

**HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) 166/2023

M/S SRV Techno Engineering Private Limited, A company limited by shares, registered under the Companies Act, 1956, having its Registered Office at B-295, Sector-19, Near Amberhai Village, Dwarka, New Delhi-110075 & Corporate Office at Plot No. 5, Tokas Plaza, 3rd Floor, Amberhai, Sector- 19, Dwarka, New Delhi-110075, represented by its authorized representative, Sri Someshwar Thakur, son of late Sri Jyotish Prasad Thakur, having his office at B-295, Sector- 19, Near Amberhai village, Dwarka, New Delhi-110075

---- Petitioner

Versus

1. The Tripura State Electricity Corporation Limited, represented by its Chairman-cum-Managing Director, having his office at Vidyut Bhawan, North Banamalipur, P.O. Agartala, P.S. East Agartala, Sub-Division- Agartala, District- West Tripura, PIN-799001.

2. The Chairman-cum-Managing Director, Tripura State Electricity Corporation Limited, having his office at Vidyut Bhawan, North Banamalipur, P.O. Agartala, P.S. East Agartala, Sub-Division- Agartala, District- West Tripura, PIN-799001.

3. The Additional General Manager (DP&C), Tripura State Electricity Corporation Limited, having his office at Vidyut Bhawan, North Banamalipur, P.O. Agartala, P.S. East Agartala, Sub-Division- Agartala, District- West Tripura, PIN-799001.

----Respondents

For Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate Ms. R. Chakraborty, Advocate
For Respondent(s)	:	Mr. N. Majumder, Advocate
Date of hearing and delivery of Judgment & Order	:	30.03.2023
Whether fit for reporting	:	Yes / No

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH
Judgment & Order (Oral)**

30/03/2023

(T. Amarnath Goud, ACJ)

Heard Mr. Somik Deb, learned senior counsel assisted by Ms. R. Chakraborty, learned counsel appearing for the petitioner as well as Mr. N.

Majumder, learned Standing counsel, appearing on behalf of the respondents-TSECL.

2. By means of filing this writ petition, the petitioner has challenged the impugned Notice Inviting Tender dated 06.03.2023, the impugned publication dated 08.03.2023 and the impugned Memorandum of Cancellation of tender dated 09.03.2023.

3. Briefly stated, the respondents floated tender NIT No./Specification No. AGM(DP&C)/TSECL/RDSS/INFR/A/LR/22-23/005, dated 05.09.2022 for the purpose of “Development of Distribution Infrastructure under Revamped Distribution Sector Scheme (RDSS)” at South Tripura District. The petitioner had participated in the tender process and submitted his bid on 21.10.2022 thereby quoting its rates for Sepahijala District, Gomati District and South Tripura District. Thereafter, the petitioner had invested certain amounts in the form of bank guarantee and deposited tender document fee in relation to the said tender. Since adequate numbers of bidders were not found, the last date of submission of bid was re-scheduled on 15.10.2022 and date of opening was re-scheduled on 30.09.2022. Thereafter, again due to paucity of bidders, the last date of submission of the bid was re-scheduled on 21.10.2022 and the date of opening was re-scheduled on 25.10.2022. Thereafter, the respondent no. 3 herein issued the Minutes of the Tender Opening dated 25.10.2022 thereby opening the technical bid for the said work. Several correspondences were exchanged and subsequently on 02.12.2022 the Financial bid was opened. Thereafter

the respondent no. 3 invited the petitioner for negotiation since the quoted price was of the higher side by 23%. After negotiation with the respondent no. 3, the petitioner agreed to revise the quoted price. Subsequently, thereafter, on 06.03.2023 the respondent no. 1 has published another NIT for execution of the same work putting the estimated cost to tender much higher the previous estimated cost put to the previous tender. On the following day the respondent no. 3 by e-mail dated 09.03.2023 cancelled the tender of the petitioner dated 05.09.2022 for some administrative reasons. Being aggrieved, the instant writ petition is filed by the petitioner.

4. Mr. Somik Deb, learned senior counsel has contended that though he has been categorized as L-1 bidder and though his amount is on the higher side of the estimated value, he is ready and willing to reduce it, and moreover the amount he has invested were lying with the respondent and at no point of time he was informed nor any clue was given to him that his tender would be rejected and after travelling to a certain extent in the process of concluding the tender, to his surprise, the cancellation proceeding has been initiated and the respondents are going for the second tender for the same work which is against the principle of natural justice and violative of doctrine of legitimate expectation. On this argument, Mr. Deb, learned senior counsel has relied upon a decision of the Hon'ble Orissa High Court in *WP(C) 5272 of 2017* titled as *Ms Sical Logistics Ltd. vs. Mahanadi Coalfields Limited And ors.* and also on a decision of Hon'ble Apex Court

in *State of Punjab vs. Bandeep Singh and others*, reported in (2016) 1 SCC 724.

5. Learned Standing Counsel Mr. N. Majumder appearing for respondents- TSECL has contended that the writ petition is not maintainable and the same is liable to be dismissed. He has further contended that the decision has been taken by the Committee and by issuing the Minutes dated 25.10.2022, and accordingly the same has been uploaded in the portal. It is further argued that the petitioner is well aware of the same. As per the decision of the Committee though the petitioner is considered as L-1 but his amount is on the higher side i.e. 23% higher to the estimated value, and loss cannot be caused to the public exchequer accepting the bid of the petitioner and that too when there is sole bidder in the entire tender process and since huge amounts are involved, the respondents have decided to cancel the previous tender and publish the second tender and accordingly the second tender would be finalized on 31.03.2023. Learned Standing Counsel has also submitted that the petitioner is at liberty to participate in the second process of tender online and nothing prevents him to participate and lastly prayed to dismiss the writ petition.

6. Considered the submission of learned counsel appearing for the parties. We have also perused the record.

7. On the preliminary point of maintainability, this court is not convinced that the argument made by learned Standing Counsel for TSECL, and this court in the light of the observations made in *State of Punjab vs.*

Bandeep Singh (supra) hold that the State Government is also liable under the contractual obligation for facing the writ of mandamus under Article 226 of the Constitution of India since the public policy is involved. Since it is settled principle of law, at this juncture, this court is not inclined to venture into the said argument.

8. With regard to consider the case of the petitioner is concerned, admittedly the petitioner is L-1 bidder and his bid has been considered and he was called for technical negotiation, and the correspondences between the petitioner and the respondents support the case of the petitioner. Clause 38.1 of the Bidding document reads as follows:

38.1. Having compared the evaluated cost/price fo Bids as per ITB 34 and applying the provisions of ITB 35, the Employer shall determine the Most Advantageous Bid (alternatively referred to as L1 Bid). The Most Advantageous Bid is the Bid of the Bidder (also referred to as the successful bidder) who meets the specified requirements as per Section 2 and Section 3 and whose Bid has been determined to have the lowest evaluated price/cost subject to ITB 35."

Clause 39.1 and 39.2 of the Bidding document read as under:

"39.1. The Employer reserves the right to accept or reject any Bid and to annul the Bidding process and reject all Bids at any time prior to Contract Award without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, Bid securities, if applicable as per ITB 18 and submitted shall be promptly returned to the Bidders.

39.2. Notwithstanding anything contained in above Para, the Employer reserves the right to accept or reject any Bid and to annul the bidding process at any time prior to Contract Award on account of obtaining sufficient evidence that warrants any of the following conditions:

i. The prospective bidder has abandoned any works under TSECL, or any contracts awarded to the bidder for works under TSECL have been rescinded in the last 7 (seven) years as on date of RFB due to non-performance of the bidder.

ii. Records of poor performance during last 7 (seven) years, as on the date of bud such as abandoning the works, rescinding the contract for reasons attributable to the non-performance of the contractor/bidder, in ordinate delay in completion consistence history of litigation/arbitration award against the bidder or any of its constituents or financial failure due to bankruptcy etc. (Furnish the FORM 23 duly filled by the Prospective bidder)."

Further, Clause 40.1 of the Bidding document reads as under:

"40.1. The Employer shall award the Contract to the successful bidder.This is the Bidder whose Bid has been determined to be the Most Advantageous Bid as specified in ITB 38."

Again, Clause 41.1 of the Bidding document reads as under:

“41.1. At the time of Contract is awarded, the Employer reserves the right to invite the Bidder whose Bid is determined to be the Most Advantageous bid as per ITB 38, for discussion if any minor adjustments in the Contract are required, without any substantial change in the terms and conditions of the bidding document.”

9. As per the above clauses, though the petitioner claims certain accommodation, the matter of right has not been accrued upon the petitioner since the bid of the petitioner has not been finally accepted and contract has not been entered. The petitioner cannot agitate legitimate expectation in the process of scrutinizing the tender at various levels. The amount, if any, that has been deposited by the petitioner are liable for refund as per the procedure and in consonance of the terms and conditions of the tender. Since the tender was issued in the interest of public policy and for its betterment, the respondent-authorities are right in not shutting their eyes and to consider the circumstances which are prevailing with regard to not having sufficient persons coming forward to bid, is an area which needs a thorough examination by the respondents since huge amount is involved. Since the petitioner is the sole bidder and there is no competitor, the reasoning given by the respondents in cancelling the tender is not unreasonable.

10. In view of the above, the instant writ petition stands dismissed. Pending application(s), if any, also stands disposed.

JUDGE

CHIEF JUSTICE (ACTING)