



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.4085 of 2012
and M.P.No.1 of 2012

M/s East Coast Construction & Industries Ltd,
Represented by its Director Mr.S.A.Mohammed Mohideen,
having office at 3rd Floor, "Park Circle",
20, Moores Road,
Chennai - 600 006. ...Petitioner

Vs.

1.M/s Tamilnadu Electricity Board
Rep by its Chief Engineer,
NPKRR Maaligai, No 144, Anna Salai
Chennai 600002

2.M/s Tamilnadu Transmission Corporation Ltd
Represented by its Chief Engineer (Transmission)
6th Floor, West Wing, NPKRR Maaligai,
144, Anna Salai,
Chennai - 600 002. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in letter / notice ref. CE/Tr/SE/C/TR/EC1/A2/F.Spcn No.1625/D.33/12 dated 02.02.2012 issued by the 2nd Respondent as against this Petitioner and quash the same and further direct the 2nd Respondent not to take any coercive steps as against this Petitioner with respect to Tender Specification No.T-1625.

For Petitioner : Mr.Sri Ganesh
For M/s.P.J.Rishikesh

For Respondents: Mr.L.Jai Venkatesh
For [TANGEDCO]



ORDER

The order impugned dated 02.02.2012 blacklisting the petitioner/company from participating in future tender for a period of three years, forfeiture of EMD amount and to recover the differential amount if any, is sought to be quashed in the present writ petition.

2. The petitioner is East Coast Construction and Industries Limited. The Company is engaged in a business of construction. The 2nd respondent had called for a bid inviting tenders vide Tender specification No. T-1625 for "Supply, Erection, Stringing and commissioning of 230 KV SC line on DC towers from Villupuram 230 KV SS to ULUNDURPET 230 KV SS and 110 KV SC line from ULUNDURPET 230 KV SS to VEPPUR 110 KV SS". The last date for submission of the tender was by 14.02.2011 at 14.00 hours and the opening of the price bid was held on 25.04.2011. The main tender conditions was the price to be kept valid for a period of 180 days from the date of submission of the bid. However, the period stipulated had been violated by the respondent Board itself is the case set out by the petitioner in the present writ petition.

3. The learned counsel for the petitioner made a submission that the petitioner Company participated in the tender and submitted their bid on 14.02.2011 after paying the requisite EMD. By letter dated 13.05.2011, the 2nd respondent called upon this petitioner to attend its office on 17.05.2011 for a price negotiation, for which the petitioner had also appeared.

4. The grievances of the writ petitioner is that the tender conditions categorically stipulates the validity period in paragraph 9.0 which reads as follows:

"9.0 Validity

9.1. The tender offer shall be kept valid for acceptance for a period of 180 days from the date of opening of offers. The offers with lower validity period are liable for rejection."

5. Though it is categorically stated that the tender offer shall be kept valid for acceptance for a period of 180 days, the petitioner was called upon to sign the contract only through letter dated 14.12.2011 beyond the period of 180 days. An intimation was given in letter dated 23.04.2011 by the Chief



Engineer for the price bid for the subject work against Specification No.T.1625 will be opened in chamber of Superintending Engineer/400 KV, 6th floor, Western Wing on 25.04.2011 at 14.30 hrs. The petitioner had participated and thereafter, the intimation was given only through letter dated 14.12.2011 asking the petitioner to sign the agreement which is beyond the period of 180 days.

6. The learned counsel for the respondents based on the counter affidavit contended that the petitioner company has not perused and signed in the detailed acceptance letter in the office of the respondent for a longer time from 08.08.2011 onwards. The petitioner/Company while sending the acceptance letter by post has refused to sign the detailed acceptance letter and returned to the 2nd respondent. In this regard, the letter dated 14.12.2011 referred the letter dated 08.08.2011. However, the letter 14.12.2011 categorically states that two copies of the draft acceptance letter are enclosed for perusing and signing in the detailed acceptance letter in token of acceptance of the conditions laid down in the detailed acceptance letter. Therefore, the process was not completed within a period of 180 days as contemplated in the tender condition.

7. Once the tender condition contemplates period of 180 days from the date of opening of offers and it is further stated that the tender offer shall be kept valid for acceptance for a period of 180 days and the acceptance letter itself has been communicated to the petitioner only through letter dated 14.12.2011, it is to be construed that the acceptance letter was communicated to the writ petitioner beyond the period of 180 days and therefore, the order impugned passed by the respondent is infirm and in violation of the tender condition issued by the respondent themselves.

8. In view of the mistake committed by the respondents, the petitioner cannot be penalized. Further, the respondents are unable to establish any default on the part of the petitioner in responding to the letters or otherwise. There was a delay admittedly on the part of the respondents in sending the draft acceptance letter for acceptance. This being the factum established, the writ petition is to be considered.



9. Accordingly, the order impugned passed by the 2nd respondent in letter dated 02.02.2012 is quashed and the Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Jeni/Cse

To

1. The Chief Engineer,
M/s Tamilnadu Electricity Board,
NPKRR Maaligai, No 144, Anna Salai,
Chennai 600002.
2. The Chief Engineer (Transmission),
M/s Tamilnadu Transmission Corporation Ltd,
6th Floor, West Wing, NPKRR Maaligai,
144, Anna Salai,
Chennai - 600 002.

+1cc to Mr.L.Jai Venkatesh, Advocate Sr.446

W.P.No.4085 of 2012

bs[co]
srg 24/01/2022