

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P.Nos.27484 & 27485 of 2015
and M.P.Nos.1, 1, 2 & 2 of 2015

M/s.Den Erfolg Switchgears (P) Ltd.,
rep. by its Director Mr.P.Sivagnanam,
No.1, Gandhiji 6th Street, Thirunagar,
Madurai - 625 006. ... Petitioner in both W.Ps

-Vs-

- 1.Tamil Nadu Transmission Corporation Ltd.
rep. by its Chairman & Managing Director,
No.144, Anna Salai, Chennai - 600 002.
- 2.The Chief Engineer/Transmission,
Tamil Nadu Transmission Corporation Limited,
6th Floor, N.P.K.R.R. Maalighai,
No.144, Anna Salai, Chennai - 600 002.

... Respondents in both W.Ps

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified Mandamus calling for the records of the 2nd respondent in its impugned proceedings dated 29.08.2015 bearing Lr.No.CE/TR/SE/TRIV/EE3/AEE2/F.T.1912/D.238/2015 and Lr.No.CE/TR/SE/TRIV/EE2/AEE2/F.T-1913/D.317/2015 rejecting the request for extension of time and reiterated the last for submission of tenders and opening of tenders for T-1912 & T-1913 on 03.09.2015 & 08.09.2015 quash the same and consequently issue mandamus directing the respondents to extend the time for submitting and opening the Tender T-1912 & T-1913 on 03.09.2015 & 08.09.2015 to another 30 days from the said date in adherence to the provisions of Tamilnadu Transparency in Tenders Act 1998 and Rules 20 (1) & (2) taking into consideration that the tender specification was amended on 25.08.2015 and 29.08.2015.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
(in both W.Ps) for Mr.C.T.Prabhakar

For Respondents : Mr.AL.Somayaji, Advocate General
(in both W.Ps) assisted by Mr.Abdul Saleem,
Special Government Pleader

COMMON ORDER

The petitioner is one of the tenderer in two projects. The particulars governing the two tenders, which are not in dispute, are as under:

Sl.No	Details	T-1912 Establishment of Porur 230/110KV GIS SS
1.	Value	98 Crores
2.	Details of publication in the dailies and Website	05.07.2015 06.07.2015
3.	Date of Pre bid meeting	17.07.2015 Petition did not attend pre bid meeting while 14 others did
4.	Due Date of tender opening	19.08.2015
5.	Date of publication of Extension in the website	13.08.2015
6.	Extended due date of opening (15 days)	03.09.2015
7.	Uploading of Pre bid reply in the website for general amendments in the Price Schedules and Pre bid queries received till 10.08.2015	11.08.2015
8.	Uploading of Pre bid reply in the website for queries (amendment on phase enclosures)	24.08.2015 Queries by M/s.L & T, 12.08.2015, 14.08.2015, M/s.Siemens and M/s.BGR and 17.08.2015, 18.08.2015 M/s.Integra, Bangalore.
9.	Publication of Pre bid reply in the website for the query on additional test on Auxiliary and Control Circuit	25.08.2015 query by Herodex Power Systems Pvt Ltd.

There is no office at the given petitioner's address, only a residence is available.

Sl.No.	Details	T-1913 Establishment of Puliyanthope 400/230KV GIS SS
1.	Value	40 Crores
2.	Details of publication in the dailies and Website	05.07.2015 09.07.2015
3.	Date of Pre bid meeting	17.07.2015 Petition did not attend pre bid meeting while 19 others did
4.	Due Date of tender opening	20.08.2015
5.	Date of publication of Extension in the website	13.08.2015
6.	Extended due date of opening (19 days)	08.09.2015
7.	Uploading of Pre bid reply in the website for general amendments in the Price Schedules and Pre bid queries received till 10.08.2015	13.08.2015
8.	Uploading of reply to additional pre bid queries in the website received till 28.08.2015	29.08.2015

There is no office at the given petitioner's address, only a residence is available.

2. As per Rule 20 of the Tamil Nadu Transparency in Tenders Act 2000, 30 days time admittedly has been given governing both tenders. It is not in dispute that both the tenders are in excess of Rs.2 Crores and thus, there is compliance of Rule 20.

3. Now the grievance of the petitioner, as rejected by the respondents, is that though he has not participated in the pre-bid meeting governing both cases, by way of a clarification and amendment, a new clause has been introduced, by which along with single phase, for the first time, three phase was also included. In the other case, the KVA has been reduced from 500 to 400. Now, the specific case of the petitioner is that by the said introduction made for the first time on 24.08.2015, the petitioner is unable to comply with as it involves a new product, apart from variation of costs involved.

4. Insofar as W.P.No.27484 of 2015 is concerned, the dispute is with regard to the extension of time pursuant to the decision

taken by the respondents from single phase to three phase. Insofar as W.P.No.27485 of 2015 is concerned, the dispute is with regard to the extension of time pursuant to the decision taken by the respondents from 500 KVA to 400 KVA.

5. The learned senior counsel for the petitioner in both cases submitted that Rule 20 read with Rule 17 has to be applied afresh for the said introduction of three phase, meaning thereby 30 days time from 24.08.2015 will have to be granted. It is the sum and substance of the submission made by the petitioner.

6. The learned senior counsel for the petitioner submitted that the decision made by introducing 400 KVA would also have a bearing on the costs. He also submitted that apart from the costs, specification will also be different. Since the same is introduced afresh, the contentions raised in W.P.No.27484 of 2015 would also apply to the case in W.P.No.27485 of 2015.

7. The learned Advocate General appearing on behalf of the respondents submitted that Rule 20 has been complied with and hence, no interference is required. Since the petitioner does not question the power of the respondents in invoking Rule 17, resultantly, it will amount to extension of time granted. As the time granted exceeds 30 days under Rule 20 and in view of the fact that the petitioner has not participated in the pre bid meeting, the clarification issued is binding on him, especially, when the other tenderers have not made out any grievance. In other words, the learned Advocate General submitted that the amendment made under Rule 17 would relate back to the date of notification and therefore, there is sufficient compliance. The request made by the petitioner, if granted, would amount to varying terms of the notification and this Court shall not exercise the power under Article 226 of the Constitution of India by extending the said time. It was further submitted that the petitioner cannot be aggrieved, since the amendment is not new, but in addition to the one that is existing (i.e.) single phase. Reliance has also been made on a judgment of the Hon'ble Supreme Court made in Sorath Builders Vs. Shreejikrupa Buildcon Limited and another reported in (2009) 11 Supreme Court Cases 9.

8. The facts narrated above are not in dispute. While it is true that the amendment does not modify or take away the original specification of single phase, it thus introduced a new specification viz., three phase. The mere fact that three phase has been introduced for the first time on 24.08.2015 would show that a tenderer can either opt for single phase or three phase or both, as the case may be. This Court is not willing to go into the said issue. Such an amendment will not take away the right of the petitioner either to choose single phase or three phase or both, as

the case may be. Similar is the case qua 500 KVA or 400 KVA

9. Merely because the petitioner has not participated in the pre bid meeting, his right to opt anyone of the option cannot be taken away. The question for consideration is, whether the said clause having been introduced by way of clarification by exercising power under Rule 17 for the first time on 24.08.2015, the same would relate back to the date of notification or not.

10. This Court is of the view that the clarification having been introduced by exercising power under Rule 17, it has to operate prospectively. The petitioner cannot be expected to be prepared and anticipate that such an amendment would relate back to the date of notification. The element of fairness required from an instrumentality of State also does not pave way for such an interpretation. Merely because an alternative option is available, it will not make a tenderer to step back. This Court cannot go into the advantage or disadvantage of single phase or three phase, 500 or 400 KVA, which fact is to be decided by the respondents. Similarly, it is for a tenderer to decide to offer any one of the two options available. When once a new specification is introduced, it has to be applied prospectively. The fact that the other tenderers have not come before this Court or made a request to the respondents seeking more time cannot be a ground to non suit the petitioner. Thus this Court is of the view that the petitioner is entitled for 30 days time to be reckoned at least from 24.08.2015 and 29.08.2015 respectively. Looking from a different angle, it can be said what the petitioner seeks is only a sufficient opportunity. 30 days time to be reckoned cannot be made from the point of view of the petitioner alone, but to be given on the interpretation of the rules based upon the decision taken by the respondents on the touch stone of Article 14, which takes in itself a sweep an element of fairness.

11. The decision relied upon by the learned Advocate General in Sorath Builders Vs. Shreejikrupa Buildcon Limited and another reported in (2009) 11 Supreme Court Cases 9 does not have application to the case on hand. What the petitioner seeks is only an opportunity to participate. There is no contract involved between the parties. This Court is primarily concerned with the fair procedure that is to be adopted by the respondents. The facts involved in the said case are different. It was with respect to the contract entered between the parties. Thus, this Court is of the considered view that the decision has no application to the present case.

12. Accordingly, the orders impugned are hereby set aside and consequently, the Writ Petitions are allowed with a direction to the respondents to extend the time limit so as to enable the petitioner to give his tenders with respect to the three phase for a period of 30 days to be reckoned from 24.08.2015 and 29.08.2015. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

- 1.The Chairman & Managing Director,
Tamil Nadu Transmission Corporation Ltd.
No.144, Anna Salai, Chennai - 600 002.
- 2.The Chief Engineer/Transmission,
Tamil Nadu Transmission Corporation Limited,
6th Floor, N.P.K.R.R. Maalighai,
No.144, Anna Salai, Chennai - 600 002.

1 cc to Mr..C.T.Prabhakar , Advocate Sr.No.46975

2 cc to Mr.Abdul Saleem, , Advocate Sr.No.47091

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and M.P.Nos.1, 1, 2 & 2 of 2015

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