BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2025

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.11637 of 2025

M.Iniyavan,
Advocate,
No.1/6D, Paramaguru Street,
Ambalakaranpatti, Valar Nagar,
Madurai - 625010. ... Petitioner

vs.

1. The Director,
Directorate of Vigilance and Anti Corruption (DVAC),
No.293, MKN Road, Alandur,
Chennai – 600 016.

2. The Deputy Superintendent of Police,
Vigilance and Anti Corruption (DVAC),
1/165G, Alagar Kovil Main Road,
Madurai - 625002. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the Respondents to register the Information and take appropriate action by rejecting any other proceedings if any.

For Petitioner : Mr.S.Yasar Arafth
For R1 & R2 : Mr.A.Albert James
Government Advocate (Crl.Side)

ORDER

(Order of the Court was made by **J.NISHA BANU, J.**)

The petitioner, who is a practicing Advocate in Madurai, has filed this Public Interest Litigation for issuance of a Writ of Mandamus, directing the Respondents to register the Information and take appropriate action by rejecting any other proceedings if any.

2. Learned counsel for the petitioner would state that the petitioner is independently monitoring and analysing through the news and media sources regarding various public procurement practices undertaken by the Tamil Nadu Civil Supplies Corporation in Madurai region and other parts of Tamil Nadu involving companies owned and controlled by Mr.T.S.Kumarasamy and his associates. He came to understand that certain high ranking public servants, including former Ministers, Secretaries and Heads of Departments have in active collusion with Mr.T.S.Kumarasamy and his associates, committed

serious offences including offences under Section 120-B of IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. According to the petitioner, contracts worth hundreds of crores have been systematically awarded to these entities at grossly inflated prices by distorting tender conditions to their exclusive benefit, thereby eliminating healthy competition and causing substantial losses to the public exchequer. The public are not getting quality products which have been promised by the Government. The money sanctioned by the Government to these contractors, have been returned to the politicians, Government officials and others for awarding contracts to particular entities only. This is the reason why the very same companies have been the beneficiaries of all the tenders.

3. Learned counsel for the petitioner would further state that by adopting the following *modus operandi* namely,

(i) by arbitrary alteration of eligibility criteria in tender documents;

(ii) manipulation of tender conditions and systematic exclusion of established competitive bidders;

(iii) award of tenders to particular companies which often sub-contract the actual supply to previously existing vendors and deliberate restriction of tender time-line and other barriers to fair participation;

(iv) artificial inflation of procurement prices;

(v) favouritism and nepotism in tender awards; and

(vi) misuse of authority by public servants for personal or political gain;

tenders are being awarded to Mr.T.S.Kumarasamy and his group concerns to unduly favour them. The petitioner has set out the list of tenders illegally awarded to Mr.T.S.Kumarasamy and his companies in collusion and corruption with higher officials. In this writ petition, the petitioner has also narrated the instances of procurement and supply of sugar, dhal and palmolein to Tamil Nadu Civil Supplies Corporation at high rates, by quoting the relevant prevailing market rates, in order to prove the allegation of unjust enrichment of both public officials and private entities.

4. Learned counsel would further contend that T.S.Kumarasamy related firms, rather than supplying the commodities directly to TNCSC, sub-contracted the supply to the previously eligible

firms and those firms sold the goods at market prices to T.S.Kumarasamy and his group concerns, who in turn supplied them to TNCSC at the inflated tender rates. This practice indicates collusion and price manipulation resulting in artificial inflation of prices and wrongful gain to T.S.Kumarasamy and his group concerns at public money. The above conduct is in clear violation of the Competition Act, 2002. Though a detailed enquiry was made on those allegations, subsequently investigation was closed in a perfunctory and unscientific manner without a thorough examination of the evidence leading to grave miscarriage of justice. Hence, the learned counsel has prayed to allow this public interest litigation.

5. Learned Government Advocate (Criminal Side) appearing for the respondents has produced the status report filed by the 2^{nd} respondent/Deputy Superintendent of Police, Vigilance & Anti Corruption, Madurai, wherein, it is stated that pursuant to the similar nature of complaints filed by one Jayaram Venkatesan and one Va.Pugazhendhi, enquiry was conducted, wherein, after examination of 57 witnesses and scrutiny of 121 documents, it was found that the

allegations in the said complaints were held as not substantiated. Thus, the learned Government Advocate would state that the present writ petition filed with the same allegations, need not be entertained and it is liable to be dismissed.

6. Heard both sides.

7. It is relevant to extract below the findings of the enquiry set out in the status report filed by the 2nd respondent:

> *5. It is submitted that during the course of the enquiry, it was revealed that 50 tenders were handled by the Tamil Nadu Civil Supplies Corporation during the period under allegation, i.e., from 2015 to 2021. Of these, 17 tenders were floated for Dhall, 7 for Sugar, 24 for Palmolein, 1 for hulling of Dhall, and 1 for transportation.*
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> *6. It is respectfully submitted that the enquiry revealed that a total of 17 tenders for procurement of Dhall were floated by the Tamil Nadu Civil Supplies Corporation (TNCSC) during the period from 2015 to 2021. Out of these, in 2 tenders, Dhall was procured at rates marginally higher than the prevailing market prices-by 2.38% and 0.21%, resulting in an additional expenditure of Rs. 2,22,45,000/-. The Tender Committee gave valid reasons for accepting the higher price. These included the need to buy the essential commodity during the festival season, build up stock for advance supply, meet an urgent demand for PDS due to rising market prices, and to avoid public complaints about shortage. The reasons given were found to be acceptable considering the situation at that time.*

7. It is respectfully submitted that the enquiry found that the Tamil Nadu Civil Supplies Corporation (TNCSC) floated a total of 24 tenders for the purchase of Palmolein between 2017 and 2021. Out of these, in 10 tenders, Palmolein was bought at rates slightly higher than the market price-by 0.95%, 3.54%, 2.49%, 1.53%, 1.65%, 0.05%, 0.92%, 0.27%, 2.72%, 4.70%, and 2.51%, which led to an extra cost of Rs. 56,61,26,250/-. The Tender Committee gave valid reasons for approving the higher prices. These included the need to buy in advance during the festival season, a sudden increase in import duty, an urgent need to stock the item due to rising market prices, and the need to avoid public complaints. It was also necessary to build up stock during the COVID-19 pandemic. The reasons were considered acceptable based on the situation at that time.

8. It is respectfully submitted that the enquiry revealed that, out of the 24 Palmolein tender files, in 18 tender files, the Tamil Nadu Civil Supplies Corporation (TNCSC) erroneously included GST twice while calculating the tender price. This mistake in calculation was admitted by the concerned officials as an oversight. As a result, a loss of Rs. 148,62,93,100/- was incurred. It has been recommended that the concerned Government departments to take appropriate action against the officials responsible for the error. It has also been recommended to recover the excess GST amount of Rs. 148,62,93,100/- from the successful tenderers.

9. It is respectfully submitted that the enquiry found that the Tamil Nadu Civil Supplies Corporation (TNCSC) floated a total of 7 tenders for the procurement of Sugar between 2019 and 2021. Out of these, in 5 tenders. Sugar was purchased at rates slightly higher than the prevailing market price-by 10.08%, 5.65%, 1.06%, 5.24%, 1.30%, and 2.90%, resulting in an additional expenditure of Rs. 65,60,62,500/-. The Board Sub-Committee reviewed the matter and found the reasons for the higher procurement rates to be reasonable and acceptable. These reasons included the need to build up stock in advance for *the festival season, anticipation of a revision in the minimum selling price of sugar by the Government of India, fluctuations in the open market, the need to ensure uninterrupted supply under the Public Distribution System (PDS) and to maintain sufficient stock during the COVID-19 pandemic.*

10. It is respectfully submitted that the decision of the Sub Committee to award tenders at rates slightly above the prevailing market prices in the above said tender files proved to be beneficial to the Board, as the market prices increased beyond the awarded rates during the supply period. This timely decision resulted in significant cost savings of Rs. 202,65,32,500/-. Therefore, when comparing the additional amount spent on procurement above the market rate (Rs. 124,44,33,750/-) with the price increase in the market during the supply period (Rs. 202,65,32,500/-). it is evident that the decision resulted in a net financial advantage to the Government Exchequer.

11. It is respectfully submitted that, in the hulling Dhall tender, the industry standard out-turn ratio for converting Tur into Phatka Tur Dal is 55%. However, the Tamil Nadu Civil Supplies Corporation (TNCSC) fixed a higher out-turn ratio of 68%, which was accepted by both participating tenderers. This resulted in a cost advantage of Rs. 7,143.05 per metric tonne (MT), leading to total savings of approximately Rs. 91.52 crores for 128,136MT of Dhall. To avoid excess warehouse charges, utilize the benefit of the Government of India's subsidized scheme, and to ensure uninterrupted supply under the Public Distribution System (PDS), the Sub-Committee negotiated the rate and finalized orders for six months at Rs. 15,000/- per MT. Therefore, the decision resulted in a clear financial advantage to the Government Exchequer.

12. It is submitted that the enquiry found that the 2019-2024 TNCSC transportation tender violated GOI guidelines, with the contract period extended to five years instead of the prescribed two years, and no Schedule of Rates (SOR) was set. According to the Internal Audit report, the Government incurred a loss of Rs.2,489.52 Crores (comprising Transport -Rs.2,226.91 Crores and Wagon

Rs. 262.61 Crores) over the five-year period from 2019 to 2024. After recalculating a 16% markup for the period from January 2020 to February 2023, as the tender was pre-closed in 28.02.2023, the loss amounted to Rs. 1,324.64 Crores. The AG Audit estimated an avoidable expenditure of Rs. 2,518.52 crores, citing improper market rate comparisons and the awarding of contracts at high rates. TNCSC has submitted a response to the AG audit's objections, and the reply from the AG Audit on the para-wise objections is awaited. During the enquiry, the Managing Director and the Manager (Marketing) of TNCSC clarified that, in addition to the disputed amount of Rs. 1,300 Crores withheld as per the Arbitral Award, a pending bill of Rs. 92.65 Crores remains with TNCSC and has yet to be disbursed to the tenderers. Therefore, there is no actual loss to the Government. The Arbitral proceedings, conducted under the direction of the Hon'ble High Court, are binding on TNCSC.

13. It is submitted that it has been recommended that the Government in concerned departments to take necessary action against some officials for violating the Government of India's guidelines when awarding the transportation tender.

14. It is submitted that, the Investigating Officer has examined 57 witnesses, collected 121 documents, scrutinized the same, and has submitted the Draft Final Report to the Government on 09.04.2025. The Detailed enquiry reveals/ concluded that the allegation that the AO has unduly favoured few company which resulted in huge losses to the Government is held as not substantiated. Under the above mentioned findings there is no cause of further action against the AO. Upon receipt of necessary orders from the Government, the matter will be proceeded with in accordance with law.''

8. Perusal of records shows that the petitioner is levelling allegation of manipulation in tender conditions regarding procurement

and supply of sugar, dhall and other articles to Tamil Nadu Civil Supplies Corporation and awarding of tenders in this regard to very same companies continuously, thereby eliminating healthy competition, causing substantial losses to the public exchequer and enabling unjust enrichment of both public officials and private entities in violation of the Tamilnadu Transparency in Tenders Act, Competition Act IPC and other relevant laws. The grievance of the petitioner is that on the complaints of similar nature, though a detailed enquiry was made on those allegations, investigation was closed in a perfunctory manner without a thorough examination of the evidence. The 2nd respondent has also filed a status report, narrating the outcome of enquiry which has been extracted supra. According to the 2nd respondent, the allegations in the complaints of similar nature were held as not substantiated. Though the petitioner has filed this Public Interest Litigation seeking to direct the respondents to register those informations and take appropriate action against the alleged act of manipulation of tender conditions and award of tenders to specific companies continuously, having regard to the closure of the earlier complaints of similar nature and also of the fact that the detailed datawise allegations levelled by the petitioner has to be proved in the manner known to law, we are of the view that sitting under Article 226 of the Constitution, we cannot delve into such disputed facts. Even earlier complaints of similar nature have been rejected holding that the allegations therein are unsubstantiated and therefore, if at all the petitioner is aggrieved, he can go before the appropriate forum if so advised, by filing private complaint.

9. Consequently, the Writ Petition is dismissed. No costs.

[J.N.B, J.] **[S.S.Y, J.]**
23.04.2025

Index : Yes / No
Neutral Citation : Yes / No
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J.NISHA BANU, J.
AND
S.SRIMATHY, J.

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To

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