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W.P.No.9522 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2024

CORAM:

THE HON'BLE Mr. JUSTICE M. DHANDAPANI

W.P.No.9522 of 2024
and W.M.P.Nos.10524 of 2024

M/s. Integrated Service Point Pvt. Ltd.,
Rep., by its General Manager & Authorised Signatory,
Mr.Suresh Gatreddi,
No.6C, Sixth Floor, Gaiety Palace,
No.1/L, Blackers Road,
Chennai-600 002

... Petitioner

Vs.

1. The Government of Tamil Nadu
Rep., by Additional Chief Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Fort St. George,
Chennai-600 009.
2. Tamil Nadu Civil Supplies Corporation,
Rep., by its Managing Director,
No.12, Thambusamy Road, Kilpauk,
Chennai-600 010.

... Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari Mandamus calling for the records of the order bearing No.BS6/042085/2023 Addl-(3) dated 26.03.2024 on the file of the 2nd respondent and quash the same and consequently direct the 2nd respondent to finalize the Tender Notification Bearing No.NIT No.BS6/004689/2024 dated 13.02.2024 on the file of the 2nd respondent, for the purchase of 60,000 Mts of identical



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products.

For Petitioner : Mr.G.Masilamani
Senior counsel for Mr.Mani Sundargopal
For Respondents : Mr.LSM.Hasan Fizal
Additional Government Pleader for R1
: Mr. C.Selvaraj for R2

ORDER

Challenging the proceedings dated 26.03.2024 passed by the second respondent directing the petitioner to supply additional quantity of 2,250 MT of Canadian Yellow Lentil, present Writ Petition is filed.

2. The main grievance ventilated by the learned senior counsel for the petitioner is that, by virtue of the said proceedings dated 26.03.2024, an onerous condition of supplying additional quantity has been imposed which in effect, results in impossibility of performance as the said commodity has to be imported and its availability is not known.

3. Learned counsel for the respondents, in one voice, submitted that the terms of the tender notification enable the purchaser, ie., the second respondent herein to reduce or increase the quantity to be supplied by 25% of the ordered quantity. When the petitioner has accepted the terms of the tender with open eyes, it does not lie in its mouth to claim



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that the availability of the said commodity in the international market is unknown.

4. Learned counsel for the respondents further submitted that the agreement between parties provides for an arbitration clause and, therefore, the present Writ Petition is not maintainable.

5. This Court have heard the submissions made by the counsel appearing on either side and perused the available records.

6. Before advertng into the merits of this case, it is apposite to refer to clause 6(viii), which reads as under:

(viii) It is agreed that the purchaser reserves the right to reduce or increase the quantity to be supplied by 25% of the ordered quantity. This provision shall be made applicable subject to the provisions made in the Tamil Nadu Transparency in Tenders Act and Rules. In the event of permitting the supplier to supply additional quantity of 25% over and above on the ordered quantity, the supplier agrees to supply the additional quantity subject to the following conditions:

(i) The L1 rate finalized in the existing tender shall be taken as the reference rate for making payment



for the additional quantity.

(ii) If additional quantity is ordered after finalization of subsequent tender, the cost of additional quantity will be settled at the L1 rate of the existing tender, if the rates are less than the subsequent tender rates.

In case of supplying the additional quantity beyond the fixed times schedule, the same shall be accepted at the existing rate subject to imposition of penalty for the belated supply if any at the rates as indicated under clause-10(ii)(a) of this agreement or the rate at which subsequent tender is confirmed ('L1' rate) without penalty whichever is less.

7. It is not in dispute that there is arbitration clause in agreement and clause 20 thereof reads as under:

“20) It is mutually agreed that in the case of any dispute arising out of any of the terms and conditions of this agreement including the interpretation of any of the clauses of the tender or the agreement to be executed, the matter shall be referred by the Corporation/ supplier to an Arbitrator who shall be selected by the parties from the panel of the Arbitration approved by the Board of Directors of T.N.C.S.C and communicate the same within 15 days from the date of receipt of the letter from the Corporation along with the panel of the Arbitrators. If there is no reply



from the supplier within 15 days, Corporation shall choose any one of the Arbitrator from the panel of Arbitrators referred to above. The remuneration for the Arbitrator and other expenses shall be shared equally by the purchaser and the supplier.

(i) The venue of Arbitration shall be at the Head Officer of the TNCSC, Chennai, The decision of the Arbitrator shall be final and binding on both the parties to the arbitration.

(ii) The arbitrator with the mutual consent of the parties may extend the time for making the award. The award to be passed by the Arbitrator is enforceable in the Court at Chennai City only.

(iii) Any other disputes arising out of the Arbitration award or any civil remedy for non fulfilment of any of the terms and conditions of the tender/ agreement shall be subject to the jurisdiction of the Civil Court at Chennai City only.”

8. The doubtfulness of the availability of commodity and the claim of impossibility of performance raised by the petitioner cannot be gone into by this Court exercising jurisdiction under Article 226 of Constitution of India.

9. Admittedly, there is arbitration clause provided under the



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agreement. If the petitioner is aggrieved by the communication dated 26.03.2024 directing it to supply additional quantity, it is for the petitioner to seek invocation of the arbitration clause.

10. Leaving open all the rights and contentions of the petitioner with regard to supply of additional quantity alone, this Court permits the petitioner to avail the appropriate remedy as per terms of the agreement.

11. This Writ Petition is disposed of with the above said liberty.
No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Neutral Citation: Yes/No

To

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