



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.23660 of 2019 and W.M.P.No.23490 of 2019

Emmess Control (P) Ltd.,
Rep.by its Authorized Signatory
Having its Registered Office at
No.71, Usman Road, 1st Floor
T.Nagar, Chennai - 600017

....Petitioner

-Vs-

1. The Chief Engineer / Transmission
TANTRANSCO, 6th Floor, NPKRR Maaligai
144, Anna Salai, Chennai 600 002.

2. The Superintending Engineer/TR-II
TANTRANSCO, 6th Floor, NPKRR Maaligai
144, Anna Salai, Chennai 600 002.

....Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent dated 10.05.2019 bearing Lr.No.CE/TR/SE/TR-II/ES/A4/F.POTR. 2998/D.274/19 and quash the same and directing the respondents herein to reissue the indent for delivery.

For Petitioner : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondents : Mr.S.Madhusudhanan
Standing Counsel

O R D E R

This writ petition has been filed challenging the proceedings of the first respondent dated 10.05.2019 wherein the first respondent has informed the petitioner that the request made by the petitioner for amendment of the indent for 60 days from the date of accepting the request is not feasible of compliance.



2. The case of the petitioner is that, they were awarded the purchase order through proceedings dated 04.12.2018 for supply of 106 Nos. of 110 KV Outdoor Metering Current Transformers with Terminal Connectors. Clause 9 of the purchase order deals with the delivery of the equipment covered by the purchase order and for proper appreciation, the entire clause is extracted hereunder.

"9.0.Delivery :

The delivery of the equipment covered by this purchase order shall be done as follows:

9.1. The indents for the quantity will be given by the Chief Engineer, Transmission 45 days in advance, based on the actual requirements duly indicating the due date of delivery. Indents for subsequent quantities shall be based on the requirement, timeliness of supply by the bidder and feed back on performance from the field and if possible, on turn basis also. This is purely at the discretion of Chief Engineer / Transmission.

9.2. The delivery period will not normally be extended. Hence, all efforts shall be taken to deliver the materials within contractual delivery period.

9.3. The above delivery shall be guaranteed by you under liquidated damages clause governed by Clause-11 of the purchase order.

The date of receipt of last component of the main equipment will be reckoned as the date of delivery for the purpose of calculation of liquidated damage for delay in delivery, when the main equipment and accessories are delivered in piece meal."

3. In the present case, the petitioner was supposed to furnish certain drawings to TANTRANSCO and get the approval before proceeding further with the supply of the transformers. The drawings were submitted and every time some discrepancies were noted and the same were sent back to the petitioner. This process was going on for quite a long time and as a result of the same, the petitioner was not in a position to deliver the transformers as stipulated under the purchase order. Apart from the drawings, the petitioner must also put the transformer through a type test and if there are any errors, the same will also be determined before finalizing the supply of the transformers. This process was going on and nothing was finalized. Ultimately, the petitioner sought for the amendment of the indent for 60 days and the said request was rejected by the first respondent through the impugned letter dated



10.05.2019. Aggrieved by the same, the present writ petition has been filed before this Court.

4. The respondents have filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder.

" 13. I state that though the indent was placed on 21.12.2018, till date the petitioner has not effected any supply. I state that time is the essence of any contract, and in this contract even after approval of the drawings the petitioner herein was insisting on the delivery schedule than submitting the type test reports. I state that the undue delay caused by the petitioner has resulted in serious problems for the respondent in the procurement of the 110KV Outdoor Metering Current Transformers with Terminal Connectors for meeting the demand.

14. I state that placing purchase order, approval of drawings, approval of type test reports and placing indent are simultaneous process and the contention of the petitioner that only on approvals indent is to be placed cannot be placed as against on the respondent, since the petitioner being in the industry is well aware of the nature of the purchase order is not entitled to claim otherwise. Further, as per Clause 9.0 of the purchase order, indent is to be placed 45 days in advance and will not be normally extended. Hence, the request of the petitioner to extend further time was not accepted and the same is as per the purchase order."

When the matter came up for hearing on 30.09.2021, this Court passed the following order.

" The subject matter of challenge in the present writ petition pertains to the impugned letter that was issued by the 1st respondent dated 10.05.2019.

2. It is brought to the notice of this Court that even pursuant to the decision taken by the 1st respondent not to extend the time, the respondents have been interacting with the petitioner and the petitioner had also produced the error test report and thereafter, there are so many communications between the parties. Ultimately, the fact remains



8. This is a peculiar case, where the interactions between the petitioner and the respondents were going on from the year



2018 onwards for finalization of the drawings and for the type test report. This Court takes into consideration the fact that the petitioner was able to supply 255 Nos. of the very same type of transformers subsequently. If the contract is to be terminated at this point of time, it will neither benefit the petitioner nor the respondents. This is more so since the respondents will have to once again call for a tender and select a person for supply of the transformers and once again the process of finalizing the drawings etc., has to be carried out. This will only further delay the supply of the transformers. Instead, it will be more feasible if the respondents are able to get the supply from the petitioner since the petitioner has supplied the very same type of transformers even subsequently.

9. In view of the above, this Court is inclined to remand the matter back to the file of the second respondent. The petitioner is directed to make a representation before the second respondent and give a final commitment with regard to the supply of the 110 KV Outdoor Metering Current Transformers. It will be left open to the second respondent to take into consideration the representation made by the petitioner and the second respondent shall also take into account the subsequent supply that has been made by the petitioner of the very same transformers and a decision shall be taken within a period of four weeks from the date of receipt of the representation from the petitioner. While taking the decision, it is left open to the second respondent to take into account the changed circumstances and the actual requirement of the Department and the rate shall also be fixed taking into consideration the prevailing market rates. It is made clear that if in spite of providing this opportunity, the petitioner is not able to fulfill the commitment, it is always open to the respondents to proceed further in accordance with law. The second respondent shall keep in mind the fact that the supply of the transformers should not get unduly delayed since it will end up in the second respondent not being able to meet the demand of the consumers.

10. This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KST



To

1. The Chief Engineer / Transmission
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144, Anna Salai, Chennai 600 002.

2. The Superintending Engineer/TR-II
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144, Anna Salai, Chennai 600 002.

+1CC to M/s.Sarvabhauman Associates, Sr.No.53068

W.P.No.23660 of 2019

PL (CO)
K.RK. (01.11.2021)