

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

Writ Petition No. 26894 of 2013

Order:

Heard Sri Yogesh Kumar Heroor, learned counsel for the petitioner and Sri Vinod Reddy, learned counsel for the respondent.

2. The petitioner in this Writ Petition assails the proceedings dated 22.09.2012 of the respondent. A purchase order was placed on the petitioner on 13.10.2009 for supply of 125 numbers of LT distribution boxes (SMC). Clause 4 thereof deal with the issue of “delivery” and provided that the petitioner had to complete the supply of material within two months of the purchase order i.e., by 13.12.2009. Since the petitioner did not offer the material even for inspection, and also did not supply as per the purchase order given to him, by the impugned proceedings dated 22.09.2012, the respondent cancelled the purchase order and simultaneously also barred the petitioner from participating in other tenders issued by the respondent for a period of five years. He also threatened to intimate the poor performance of the petitioner in execution of the orders to other Discoms.

3. Counsel for the petitioner contends that Clause 59 of the general terms and conditions of the contract applicable to the above purchase order provides that in cases where new vendors fail to meet the requirement of the contract, they would not be subjected to any penalty except that they would be excluded from the next bid for particular item of the material; and that in view of this Clause it was

not open to the respondent to bar the petitioner from participating in CPDCL tenders for a period of five years or intimate the petitioner's poor performance in execution of the orders to other Discoms.

4. Standing Counsel for the respondent, however, sought to support the order of the cancellation of the purchase order and contended that petitioner had not even submitted the material available for inspection of the respondent and, therefore, the impugned order was valid.

5. Clause 59 of the tender conditions applicable to the subject tender impose only a limited penalty on a new vendor such as petitioner who failed to meet the requirement of the contract, in that it provided only for exclusion from the next bid for particular item of the material.

6. It does not empower the respondent to bar a new vendor such as the petitioner for a period of five years from participating in the tenders issued by the respondent or to intimate poor performance of the petitioner in execution of the orders to other Discoms.

7. The respondent being a party to the said contract is bound by the terms and conditions therein including Clause 59 and is, therefore, not entitled to bar the petitioner from participating in the tenders issued by the respondent for a period of five years or to intimate the petitioner's poor performance in execution of the orders to other Discoms, although it is entitled to cancel the purchase order placed on the petitioner.

8. Also, debarring of the petitioner for a period of five years amounts to black listing, which ought to be preceded by a notice and, admittedly, there was no such notice issued to the petitioner.

Therefore, the respondent had also acted in violation of principles of natural justice.

9. In the circumstances, the Writ Petition is allowed to the limited extent of setting aside the proceedings dated 22.09.2012 insofar as the respondent debarring the petitioner for a period of five years from bidding in the respondent tenders. No order as to costs.

10. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

M.S. RAMACHANDRA RAO, J.

Date: 19.11.2015

Nsr