

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019
CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.29910, 29913, 30421 & 31039 of 2018

Magnewin Energy Pvt. Ltd,
L-49/K-2, M.I.D.C.,
Kupwad, Sangli-416436,
Maharashtra

Rep.by its Director

Mr.Vijaykumar Chippakatti

....Petitioner in all WPs

--Vs--

Tamilnadu Transmission Corporation Limited,
Rep.by its Chief Engineer/Transmission,
144, Anna Salai,
Chennai-600002.

...Respondent in all WPs

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus, calling for the records relating the order of the respondent rejecting the petitioner company's Technical bid dated 11.10.2018 of e-tender specification No.T.2048, No.T.2050, No.T.2049 and No.T.2051 respectively and quash the same and thereafter, direct the respondent to allow the petitioner company's price bid to be opened.

For Petitioner : Mr.K.Sakthivel in all the WPs

For Respondent : Mr.Abdul Saleem in all the WPs

J U D G M E N T

All these four writ petitions are filed questioning the validity of the procedures, adopted by the respondent in finalising the tender. All the four writ petitions are interconnected with reference to the different tender notification and the learned counsel for the writ petitioner vehemently contended that the process and procedure adopted are not only irregular but also the decision taken is not in consonance with the provisions of the Tamil Nadu Transparency in Tenders Act, 1998(hereinafter referred to as the 'Act').

2. To substantiate the contentions, learned counsel for the writ petitioner states that the Board is the competent authority to reject the technical bid even as per the tender document. However, the Board has not passed any orders so far and the Board Level Committee constituted to scrutinize the tenderer specifications and the documents had taken a decision, which is in violation of the procedures contemplated in the tender document as well as in violation of the provisions of the Tender Transparency Act. When it is informed that the Board is the competent authority to pass orders rejecting the tender summarily, the Committee constituted cannot have any jurisdiction or authority to reject the technical bid of the writ petitioner on the ground that the petitioner have not complied with the Bid Qualification Requirement (in short the 'BQR').

3. This apart, two tenderer had participated in the tender and the other tenderer, who has been selected is also not qualified with the conditions stipulated in the BQR. When the other tenderer is also not qualified, the rejection of the claim of the writ petitioner is untenable and the decision taken in this regard by an incompetent authority is liable to be scrapped.

4. The learned counsel for the petitioner states that the writ petitioner is fully qualified even as per the BQR's requirement and the writ petitioner, in fact, was invited to comply with the other requirement. After identifying that the petitioner has complied with the BQR conditions thus the sudden decision taken rejecting the technical bid of the writ petitioner is mala fide and in order to favour the other tenderer.

5. The learned counsel for the writ petitioner solicit the attention of this Court to the letter communicated by the authorities concerned to establish that the petitioner was also selected and subsequently rejected on certain flimsy grounds. Thus, the entire process is to be declared as null and void and the petitioner must be provided with an opportunity to proceed with the tender as per the notification.

6. The learned counsel for the petitioner relied upon the judgment of this Court in the case of CSEPDI-Trishe Consortium Vs. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) [reported in (2015) 5 CTC 642] particularly para nos. 29.19 & 29.32 extracted below:

29.19. At this juncture, the aspect which gains prominence is the submission of the learned Advocate General that BLTC may be treated as Tender Scrutiny Committee. As per Rule 24 of the TTIT Rules, the Tender Scrutiny Committee may be constituted to scrutinize the tender documents, supervise opening of tenders,

to carry out the preliminary examination and detailed evaluation of the tenders received and to prepare an evaluation report for the consideration of the Tender Accepting Authority. The BLTC is not the Tender Accepting Authority. Section 10 of the TTIT Act, which prescribes the procedure for evaluation and acceptance of tender clearly stipulates that evaluation and acceptance should be done only by the Tender Accepting Authority. Moreover, there is no reference to the proceedings of the BLTC dated 2.6.2014 in any of the proceedings, either it be the first round of litigation or before the learned Single Judge in the present round of litigation, which order is impugned.

29.32. In such view of the matter, we are of the considered opinion that reasons as contemplated in Section 10 of the TTIT Act are required to be spelt out and should have been communicated to the appellant. Non furnishing of the same runs counter to the decisions of the Supreme Court and this Court and is also contrary to the provisions of the TTIT Act. We, therefore, have no hesitation to hold that the decision making process is flawed and breach of statutory provisions.

7. Citing the above judgment, the learned counsel for the petitioner reiterated that the Board alone is competent to take a decision and pass orders rejecting the technical bid submitted by the writ petitioner and not the Board Level Committee constituted for the purpose of scrutinizing the technical bid. The power to scrutinize by the Committee would not confer any right on them to take a decision and reject the technical bid. Such a procedure is unknown to the provisions of the Tender Transparency Act and therefore, the Board has not taken any decision so far and the decision taken by the Board Level Committee is not in accordance with the provisions of the Act.

8. Per Contra, the learned counsel appearing on behalf of the respondent disputed the grounds raised by the writ petitioner stating that the writ petitioner undoubtedly participated in the tender process and he submitted his bids, however, the technical bid submitted by the writ petitioner had been rejected on the ground that the petitioner has not complied with the conditions stipulated in the BQR. When the Board Level Committee constituted for the purpose of scrutiny found that the writ petitioner is not qualified, the decision taken by the Committee is in accordance with law and there is no infirmity as such.

9. The learned counsel for the respondent further states that as per Section 10(6) of the Act, "If the Tender Accepting Authority proposes to accept the tender as per the provisions of this section, [the said authority] shall pass orders accepting the tender together with reasons for such acceptance.". Section 10(7) of the Act enumerates that "The Tender Accepting Authority shall intimate the information regarding the name and address of the tenderer whose tender has been accepted along with the reasons for rejection of other tenders to the appropriate Tender Bulletin Officers. Therefore, it is mandatory on the part of the tender accepting authority to provide information both to the successful tenderer, as well as to the tenderers, whose tenders were rejected."

10. The very intention of the provision is to ensure that all the participants are served with the reasons or otherwise in respect of their rejection or acceptance. Even while accepting the tender reasons must be stated and while rejecting the tender also the reasons must be furnished.

11. The learned counsel for the respondent states that such a position has not been reached now. The Board Level Committee has taken a decision based on the scrutinization done in respect of the technical bids submitted by the respective tenderers. However, all these files are to be placed before the Board for the purpose of acceptance of the tender or to reject the same independently.

12. It is further clarified that the finance bid also had been opened on 12.10.2018 and an acceptance order is to be passed by the Board. The Board while passing the acceptance order has to necessarily pass order in respect of the rejections also. While a decision to reject the tenders is taken then reasons are also to be provided to the tenderers, who were not successful. Thus, sufficient protections are provided under the Act itself.

13. In these circumstances, this Court is of an opinion that such an exercise is yet to be done by the Board concerned. The Board has to pass an order of acceptance and simultaneously, reasons for rejection are also to be issued in respect of the unsuccessful tenderers.

14. This being the factum of the case, this Court has no hesitation in arriving at a conclusion that the writ petitions are premature. Even now, it is left open to the writ petitioner

to submit their objections/explanations, if any, to the Board, which is the competent authority to pass an order of acceptance and in the event of submitting any such explanations, the Board shall consider the same and take a decision and pass orders in accordance with the provisions of the Tamil Nadu Transparency in Tenders Act, 1998. However, the relief sought for in the present writ petition is premature and no further consideration is required. Accordingly, the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kmm/ska

To

Tamilnadu Transmission Corporation Limited,
Rep.by its Chief Engineer/Transmission,
144, Anna Salai,
Chennai-600002

+4ccs to Mr.Abdul Saleem , Advocate SR.No. 7507,7508,7509,7510
+4ccs to Mr.K.Sakthivel , Advocate SR.No. 6367,6368,6369,6370

W.P.No.29910, 29913,
30421 & 31039 of 2018

A.SK(18/03/2019)

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