

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.747 of 2017

Between:

Techno Soft Solutions

....Petitioner

and

The State of Andhra Pradesh,
Energy Department, Secretariat Buildings,
Secretariat, Velagapudi, Guntur District,
Rep.by its Principal Secretary,
And others.

....Respondents

JUDGMENT PRONOUNCED ON

01.09.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : No

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.747 of 2017

ORDER:

Heard the learned Counsel for the petitioner, learned Government Pleader and learned Standing Counsel appearing for respondent Nos.1 and 2, and the learned Counsel for respondent No.3.

The petitioner is represented by its Managing Director, who states that he is an unemployed B-Tech graduate and started a firm for doing electrical works in the name and style of M/s.Techno Soft Solutions. It was registered in the National Small Industries Corporation Limited, Ministry of Micro Small and Medium Enterprises, New Delhi. He is also a registered contractor in the A.P.Transco with Grade A electrical licence and it is valid up to 27.06.2017. The petitioner firm was executing several electrical and civil works successfully with APEPDCL, A.P.Transco, East Coast Railways, Visakhapatnam Steel Plant etc. The petitioner previously executed works at 220 KV Anrak-Narsipatnam, Kalapaka and TLC Stores. While so, the second respondent invited tenders for carrying out operation and maintenance including watch and ward, house keeping and gardening pertaining to 400 KV Kalapaka SS and 220 KV sub-stations in Pendurthy Division in OMC Circle, Visakhapatnam. The last date for filing the tenders was 19.03.2016 and they were supposed to be opened on the same day. But, it was extended to 11.04.2016. The petitioner submitted the tender

along with the third respondent. When the second respondent opened the tenders on 11.04.2016, the petitioner became the lowest tenderer, whereas the third respondent became the second lowest tenderer. The tender was not finalized till 23.12.2016 and on that day the letter of intent was issued in favour of the third respondent by the second respondent. Challenging the same, the present Writ Petition is filed.

Learned Counsel for the petitioner submitted that the third respondent quoted higher price than that of the petitioner and thus it should not have been awarded the work. The work was awarded to the third respondent only in order to favour it, even though the petitioner is the lowest tenderer. Learned Standing Counsel for the respondents submitted that the petitioner did not fulfill the condition of financial turnover specified in the terms and conditions of the tender, and hence, it was not awarded the work.

The relevant clause relating to the financial turnover of bidders reads as follows:

“6. Financial Turnover of Bidders:

The financial turnover of the bidder should have at least 50% of ECV of Bid for the two years cumulatively out of last 3 years for O&M or construction activity in power sector anywhere in the country. Documentary evidence to be enclosed with the bid duly certified by Chartered Accountant.”

A reading of the above clause makes it clear that the financial turnover of the bidder should be at least 50% of the estimated contract value of bid for the two years cumulatively

out of last three years for O&M or construction activity in power sector anywhere in the country.

The approximate estimated contract value of the work is Rs.8.72 crores and hence the bidder should have financial turnover of Rs.4.36 crores. The petitioner filed the list of 30 works executed during the financial years 2014-15 and 2015-16. It filed the certificates from the Chartered Accountant dated 23.04.2016 and 24.12.2016 indicating the turnover in execution of the contracts as follows:

S.NO.	FINANCIAL YEAR	ELECTRICAL WORKS CONTRACTS	OTHER WORKS CONTRACTS	TOTAL RS.
1	2014-15 (i.e as on 31-3-2015)	79,25,643	4,93,12,382	5,72,38,025
2	2015-16 (i.e as on 31-3-2016)	4,08,68,734	5,69,08,677	9,77,77,411

S.NO.	FINANCIAL YEAR	POWER SECTOR CONTRACT WORKS	OTHER CONTRACT WORKS	TOTAL (RS.)
1	2014-15 (i.e., as on 31-03-2015)	Rs.79,25,643/-	Rs.4,93,12,382/-	Rs.5,72,38,025/-
2	2015-16 (i.e., as on 31-03-2016)	Rs.4,08,68,734/-	Rs.5,69,08,677/-	Rs.9,77,77,411/-

In the above tables the value of electrical works contracts and power sector contract works should be taken, and if cumulative amounts are taken, they exceed the required amount of financial turnover.

The petitioner filed evidence in support of the same covering both situations and in view of the alternatives available in the clause, while arguing the present matter, he submitted that the financial turn over in respect of construction activity in power sector should be taken for the purpose of deciding the present case. Clause 28 of the tender conditions stipulates that

the bidders shall furnish credentials of similar nature of work undertaken previously along with the tender.

But, the learned Standing Counsel submitted that the amount mentioned in the above tables does not purely pertain to O&M works or construction activity in power sector exclusively, and when the information available in the Form 16 submitted to the Income Tax authorities is taken and calculated for the relevant activity, the required financial turnover was not achieved. Learned Standing Counsel produced before this Court the record relating to the works indicated in the Form 16 submitted to the Income Tax authorities. The petitioner could not point out that the amount in respect of the relevant works exceeded the required financial turnover. Thus, it is clear that the petitioner did not fulfill the requirement of clause 6 of the terms and conditions of the tender, and hence, the rejection of the bid of the petitioner is proper.

The Writ Petition is, accordingly, dismissed. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

01.09.2017

vs