

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No. 19787 of 2016 (O&M)
Date of Decision: 18.01.2017

Tapan Solar Energy Pvt. Ltd. through its representative Shri Jai Parkash

..Petitioner

versus

State of Haryana and others

..Respondents

CORAM: **HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE.**
 HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL, JUDGE.

Present : Mr. Anil Kshetarpal, Senior Advocate with
 Mr. Maninder Singh Saini, Advocate, for the petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General,
Haryana, for respondent No.1.

Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Rajesh Sheoran, Advocate and
Mr. Saurabh Mago, Advocate, for respondent Nos.2 and 3.

Mr. B.S.Rana, Senior Advocate with
Mr. Gagandeep Rana, Advocate and
Mr. Rajinder Paul, Advocate, for respondent Nos.4 to 8.

S.J.VAZIFDAR, CHIEF JUSTICE (oral)

Respondent Nos.4 to 8 are the private parties. Respondent No.1 is the State of Haryana and respondent No.3 is the Director of respondent No.2 Haryana Renewable Energy Development Agency (HAREDA).

2. The petitioner has challenged the decision of respondent No.1 dated 22.08.2016 rejecting its representation against the first respondent's decision considering the petitioner's bid to be ineligible in respect of the work which we will shortly refer to. The petitioner has also challenged the award of rate contracts dated 04.08.2016 in favour of the private

respondents. The learned Advocate General, Haryana states that the work was actually awarded on 23.09.2016.

3. The official respondents issued an e-tender notice re-inviting bids for the Annual Rate Contract for tentative aggregate capacity of 3.25 MWp of Rooftop Grid Connected SPV Power Plants for a period of five years. The bids were invited in a two bid system. The last date for submitting the bid was 31.12.2015. Clause-4 of the detailed notice inviting tenders (DNIT) reads as under:-

“4. **MINIMUM ELIGIBILITY CONDITIONS:**

- i) **MNRE Channel Partner** for rooftop grid connected solar power plant in the current financial year.

The name of firm shall appear in the valid empanelled list of MNRE channel partner for rooftop grid connected solar power plants for the current year and/or a copy of certificate in this regard shall be furnished alongwith the bid. List shall be valid as on date of issue of tender.

- ii) **Technical Evaluation of Bids:**

Detailed Technical evaluation criteria:

- a. The bids shall be evaluated on the basis of the application and the supporting documents submitted by them.
- b. The evaluation would be Quality and Cost based. The Technical Proposal would be evaluated first and points would be allotted to each of the bidders as follows:-

Sr.No.	Field	Points	
1.	‘Category A’ Channel Partners of MNRE List	70	70
2.	‘Category B’ Channel Partners of MNRE List	50	
3.	‘Category C’ Channel Partners of MNRE List	30	
4.	Bidder having supplied, installed and commissioned cumulative Grid connected Solar PV Power Project, with net-metering facility, having a capacity of 50 Kwp and above which should have been commissioned at least one months prior to last date of submission of tender.	30	30
5.	Bidder having supplied, installed and commissioned at least cumulative Grid connected Solar PV Power Project, with net-	20	

	metering facility, having a capacity of 30 kWp and above but less than 50 KWP which should have been commissioned at least one months prior to last date of submission of tender.		
6.	Bidder having supplied, installed and commissioned at least cumulative Grid connected Solar PV Power Project, with net-metering facility, having a capacity of 10 kWp and above but less than 30 KWP which should have been commissioned at least one months prior to last date of submission of tender.	10	
	Total		100

The list of project supplied, installed and commissioned at least one months prior to last date of submission of tender, indicating whether the project is grid connected, with net-metering facility, along with a copy of the Commissioning certificate (issued by the State Nodal Agency of the State in which the project(s) is/are commissioned and Work order/contract/agreement from the Client/Owner shall be submitted in support of the claim.

The minimum Technical Score to be obtained for considering Financial Proposal shall be 60 points. The financial evaluation would be done for only those proposals which quality technically with minimum 60 points.

(Document to be uploaded: Relevant document supporting the claim.)”.

The petitioner claims to be a Category-A Channel Partner of the Ministry of New and Renewable Energy (MNRE) list and therefore, claims to be entitled to 70 points. The petitioner does not claim to be entitled to any points under the other categories.

4. The dispute in a nut-shell is this. The petitioner is admittedly a Category A Channel Partner entitled to 70 points and therefore, eligible to 70 points i.e. ten points more than the requirement of 60 points. Admittedly, therefore, the petitioner is eligible. The official respondents, however, only on the basis of an incorrect entry on the website of the MNRE concluded that the petitioner was entitled to only 50 points and, therefore, did not meet the eligibility criteria of 60 points on account of it being only a Category-B

Channel Partner and not a Category-A Channel Partner. We have held that the petitioner cannot suffer prejudice on account of an error on the part of the Ministry.

5. The petitioner submitted its bid within the time stipulated. It is important to note that two documents were uploaded by the petitioner.

The first is the rating of SMERA Ratings Ltd. titled as “MNRE SMERA-SOLAR GRADING”. It certifies that the petitioner has been evaluated by SMERA Ratings Ltd. and assigned the grading of SP2C “High Performance Capability & Moderate Financial Strength”. SP2C is referred to in an MNRE circular No. 5/22/2013-14/RT relating to ‘Grid Connected Rooftop Solar Power Division’. Clause 3.1 of the circular insofar as it is relevant, states that the reputed rating agencies in the country which may be specified by MNRE including those registered with RBI and SEBI are eligible to rate the agencies. The level of the ratings is tabulated. Category-A channel partner includes those with the rating of 2C. Thus the grading of SP2C in the said certificate places the petitioner in the category-A Channel Partner. There is no dispute that SMERA is specified by the MNRE and is, therefore, eligible to rate the agencies.

The second document is a certificate of empanelment as a Channel Partner issued by the MNRE to the petitioner “*Under Grid Connected Rooftop and Small Solar Power Plants Programme, Empanelment Number-MNRE/CP/GCRT/A/410*”. The date of empanelment was 31.08.2015 and it was valid upto 31.08.2017 i.e. prior to the last date for submission of bids.

Mr. Kshetarpal, learned senior counsel appearing on behalf of the petitioner relied upon an endorsement at the foot of certificate which reads “*please verify the authenticity from SPIN in mnre.gov.in*”. He submits that this site shows the petitioner as a Category-A Channel Partner.

6. The petitioner submitted its bid as required. By an e-mail dated 06.02.2016 the official respondent No.3 i.e. the Director of respondent No.2 informed the petitioner that while checking the on-line uploaded documents it was observed that the petitioner was not eligible on account of: “Not secured 60 marks, the firm has not provided experience of grid connected power plants certified by SNA”. Before us it is only contended that the petitioner has not obtained 60 marks. This contention, as mentioned earlier, was on account of the petitioner having been considered to be a category-B Channel Partner and not a category-A Channel Partner only on the basis of the incorrect entry in the website of the MNRE. Under Clause 4 of the DNIT, Category-B Channel Partner would be entitled to 50 points and Category-A Channel Partner would be entitled to 70 points. The minimum requirement was 60 points.

7. The financial bids were opened on 10.02.2016. The petitioner by its letter dated 10.02.2016 informed the official respondents that as per the said certificate uploaded by it, it had obtained the rating of SP2C from an authorized agency and, therefore, was entitled to be considered under category-A Channel Partner. The petitioner by an e-mail dated 16.02.2016 addressed to the MNRE stated that it had incorrectly been shown on the website of MNRE in Category-B and as per the certificate issued by it it was entitled to be in Category-A. The petitioner requested the MNRE to update its website accordingly. The MNRE by its e-mail in reply dated 16.02.2016

stated that based on the SMERA rating (SP-2C) the petitioner falls in 'A' category in the list of Channel Partners with the Ministry of New and Renewable Energy.

8. In view of these facts the official respondents fairly and rightly did not contend that the petitioner is not a category-A Channel Partner. In other words, they agree that the petitioner is a category-A Channel Partner and would be eligible. It was, however, contended that the petitioner had not submitted the necessary proof of its grading alongwith its bid.

9. This contention is incorrect as is evident from the two certificates issued in favour of the petitioner and uploaded by the petitioner alongwith its e-bid. As we mentioned earlier the certificate issued by SMERA stated that the petitioner was entitled to a grading of SP2C which entitles it to be considered a category-A Channel Partner. The website did indeed refer to the petitioner's grading as done by another authorized agency. That, however, was subsequently upgraded to 'A' category by SMERA and what is important is that MNRE has considered the petitioner to fall within the category-A.

10. This was, therefore, not a case where a party though eligible did not furnish the proof of its eligibility by a stipulated date. Had that been the case, the official respondents could well have contended that the bid was not responsive by the stipulated date. We referred to clause-4 of the DNIT earlier. It is important to note that clause-4 (i) which deals with the minimum eligibility conditions requires a bidder to be empanelled and sub-clause (ii) provides that the bids would be evaluated on the basis of the application and the supporting documents submitted by them. Among the supporting documents were the two documents which we referred to earlier.

These certificates undoubtedly establish that the petitioner is a category-A Channel Partner.

11. What the respondents contended, however, is that the list uploaded on the website of MNRE referred to the petitioner as category-B Channel Partner. The petitioner cannot possibly suffer on account of the error of the MNRE of not updating its website. Moreover, the eligibility was to be determined not on the basis of the website of the MNRE but on the basis of the application and the supporting documents submitted by the applicants. It is obviously on account of this error that the petitioner's bid was considered to be non-responsive.

12. The petitioner filed Civil Writ Petition No. 14577 of 2016 to challenge the communication contained in the e-mail dated 05.12.2016 considering its bid to be ineligible. That writ petition was disposed of by an order and judgment dated 25.07.2016 by the Division Bench directing respondent No.1 to take a decision on the petitioner's representation dated 16.05.2016 in accordance with law and by passing a speaking order and after hearing the petitioner. Pursuant thereto, the official respondents passed the impugned order dated 22.08.2016. The order does not deal with the issues that we have referred to. We, however, permitted the respondents to address us on any objection that they have to the petitioner's bid being considered to be eligible.

13. It was contended that the petitioner sought a clarification from the MNRE regarding its grading only after the financial bids were opened. That, however, would not affect adversely on any of the parties in any manner whatsoever. Indeed if the petitioner's financial bid was not competitive it may well have decided not to challenge the order at all.

14. As we mentioned earlier the petitioner's representation was rejected by the impugned order dated 22.08.2016. The present writ petition was filed on 17.09.2016. On 26.09.2016, the notice was issued only to the official respondents for 06.10.2016. Learned Advocate General states that on 23.09.2016 the contract was awarded in favour of the private respondents. Curiously this fact was not brought to the notice of the Division Bench on 06.10.2016 when the official respondents sought time to file a reply. It was only on 19.10.2016 that the official respondents informed the Court that the tender had been allotted to the private respondents. Accordingly by an order dated 19.10.2016 the notice was issued to the private respondents as well. The Division Bench by the said order further restrained the private respondents from carrying on any further work pursuant to the tender given to them till the next date of hearing.

15. We are not impressed by the contentions on behalf of the private respondents that they would suffer financial loss if any orders are passed in favour of the petitioner on account of the expenses incurred by them. The matter was pending before the Court. The official respondents had been served with the petition. Despite that they issued the work order on 23.09.2016. The private respondents allegedly placed the work order on third parties on 18.10.2016 i.e. one day prior to the interim order dated 19.10.2016. In any event they were served with the same on the very next day i.e. on 20.10.2016. In these circumstances, it would be unfair to deny the petitioners the relief although on-merits they have succeeded.

16. To reiterate, therefore, the petitioner is admittedly eligible and was always eligible. The bid uploaded/submitted by the petitioner was not defective in any manner whatsoever. The bid was responsive. The petitioner

is not responsible for the error on the part of the Ministry of New and Renewable Energy in not updating its website. Moreover, Clause-4 of the DNIT required the bid to be evaluated not on the basis of the MNRE website but on the basis of the application of the bidder and of the supporting documents. The supporting documents establish that the petitioner was a category-A Channel Partner of the MNRE. This is not even disputed.

17. In the circumstances, the Rule is made absolute in terms of the prayer (ii) which reads as under:-

- ii) Issue a writ in the nature of certiorari quashing the decision of the Principal Secretary, Government of Haryana, Department of Renewable Energy dated 22.08.2016 (Annexure P-16) and the rate contract dated 04.08.2016 awarded to the private respondents (Annexure P-17) as also the decision of the Committee, if any, taken while refusing to open the financial bid and rejecting the technical bid submitted by the petitioner.

The official respondents shall re-allot the work afresh on the basis that the petitioner's bid is eligible. There shall, however, be no order as to costs.

(S.J.VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

18.01.2017
'ravinder'

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No