNCSC for purchase of palmolien oil in its latest tender floated in the month of October 2017. However, TNCSC in the tender (BS3/45530/2017) dated 09th November, 2017 introduced new conditions which mandated that only those suppliers, who had executed the supply orders either to TNCSC or to any other Government/ Quasi Government/ any



institution/ firm covering a quantity of 10,00,000 (Ten Lakh) litres of Refined Bleached Deodorized (RBD) palmolein for the last three financial years were eligible to take part in the said tender. Further, it had prescribed certain additional conditions related to quality certification regarding machinery/ equipment and other infrastructure, processes, industrial safety and statutory licences under Agmark/ ISI/ BIS Act/ Factory Act/ Food Safety Rules/ Act *etc.*

7. Lastly, with regard to tender norms for procuring eggs, it has been submitted that the State Government, through Commissioner of Integrated Child Development Service Scheme (ICDSS) Chennai, used to procure the required quantity of egg through local traders since the scheme was introduced in the year 1989. From 1989 to 2012, eggs were procured through multiple tenders issued at district level. It is alleged by the Informant that after 2012, the tenders for procurement of eggs were called at state level only to favour some particular entities such as (a) M/s. Fair Deal Food Ventures Private Limited, Thiruchengode, Namakkal District; (b) M/s. Natural Food Products, Rasipuram, Namakkal District; (c) M/s. Suvamabhoomi Enterprise Private Limited, Thiruchengode, Namakkal District; and (d) M/s. Christy Fried Gram Industries Private Limited, Thiruchengode, Namakkal District.
8. It has been alleged that TNCSC changed the pre-qualification criteria with an aim to restrict other participants to take part in the tender process and limit the competition. In fact, the changes made in the tender conditions have drastically raised the price of tur dal, palmolein oil and eggs in the market between 30% - 40%. It is further alleged that the aforesaid changes show abuse of its dominant position in contravention of Section 4 of the Act and had affected the competitors and consumers in the said markets.
9. The Commission has carefully perused the information filed and the material available in public domain. It is observed that the Informant is aggrieved because of the modifications in the pre-qualification criteria in the tender process for procurement of tur dal/ Canadian yellow lentil, palmolein oil and eggs. It is further



observed that the Informant has not revealed the relationship between OP-2 and TNCSC and the role of OP-2 in the impugned conduct. At the same time, he has raised allegations against TNCSC with respect to procurement of tur dal and palmolein oil but, he has not impleaded TNCSC as the Opposite Party in the present case. However, the Commission notes from the website¹ of TNCSC that OP-1 is a Director in the Board of Directors of TNCSC.

10. It is the case of the Informant that the OP-1 and TNCSC have allegedly changed the pre-qualification criteria in their tenders floated for procurement of eggs, tur dal/Canadian yellow lentil and palmolein oil respectively and hence restricted many stakeholders from participating in the tender process. It has alleged that such conduct of OP-1 and TNCSC amount to contravention of the provisions of Section 4 of the Act.
11. As per the information, on the website of TNCSC, it is a state owned Public Sector Company registered under Section 8 of the Companies Act, 2013. The Commission observes that Tamil Nadu Government is implementing Universal Public Distribution System (UPDS) and TNCSC is the agency mandated to procure food grains including pulses and palmolein oil so as to supply the same at subsidized rates to the family card-holders under the said scheme. TNCSC procures essential commodities required for public distribution system from Food Corporation of India and from the open market through tenders. Then, distribution of commodities through fair price shops is being carried out by TNCSC and the Cooperative Societies. TNCSC invites quotation from the traders to supply the requisite quantity of the products through tenders. It also procures various other essential commodities for Special Public Distribution System directly from the market through tenders and also through designated Government of India agencies.
12. Based on the above information, the Commission notes that OP-2 does not float tenders but, it is TNCSC which floats tenders for procurement of tur dal/ Canadian

¹ <http://www.tncsc.tn.gov.in/>



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yellow lentil and palmolein oil. It is noted that the volume of the procurement and the rate finalized are different for the each of these products.

13. With regard to the products whose tender conditions are challenged herein, it is observed that each of these products has distinct demand and supply conditions and they are not substitutes for one another rather they are used as complements in the preparation of food. Further, the producers/ distributors for the aforementioned goods are also not the same. Taking into account the above mentioned aspects and the facts and circumstances of the case, the Commission is of the view that there are three different product markets in the instant case. Thus, it would be appropriate to define the relevant product market in the present case as the *'market for procurement of tur dal/ Canadian yellow lentil; market for procurement of palmolein oil; and market for procurement of eggs for noon meal scheme'*.
14. With regard to the relevant geographic market, it is observed that any supplier in India could bid for those tenders provided they satisfied the eligibility conditions. Thus, the relevant geographic market in the instant matter would be *'India'*. The relevant market therefore, in present case would be the *'(a) market for procurement of tur dal/ Canadian yellow lentil in India; (b) market for procurement of palmolein oil in India; and (c) market for procurement of egg for noon meal scheme in India.'*
15. For examining the alleged violation of Section 4 of the Act, it is necessary to assess the dominance of procurement agency in the relevant market. With regard to the products tur dal and palmolein oil, TNCSC is the procuring agency and the Commission has recently in a similar matter Case No. 2 of 2018 (*Maheshwari Agro Products v. TNCSC*) has concluded that TNCSC is not dominant in the relevant market for procurement of tur dal/ Canadian yellow lentil in India. The Commission had in the said order observed as under :

"It is further observed from the website of Department of Consumer Affairs 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, the Commission notes that the Informant has not placed any material on record from which the dominance of the OP could be determined or the above position gets altered. Since the market appears to be a fragmented one with many players, TNCSC cannot be said to be dominant in the market for procurement of tur dal / Canadian yellow lentil in India.
17. Also, the allegations made by the Informant herein with regard to arbitrary modification of pre-qualification requirements are similar to those mentioned in Case No. 2 of 2018 (*supra*). Therefore, the Commission does not feel the need to delve into it again and reiterates the observations made therein which reads as below:

“...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....”

18. Similarly, in the relevant market for procurement of palmolein oil in India, various state agencies such as Karnataka Food and Civil Supplies Corporation², State Trading Corporation of India Ltd.³, and Andhra Pradesh State Civil Supplies Corporation Ltd.⁴ etc. procure the same from open market and thus, TNCSC is operating under competitive constraints and does not seem to have ability to operate independently in the relevant market.
19. In the present case, the prerogative of deciding the criteria for qualification of bidders is vested in TNCSC, and TNCSC in this regard appears to have acted to ensure that the supplier participating in the tender has the capacity and resources to successfully execute the work for an uninterrupted supply of essential commodities. Further, the conditions in the tender requiring the bidders to comply with statutory compliances cannot be said to be anti-competitive merely because it could eliminate certain bidders from participating in the tenders. Thus, the Commission does not find any *prima facie* anti-competitive conduct or contravention of the Act on part of TNCSC.
20. With regard to procurement of eggs for noon meal scheme/ mid-day meal scheme, the Commission notes OP-1 as the tender inviting authority for Integrated Child Development Services scheme for the procurement of eggs and thus works out the detailed tender conditions with due regard to pre qualifications, technical specifications, technical capabilities, financial conditions, experience and production capacities, penal provision and other relevant details through tender scrutiny committee. Further, the eggs are procured by the Tamil Nadu Government for distributing to the children under the said scheme.

² <http://www.kfsc.com/KFCSC%20MDM%20RBD%20palmolein%20Oil%20RFP%202017-18%20Draft%2020-6-17%20Final.doc>

³ STC/CHN/EDO/TM/2018-19/04

⁴ <http://apscsc.gov.in/tenders/P.OilRFPJunetoAugust2018.pdf>



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21. With regard to the dominance of OP-1 in the said market, it is observed that different State Governments like Telangana, Andhra Pradesh, Kerala, Odisha, Jharkhand, West Bengal and Maharashtra⁵ etc. also procure eggs for distribution through their respective PDS mechanisms. Further, based on information in public domain⁶, it is seen that in 13 states, eggs are procured by respective state agencies for distribution in the aforesaid scheme to children in schools as well as anganwadis. With the presence of multiple procurement agencies, OP-1 cannot be said to be dominating in a fragmented market consisting of multiple players. Even otherwise, the Commission on considering the alleged conduct of the OP-1, notes that the Informant has himself stated that only after taking into consideration the objections raised by the Accountant General with respect to cost involved in the process of issuing multiple tenders for the procurement of eggs at various district level, the State Government had decided to replace the same with state level tender system. Thus, the State Government is only taking corrective measures as suggested by the Accountant General.
22. Further, the Commission observes that OP-1 is procuring as a customer only for the welfare of the weaker section of the society. It is in public interest that certain preconditions or qualifications of the tenderers have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work and for ensuring supply of huge quantity of quality eggs on time without any hiccups. In this regard, the Commission is of the view that the allegation raised by the Informant in relation to the procedure followed by the State Government for the said procurement does not *prima facie* appear to raise any competition concern.
23. In view of the foregoing, the Commission finds no *prima facie* case of contravention of the provisions of Section 4 of the Act against the OPs and

⁵ http://mdm.nic.in/Files/Review/Seventh_JRM_2015-16/Final_Report_7th_JRM.pdf

⁶ <http://www.thewire.com>



TNCSC. The matter is ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Act.

24. The Secretary is directed to communicate the order to the parties, accordingly.

Sd/-
(Sudhir Mital)
Chairperson

Sd/-
(Augustine Peter)
Member

Sd/-
(U. C. Nahta)
Member

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

New Delhi
Date: 06/08/2018