



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.11.2019	Pronounced on: 07 .11.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.5219 of 2019
& W.M.P.No.5931 of 2019

Turbo Engineers (CBE)
represented by its General Manager D.Arun Kumar,
No.2/A-2, Nandhi Nagar,
Rathinapuri P.O.
Coimbatore - 641 027. Petitioner

/versus/

1. The Tamil Nadu Generation and Distribution Corporation Limited, represented by its Director, Generation, No.144, Anna Salai, Chennai - 600 002.
2. Director, Finance, Tamil Nadu Generation and Distribution Corporation Limited, represented by its Director, Generation, No.144, Anna Salai, Chennai - 600 002.
3. The Chief Engineer, North Chennai Thermal Power Station - I, TANGEDCO, Chennai - 600 120.
4. Chief Engineer, Mechanical Thermal Stations, Tamil Nadu Generation and Distribution Corporation Limited, No.144, Anna Salai, Chennai - 600 002.
5. BMW Steels Limited, Navipur Road, Hathras - 204 101, Uttar Pradesh. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Declaration to declare that Techno-Commerical Bid submitted by BMW Steels Limited, Navipur Road, Hathras - 204 101, Uttar Pradesh, the 5th respondent, stands rejected as contrary to tender conditions of Tender No. CE/NCTPS1/SE/MII/Spec.163/2017-18, dated as due on 29.12.2017, floated by the 3rd respondent, as the 5th respondent

furnished bogus documents and direct the respondents 1 to 4 to blacklist the said 5th respondent herein for furnishing bogus documents and pass orders.

For Petitioner : Mr.K.Ramanraj,
For R1 to R4 : Mr.P.R.Dhilip Kumar,
For R5 : Mr.Madhuri Donti Reddy

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The Petitioner herein is a manufacturing of Wear Resistant products like cast Basalt Lined Pipes, Bends, High Alumina Ceramic Lined products, Complex Carbide Wear Plates, Polymer and steel based casings and other products. The respondents 1 to 4 are their customers. The 3rd respondent has invited tender for supply of 25866 meters cast Basalt Lined Ms Pipes and all Pipe Specials such as Sleeve Couplings, Uclamps, Fasteners, Consumables, etc., as per Tender specification No.CE-163/2017-18/NCTPS-I and the due date for submission was 29.12.2017 at 2.00 PM.

3. The petitioner herein submitted his tender along with EMD. The entire bidding process is of two stages with Bid Qualification Requirement (BQR) and through e-tender. The e-tender required to be submitted in two parts - Techno - Commercial Bid (Part 1) and Price Bid (Part 2). The petitioner being fully qualified with requisite experience for supply of material required for TANGEDCO, participated in the tender and attended the opening of the Techno-Commercial Bid held on 29.12.2017. There were five participants along with the petitioner including the 5th respondent. When the evaluation of Bid Qualifying Requirement (BQR) was done by the Tender Inviting Authority, the Techno-Commercial Bid of 5th respondent along with two others were rejected two of the bids including the petitioner was accepted. The bonafide and valid purchase order and end user performance certificate which ought to have been produced before opening of the tender was not submitted by the 5th respondent within the time prescribed. An unauthenticated e-mail hurriedly prepared just before the tender date was submitted by the 5th respondent and same was objected by the petitioner. Hence, the Tender Inviting Authority rightly rejected the bid of the 5th respondent on 14.02.2018 when evaluation of bid qualifying requirement was done.

4. According to the petitioner, after rejection of the bid, the 5th respondent has influenced some of the Official of TANGEDCO and made them to accept his bid which was rejected earlier. The performance certificate alleged to have been issued by Tata Power Limited without any signature or official stamp or seal from authorised person ought not to have been accepted by

the respondents. Hence, a representation was submitted by the petitioner objecting the satisfaction of bid qualifying requirement of the 5th respondent by the 3rd respondent. Hence, a committee was constituted by the 3rd respondent to consider the representation of the petitioner. The said committee rejected the bid of the 5th respondent on the ground that, the performance certificate furnished by the 5th respondent is not a genuine certificate. Later to the shock of the petitioner the Techno-Commercial bid of the 5th respondent has been accepted and recommended for price bid opening ignoring violation of Bid Qualifying Requirements.

5. The representation of the petitioner regarding the bogus performance certificate furnished by the 5th respondent was not considered by the respondents 1 to 4 and they proceeded with opening of the price bid. While the bidder should produce the performance certificate obtained from the end user for the satisfactory performance for minimum period of one year, as on the date of tender opening, the 5th respondent has not furnished genuine performance certificate but only an unsigned e-mail which could never be treated as a performance certificate. The respondents 1 to 4 have erroneously allowed the 5th respondent to participate in the price bid based on the letter given by the end-user (Tata Power Limited), confirming the purchase order placed by them with the 5th respondent. The end-user, so far not confirmed the genuineness of the e-mail submitted by the 5th respondent before opening of the bid. Therefore, the petitioner herein prays for declaration to declare the Techno-commercial bid submitted by the 5th respondent stands rejected as contrary to the tender condition floated by the 3rd respondent and 5th respondent, should be blacklisted for furnishing bogus document.

6. The Learned Counsel appearing for the petitioner would submit that, the acceptance of the 5th respondent bid and opening the price bid inspite of objection regarding the bogus certificate furnished by the 5th respondent is highly arbitrary, contrary to Bid Qualifying Requirement (BQR) and in utter violation of the terms and conditions of the tender.

7. The Learned Counsel appearing for the petitioner would draw the attention of this Court regarding the tender terms which enables the Tender Inviting Authority to forfeit the EMD and blacklist the contractors who has furnished documents found to be fraudulent and non-genuine and emphasis that, an unsigned e-mail furnished by the 5th respondent in lieu of performance certificate to be considered as bogus and non-genuine. Besides rejecting the bid of the 5th respondent, the respondents 1 to 4 should have blacklisted 5th respondent from future contract with TANGEDCO and in addition, EMD paid should be forfeited.

8. The respondents 1 to 4 have defended their action through counter affidavit filed by the 3rd respondent. In the

counter, it is stated that, pursuant to the direction of the Hon'ble National Green Tribunal bench, Southern Zone at Chennai, a committee was formed to study the objections raised by NGO's and public on ETPS Replacement Project. The Ash Slurry Disposal Pipelines of NCTPS (Stage I) was visited and suggested for replacement of worn out and corroded/eroded Ash Slurry Disposal Lines then and there. As a consequence, Administrative Approval was granted for procurement of 25866 meters of Cast Basalt line Ms Pipes and all pipes specials, Sleeve Couplings, hardwares, clamps, consumables.

9. After the Full Board Approval of Draft Tender Specification and BQR, tender was floated under Open Tender (Two part) system through e-Tendering Process. As per Bid Qualifying Requirements (BQR), the bidder should produce performance certificate from the end-user for the above for satisfactory performance for a minimum period of one year as on the date of tender opening. If the bidder has executed the order to TANGEDCO/TNEB, the end-user certificate shall be obtained by Tender Inviting Authority.

10. The performance certificate produced by the 5th respondent through e-mail was objected by the petitioner and his objection was considered by a Committee and found that, the performance certificate of the 5th respondent is genuine. The end-user (Tata Power Limited) vide letter dated 29.03.2018, had given a clarificatory letter to the satisfaction of the respondents 1 to 4 that, the 5th respondent has requisite experience, as prescribed under 8(a)(3) of the Bid Qualifying Requirements.

11. The Learned Counsel appearing for the respondents 1 to 4 would further submit that, the respondents having fully satisfied with the genuineness of the performance certificate issued by the end-user to the 5th respondent, the bid of 5th respondent was accepted. Whereas, the bid of other two participants namely M/s.Goenka Rockwooll (I) Pvt Lt., Raipur and M/s.Rali Engineering Works, Tuticorin, were rejected for not satisfying BQR conditions. The selection of bid has been done in a fair and transparent manner in strict compliance with the Tamil Nadu Transparency in Tenders Act, 1999 and Tamil Nadu Transparency in Tender Rules, 2000. The full Board of the TANGEDCO scrutinised the documents furnished by the 5th respondent and had accepted as qualified bidder being satisfied with the documents furnished by the 5th respondent, there is no arbitrariness or malafide in their action.

12. The 2nd respondent, in his counter has categorically said that, they are satisfied with the documents produced by the 5th respondent and accepted the 5th respondent has qualified bidder. Therefore, blacklisting the 5th respondent or forfeiting the EMD are rejecting the bid does not arise. It is also alleged that pendency of this petition has delayed the

tender process, tampering the TANGEDCO attempt to solve the critical environmental issue. Hence, the Writ Petition has to be dismissed.

13. In the counter filed by the 5th respondent, it is specifically stated that, they are genuine suppliers for Tata Power Limited and documents produced by them for participating in the tender floated by the 3rd respondent are genuine. The respondents, for nearly 10 years, being monopolising the Trade and looting the TANGEDCO by selling its product at high price. Hence, to protect its monopoly, had raised untenable plea in this Writ Petition in order to keep the 5th respondent away from the competition.

14. The 5th respondent contends that the submission of the petitioner that, the 5th respondent bid was initially rejected for production of bogus certificate is misleading and malicious. The petitioner will not be prejudiced on accepting the 5th respondent bid since even now the petitioner has been identified as the lowest bidder and he will be getting 96.23% of the tender value. Whereas, the 5th respondent will be getting only 1.20% of the tender value but due to this petition, the project is getting delayed.

15. The Learned Counsel appearing for the petitioner find fault with the 3rd respondent for qualifying the 5th respondent to participate in the bid on the ground that, the e-mail produced by the 5th respondent regarding performance is an unauthenticated document. While the tender condition mandates the participants should produce the performance certificate before opening of the tender, the letter of the end-user, dated 28.06.2019, much after opening the tender even if it is genuine, cannot be accepted since it was produced subsequent to opening of the tender. Whereas in respect of the e-mail, the end-user has not certified that e-mail is a genuine document emanated from their Office. Therefore, the 3rd respondent and other respondents ought not to have accepted the 5th respondent bid and proceeded to opening of price bid.

16. In response to the submission, the Learned Counsel for the 3rd respondent would submit that, the certificate issued by the end-user (Tata Power Limited), dated 28.06.2019 is not a fresh certificate but it is in continuation of the e-mail presented by the 5th respondent before opening of the tender. Only after getting a clarificatory letter from the end-user, the bid of the 5th respondent was opened.

17. Considering the rival submission, this Court finds that though the project involved several crores of public money, the e-mail produced by the 5th respondent followed by the clarification given by the Tata Power Limited and the experience certificate issued by the Tata Power Limited would show that, there is no act of fraud on the part of the 5th respondent. This Court neither could find any malafide on the part of the respondents 1 to 3 in accepting the bid of the 5th respondent.

18. The reason for demanding the performance certificate is to ensure that the bidder has enough experience and worth of supplying the requirements. The 3rd respondent and other Officials of TANGEDCO, from the documents produced by the 5th respondent are satisfied about the past performance of the 5th respondent. As long as the Tata Power Limited has not denied about the origin of the e-mail, it cannot be presumed that it is a fake document, more particularly when Tata Power Limited (end-user) has subsequently come forward to clarify about the performance of the 5th respondent and also given hard copy of the certificate.

19. In view of the above facts, this Court is of the opinion that the prayer in the Writ Petition cannot be acceded. Hence, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Director, Generation,
Tamil Nadu Generation and Distribution Corporation Limited,
No.144, Anna Salai, Chennai - 600 002.
2. The Director, Generation,
Director, Finance,
Tamil Nadu Generation and Distribution Corporation Limited,
No.144, Anna Salai, Chennai - 600 002.
3. The Chief Engineer,
North Chennai Thermal Power Station - I,
TANGEDCO, Chennai - 600 120.
4. The Chief Engineer, Mechanical Thermal Stations,
Tamil Nadu Generation and Distribution Corporation Limited,
No.144, Anna Salai,
Chennai - 600 002.

+1cc to Mr.Madhurai Donti Reddy, Advocate, S.R.No. 92901

+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No. 92689

+1cc to Mr.K.Ramanraj, Advocate, S.R.No. 92383

Writ Petition No.5219 of 2019

MPI (CO)

GN(18/11/2019)