

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.11.2016

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P. No.39982 of 2016
& W.M.P.Nos.34042 & 34043 of 2016

M/s.Hebei New Baofeng Wire and Cable Co. Ltd.,
Rep. by its Authorised Signatory,
Anupam Goyal,
Having Office at No.58, A/1,
Sainik Farm, New Delhi. .. Petitioner

Vs.

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

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Tender Notification T-1979 dated 28.09.2016 issued by the second respondent and quash the same as so far it relates to the provisions of mode of payment in Volume 1 Sec.1 Clause 8 is concerned and consequent direct the respondents to amend by including the alternative mode of payment of EMD and other payments by Swift, Telegraphic Transfer, Fund Transfer etc. in the said place or call for fresh tender for the said work.

For Petitioner : Mr.T.P.Manoharan,
Senior Counsel for
Mr.C.T.Prabhakar

For Respondents : Mr.Abdul Saleem

O R D E R

The petitioner is a foreign bidder. The Tender Notification T-1979 dated 28.09.2016, is for the supply of 21.6 Kms of 230 KV Single Core 1200 sq.mm. Aluminium Conductor to the first respondent Corporation. Since the petitioner is a foreign

company, it has to make payment through foreign remittance. However, as per the tender document, there is no provision for foreign remittance and therefore, the petitioner is compelled to challenge Clause 8 of the tender document.

2. Mr.T.P.Manoharan, learned Senior Counsel appearing for the petitioner would submit that since the petitioner is a foreign company, EMD has to be necessarily paid through foreign remittance but the same is prohibited under Clause 8 of the tender document. Secondly, the said provision, namely, payment through foreign remittance was available in the earlier tender dated 19.08.2015 as well as the subsequent tender dated 10.11.2016 floated by the very same Corporation. In this regard, the petitioner has already made a representation on 08.11.2016 to the respondents requesting to provide the account details for the remittance of PEMD or EMD and also the list of documents to be provided for the approval of PEMD or EMD. However, till date, no reply has been issued.

3. That apart, on 09.11.2016, a revision of Civil Price Schedule has been made. When a revision of Civil Price Schedule is made or any changes in the tender documents are made, as per Rule 18(5)(b) of The Tamil Nadu Transparency in Tenders Rules, 2000, the Tender Inviting Authority has got power to extend the date and time for receiving the tenders. Since the clarification has been made only on 09.11.2016, it is not possible to submit the petitioner's bid for the tender to be opened on 16.11.2016. Therefore, he seeks permission for payment through foreign remittance either through PEMD or EMD and for extension of time for submission of the tender document.

4. However, Mr.Abdul Saleem, learned counsel appearing for the respondents would submit that the petitioner has come in the last minute and he is trying to prevent the entire process after completion. The value of tender is about Rs.36 crores and the project has to be executed in time. Further, with regard to a query, whether the payment of EMD for foreign remittance is possible. On instructions, he would submit that the foreign remittance is possible. If the prayer with regard to the acceptance of foreign remittance is accepted by the respondents, then only the question is to be decided in respect of extension of time.

5. The learned counsel appearing for the respondents would submit that even though the tender was issued on 28.09.2016, the petitioner kept quite for long time and in the last minute only, he has sent a representation and seeks extension of time which is not possible.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. The payment of foreign remittance for EMD is the main issue in this case apart from extension of time. A perusal of the earlier Tender Specification No.T-1912 dated 19.08.2015 and Tender Specification No.T-1986 dated 10.11.2016 would reveal that there is option/provision for the foreign bidders for payment of EMD through Telegraphic Transfer from Overseas Account by the respondents. Therefore, the same provision should be available for the tenders dated 19.08.2015 and 10.11.2016, i.e., payment of EMD through Telegraphic Transfer from Overseas Account and there is no occasion for the respondents to deny the same in the impugned order dated 28.09.2016 as per Clause 8 of the tender document.

8. The Telegraphic Transfer from Overseas Account of the petitioner (foreign bidder) has to be made by swift through the following accounts:

"Through JP MORGAN CHASE BANK, NEW YORK,
N.A.
SWIFT CODE: CHASUS 33,
ABA ROUTING NO.021000021.
FOR
CREDIT TO
A/C NO.011-1395969 OF
CANARA BANK, INTERNATIONAL DIVISION MUMBAI,
SWIFT NO.CNRBINBBID
FOR
FINAL CREDIT TO
A/C NO.0911201022266 OF
M/S.TANTRANSCO WITH
CANARA BANK, MOUNT ROAD BRANCH,
CHENNAI - 600 002, INDIA."

9. Though Clause 8 of the tender document has been challenged, in view of the submission made by Mr.Abdul Saleem, learned counsel for the respondents that foreign remittance through Telegraphic Transfer from Overseas Account of the foreign bidder is acceptable by the respondents, the issue is answered in that way and there is no necessity to go into the further details. To put succinctly, the prayer of the petitioner has been accepted by the respondents.

10. As far as the extension of time is concerned, Rule 18(5) (b) of The Tamil Nadu Transparency in Tenders Rules, 2000 make it very clear that there is any verification or changes in the tender document, the Tender Inviting Authority has got power to extend the last date and time for receiving tenders. Admittedly, in this case, when the representation has been made on 08.11.2016 and the original date of opening of tender is on

16.11.2016. When the tender was published on 28.09.2016 to be opened on 16.11.2016, a clarification made on 09.11.2016 has to necessarily make a Tender Inviting Authority to extend the time under Rule 18(5)(b) of The Tamil Nadu Transparency in Tenders Rules, 2000 reads as follows:

"the communication of changes in the tender documents to the prospective tenderers under sub-rule(1) of Rule 17 took time"

11. Therefore, in view of the revision of Civil Price Schedule dated 09.11.2016, the second respondent is directed to exercise its power under Rule 18(5)(b) of The Tamil Nadu Transparency in Tenders Rules, 2000 and extend the time by further 10 days, so as to enable the petitioner to participate for getting foreign remittance on or before 30.11.2016.

12. The Writ Petition is disposed of with the above directions. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

sri

To

1.The Chairman and Managing Director,
Tamil Nadu Transmission Corporation Ltd.,
No.144, Anna Salai, Chennai - 600 002.

2.The Chief Engineer / Transmission,
Tamil Nadu Transmission Corporation Ltd.,
6th Floor, N.P.K.R.R. Maaligai,
No.144, Anna Salai, Chennai - 600 002.

1 cc to Mr. Abdul Saleem, Advocate Sr. 65789
2 ccs to MR.C.T. Prabhakar, Advocate, Sr. 65749

W.P. No.39982 of 2016

PPA (CO)
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