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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**W.P.(C) No.3668/2008**

Reserved on : 23<sup>rd</sup> May, 2008

Date of Decision : 26<sup>th</sup> May, 2008

**M/s. Electrical Manufacturing Company Ltd.** .... Petitioner

Through : Mr. Sudhir Chandra, Sr. Advocate,  
with Mr. Rabindra Singh with  
Mr. Bhagbati Prasad, Advocates.

versus

**M/s. Power Grid Corporation of India Ltd. & Another** .... Respondents

Through : Mr. R.L. Goel, Advocate, for respondent  
no.1 -UOI.  
Mr. Raju Ramachnadrn, Sr. Advocate,  
with Mr. Pawan Upadhyay and  
Ms. Shubhra Goyal, Advocates, for  
respondent no.1.

**CORAM:**

**HON'BLE MR. JUSTICE MUKUL MUDGAL**

**HON'BLE MR. JUSTICE V.K. SHALI**

1. Whether the Reporters of local papers  
may be allowed to see the judgment?

YES

2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

### **J U D G M E N T**

**26.05.2008**

#### **MUKUL MUDGAL, J.**

1. Rule DB. With consent of the counsel for the parties the writ petition is taken up for final hearing.

2. The case set up by the petitioner is as under:-

(a) The Petitioner, EMC is a leading modern power system company in India and is the first ISO 9001 certified company in India in Transmission Line Projects.

It was established in 1951 and carries out such projects in India as well as overseas. This writ petition is filed with the following prayer: -

“To quash the decision taken by the Board of Directors in its meeting held on 06.05.08 with respect to not awarding of contract to the petitioner with respect to Package A1,A2 & A7 inspite of the fact that it is L1, technically qualified as per the requirement and more so its bid is Rs.16.34 crores less than L2 bidders.”

(b) The Respondent No.1 is a Public Sector Undertaking of the Government of India working under the Ministry of Power. The petitioner has been carrying out the contract of Respondent No.1, Power Grid Corporation of India Ltd. (PGCIL), for a long time.

(c) On 5.11.2007, a Notice inviting tender with respect to Package A1 and A2 was made by Respondent No.1 (PGCIL). On 8.11.2007, Notice inviting tender with respect to Package A7 was made by Respondent No.1.

(d) On 08.01.2008 and 09.01.2008, bids were opened for the abovementioned packages, respectively. In both, the Petitioner was declared Lowest Quoted Bidder (L1).

(e) On 16.04.2008, the petitioner made representations to the Respondent No.1 with respect to Package A1, A2 and A7, explaining as to how the Petitioner was fully qualified and met the requirements of technical experience stipulated in Clause 1.1 of Annexure 'A' of Special Condition of Contract.

(f) On 06.05.2008, the Board of directors of Respondent No.1, on the opinion

and recommendation of certain set of officials had decided not to award the contract for the above-mentioned packages to the Petitioner based on an erroneous interpretation of Clause 1.1 of Annexure 'A' of the Special Condition of Contract.

3. As per the case set up by the petitioner, the above refusal has resulted in unfairly barring the Petitioner from the bid. In spite of being L1 in all the bids, the petitioner is not being accorded a fair treatment by the Respondent No.1 and is being arbitrarily deprived of its rights to execute the contract even after being declared L1 by the Respondent No.1 and the exchequer has suffered a loss of 16.34 crores by not accepting the lower bid of the petitioner.

4. Therefore, Clause 1.1 of Annexure 'A' of the Special Condition of Contract becomes relevant. Clause 1.1 is as follows:

**“1.1 Technical Experience**

The bidder shall have satisfactorily completed as a prime contractor or as a sub-contractor or as a member in a Joint Venture, 345/400 kV Double Circuit or higher voltage class transmission line(s) within the last seven(7) years as on date of bid opening. The bidder's experience should include the following:

(i) The bidder should have surveyed, optimized tower locations, erected and strung *with tension stringing equipment*, not less than following cumulative route length of transmission lines of 345/400 kV Double Circuit or higher voltage class involving bundle conductor.

**Package – A7: 100 Kms**

**Package – A8: 100 Kms”**

5. The petitioner’s case is that the petitioner fully satisfied the requirements stipulated in Clause 1.1 (i) namely that the petitioner has surveyed, optimized tower locations, erected and strung with tension stringing equipment, not less than the following cumulative route length of transmission lines of 345/400 kV Double Circuit or higher voltage class involving bundle conductor which in so far as the petitioner is concerned, is 100 kms for package A1 and A7 and 200 kms for package A2. The learned senior counsel appearing for the petitioner, Sh.Sudhir Chandra, has submitted that once the petitioner has fulfilled all the requirements stated in sub clause (i) for the requisite length stipulated in the packages, then it could not be discriminated against by wrongly leaving him out of the bid merely

on the ground of technical disqualifications.

6. The learned senior counsel Sh. Raju Ramachandran, appearing on behalf of the respondent has submitted that the sub-clause (i) of clause 1.1 ought to be read along with the main portion of clause 1.1 which stipulates that the bidder should have **satisfactorily completed** the requisite length (emphasis supplied). He has submitted that the petitioner has only satisfactorily completed 83 kms of transmission line as on 9<sup>th</sup> January, 2008 and therefore, could not be said to be fulfilling the technical experience set out in clause 1.1. He has highlighted the words “satisfactorily completed” and emphasized the said phrase to us by submitting that the kilometerage specified should not only be surveyed, optimized tower locations, erected and strung with tension stringing equipment but such works should be commissioned and unless and until the said project is commissioned and tested; it cannot be said to have been satisfactorily completed. He submitted that while the petitioner had surveyed, optimized tower locations, erected and strung with tension stringing equipment the required kilometerage, it

fell short of the requisite mandatory eligibility criteria specified in the tender as the satisfactory completion upon commissioning was only for 83 kms. He submitted that this stand of “satisfactory completion” meaning commission has been consistently adopted by the respondent no.1-Corporation and even the petitioner in his earlier work with the respondent No. 1 is a beneficiary of such an interpretation.

7. He submitted that the petitioner, EMC, has *satisfactorily* completed only 83 kms of transmission line as on 8-9.01.2008, as against requirement of 100 kms for Packages A1 and A7 and 200 kms for Package A2. He, therefore, submitted that in so far as the commissioning and satisfactory completion is concerned, the petitioner has only completed 83 kms and thus, he was rightly ousted from the tender process, since the petitioner was not technically qualified.

8. He has further submitted that Clause 1.1 is an inclusive one, which includes the various sub-clauses and should be read integrally with the same. This is because the term used in the clause is “includes” and not “means”.

9. The learned counsel for the respondent also urged that the learned counsel for the petitioner has put too much of stress on the petitioner being L-1 bidder while as this is being disputed by the respondent. It was further stated that the L1 bidder must be a technically eligible bidder and since the petitioner is not technically eligible, therefore, it could not be said that he is L-1.

10. Having considered the pleas of the parties, we are satisfied that while the arguments of Mr. Sudhir Chandra at first blush appear to be attractive but the phrase, “satisfactorily completed” and the user of the words cumulative has to be given a rational meaning in the light of the fact that the total length of the transmission time having been laid, whether it is 100 or 200 and mere surveying, optimization, erection and stringing cannot enure to the benefit of the petitioner, unless and until these works were satisfactorily completed. While the interpretation suggested by Shri Chandra could be said to be one of the plausible interpretation of clause 1.1(i) but the respondent No. 1's interpretation appears to be more plausible and acceptable particularly when they have averred without rebuttal that they have consistently adopted the interpretation of 'satisfactory

completion' to mean commissioning. Even otherwise, this stand of the respondents stands to reason as a party may have done the activities specified in the sub-clause (i) of Clause 1.1 for the requisite kilometerage but such activities may or may not have been carried out satisfactorily. Such a satisfaction in our view could only be upon commissioning of the project signifying satisfactory completion. Mr. Chandra had stressed upon the fact that upon completion of specified segments he had been paid and that signifies satisfactorily completion. In our view since the sub-clause (i) undoubtedly fulfilled by the petitioner is a component of Clause 1.1, we find ourself unable to agree with the plea of the petitioner that payment for the segments of the project completed signified satisfactory completion. Thus, clause 1.1 makes it evident that the bidder should have satisfactorily completed transmission lines of specified voltage and specified lengths, including the four activities, i.e. Survey, optimization of tower locations, erection and stringing as on the date of bid opening. We are thus, satisfied that the respondent no.1's construction of the said clause is not so unreasonable so as

to warrant interference under Article 226 of the Constitution of India.

11. Accordingly, the writ petition is dismissed. No order as to costs. The Interim order dated 12<sup>th</sup> May 2008 shall come to an end after 2<sup>nd</sup> June 2008.

**(MUKUL MUDGAL)**

**JUDGE**

**(V.K. SHALI)**

**JUDGE**

**May 26, 2008**

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