

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8088 of 2015

CSEPDI - TRISHE Consortium

Represented by its Managing Director

Mr.Sanjay K.Pillai,

No.6, Kasturi Rangan Road,

Alwarpet,

Chennai - 600 018.

Petitioner

vs.

Tamil Nadu Generation and Distribution

Corporation Limited (TANGEDCO)

Represented by its Chairman and Managing Director,

144, Anna Salai,

Chennai - 600 002.

Respondent

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent herein to forthwith furnish to the petitioner the order/proceedings of the Board of the respondent rejecting all the bids and scrapping the tender bearing SPEC.No.SE/C/UP/EE1/OT No.1/2013-14 in respect of the 2*660 MW Udangudi Supercritical Thermal Power Project along with reasons thereof.

For Petitioner : Mr.N.L.Rajah

For Respondent : Mr.A.L.Somayajee, Advocate General
for by Mr.P.Gunaraj

O R D E R

Heard Mr.N.L.Rajah, learned counsel for the petitioner and Mr.A.L.Somayajee, learned Advocate General for Mr.P.Gunaraj appearing on behalf of the respondent.

2.In this Writ Petition, the petitioner seeks for an issuance of Writ of Mandamus to direct the respondent to forthwith furnish the petitioner the order/proceedings of the Board of the

respondent rejecting all the bids and scrapping the tender bearing SPEC.No.SE/C/UP/EE1/OT No.1/2013-14 in respect of the 2*660 MW Udangudi Supercritical Thermal Power Project along with the reasons therein.

3. When the Writ Petition was heard for admission on 23.03.2015, the learned Advocate General while accepting notice on behalf of the respondent/TANGEDCO, on instructions, submitted that the matter is under progress and the Committee will take a decision in a couple of days and notification in this regard will be issued. Therefore, the case is adjourned to 26.03.2015 (today) by passing the following order :

"Heard Mr.N.L.Rajah, learned counsel appearing for the petitioner and Mr.A.L.Somayajee, learned Advocate General assisted by Mr.P.Gunaraj, learned counsel appearing for the respondent/ Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO).

2. The petitioner in this writ petition seeks for a direction to forthwith furnish to the petitioner the order/ proceedings of the respondent rejecting of bids and scrapping in the tender in question.

3. The learned Advocate General on instructions submitted that the matter is under process and the Committee will take a decision in a couple of days and the notification in this regard will be issued.

4. Call the writ petition on 26.03.2015 at the end of motion list for production of the copy of the notification/ order. "

4. Accordingly, the case is posted today and the learned Advocate General produced the copy of the State Tender Bulletin dated 26.03.2015. From Page 81 of the said Bulletin, it is seen that the bids submitted by the petitioner and M/s.BHEL, Sirifort, New Delhi for the subject tender have been rejected. It is stated that out of the four bids received for the project, the price bid of two bidders viz., the petitioner and M/s. BHEL, Sirifort, New Delhi, as listed in the details of the bid, were opened.

5. Subsequently, TANGEDCO rejected both the bids in its Board Meeting held on 13.03.2015 due to infirmities which have been stated in the State Tender Bulletin.

6. A copy of the same has been furnished by the learned Advocate General to the learned counsel appearing for the petitioner.

7.The learned counsel for the petitioner submitted that in terms of Clause 25.4 of the Tender " Bids shall be deemed to be under consideration immediately after they are opened and until such time official intimation of award /rejection is made by the Purchaser to the Bidders". Therefore, it is submitted that the respondent is bound to indicate the reasons for the rejection to the petitioner.

8.Resisting such a prayer, the learned Advocate General referred to Rule 5 of the Tamil Nadu Transparency in Tenders Rule, 2000 and submitted that the rule does not provide any communication of the reason for rejection to the petitioner/bidder.

9.In this regard, reference also been made to Rule 30(3) and it is submitted that in compliance with the same, the information has been published in the State Tender Bulletin. Per contra, the learned counsel for the petitioner submits that in terms of Section 4 (1)(d) of Right to Information Act, the respondent is bound to provide reasons for administrative or quasi-judicial action to the affected persons.

10.As could be seen from the State Tender Bulletin, the respondent-TANGEDCO, has taken decision to reject both the bids viz., the bid submitted by the petitioner and BHEL for defects/infirmities mentioned in the notification. Therefore, the reasons for rejection are contained in the State Tender Bulletin.

11.The issue is as to whether the petitioner has to be communicated with the reasons in terms of Clause 25.4 of the Tender conditions read with 4(1)(d) of the Right to Information Act or as to whether action of the respondent is in compliance with the provision of Tamil Nadu Transparency in Tender and Rules framed thereunder. These issues are left open to be considered at a later point of time, as and when need arises.

12.Since the learned counsel for the petitioner has been furnished with a copy of the relevant papers of the State Tender Bulletin wherein TANGEDCO has taken a decision to reject both the bids, the Writ Petition could be disposed of on such ground.

13.This Writ Petition is disposed of accordingly, leaving it to the petitioner to work out their remedy in the manner known to law. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dp/ds

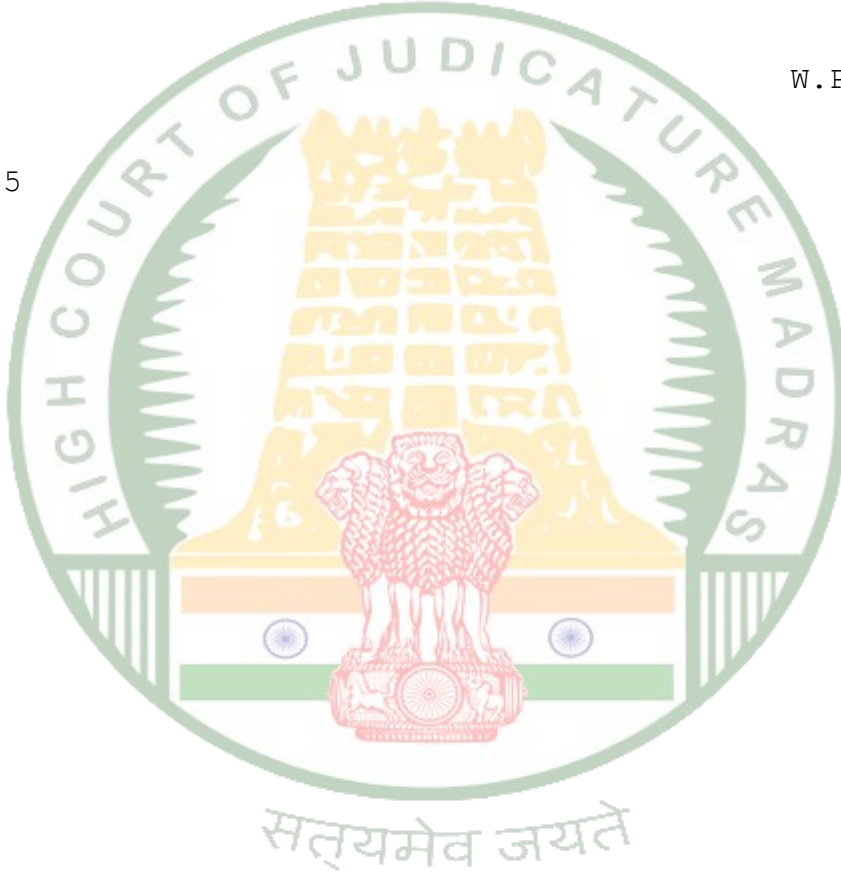
To

Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Represented by its Chairman and Managing Director,
144, Anna Salai,
Chennai - 600 002.

+ 1 cc to Mr.N.L.Rajah, Advocate SR.17171
+ 1 cc to Mr.P.Gunaraj, Advocate SR.17071

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TS (CO)
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