

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.9505 of 2019

and

W.M.P.Nos.10128, 10129 & 10130 of 2019

Voith Hydro Private Limited
Formerly Voith Seimens Hydro Private Limited
Represented by its Authorized Signatory
Sandeep Shrivastav
SF-3/C, 2nd Floor, Rishab IPEX Mall
I.P.Extension, Delhi-110 092.Petitioner

Vs.

1. Tamil Nadu Generation and
Distribution Corporation Ltd.,
Represented by its Chairman
2. The Chief Engineer
Projects I
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Both having office at
144, Anna Salai, Chennai-600 002.Respondents

Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of
Certiorari, to call for the records in Clause 1.5.2. of
the Invitation to Bid in Specification No.SE/E/T&H(P)/
OT.No.02/2018-2019 dated January 2019 on the file of the
2nd respondent and quash the same.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.S.K.Rameshwar
standing counsel

O R D E R

Mr.S.K.Rameshwar, learned standing counsel
takes notice for the respondents. By consent of the
parties, this main writ petition is taken up for final
disposal at the admission stage itself.

2. The petitioner is aggrieved against Clause 1.5.2.
of the tender conditions.

3. Heard Mr.V.Raghavachari, learned counsel for the petitioner and Mr.S.K.Rameshwar, learned standing counsel for the respondents.

4. The petitioner is a company involved in the Design, Engineering, Manufacturing, Supply, Erection, Installation and Commissioning of Hydro-Electric power plants. The second respondent floated a tender in January 2019 for "Complete Design, Engineering, Procurement, Manufacturing, Assembly, Inspection, Testing at Manufacturer's works, Packing, Forwarding, Transporting and Insurance, Supply of complete Machineries, Receipt and Handling at site, Supply of Mandatory spares at site, Erection, Testing and Commissioning of the units on Engineering, Procurement and Construction (EPC) basis for E & M works of Kundah Pumped Storage Hydro Electric Project (4 x 125 MW) in three phases in the Nilgiris District of Tamil Nadu. The petitioner has specifically aggrieved against Clause 1.5.02 as well as Sub-Clause(v) of Clause 1.5.06. According to the petitioner, the requirement of annual turnover of more than 900 crores as pre-qualification to participate in the tender process, is bad. Likewise, it is the contention of the petitioner that while seeking for fulfillment of financial criteria, the respondents are not justified in imposing a condition that the bidder's subsidiary company/Associate Manufacturer shall not use credentials of the parent company/Apex parent company. In other words, according to the petitioner, the respondents are not justified in not permitting the subsidiary company bidder to use the financial credentials of the parent company/Apex parent company as well, while they permitting the subsidiary company to take technical strength of parent/Holding company, while considering the technical aspect of the matter. By contending so, the present writ petition is filed that the above conditions imposed as terms and conditions of the tender, are bad.

5. I have given careful considerations to the submission made by Mr.V.Raghavachari, learned counsel for the petitioner and perused the materials placed before this Court. In effect, the grievance of the petitioner is that the above impugned conditions are not suitable for the petitioner to take part in the tender process. In other words, it is the contention of the petitioner that by introducing the said conditions, the petitioner's chance to participate in the tender process is taken away. It is also contended that the above conditions are imposed only to facilitate some interested persons.

6. The question as to whether the person participating in the tender can dictate terms as to how the tender process should be conducted, has already been considered by this Court in WP.Nos.21600 & 30503 of 2018 dated 15.02.2019 and this Court has found that it is for the Tender Inviting Authority to impose suitable conditions to select the best suited person for doing the work. When such being the position, I do not think that the petitioner is justified in challenging the terms and conditions of the tender, merely because, the impugned conditions do not suit them. Since this Court has already taken the view and rejected similar request made by the other persons in respect of other tenders, this Court is not inclined to entertain the writ petition. At this juncture, the learned counsel for the petitioner submitted that the respondents are going to select totally an unqualified person to do their project. Needless to say that the respondents will have to select only the qualified person as per the terms and conditions and if any unqualified person is selected, it is always open to the affected person to challenge the said selection.

With the above observation, this writ petition is dismissed as not maintainable. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

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To

1. Tamil Nadu Generation and Distribution Corporation Ltd.,
Represented by its Chairman

2. The Chief Engineer
Projects I
Tamil Nadu Generation and Distribution Corporation Ltd.,
Both having office at
144, Anna Salai, Chennai-600 002.

+1cc to Mr.V.Raghavachari, Advocate SR.No. 30403

+1cc to Mr.S.K.Rameshwar , Advocate SR.No. 30787

W.P.No.9505 of 2019

ks (CO)

A.SK (06/05/2019)