

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2016

Coram

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

Writ Petition No.6003 of 2016
and
W.M.P.Nos.5329 and 5330 of 2016

M/s.Malu Wires
rep. by its Partner,
Mr.Nand Kishore Malu.

...Petitioner

Vs.

1. The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO)
10th Floor, NPKKR Maaligai,
No.144, Anna Salai, Chennai - 600 002.

2. The Chief Engineer (Distribution)
Chennai Region/South,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO)
5 A Block, 1st Floor, No.802,
Anna Salai, Chennai - 600 002.
Tamil Nadu.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the respondents to open and consider the petitioner's Price bid (i.e. the Envelope-B) for the finalization of the respondents' Tender Specification No.CED/CSR/E.559/2015-16, (Opened on 29.01.2016) for the supply of 4 & 5 mm GI Wire.

For Petitioner : Mr.Amalaraj S.Penikilapatti

For Respondents : Mr.S.K.Rameshuwar
Standing Counsel for TNEB

O R D E R

The petitioner has filed this Writ Petition, praying for issuance of a Writ of Mandamus to direct the respondents to open and consider the petitioner's price bid for the finalization of the respondents Tender, bearing Specification No.CED/CSR/E.559/2015-16, which was opened on 29.01.2016.

2. Heard Mr.Amalaraj S.Penikilapatti, the learned counsel appearing for the petitioner, and Mr.Mr.S.K.Rameshwar, the learned Standing Counsel (for TNEB), who accepts notice on behalf of the respondent.

3. The petitioner is a Partnership Firm, represented by its Partner, Mr.Nand Kishore Malu. The petitioner-Firm is stated to have been established on 30.01.2013, and engaged in the manufacture of iron and steel products, including GI wire, and other allied products. The petitioner-Firm is registered under the provisions of Karnataka Value Added Tax, and is carrying on its business in the said State.

4. The respondent had called for tender, for the supply of 4 & 5 mm GI Wires. The last date for sale of the specification of the tender was, 14.00 hours on 28.01.2016; due date and time for receipt of tender was, 14.00 hours on 29.01.2016; and the due date and time for opening of the tender was, 14.30 hours on 29.01.2016.

5. It is not in dispute that the tender has been opened at 14.30 hours on 29.01.2016. The petitioner has come forward with this Writ Petition even prior to any order being passed by the Authority, rejecting the petitioner's tender. Therefore, this Court, at the very inception, pointed out to the learned counsel appearing for the petitioner that the Writ Petition is premature one, but the learned counsel endeavored to submit that the petitioner's case is not premature, and their apprehension is genuine on account of the past conduct of the another wing of the respondent/Corporatino, viz., Tiruchy TANGEDCO, which had rejected the petitioner's tender on the ground that they have not submitted three years audit balance sheet. The petitioner has further stated that, in respect of the identical goods, the petitioner was successfully awarded the contract by Erode Region of TANGEDCO, and the purchase order has been placed on them and they have also supplied the materials. Therefore, it is submitted that the petitioner's case should be considered, since the petitioner Firm came into existence only on 30.01.2013, and one of the conditions, as per the Bid Qualification Requirements (BGR) is that the annual turnover of the tenderer should be more than 11,50,000/- during any one of the last three years, i.e., 2012-13, 2013-14, and 2014-15, and it does not mean that the petitioner should have been in existence for three years, but, it is suffice, if the petitioner produces the turnover above the stipulated period for one year.

6. Further, since the petitioner established their business during the month of January, 2013, the question of furnishing the particulars for three years does not arise. Further, the petitioner has also produced certificate issued by the Chartered Accountant, certifying that the turnover of the

petitioner Firm for the period from April, 2015 to November, 2015 is Rs.1,27,67,758/-.

7. This matter was taken up at the forenoon session, and, in order to ascertain the full facts, the learned Standing Counsel for the respondent/TANGEDCO was directed to get instructions from the respondents. Accordingly, on the matter being passed over, and taken up at the after noon session, the Executive Engineer/Purchase, Chennai South Region, has given a written instructions to the learned Standing Counsel. In terms of the said written instructions, it is stated that one of the BQR is that, the annual turnover of the tenderer should be more than 11,50,000/- during any one of the last three years i.e., 2012-13, 2013-14 and 2014-15, and the tender submitted by the petitioner was opened on 29.01.2016, and the petitioner submitted the audit certificate, as proof of the turnover for the period from April, 2015 to November, 2015, as Rs.1,27,67,758/- and not for any one the aforementioned three years. Further, it is stated in the written instructions that, as per clause (1) section III of the tender specifications, the tender will be summarily rejected, if BQR are not satisfied. Therefore, a specific stand has been taken by the Executive Engineer/Purchase, Chennai South Region, TANGEDCO that the petitioner's tender will be rejected, if it does not satisfy the BQR, as per the specification.

8. The arguments of the learned counsel appearing for the petitioner is that the petitioner-Firm, having been established and commenced operation since January 2013 only, the question of insisting upon the annual turnover particulars for three years is not feasible for compliance of conditions, and therefore, the petitioner cannot be insisted upon that their annual turnover should be more than 11,50,000/- during any one of the last three years, i.e., 2012-13, 2013-14 and 2014-15, and it should be only for any one of the abovesaid years, which should be at Rs.11,50,000/-, which the petitioner fulfills.

9. In my view, the arguments advanced by the learned counsel appearing for the petitioner is not tenable, as the petitioner seeks to interpret the BQR. Firstly, the petitioner having participated in the tender, is estopped from doing so. Secondly, this Court cannot interpret the BQR, than what has been explicitly stated thereunder. The tenderer should furnish annual turnover for three years, which is mandatory, as per BQR. The only concession is that, turnover of sum of Rs.11,50,000/- is insisted upon only for only one year out of aforesaid three years. Therefore, the petitioner, obviously, does not satisfy the BQR, and therefore, the stand taken by the learned Standing Counsel for the respondent/TANGEDCO is fully justified. Merely because, the Erode Region had allotted some work, that cannot be a ground to test the impugned tender

notification. That apart, there is no challenge to the tender condition, and the petitioner had participated in the tender, therefore, it is too late for the petitioner to raise such contention.

10. In the result, the Writ Petition is dismissed, as being devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

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5 A Block, 1st Floor, No.802,
Anna Salai, Chennai - 600 002, Tamil Nadu.

+1cc to Mr.Amalraj S.Penikilapatti, Advocate, S.R.No.10397
+1cc to Mr.S.K.Rameshuwar, Advocate, S.R.No.10362

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Writ Petition No.6003 of 2016

jsv(CO)
srg(25/02/2016)

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