

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2017

CORAM

THE HONOURABLE MR.JUSTICE T. RAJA

W. P. Nos. 3778 to 3782, 3783, 3784, 3929 & 3930 of 2017
&
W.M.P.Nos.3829 to 3835, 4019 & 4020 of 2017

W.P.No.3778 of 2017

1. M/s.Supreme Power Equipment Pvt. Ltd.,
Rep. By its Managing Director Mr.Vee Rajmohan,
No.55, Sidco Industrial Estate,
Thirumazhisai,
Chennai-600 124.
2. M/s.Danya Electric Company,
Rep. By its Managing Partner, Mr.K.V.Pradeep,
No.512/2, Nayapakkam High Road,
Papparambakkam Village,
Thiruvallur District & Taluk,
Papparambakkam-602 025.
3. Sree Abirami Engineering Works,
Rep. By its Managing Partner, Sirsabesan
No.56, Arunachalam Main Road,
Ambal Nagar,
Porur, Chennai-600 116.
4. M/s.Tamil Nadu Transformers,
Rep. By its Partner Mr.B.Arivalagan
No.53, Sidco Industrial Estate,
Sipcot, Ranipet-632 403,
Vellore District.
5. M/s.Sri Ramakrishnan Transformers,
Rep. By its Managing Partner Mr.A.Arun Kumar,
No.52/1A, Morrattandi Vanur Taluk,
Villupuram-605 101. ... Petitioners
6. Suntech Transformers
Rep. By its Partner Mr.B.Chandrasekaran,
No.52, Sidco Industrial Estate,
Sipcot, Ranipet-632 403.
Vellore District.

7. Wilson Power & Distribution Technologies Pvt. Ltd.,
Rep. By its Managing Director S.Srinivasan,
Orakkadu Village,
Cholavaram,
Chennai-600 067.
 8. Suriya Electrical Enterprises,
Rep. By its Managing Partner Mr.E.Wenceslaus,
No.24 & 25/1, Anna Nagar,
Kolathuvancherry,
Paraniputhur Post, Chennai-600 122.
 9. S.L.Electricals,
Rep. By Prop.T. Srinivasan,
No.325, Odaman Nagar,
Vannagaram,
Chennai-95.
 10. Lavanaya Industries,
Rep. By its Partner, P.R.Kannan,
No.4-A, Kuppuswamy Nagar,
Sivabhootha Medu,
Pillayar Koil Street,
Vannagaram, Chennai-95.
 11. Sri Vinayaga Star Electricals,
Rep. By its Prop. C.Pethuraj,
No.9, Rajas Garden,
Mettukuppam Main Road,
Chettiar Agaram, Chennai-77.
 12. Vinai Electricals,
Rep. By its Partner, A.Periyanayagam,
No.4/123, 1st street,
Balaji Nagar,
Koluthuvancherry, Chennai-122.
 13. V.K.Transformers,
Rep. By its Proprietor A.Periyanayagam,
No.4/123, 1st Street,
Balaji Nagar,
Koluthuvancherry, Chennai-122
- ...*Petitioners 1 to 13 in WP 3778 to
3784/2017

M/s.Current Electricals Ltd.,
Rep.by its Executive Director,
M.Saravanan,
Survey No.184/2 & 213
Thirumudivakkam Village,
(Near SIDCO) Sriperumpadur,
Kanchipuram District,
Chennai-600 044.

... Petitioner in WP.3929/2017

M/s Current Power Equipments Private Limited,
Reresented by its Director,
Mr.M.Saravanan,
SF No.214, Near SIDCO Industries Estate Street,
Thirumudivakkam,
Sriperumpadur Taluk,
Kanchipuram District.
Chennai-600 044.

... Petitioner in WP.No.3930/2017

Vs

1. The Chairman,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai-02.
2. The Chief Engineer,
Material Management,
TANGEDCO,
144, Anna Salai,
Chennai.
3. The Bureau of Indian Standards,
Rep. By its Chief Scientist,
Southern Region,
IV Cross Road, CIT Campus,
Taramani, Chennai-113.
4. EMESS Control Private Limited,
Rep. By its Director Mr.Srinivasan,
D.P.90, 91 & 92, SIDCO Industrial Estate,
Thirumazhisai, Chennai-124

... Respondents 1 to 3 in Wp 3778
to 3784/2010 & 3929 & 3930/2017

... 4th Respondents in WP.3778,
37781, 3782, 3783, 3784/17

(Respondent No.4 is impleaded as per the
order dated 17.02.2017 in WMP No.4210/2017
4211 to 4214/17 in wp 3778/2017, 3781 to 3784/17

4)Central Power Research Institute,
reb.by its Chief Scientist,
Kondandarampura,
Armane Nagar,
Bengaluru,
Karnataka -560 080

...4th Respondent in WP Nos.3929 &
3930/2017

Amptech Power Transformers,
Rep.by Managing Partner,
S.Arunachalam,
8/42, Athipalayam Road,
ChinnavedamPatty,
Coimbatore -49

...5th Respondent in WP.3783 of 2017
(Respondent No.5 is impleaded as per the
Order of this Court dated 02/03/2017 in
WMP.No.4594/2017)

PRAYER in W.P.No.3778 of 2017: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus (1) directing the respondents 1 and 2 to grant 3 months time to the petitioners for submission of BIS certification from the 3rd respondent pending evaluation of tender notification No.M-15/16-17, M-16/16-17, M-17/16-17, M-18/16-17, M-22/16-17, M-23/16-17 in WP.Nos.3778 to 3782, 3783, 3784/17 respectively extended dated 31.01.2017 24.01.2017, 20/01/17, 28/01/2017, 03/02/2017, 07/02/2017, 04/02/2017 in WP.Nos.3778 to 3782,3783, 3784/17 respectively.

[2] directing the 1st and 2nd respondents to grant 4 months time to the petitioners for submission of Bureau of Indian Standards(BIS) Certification from the 3rd respondent and Type Test Certification from 4th respondent pending evaluation of tender notification No.M-15/16-17, M-16/16-17, M-17/16-17, M-18/16-17, M-19/16-17, M-22/16-17, and M-23/2016-17 date 20/01/2017 to 07/02/2017 (in Wp.Nos.3929 and 3930/2017)

For Petitioners in WP Nos.3778
to 3782 of 2017

: Mr.Vijay Narayan,
Senior Counsel for
for Mr.Solomon Francis

For Petitioners in WP Nos.3783
& 3784 of 2017

: Mr.C.Selvaraju, Senior Counsel
for Mr.Solomon Francis

For Petitioners in WP Nos.3929
& 3930 of 2017

: Mr.P.S.Raman, Senior Counsel
for MR.R.Sivaraman

For Respondents : Mr.S.K.Rameshuwar for R1&R2
in all Wps

For Respondents in WP.
Nos.3778,3781, 3782, 3783
3784/2017 :

: Mr.J.Srinivasa Mohan for R4

W.P.No.3783/2017

: Mr.J.Srinivasa Mohan for R5

COMMON ORDER

Nine writ petitions have been filed seeking a common relief for issuance of writ of Mandamus under Article 226 of the Constitution of India, directing the respondents 1 and 2 to grant time to the petitioners for submission of Bureau of Indian Standards (BIS) Certification from the Bureau of Indian Standards/the third respondent herein and Type Test Certification from the Central Power Research Standards/fourth respondent herein, pending evaluation of tender notification No.M-15/16-17 Extended dated 31.01.2017.

2.Heard Mr.P.S.Raman, learned Senior Counsel representing Mr.R.Sivaraman, learned counsel for the petitioner in W.P.No.3929 of 3930 of 2017, Mr.C.Selvaraju, learned Senior Counsel representing M/s.P.Solomon Francis, learned counsel for the petitioner in W.P.No.3783 & 3784/2017 and Mr.Vijay Narayan, learned Senior Counsel representing Mr.P.Solomon Frances, learned counsel for the petitioner in W.P.Nos.3778 to 3782 of 2017 as well as Mr.S.K.Rameshuwar, learned Standing Counsel appearing for R1 and R2 in all writ petitions, Mr.J.Srinivasa Mohan, learned counsel for R4 in W.P.Nos.3778, 3781, 3782, 3783 and 3784/2017 and in W.P.No.3783 of 2017 for R5.

3.Since the Chief Engineer/ Material Management, Tamil Nadu Generation and Distribution Corporation Limited / the second respondent herein had invited tenders for supply of Level II Distribution Transformers of 7 categories by advertisements dated 04.09.2016 and 11.09.2016 published in the news paper "Sunday Express", the first and second respondents have brought in a special condition that the suppliers should have a certification from the third respondent viz., BIS (Bureau of Indian Standards) apart from the certification of CPRI or ERDA. Since the Central Government has made the BIS certification as mandatory, the petitioners had to apply for the same for grant of licence. Since all the petitioner companies are manufacturing prototype transformers and applied for BIS licence on various dates, they were not able to apply for all categories, as enumerated in the tender. As they were not able to obtain certification from the respondents 3 and 4 viz. BIS and CPRI, within a short span of time, it is not possible for

them to get these services. Hence, all of them jointly made a request before this Court to grant them eight weeks time for submission of Bureau of Indian Standards (BIS) certification from the third respondent, pending evaluation of tender notification NO.M-22/16-17 dated 07.02.2017.

4.It is also jointly submitted by all the learned Senior Counsel appearing for the petitioners that it is not their intention to postpone or delay the tender process, since the process of finalisation by the respondents 3 and 4 will take a long time for issuance of the aforementioned certification. However, granting of two months time to the petitioners would not cause any problem and they also undertake to produce the above mentioned certification within a period of eight weeks.

5.Learned Standing Counsel for the respondents 1 and 2 has filed a counter affidavit objecting to allow these writ petitions. The relevant portion is extracted hereunder:

"10. The Honourable High Court of Madras has directed in the W.P.No.1608 of 2017 against the Specn.No.:M-16/16-17 on 23.01.2017 as below:

"In view of the above, since 12 other companies have submitted their applications along with undertakings (against the Specn.M-17/16-17 for procurement of 160KVA/11KV/433V Amorphous Core DTs.), the petitioners case also shall be considered to receive the tender application of the petitioners' along with the undertakings and the same be decided by the "Board of Directors".

With these directions, this writ petition (W.P.No.1608 of 2017) is disposed of. No costs. Consequently, connected miscellaneous petition (W.M.P. No:1566 of 2017) is closed."

Based on the above directions, (Per) F B TANGEDCO Proceedings No.16 dated 21.02.2017 issued vide approval of the as below:

"To insist and consider the bidders having BIS certification/licence/the status report for offered distribution transformers as per the grouping guidelines issued by the BIS with attestation/without attestation on the date of opening of techno-commercial bids (along with offer)." for the various tender specifications namely M-15/16-17, M-16/16-17, M-18/16-17, M-19/16-17, M-22/16-17 & M-23/16-17 for procurement of various rating of distribution transformers.

11.The bidders, whose technical and commercial bids get qualified, will be considered for issue of award. In any case, the TANGEDCO invite bids and it will consider the tender based on the response received as per the tender conditions."

6.Learned counsel for the fourth respondent, raising huge objection to entertain these petitions, had submitted that

when the petitioners have not filed BIS -Certification till date, these writ petitions shall be dismissed in limine.

7. This Court is not able to find any merit in the said objection, inasmuch as the request of the petitioners is reasonable. The second respondent, while pending tender notification for the first time, has made it clear that the production of BIS certification is necessary. It is the common grievance of the petitioners that they are not against obtaining certification from the respondents 3 and 4, but, the same is not possible within a short span of time as directed by the respondents 1 and 2. Firstly, the transformers tabulated under seven categories as required by the respondents 1 and 2 are all with particular design and specification and those details and particulars issued by the respondents 1 and 2 only in the month of July/August, 2016. Secondly, the respondents 1 and 2, without even any consultation with the third respondent, have announced the tender dates. When the third respondent is a Central Government Certification Agency, they are responsible for certifying over 8000 products in India and they have also informed the petitioners that the certification cannot be given immediately as they have to follow certain procedures. Thirdly, after manufacturing transformers, the petitioners will have to send the same to the CPRI Bengaluru or ERDA Vadodara for testing and thereafter, they will conduct four tests on Transformers. Therefore, such process would definitely take some time for getting BIS certification. Moreover, the test also would be conducted on seniority basis for all the manufacturers coming from all over the country and this would cause enormous delay in testing.

8. Thus, in view of the aforesaid reasons, this Court grants only eight weeks time from the date of receipt of a copy of this order to the petitioners for obtaining BIS certification and type test certification from the fourth respondent. The second respondent is at liberty to proceed further after eight weeks and finalise the same in accordance with law.

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9. With the above direction, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS-III)
Dated: 24/03/2017

***corrected order to be issued**

Sd-Sub Assistant Registrar
Dated: 12/04/2017

True Copy

Sub-Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai-02.
2. The Chief Engineer,
Material Management, TANGEDCO,
144, Anna Salai,
Chennai.
3. The Bureau of Indian Standards,
Rep. By its Chief Scientist,
Southern Region, IV Cross Road,
CIT Campus, Taramani, Chennai-113.
4. EMESS Control Private Limited,
Rep. By its Director Mr. Srinivasan,
D.P.90, 91 & 92, SIDCO Industrial Estate,
Thirumazhisai, Chennai-124.
5. The Chief Scientist,
Central Power Research Institute,
Kondandarampura, Armane Nagar,
Bengaluru, Karnataka-560 080

To be
Substituted to the order
already despatched on
29/04/2017

+2cc to Mr. S.K. Rameshuwar, Advocate SR.No.13631
+2cc to Mr. J. Srinivasa Mohan, Advocate SR.No.13774
+1cc to Mr. R. Sivaraman, Advocate SR.No.13694
+1cc to Mr. P. Solomon Francis, Advocate SR.No.13648

W. P. Nos. 3778 to 3782, 3783, 3784, 3929 & 3930 of 2017 &
W.M.P.Nos. 3829 to 3835, 4019 & 4020 of 2017

NM(CO)
GN(24/03/2017)