

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2015

Date of Reserving the Order	Date of Pronouncing the Order
09.02.2015	20.02.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No. 27018 of 2014 &
M.P.No.1 of 2014

M/s.AIA Engineering Limited,
A Public Limited Company,
registered under the provisions of
The Companies Act, 1956,
having its Registered Office at:
115, GVMM Estate,
Odhav Road, Odhav,
Ahmedabad 382410
Rep., by its Authorised Signatory
Mr.Samir Patel

.... Petitioner

Vs

1.Tamilnadu Generation and Distribution
Corporation Limited,
Rep., by its Chief Engineer,
Mettur TPS/Stage II (1X600 MW)
A Public Sector Undertaking and
established under the provisions
of the Companies Act,1956,
having its Office at:
822, Anna Salai,
Chennai - 600 002.

2.The Superintending Engineer,
C/o.Tamilnadu Generation and
Distribution Corporation Limited,
having its Office at:
Mettur TPS/Stage II (1X600MW)
Mettur Dam 636 406.

3.M/s.Magottaux International Pvt., Ltd.,
a Private Limited Company,
registered under the provisions of
the companies Act, 1956,
Rep., by its Director
having its Office at:
410, 4th Floor, Suryakiran Building,
19, K G Marg, New Delhi - 110 001.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to direct the first and second respondents to disqualify the bid of the third respondent as it has not satisfied the Bid Qualification Requirement (BQR) and the Technical requirement stipulated in the Tender Specification No.CE/MTPS-II/SE/ P&A/EE/Pur.,/AE.2/OT.08/2014-15 issued by the first respondent.

For petitioner ... Mr.P.S.Raman Sr. Counsel for
Mr.P.V.Balasubramanian for
M/s.BFS Legal

For Respondent ... Mr.P.H.Arvinth Pandian AAG
assisted by
Mr.S.K.Raameshwar for RR1&2

Mr.R.Muthukumarasamy Sr. Counsel
for
M/s.C.Daniel & Gladys Daniel for R3

O R D E R

The petitioner a Public Limited company, seeks for issuance of a Writ of Mandamus to direct the respondents 1 and 2, Tamilnadu Generation and Distribution Corporation Limited (TANGEDCO) to disqualify the third respondent on the ground that they have not satisfied the Bid Qualification Requirement (BQR) and the technical requirement stipulated in the tender specification issued by the first respondent.

2. The petitioner is stated to be engaged in the Manufacture and Supply of Wear Resistant Casting for Pulveriser being used at Thermal Power Stations, Cement and Mining Industry, since 1979. The respondent TANGENCO issued a tender notice inviting bids for the Supply of Grinding Roller Tyres for Pulverised Coal Mills for its Mettur Thermal Power Stage-II and information was uploaded in their website during July 2014. There is no dispute regarding the date and time of closing of sale of tender and other preliminaries and hence they are not adverted to.

3. The dispute raised in this Writ Petition pertains to the description of the product, in particular its chemical composition, to be supplied and as to whether the bid submitted by the third respondent was for the product as described in the tender; whether the third respondent satisfied the past performance criteria as per BQR; and whether there was any deviation by TANGENCO in the manner in which the tender submitted by the third respondent was processed.

4. The tender invited was for Supply of Grinding Roller Tyres for Pulverised Coal Mills in three numbers with technical specification as prescribed and the nature of equipment to which it is to be fitted, name of the manufacturer of the equipment, weight, material and coal flow rate. As per the technical specification, the bidder should have supplied Grinding Roller Tyres for ZGM Model Mills Grinding Roller for XRP type Mills to any of the 210MW or above capacity Thermal Power Stations of State Electricity Boards or Central Government Organisation/Public Undertaking in India in a single order of value not less than Rs.22.50 lakhs within the past five years as on the date of tender opening and the supply item with a satisfactory performance for a minimum period of 12,000 hours. Further, the bidders should have annual turnover of minimum of Rs.22.50 lakhs in the last three years preceding the year of floating the tender. The tender was a two part system namely, (i) Techno Commercial Bid and (ii) Price Bid in separate sealed envelopes. The petitioner submitted their bid on 05.08.2014, enclosing the Demand Draft for a sum of Rs.90,000/- towards the Earnest Money Deposit. The petitioner came to know that the third respondent has also submitted its bids at the headquarters. Since there were only two bidders, as scheduled on 14.08.2014, techno commercial bids of the petitioner and the third respondent were opened by the respondents 1 and 2. The petitioner is said to have noted the details furnished by the third respondent in its techno commercial bid. The petitioner would state that there was a technical deviation in the bid offered by the third respondent, as it did not have the proper chemical composition of the product as per description in the tender document and their past performance criteria as per the BQR. Therefore, the petitioner addressed a letter dated 01.09.2014 to the first respondent pointing out the deviations with regard to the technical specification in the bid submitted by the third respondent and stating that they do not satisfy clause Nos.2 and 3 of the BQR. The petitioner would state that inspite of the representation dated 01.09.2014, no action was taken by the respondents 1 and 2, on the contrary a letter was sent to the petitioner on 10.09.2014, seeking the confirmation on guarantee about the satisfactory performance for a period of 12 hours about the product to be supplied by the petitioner. The petitioner would state that there is no such requirement in the terms and conditions to give future guarantee. Therefore, the petitioner vide their letter dated 18.09.2014, pointed out that there is no requirement for future performance guarantee

with respect of the wear life and the guarantee sought for in the bid document is for past performance for 12 hours operation, but not for future guarantee. However, the petitioner guaranteed that the product would have a wear life of 16,000 hours without reversal and 20000 running hours with reversal any time after 12000 hours operation. The petitioner also furnished further details as regards the supplies effects by them to the West Bengal Power Development Corporation Ltd among other things. It is submitted that inspite of the specific objection dated 01.09.2014, pointing out that the third respondent has deviated from the mandatory technical specification that they have not provided any composition of component nickel and chromium and their techno commercial bid ought to have been rejected at the threshold, as they do not meet the BQR and cannot be permitted to participate in the tender process. Further, by referring to clause 2 of the tender instruction, it is submitted that the bid which does not confirm to the Board's technical specifications shall be rejected. In the background of these facts, the petitioner has filed this Writ Petition for a direction to the respondents 1 and 2 to disqualify the bid submitted by the third respondent.

5. The learned Senior counsel appearing for the petitioner contended that the third respondent has deviated from the technical specification as specified in the notification by offering a product without the components of nickel and chromium, which was pointed out by the petitioner vide their letter dated 01.09.2014. In spite of the matter having been brought to the notice of the respondents 1 and 2, they permitted the deviation and therefore, the entire tender process is arbitrary and violative of Article 14 of the Constitution of India. It is further submitted that the respondents 1 and 2 are bound by the mandatory terms and conditions, more particularly, clause II of Schedule A, which provides that if the bid is not in conformity with the Board's technical specification, the same has to be rejected. However, the bid submitted by the third respondent was taken into consideration and the same is arbitrary and illegal. The deviation committed by the third respondent as pointed out by the petitioner clearly shows that the third respondent did not meet the eligibility criteria and therefore, its techno commercial bid ought to have been rejected at the threshold. Further, it was submitted that the bid submitted by the third respondent did not satisfy the past performance requirement of 12000 hours for a minimum value of Rs.22.50 lakhs having not produced a certificate to the said effect. Hence, this is one more ground to reject the third respondent's technical commercial bid at the threshold. It is further submitted that inspite of the petitioner pointing out these inherent defects, the respondents 1 and 2 proceeded to consider the third respondent's technical bid, which amounts to discrimination and favouritism and called upon the third respondent to provide the details of the chemical composition that too after the petitioner brought to the notice of the second respondent about the inherent defects in the bid submitted by the third respondent. It is further submitted that the

conditions relating to the technical specifications are essential conditions and the same has to be adhered to and there is no power for granting relaxation and therefore, the action of the official respondents in deviating from the essential condition of tender is illegal and by adopting a different yardstick for the third respondent amounts to discrimination and arbitrariness. In support of such contention, the learned counsel reliance placed on the decision of the Hon'ble Supreme Court in the cases of B.S.N.Joshi and Sons Ltd., vs. Nair Coal Services Ltd., & Ors., reported in (2006) 11 SCC 548, Kanhaiya Lal Agrawal vs. Union of India reported in (2002) 6 SCC 315; West Bengal State Electricity Board vs. Patel Engineering Co., Ltd., & Ors., reported in (2001) 2 SCC 451; Ramana Dayaram Shetty vs. International Airport Authority of India & Ors., reported in (1979) 3 SCC 489; and Siemens Public Communication Networks Pvt., Ltd., & Anr., vs. Union of India & Ors., reported in (2008) 16 SCC 215.

6. The learned Additional Advocate General counsel appearing for the respondent TANGEDCO by relying upon the counter affidavit submitted that while floating the tender the material was mentioned as Nickel Chromium Alloy Casting suitable for ZGM 133G II model Mill as there was no detail available in the manual. Further, it is submitted that chemical composition of the material was not given and no facility exists at the site to test the composition and the quality of the material is to be decided on the service life of Mill Grinding Roller Tyres. Further, it is submitted that the OEM has given a guaranteed wear life of 6000 hours for Mill Grinding Elements with Nickel Chromium Alloy Casting and hence, in the BQR, it had been stipulated that the grinding rollers supplied should have satisfactory performance for a minimum period of 12000 hours. Therefore, it is submitted that the offers submitted by both the petitioner and the third respondent were found technically and commercially suitable and before even the price bid could be opened, the petitioner has filed this Writ Petition and stopped all further proceedings. It is submitted that in the bid the technical specification was given and the material was indicated as Nickel Chromium Alloy Casting. The Chemical composition of the materials to be supplied was not specified in the tender, since the same was not given in the O & M manual provided by the EPC Contractor, M/s.BGRESL, Chennai/DEC, China. It is submitted that the third respondent furnished the Chemical Composition as %C: 2.5 to 3.5%, % Cr: 14 to 18%, Hardness: 58 HRC. It is submitted that they also furnished the drawing type, since the chemical composition of other items was not mentioned. The third respondent was addressed by letter dated 20.09.2014, to furnish the chemical composition of the rollers, in response to which by reply dated 24.09.2014, stated that the chemical composition as % C : 2.5 to 3.5%; % Cr:18% ; %Ni : 0.5 to 2.5%. Therefore, it is submitted that there is no technical deviation. Further, it is submitted that the guaranteed wear life of the Grinding Roller Tyre is given a 6000 hours in the DEC/China drawing.

Considering this, it was specified in the BQR that the rollers supplied should have the satisfactory performance for a minimum period of 12000 hours. It is submitted that it has not been mentioned in the BQR-3 that minimum value of the supplied item with satisfactory performance of 12000 hours should have the minimum value of Rs.22.50 lakhs and BQR-2 clearly mentions that the bidder should have supplied the item to any of the 210MW or above capacity Thermal Power Station of the State Government or Central Government etc., in a single order of value not less than Rs.22.50 lakhs within the past five years as on the date of tender opening. It is further submitted that the performance of the 12000 hours has not been linked with the value of the material.

7. It is further submitted that so far as the petitioner is concerned, they had accepted the guaranteed period furnished in the tender namely, 18 months from the date of supply of 12 months from the date of commission subject to an overall guarantee period of 12 months. Therefore, a letter was addressed to the petitioner on 10.09.2014 to furnish the wear life guarantee of 12000 hours for the grinding rolls to be supplied by them and they were asked for compensation to be given by them, if the grinding rolls failed to serve in the above period. The third respondent in their offer furnished the wear life guarantee of 12 hours and to consider both the offers, the petitioner was requested to furnish wear life guarantee of 12000 hours as stipulated in BQR-3. Further, it is submitted that there is no error in calling for techno commercial clarifications after opening of the technical bid and is an usual and accepted tender practice to call for such clarification and there is no error in that regard. For the query raised by the respondent Board, the third respondent has furnished the wear life guarantee. However, the petitioner has not furnished the wear life guarantee, but accepted the guarantee period as 18 months from the date of receipt of site in good condition or 12 months from the date of commissioning whichever is later subject to an overall guarantee period of 24 months from the date of supply. As it had been stipulated in the BQR-3, that the supplied roller should have satisfactory performance for a minimum period of 12000 hours, the petitioner was addressed by letter dated 10.09.2014 to furnish the wear life guarantee of 12000 hours. Therefore, it is submitted that the bid submitted by the petitioner as well as by the third respondent were found to be technically suitable satisfying the BQR conditions. Thus, the learned counsel would submit that the process adopted by the respondent TANGEDCO is proper and free from arbitrariness and in public interest, the tender may be permitted to be proceeded further. In support of his contentions, the learned Senior counsel placed reliance on the decision of this Court in the case of Easun products of India (P) Ltd., vs. Chairman, Tamil Nadu Electricity Board, reported in 2011 SCC online Mad 379.

8. The learned Senior counsel appearing for the third respondent submitted that the third respondent had offered the product with casting of nickel and chromium and the allegation contrary to the same is factually incorrect. It is submitted that the third respondent is not aware of the letter sent by the petitioner on 01.09.2014, to the first respondent. Further, the allegation is that the first respondent included a new condition in the tender after submission of the bid is totally incorrect submission and there is no deviation from the mandatory technical specification. Further, it is submitted that from the communication issued by the Superintending Engineer on 20.09.2014, it is clear that the product offered by the third respondent was Nickel Chromium Alloy Casting as per the mandate of the tender and the third respondent has fulfilled the BQR and the allegations made contrary to the same, are untenable. Further, it is submitted that the roller tyres offered by the third respondent is manufactured with materials consisting of Nickel Chromium Alloy casting, which has been reiterated and confirmed by the third respondent and the third respondent has satisfied the tender condition. Further, the third respondent has qualified the past performance requirement of 12000 hours for a minimum value of Rs.22.50 lakhs. Therefore, it is submitted that the first respondent rightly held that both the petitioner as well as the third respondent have satisfied the technical specifications. In support of the above contentions reliance has been placed on the decision of the Hon'ble Supreme Court in the case of Jagdish Mandal vs. State of Orissa & Ors., reported in (2007) 14 SCC 517 and contended that evaluating tenders and awarding contracts are essentially commercial functions and if the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out.

9. The learned Senior counsel appearing for the writ petitioner in reply after referring to the re-joinder affidavits filed to the counter affidavits filed by the respondents 1 and 3 laid emphasis on the submission that the material required to be supplied should be a Nickel Chromium Alloy casting and admittedly, the third respondent did not satisfy the requirement and it is only thereafter that too after the writ petitioner pointed out that the third respondent's bid ought to have been outrightly rejected letter was addressed to the third respondent seeking for clarification. Therefore, it is submitted that an essential condition cannot be relaxed and the action of the first respondent in not disqualifying the third respondent is illegal and contrary to the terms and conditions of the tender.

10. Heard the learned counsels appearing for the parties and perused the materials placed on record.

11. The respondent TANGEDCO invited tenders for Supply of Grinder Roller Tyres for Pulverised Coal Mills-3 nos. The date and time fixed for opening of the technical bid was opened on 14.08.2014, at 14.50 hours. The tender was a open tender two part system. The dispute in this case as raised by the petitioner, who was also one of the bidders as that of the third respondent, is by contending that the bid submitted by the third respondent does not satisfy clause 11 of the tender, which stipulates the bid qualification requirement. In order to appreciate the factual scenario, it would be essential to refer to the description of the goods, which were to be supplied and the bid qualification requirement (BQR):-

Sl.No	Description	Qty
1.	Grinding Roller Tyres for Pulverized Coal Mill Mill Type/Model:ZGM 133G-II Roller mill Make:M/s.Dong Fang Electric Corporation Ltd., Chengdu, China Weight: 5.01 Tons Drawing No:29MG 63.11.09 Material:Nickel Chromium Alloy Casting Coal flow rate: 8 to 80 Tons per hour.	

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11	Bid Qualification Requirement	1.The bidder should be a Manufacturer/Authorized dealer of Grinding roller tyres for Vertical coal mills in Thermal Power stations. Valid evidence such as Certificate of Registration (License)/ Memorandum of Articles of association should be enclosed in case of manufacturer. In case of dealer, valid dealership certificate from the manufacturer should be enclosed. 2.The bidder should have supplied Grinding roller tyres for ZGM model mills or Grinding Rollers for XRP type mills to any of the 210MW or above capacity Thermal Power Stations of State Electricity Boards/ State or Central Government Organisation/Public Sector Undertaking in India in a single order or value not less than Rs.22.50 Lakhs within the past five years as on the date of tender opening. 3.The above supplied item should have the satisfactory performance for a minimum period of 12,000 hours as on the date of tender opening. 4.The bidder shall submit attested photo copy of the purchase order for the above and attested photo copy of the End user certificate for the satisfactory performance of the above. In case the above work was carried out in TNEB/TANGEDCO, the End User Certificate shall be obtained by Tender Inviting Authority directly from the concerned organisation. However in case of other organisations Performance Certificate should be obtained and furnished by the bidder. 5.The bidder's should have annual turnover of minimum of Rs.22.50 lakhs in the last three financial years preceding the year of floating the tender. The bidder shall submit attested photo copies of Annual Audited Balance Sheet duly certified by a Chartered Accountant for the concerned year (or) attested copy of Sales Tax clearance certificate (or) attested copy of Income Tax return filed by the bidder (or) attested copy of Enlistment Certificate issued by NSIC containing turnover details of the bidder for the concerned year, as a proof of the annual turnover. Note: The Proof for the above BQR shall be kept in the overall outer cover, failing which their bid will be summarily rejected.
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12. As noticed from the above tabulated statement, the roller tyres, which are to be supplied was for a particular equipment, which has been manufactured and supplied by a company from China. As per the instructions, the material of the tyres should be Nickel Chromium Alloy casting. The requirements for declaring a bid to be qualified as per BQR requirement under clause 11(2) is that the bidder should have supplied the product to any of 210MW or above capacity thermal power stations of the State Electricity Boards/State or Central Government Organisation/ Public Sector undertakings in India in a single order of value not less than Rs.22.50 lakhs within the past five years as on the date of tender opening. In terms of clause 11 (3), the item stipulated in clause 2, should have a satisfactory performance for a minimum period of 12000 hours as on the date of tender opening. The technical bid submitted by the third respondent is put to challenge by the petitioner as lacking in essential qualification on three grounds, namely (i) the product offered to be supplied by the third respondent does not match the material composition mentioned in the instruction to bidders or in other words, it does not match the description as per the bid document; (ii) the third respondent has not supplied the Grinding Roller Tyres to any other 210 MW Thermal Power Station in a single order of value of not less than Rs.22.50 lakhs; (iii) as per clause 11(3) of the BQR, the item supplied should have satisfactory performance for minimum period of 12000 hours and the tender document uses the word 'item' in singular and therefore, the requirement is a single item should have satisfied the performance requirement.

13. The learned Senior counsel appearing for the petitioner would submit that all the three conditions are essential conditions and that there can be no deviation and there can be no relaxation and in this regard, the decisions of the Hon'ble Supreme Court referred to have been relied upon. Examining the correctness of the first contention, it is seen that the material composition as per the bid document is Nickel Chromium Alloy Casting. After the technical bid was opened, the petitioner sent a representation on 01.09.2014, stating that in their offer, they have given the clear breakup of the chemical composition, whereas the chemical composition offered by the third respondent is not in accordance with the technical specifications, since the third respondent has not given the details of the other elements, namely, Nickel, Molybdenum etc and therefore, the offer received from the third respondent is not in line with the technical requirement and with less hardness.

14. It was further pointed out that the bid submitted by the third respondent is totally vague and the petitioner pointed out that evaluation of two different materials in the absence of clarity on the technical specifications contained in the bid document is not fair. Further, the petitioner stated that they may be given an opportunity to quote for the specification offered by the third

respondent without Nickel, Moly and lower levels of chromium and hardness with an assurance that they will be commercially competitive. Further, it is pointed out that the third respondent does not satisfy the satisfactory performance requirements and as per the statement furnished by them, it was observed that only one set of rollers have rendered a wear life of 12040 hours and the value of the same is much lessor than Rs.22.50 lakhs and therefore, they have to be disqualified.

15. After the representation was made by the petitioner, it appears that the respondent sent a communication to the third respondent on 20.09.2014 calling for the chemical composition of grinder roller tyres offered by the third respondent. Pursuant thereto, by reply dated 24.09.2014, the chemical composition was furnished by the third respondent as C-2.5 to 3.5%, Cr-14 to 18%; Ni-0.5 to 2.50% minimum 58HRc. While furnishing the chemical composition, the third respondent pointed out that the offer submitted earlier does not have all main chemical components, as it was not mandatorily required in the tender enquiry. Therefore, it has to be seen as to whether the third respondent deviated from an essential condition and whether the first respondent was justified in calling for information vide letter dated 20.09.2014 after the petitioner's representation dated 01.09.2014.

16. In the preceding paragraphs, the specification of the product has been set out. On a perusal of the specification, it is seen that the material should be Nickel Chromium Alloy casting. The tender document does not seek for break up details or percentage of the various components in the alloy casting. It may be true that the petitioner has offered the break up details, but such was not a mandatory requirement as per the tender condition. Undoubtedly, the product has to be a Nickel Chromium Alloy casting. The third respondent stated that earlier they did not give the composition, the break up details of the composition, since it was not mandatorily required in the tender enquiry. Therefore, this Court is not inclined to accept the contentions raised by the petitioner that the bid submitted by the third respondent does not match the description of the product as contained in the notification solely on the ground that the full details of the chemical composition was not offered at the initial stage, when the same was not a mandatory requirement under the tender.

17. Having held so, it has to be examined as to whether the first respondent was right in holding that the third respondent satisfied the BQR. The first condition being the supply should have been effected to any of 210MW or above capacity Thermal Power Station of State Electricity Board or Central Government Thermal etc., in India in a single order of the value not less than Rs.22.50 lakhs. The contention of the petitioner is that the supply made by the third respondent is not a single order, but under several purchase orders,

therefore, they did not satisfy the requirement. The details regarding the purchase order, which were filed along with the bid submitted by the third respondent has been filed along with the typed set of papers filed by the first respondent, from which it is seen that the third respondent has effected six supplies between January 2014 and June 2014 in a single purchase order bearing PO No.4000029817. Therefore, the first respondent Board was fully justified in considering the single purchase order as being in satisfaction of clause 11.2 of the BQR and the cumulative value of the supply under the said single purchase order is above the mandatory limit prescribed. Therefore, it is incorrect to state that the third respondent failed to satisfy the requirement under clause 11.2 of the BQR.

18. The next contention raised was that the item supplied should have satisfactory performance for minimum period of 12000 hours on the date of tender opening. Emphasis is being laid by the petitioner to state that the word used is 'item' in clause 11.3 of the BQR which means that each items supplied should have satisfied the requirement. On a careful consideration of the terms and conditions as stipulated in the tender and the stand taken in the counter affidavit, it is seen that the performance guarantee sought for has not been linked with the material to be supplied. The interpretation sought to be given by the petitioner is not in consonance with clause 11.3 of the BQR. The satisfactory performance for a minimum period of 12000 hours having not been linked with the value of the material the contention that the third respondent does not satisfy clause 11.3 of the BQR is incorrect and it would amount to a wrong interpretation of the terms and conditions of tender.

19. In the light of the above, this Court is of the view that there is no error in the manner in which, the first respondent TANGEDCO, has proceeded with the evaluation of the techno commercial bid submitted by the third respondent. At this stage, it is worthwhile to take note of the celebrated decision of the Hon'ble Supreme Court in the case of Tata Cellular vs. UOI reported in (1994) 6 SCC 651, wherein the scope of judicial review with regard to exercise of contractual power by Government bodies was dealt with in detail and it was observed that there are inherent limitations in exercise of that power of judicial review. It was further pointed out that the power of judicial review is not with the merit of the decision in support of which application to judicial review is made, but the decision making process itself, since the power of judicial review is not an appeal from the decision, the Court cannot substitute its own decision, unless the selection or rejection is arbitrary or malafide. Following the decision in the case of Tata Cellular vs. Union of India, reported in (1994) 6 SCC 651, and other decisions, the Hon'ble Supreme Court in Jagdish Mandal vs. State of Orissa, (referred supra), pointed out that a Court before

interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:-

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

or

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached":

(ii) Whether public interest is affected.

If the above questions are posed in the instant case, in the light of the above discussion, this Court has no hesitation to hold that the processes are adopted and the decision taken by the respondent TANGEDCO is neither malafide nor intended to favour some one nor the decision is arbitrary or irrational and the decision subserves public interest.

20. The decisions relied on by the learned Senior counsel appearing for the petitioner pertain to cases where essential conditions were said to have been deviated and not followed. In the case on hand, the conditions which have been stipulated in the tender have been examined and this Court has recorded a factual finding that the third respondent has satisfied the essential conditions, and there is no error in the evaluation process done by the first respondent. Therefore, the decisions relied on by the petitioner does not render any support to the case as projected by the petitioner. In such circumstances, this Court is not inclined to sit as an appellate authority over the decision of the first respondent TANGEDCO with regard to the evaluation of the Techno Commercial bid of the third respondent in the light of the fact that there is no arbitrariness in the decision making process. Further, the petitioner has not alleged any specific plea of malafides in the decision making process. Mere use of the expression "malafide" would not be sufficient, as an allegation of malafide has to be specifically pleaded and proved which the petitioner has miserably failed to do.

21. Thus, in the absence of any arbitrariness or discrimination in the manner in which the techno commercial bids of the petitioner as well as the third respondent were evaluated, this Court is not inclined to issue a Writ of Mandamus, as sought for by the petitioner.

In the result, the Writ Petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

Dated:26.2.15

True Copy

Sub Assistant Registrar

To

1.Tamilnadu Generation and Distribution

Corporation Limited,

Rep., by its Chief Engineer,

Mettur TPS/Stage II (1X600 MW)

A Public Sector Undertaking and

established under the provisions

of the Companies Act,1956,

having its Office at:

822, Anna Salai,

Chennai - 600 002.

2.The Superintending Engineer,

C/o.Tamilnadu Generation and

Distribution Corporation Limited,

having its Office at:

Mettur TPS/Stage II (1X600MW)

Mettur Dam 636 406.

+1 cc to M/s.S.K.Rameshwari, Advocate,SR.9801

+1 cc to M/s.Daniel and Gladys Daniel, Advocate,SR.9716.

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