



W.P. Nos.28895-29477/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
25.10.2025	25.11.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NOS.28895 & 29477 OF 2022
AND
W.M.P. NOS. 28186 & 28824 OF 2022**

Integrated Service Point Pvt. Ltd.
Rep. By its Director
K.Madhav Sri Apparao
6-C, Sixth Floor, Gaiety Palace
No.1/L Blackers Road
Chennai 600 002.

.. Petitioner in both WPs

- Vs -

Tamil Nadu Civil Supplies Corporation
Rep. By the Managing Director
TNCSC Head Office
No.12, Thambusamy Road
Kilpauk, Chennai 600 010.

.. Respondent in both WPs

W.P. No.28895 of 2022 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records and quash the order in Proc. No.com8/58945/2021-(4)-2 dated 16.5.2022 passed by the respondent and consequently direct the respondent to release payment withheld as penalty along with 18% interest from the date of submission of the invoices of the petitioner herein.



W.P. Nos.28895-29477/2022

W.P. No.28895 of 2022 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records and quash the order in Proc. No.Com8/58495/2021-(4)-1 dated 14.03.2022 passed by the respondent and consequently direct the respondent to release payment withheld in Proc. No.Com8/58495/2021-(4)-1.

For Petitioner : Mr. S.Manuraj, for
M/s. Vandana Bhaskar

For Respondent : Mr. D.Ravichander

COMMON ORDER

Assailing the impugned orders passed by the respondent in and by which amount payable to the petitioner has been withheld, the present writ petitions have been filed.

2. It is the case of the petitioner that tenders were floated by the respondent for the supply of 12 grocery items in which the petitioner came out successful and was awarded the tender. As per clause 14 of the Notice Inviting Tender (for short 'NIT'), the supplier is to comply with the standards prescribed in the annexures to the NIT and also it prescribes the procedure for checking the quality of supply, which requires samples to be drawn in the presence of the suppliers and issuance of analysis report to the supplier.



WEB COPY

3. It is the further case of the petitioner that upon acceptance of the tender, as envisaged under the NIT the supplies were made and bills were submitted to the respondents. It is the further averment of the petitioner that though upon supply, the amounts were to be released retaining 20% of the bill value which would be released after reconciliation with the regions, vide the impugned orders, several deductions were made towards recovery by alleging that the items supplied by the petitioner did not comply with the specifications incorporated in the NIT as reported by the National Accreditation Board for Testing and Calibration Laboratories, which tested the random samples of the items supplied, which was communicated to the respondent.

4. Subsequent to the said order, which was not served on the petitioner with regard to the recovery of the amounts, show cause notices were issued by the respondent with respect to the supplied undertaken by the petitioner and in the show cause notices it has been pointed out that upon examination of the samples drawn from the supply made by the petitioner company, the samples did not conform with the prescribed specifications to which the petitioner submitted his replies. It is the further averment of the petitioner that the respective show cause notices culminated in the passing of the impugned order by the



W.P. Nos.28895-29477/2022

respondent, whereby, without considering the reply of the petitioner, the respondent had imposed a penalty of 50% of the value of the supply due to which the petitioner has been put to loss to the tune of Rs.1,28,43,588/= in each of the petitions. It is the further averment of the petitioner that prior to passing the impugned orders, the respondent did not provide an opportunity of hearing to the petitioner, which is in violation of the terms of NIT and further the samples were drawn with the presence of the petitioner, which also is in violation of clause 14 of the NIT and, therefore, the present writ petitions have been filed.

5. Learned counsel appearing for the petitioner submitted that the impugned order suffers from total non-application of mind and is biased, pre-determined, mala fide, arbitrary and colourable exercise of power conferred upon the respondent. It is the further submission of the learned counsel that the show cause notice was issued by the respondent belatedly after punitive measures were enforced by the impugned order and the materials, which have been relied on by the respondent have not been provided to the petitioner and that no substantive material has been placed by the respondent to corroborate the allegations.



W.P. Nos.28895-29477/2022

WEB COPY

6. It is the further submission of the learned counsel that the respondent acted in contravention of Clause 14 of NIT, which specifically provides that the samples have to be drawn for testing in the presence of the supplier/petitioner. However, in the present case, the samples were drawn without the presence of the petitioner and, therefore, the said samples cannot form the basis of the present impugned orders.

7. It is the further submission of the learned counsel that the imposition of penalty is in violation of principles of natural justice and is arbitrary and that even in contract matters, the State is mandated to act as per the principles of fairness, reasonableness and non-arbitrariness and in the present case, the State, in dereliction of its constitutional obligations should not act in a arbitrary manner and is against the decision of the Apex Court in ***Afcons Infrastructure Ltd. – Vs – Nagpur Metro Rail Corporation Ltd. (2016 (16) SCC 818)***. Therefore, it is prayed that the violation as pointed out above requires this Court to interfere with the impugned orders herein and, accordingly, prays for allowing the writ petitions.

8. Per contra, learned counsel appearing for the respondent submits that the writ petition is not maintainable as the petitioner has to first avail the



W.P. Nos.28895-29477/2022

WEB COPY

alternative remedy, as provided in the NIT by resorting to arbitration as provided in Clause 23 of NIT. However, without resorting to arbitration, the petitioner has rushed to this Court, which is impermissible.

9. It is the further submission of the learned counsel that the issue revolves around supply of goods by the petitioner, which according to the respondent is of sub-standard quality, which, being a disputed question of fact, cannot be determined in a writ petition and the proper course for the petitioner is to resort to arbitration proceedings, as the issue arises out of a commercial transaction involving contractual clauses and its interpretation, which has to be settled through arbitration.

10. It is the further submission of the learned counsel that upon issuance of show cause notice, the petitioner has given his explanation, which was considered and, thereafter, the impugned order had come to be passed and, therefore, there is no violation of principles of natural justice, as it is not always necessary that an opportunity of personal hearing should be afforded to the other party.



W.P. Nos.28895-29477/2022

WEB COPY

11. It is the further submission of the learned counsel that on account of serious complaints in the supply of commodities, which includes but not limited to quality in supply, the respondent has invoked its right under the contractual terms, more particularly, clause 14 and, thereby retained the payments and the proceedings following the same were in accordance with law and, therefore, if at all the petitioner is aggrieved, it has to resort to arbitration under clause 23 of the NIT and the mala fides attributed to the respondent merely because the amounts have been withheld is grossly impermissible and unsustainable. Accordingly, he prays for dismissal of the present writ petitions.

12. Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondent and perused the materials available on record.

13. The whole case arises out of the withholding of the amount as penalty and seeking release of the same along with interest. The facts relating to the calling for tender, the petitioner being successful and the supply of the items as per the tender are not in dispute. The whole dispute arises on account of withdrawal of samples and upon testing, according to the respondent, it having



W.P. Nos.28895-29477/2022

WEB COPY

not met with the quality prescribed as well as other conditions, show cause notice was issued and penalty was imposed.

14. The main grievance espoused by the petitioner is that the said samples were drawn outside his presence and that the petitioner has not been provided with a copy of the test report furnished by the lab, which is a mandatory condition as per clause 14 of NIT. However, the respondent contend that the conditions imposed in NIT have been followed and if at all the petitioner has any grievance, the course open to the petitioner is to seek for arbitration as provided under clause 23 of the NIT.

15. It has been the consistent view of the Court that if the contractual agreement provides for arbitration, the parties shall take recourse to arbitration and without taking recourse to arbitration, shall ordinarily not knock on the doors of this Court by filing a writ petition. In the present case, the contract provides for an arbitration clause, which is pointed out by the respondent and is not disputed by the petitioner.



WEB COPY

16. Clause 23 of the NIT relates to the arbitration clause, which is provided in the contract entered into between the parties, which provides as under :-

“23. Arbitration :

i) In case of any dispute in the tender 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/tenderer to an Arbitrator who shall be selected by the party from the panel of Arbitrators approved by the Board of Directors of TNCSC 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 tenderer within 15 days, the Corporation shall choose any one of the Arbitrators from the panel of Arbitrators. The remuneration for the Arbitrator and other expenses shall be shared equally by the TNCSC and the party to the Arbitration.”

17. There is no dispute about the fact that clause 23 of NIT provides for arbitration. From clause 23, as extracted above, the reference for such arbitration can be made by either of the party to the contract, meaning thereby, it could be by either the petitioner or the respondent and the procedure in which the Arbitrator is also provided. Further, the Arbitrator is also entitled to adjudicate the dispute, including interpretation of any of the clauses of the



W.P. Nos.28895-29477/2022

WEB COPY

tender. There is no quarrel by the petitioner that an arbitration clause is available in the contract and that he is a signatory to it.

18. In the present case, the whole dispute relates to the manner in which the samples have been drawn and tested and the claim of non-providing of the copy of the test report to the petitioner. The manner in which the samples have to be drawn, even according to the petitioner is provided for in the contract entered into. Such being the case, the matter could be easily adjudged by the arbitrator and in fact, if an interpretation is required as to how the samples should be drawn, the arbitrator could very well adjudicate the same as is provided for under clause 23.

19. Further, providing of a copy of the test-report, according to the petitioner, is provided for in clause 14, which, it is claimed, has not been provided to the petitioner. The interpretation of the manner in which the samples to be drawn and providing of a copy of the test report are all matters, which are to be adjudicated upon placing proper evidence, as it is a disputed question of fact, as it has not been accepted by the respondent. Therefore, the proper course open to the petitioner is only to reach out for arbitration, as this Court cannot decide



W.P. Nos.28895-29477/2022

WEB COPY

disputed questions of fact sitting under Article 226 of the Constitution of India and the arbitrator, who has been given wide powers under clause 23, could very well adjudicate on the same and given a quietus to the issue. Based on the outcome of the arbitration proceedings, the arbitrator could fix the responsibility on the parties to the extent permissible under the contract. However, without resorting to arbitration, the petitioner has rushed before this Court to decide on disputed questions of fact, which cannot be done by this Court.

20. Therefore, in the limited sphere, as pointed out above, this Court is of the considered view that the proper course open to the petitioner is to seek for arbitration by invoking clause 23 and upon such invocation by the petitioner, the respondent shall follow the procedure prescribed under clause 23 to select an arbitrator from the panel, who shall then be responsible to arbitrate the proceedings between the parties.

21. For the reasons aforesaid, these writ petitions are dismissed granting liberty to the petitioner to invoke clause 23 for appointment of arbitrator to adjudicate the dispute with regard to the contract between the parties, including



W.P. Nos.28895-29477/2022

WEB COPY

the present dispute, in accordance with law. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

25.11.2025

Index : Yes / No

GLN

To

The Managing Director
Tamil Nadu Civil Supplies Corporation
TNCSC Head Office
No.12, Thambusamy Road
Kilpauk, Chennai 600 010.



WEB COPY



W.P. Nos.28895-29477/2022

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.28895 & 29477 OF 2022**

**Pronounced on
25.11.2025**



WEB COPY



W.P. Nos.28895-29477/2022

M.DHANDAPANI, J.

5. Registry is directed to make the aforesaid correction in the order dated 25.11.2025 and issue order copy to the parties.

GLN

19.12.2025

W.P. NOS.28895 & 29477 OF 2022