

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.16454 & 16455 of 2008

and

M.P.No.1 of 2008 &

M.P.No.1 & 1 of 2009

M/s.Shree Engineering Corporation

rep. by its Proprietor

R.M.Raju

Plot No.1833, Door No.40

18<sup>th</sup> Main Road, Anna Nagar

Chennai 600 040

... Petitioner in 16454/2008

SEC Engineers (P) Ltd.,

Rep. by its Director

M.Bharath Kumar

Plot No.1833, Door No.40

18<sup>th</sup> Main Road, Anna Nagar

Chennai 600 040

... Petitioner in 16455/2008

Vs.

1.Tamil Nadu Electricity Board

Rep. by its Chairman

No.800, Anna Salai

Chennai 600 002

2.Tamil Nadu Electricity Board

Rep. by its Chief Engineer / Transmission

6<sup>th</sup> Floor / Western Wing, NPKRR Maaligai

800 Anna Salai

Chennai 600 002

3.Tamil Nadu Electricity Board

Rep. by its Superintending / Transmission-I

6<sup>th</sup> Floor, NPKRR Maaligai

800 Anna Salai

Chennai 600 002

... Respondents in both W.Ps.

Common Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the 2<sup>nd</sup> respondent's communication under Ref: Lr.No.CE/TR/SE/TR-I/EL/A3/T.1201/D.803/08 and Lr.No.CE/TR/SE/TR-I/EL/A3/T.1201/ D.802/08 respectively, dated 13.05.2008, passed by the 2<sup>nd</sup> respondent and to quash the same as illegal and invalid.

For Petitioners in both W.Ps. : Mr.A.Ashok Menon  
For Respondents in both W.Ps. : Mr.Abdul Saleem

COMMON ORDER

The petitioners have filed these writ petitions under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the 2<sup>nd</sup> respondent's communication under Ref: Lr.No.CE/TR/SE/TR-I/EL/A3/T.1201/D.803/08 and Lr.No.CE/TR/SE/TR-I/EL/A3/T.1201/D.802/08 dated 13.05.2008, passed by the 2<sup>nd</sup> respondent and to quash the same as illegal and invalid.

2.The case of the petitioner is that the Tamil Nadu Electricity Board had floated a tender in the year 2004 under Specification No.T-1201 for the supply of certain Transmission Line Hardware Fittings. The petitioner participated in the tender by submitting their offer to the respondent in the prescribed form. The offer as per the terms of the tender was valid for a period of 180 days. i.e. till 26.03.2005. As per the conditions, if the respondents were to fail to confirm the tender or to place an award / purchase order before the expiry of 180 days, the offer would automatically stand cancelled and the petitioner company would not be under any obligation to supply materials or goods under the tender unless an extension of validity period was sought for by the respondent Board. After participating in the tender, the petitioner deposited the EMD of Rs.1,20,000/- on 28.09.2004 and the same day, the tender was opened and the petitioner was the successful bidder. However, the respondent Electricity Board by its letter dated 26.03.2005 directed the petitioner that the draft purchase order was likely to be ready for their perusal and that the petitioner could send its representative to the Office of the Superintending Engineer within 2 days from the date of receipt of a letter to peruse the same. The letter was received by the petitioner after the lapse of 180 days time granted in Clause 8(1) of the tender specification. Hence, the petitioner made a representation to the respondents Electricity Board to refund the EMD of Rs.1,20,000/-. The representation of the petitioner was rejected against which the present writ petition has been filed.

3.The learned counsel appearing for the petitioners would submit that after expiry of 180 days i.e. on 26.03.2005 (on Saturday) from the date (i.e. 28.09.2004) opening of the tender the respondents placed the purchase order and directed the petitioner to depute its representative to the Office of the Superintending Engineer for acceptance of the purchase order. Hence, the petitioner sent a letter to the respondent Electricity Board that the validity of the offer submitted by

the petitioner company had expired and it is not viable for the petitioner company to supply the materials at the old rates as the cost of all metals had increased by 25% to 30%, and requested the respondent board to refund the EMD amount deposited by the petitioner company. But the request of the petitioner company was rejected. Hence, the petitioner is before this Court and submits that he is entitled for the refund of EMD amount of Rs.1,20,000/-.

4.The learned standing counsel appearing for the respondents board would submit that as per clause 11(a) of Section 1 of the Specification T.1201, the EMD would be forfeited if the tenderer withdraw or backed out after acceptance and the respondent board sent a letter to the petitioner company for issuance of the letter for perusal of draft purchase order which was itself an acceptance and petitioner had not turned up for perusal of the purchase order which would be equivalent to backing out from the tender. The learned counsel would further submit that as per clause 4.22 of Section IV of the Specification T.1201, no offer could be withdrawn by the tenderer within the validity period specified and as per clause 8.1, the validity period was 180 days and the acceptance of the petitioner's offer by the TNEB was issued on 26.03.2005 by fax and consequently the offer had been accepted within the validity period. Hence, prays for dismissal of the writ petition.

5.In view of the admitted fact that as per clause 8.1 of the tender specifications, if the respondents fail to confirm the tender or to place an award / purchase order before the expiry or 180 days the offer would automatically stand cancelled and the petitioner company would not be under any obligation to supply materials or goods under the tender unless an extension of validity period was sought for by the respondent board, this Court has no hesitation to set aside the impugned order passed by the 2<sup>nd</sup> respondent. Hence, the impugned order passed by the 2<sup>nd</sup> respondent is hereby set aside and there will be a direction to the respondent board to refund the EMD amount of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand Only) in each of the writ petitions within a period of four weeks without any interest from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1.The Chairman, Tamil Nadu Electricity Board  
No.800, Anna Salai, Chennai 600 002

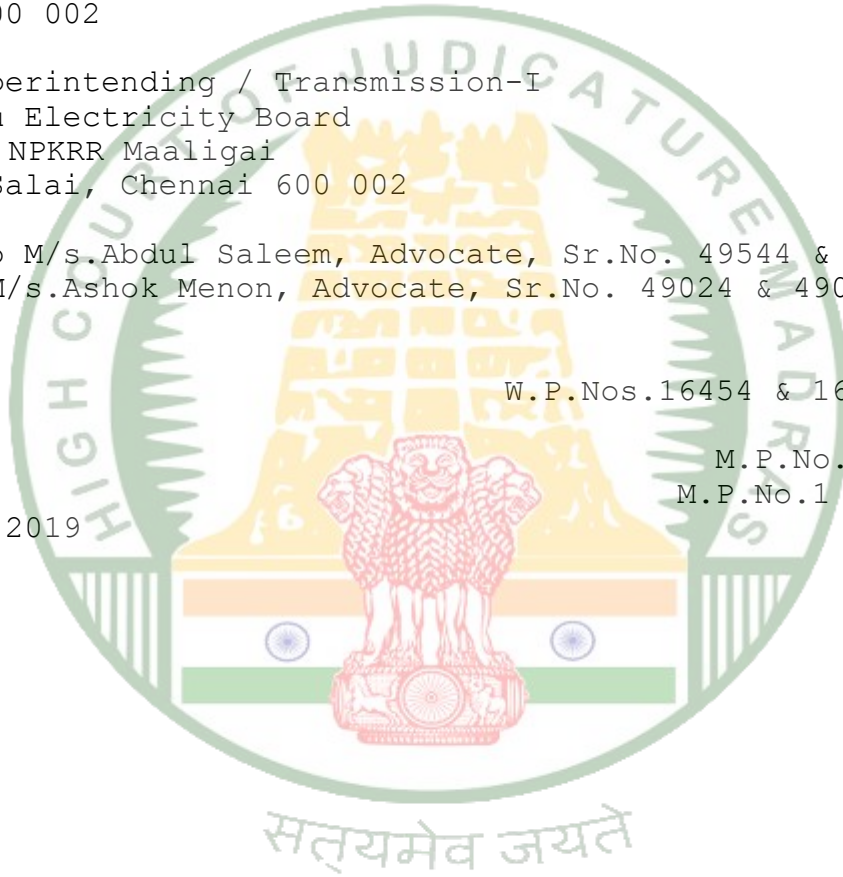
2.The Chief Engineer / Transmission  
Tamil Nadu Electricity Board  
6<sup>th</sup> Floor / Western Wing, NPKRR Maaligai  
800 Anna Salai,  
Chennai 600 002

3.The Superintending / Transmission-I  
Tamil Nadu Electricity Board  
6<sup>th</sup> Floor, NPKRR Maaligai  
800 Anna Salai, Chennai 600 002

+2 cc's to M/s.Abdul Saleem, Advocate, Sr.No. 49544 & 49545  
+2 cc to M/s.Ashok Menon, Advocate, Sr.No. 49024 & 49025

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CSL/15.07.2019



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