



W.P.Nos.33809, 33820, 33811, 33814, 33816 & 33819 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.33809, 33820, 33811, 33814, 33816 & 33819 of 2023

and

W.M.P.Nos.33671, 33674, 33666, 33668, 33661 & 33663 of 2023

W.P.No.33809 of 2023:

Overseas Infrastructure Alliance (India) Private Limited,
Rep by its Authorized Representative Vinod Chaturvedi,
No.501, OIA House, 470, Cardinal Gracious Road,
Andheri East, Mumbai.

... Petitioner

Vs.

- 1.The Chairman,
Tamil Nadu Generation and
Distribution Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai 600 002.
- 2.The Chief Engineer/IT & RAPDRP/TANGEDCO,
6th Floor, Western Wing,
NPKRR Maaligai,
Anna Salai, Chennai,
Tamil Nadu 600 002.



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3.Director/Distribution,
TANGEDCO,
144, Anna Salai,
Chennai 600 002.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 24.11.2023 issued by the 2nd respondent TANGEDCO, rejecting the Bid No.798219, submitted by the petitioner for the reason “BQR not satisfied” during technical evaluation by the duly constituted committee, pertaining to the Tender Ref No.CE/IT and RAPDRP No.09/2023-24; Package 10, Tender ID:2023_EB_332063_1, and to quash the same with consequential direction, directing the respondents to declare the petitioner as technically qualified bidder, allowing the evaluation of its financial bid.

For Petitioner
in all petitions : Mr.Srinath Sridevan, Senior counsel
for Mr.S.Senthil

For Respondent
in all petitions : Mr.P.S.Raman, Senior counsel,
for Mr.D.R.Arunkumar,
Standing counsel



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COMMON ORDER

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These writ petitions have been filed challenging the impugned order dated 24.11.2023 passed by the 2nd respondent.

2. The case of the petitioner is that the petitioner had participated in 6 tenders, in which the bids offered by the petitioner were rejected by the 2nd respondent by virtue of impugned order dated 24.11.2023 without assigning any reasons. When the petitioner sought for reasons, the 2nd respondent had provided a communication by virtue of letter dated 28.11.2023, wherein it has been stated as follows:

“Adverting to your email vide reference (2) cited, the following are informed.

As per the, Tamil Nadu Transparency in Tenders Rules, 2000, Clause 27, and as per technical specification part – I clause 25 under the heading of Confidentiality, the details sought could not be furnished.

Please acknowledge the receipt of this letter.”



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3. Mr.Srinath Sridevan, learned Senior counsel, appearing for the petitioner would submit that the petitioner is entitled for the information with regard to the reason for rejection of their tender bids in terms of Section 10(7) of the Tamil Nadu Transparency in Tenders Act, 1998 (hereinafter called as “the Act”) read with Rule 27 of the Tamil Nadu Transparency in Tenders Rules, 2000 (hereinafter called as “the said Rules”). Hence, he requests this Court to allow these petitions.

4. In response, Mr.P.S.Raman, learned Senior counsel appearing for the respondents would fairly submit that the 2nd respondent has to provide reasons for rejection of the petitioner's tender bid in terms of Section 10(7) of the Act read with Rule 27 of the said Rules. However, in the present case, the said provisions of the Act was not at all complied with by the 2nd respondent. Hence, he requests this Court to pass appropriate orders in these writ petitions.



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5. Further, both the learned Senior counsel, in unison, would submit that this Court had dealt with a similar situation in W.P.(MD)No.11721 of 2022, wherein the respondent therein was directed to provide the information, which were required as per the provisions of Section 10(7) of the Act.

6. Heard Mr.Srinath Sridevan, learned Senior counsel appearing for the petitioner and Mr.P.S.Raman, learned Senior counsel appearing for the respondents and also perused the materials available on record.

7. In the present case, the tender bids offered by the petitioner were rejected by virtue of the impugned order dated 24.11.2023, wherein the 2nd respondent had not provided any reasons for such rejection. Further, it appears that in spite of the request made by the petitioner, the reasons were not provided by the 2nd respondent. However, as per the provisions of Section 10(7) of the Act, the petitioner is certainly entitled to get the information with regard to the reasons for rejection of their bids. Section 10(7) of the Act reads as follows:



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“10.Evaluation and Acceptance of Tender:-

(7) 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.”

8. A reading of the above Section makes it clear that the 2nd respondent should have provided the information with regard to the reasons for rejection of the petitioner's tender bids and all the other details as mentioned therein. However, the same was not complied with by the 2nd respondent.

9. In a similar situation, the Madurai Bench of this Court had passed an order dated 17.06.2022 in W.P.(MD)No.11721 of 2022 directing the respondent to provide the information as contemplated under section 10(7) of the Act. The relevant portion of the said order is extracted hereunder:



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“7.It is true that Section 10(7) of the Act is silent as to when the information must be furnished. As per Rule 27 of the Tamil Nadu Transparency in Tenders Rules, 2000, the process of tender evaluation should be confidential until orders on the tenders are passed. When the statute has prescribed an appeal remedy to the aggrieved tenderer, it cannot be rendered futile or meaningless by not furnishing the information in time. Subsequent developments ought not to render any remedy infructuous. Any statutory scheme should be meaningfully construed. A balance has to be struck so that no provision becomes a dead letter. After the award of contract is notified, work order has to be issued in favour of the successful tenderer after which alone the implementation stage will begin. Section 11 gives ten days to file an appeal. The appeal has to be disposed of within 15 days after the appeal is filed. Interim relief can also be granted. It would be reasonable to hold that the tender accepting authority should issue work order not immediately but only after ten days after the orders are passed on the tenders. If the aggrieved party is really serious, he will not wait for the limitation period of ten days to file the appeal. He would immediately file the appeal and also pray for interim order. If the appeal



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is filed within six days after receipt of information under Section 10(7) of the Act, the Government must dispose of the interim application within three days thereafter. Such a construction will ensure that the statutory scheme is not subverted. In the case on hand, the information under Section 10(7) of the Act was not at all furnished to the petitioner. No publication has been made in the tender bulletin also.

8.In view of the foregoing discussion, the writ petition is disposed of in the following manner :

1.The third respondent is directed to furnish the information as contemplated under Section 10(7) of the Act forthwith. The same shall also be published in the meanwhile. A copy of such publication shall be sent to the petitioner also.

2.It is open to the petitioner to avail the alternative remedy before the Government. The petitioner is directed to avail the statutory remedy within a period of six days after receipt of such communication.

3.The government shall dispose of the petitioner's appeal within a period of two weeks thereafter. The petitioner shall be heard in person. Till final order is passed under Section 11 of the Act, the position that obtains as on date shall continue.

No costs. Connected miscellaneous petition is closed.”



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10. Therefore, this Court is inclined to pass orders in these writ petitions following the above order. However, in the present case, this Court feels that it would be appropriate to expunge the 2nd and 3rd sentences of paragraph No.8.1 of the said order since the respondents are supposed to have maintain confidentiality as per the Rule 27 of the said Rules. Accordingly, this Court passes the following orders:

(i) The 2nd respondent is directed to furnish the information as contemplated under Section 10(7) of the Act forthwith;

(ii) It is open to the petitioner to avail the alternate remedy before the Government within a period of 6 days from the date of receipt of information from the respondent;

(iii) Thereafter, the Government shall dispose of the appeal filed by the petitioner, within a period of 2 weeks from the date of filing of the appeal, after providing sufficient opportunity of personal hearing to the petitioner.

(iv) Further, it is made clear that the position that obtains as on date shall continue till the passing of final order under Section 11 of the Act.



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11. With the above directions, these writ petitions are disposed of.

No costs. Consequently, the connected miscellaneous petitions are also closed.

07.12.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

nsa

Note: Issue order copy on 08.12.2023

To

- 1.The Chairman,
Tamil Nadu Generation and
Distribution Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai 600 002.
- 2.The Chief Engineer/IT & RAPDRP/TANGEDCO,
6th Floor, Western Wing,
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KRISHNAN RAMASAMY.J.,

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(1/2)