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W.P.No.2538 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.02.2024

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.2538 of 2024
and WMP Nos.2781 to 2783 of 2024

Bharat Grid Private Limited
Prius Platinum, Wing A,
4th Floor, D3 + P3B Sitrit Centre Saket
New Delhi – 110 017
represented by its Authorised Signatory
Mr.Rajeev Tiwary

... Petitioner

Vs

Chief Engineer/IT & RAPDRP
Tamil Nadu Generation & Distribution Limited
6th Floor, Western Wing,
NPKRR Maaligai, 144, Anna Salai,
Chennai-600 002.

.... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records contained in the impugned letter dated 16.12.2023 bearing Lr.No.CE/IT&RAPDRP/SE/RDSS/EE-3/AEE/RDSS/F.17/D.927/23 issued by the respondent to the petitioner, and to quash the same as arbitrary, illegal and unjust and to consequently direct the respondent to accept a revised/amended earnest money deposit from the petitioner and to consequently accept the



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petitioner's bid in respect of the request for proposal bearing
Ref.No.CEIT&RAPDRP-17/2023-24.

For Petitioner : Mr.M.S.Krishnan, Senior Counsel
for Mr.Ashwini Vaidialingam
For Respondent : Mr.D.R.Arunkumar
Standing Counsel

ORDER

The facts in the present case are analogous with those dealt with by me in
W.P.No.2524 of 2024 that was disposed on 05.02.2024.

2. The petitioner had participated in a tender for appointment of
Advanced Metering Infrastructure (AMI) Service Provider for Smart Prepaid
Metering and Smart System Metering for the respondent on DBFOOT basis
under Revamped Distribution Sector Scheme under Global Open Tender Two
Part System, issued on 18.08.2023.

3. The tender itself had been the subject matter of litigation insofar as the
two bidders had challenged the reverse bidding process on which the tender
was based. A learned single Judge of this Court had accepted the submissions
holding that reverse bidding process was not an appropriate methodology to be
followed.

4. The order of the learned single Judge dated 04.01.2024 was carried in
appeal by Tangedco and the First Bench of this Court, after hearing the parties,
by order dated 31.01.2024, reversed the order of the learned single Judge and



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allowed the appeals. Clause 12.3 of the bid document requires that the bid security to be provided by the bidder had to be valid for a period of one year.

5. In the present case, Mr.M.S.Krishnan, learned Senior Counsel appearing for Ms.Ashwini, learned counsel on record for the petitioner would submit that there had been an error committed by the petitioner, as the petitioner had submitted its bid on 13.10.2023 accompanied by bid security with validity for a period of 180 days only.

6. Since the respondents, on scrutiny of the bid, found that the bid security had validity only for a period of 180 days, an order of rejection of bid had come to be passed on 16.12.2023, communicated to the petitioner on 20.12.2023, wherein Tangedco states that the tender was rejected as non-responsive.

7. The very next day, i.e., on 21.12.2023, the petitioner had made a detailed representation by way of e-mail, wherein they argue that the non-furnishing of the bid security for 365 days is a curable defect and not a material deviation. They undertake that arrangements would be made for submission of amended bid security valid for a period of one year as required under the bid document.



8. They refer, in this connection, specifically to clauses 20.3, 20.4, 20.6, 20.9, 21.2, 21.2.1 and 24.2, extracted below in the interests of completion, in support of their stand.

20.3 TANGEDCO's determination of the responsiveness of a Bid/Proposal is to be based on the contents of the Proposal itself including any response to clarifications sought by TANGEDCO which does not alter the substance of the Proposal or the price.

20.4 A substantially responsive Bid/Proposal is one that conforms to all the mandatory requirements, terms, conditions, and specifications of the RFP Document without any material deviation, reservation, or omission, as defined in ITB 24.

...

20.6 Notwithstanding anything stated in the RFP Document, TANGEDCO reserves the right to verify the authenticity of the documents submitted for meeting the eligibility, qualification and/or other specified requirements and may request for clarifications any additional information/documents from the Bidder. However, the Bidder shall not be permitted to alter the substance of the Proposal or the price under any circumstances whatsoever.

...

20.9 To assist in the examination, evaluation, comparison and past-qualification of the Bids, TANGEDCO may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder that is not in response to a request by TANGEDCO shall not be considered TANGEDCO's request for clarification and the response shall be in writing. No change in the prices shall be sought, offered, or permitted by TANGEDCO in the evaluation of the Financial Bids.

21.2 In the event the Technical Bid is substantially responsive, TANGEDCO may waive any deviation, reservation, or omission in the Bid as defined in ITB 24.1.

21.2.1 Provided that a Technical Bid is substantially responsive,



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TANGEDCO may request that the Bidder submit the necessary information or documentation within a reasonable period of time, to rectify nonmaterial, nonconformities or omissions in the Technical Bid related to documentation requirements. Such omission shall not be related to any aspect of the price Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

...

24.2 A substantially responsive Bid is one that meets the requirements of the bidding document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

(a) if accepted, would:

(i) affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or

(ii) limit in any substantial way, inconsistent with the bidding the TANGEDCO's rights or the Bidder's obligations the Contract; or

(b) if rectified, would unfairly affect the competitive position of Bidders presenting substantially responsive Bids.

9. The sum and substance of their submission is that the terms of the bid permitted waiver of minor defects and deviations and it was thus appropriate that they be permitted to correct the minor error that had transpired and rectify the same

10. Mr.Krishnan, refers to the following four citations in support of the aforesaid submissions:

i) *Tata Cellular V. Union of India* ((1994) 6 SCC 651).



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ii) *PES Installations Pvt. Ltd. and another V. Union of India and another*

(AIR 2015 Del 108).

iii) *Rashmi Metaliks Limited and another V. Kolkata Metropolitan Development Authority and others* ((2013) 10 SCC 95).

iv) *Poddar Steel Corporation V. Ganesh Engineering Works and others* ((1991) 3 SCC 273).

11. Per contra, Mr.Arunkumar, learned Standing Counsel appearing for the respondents, while acceding to the pendency of representation dated 21.12.2023, would rely on the judgment of the Hon'ble Supreme Court in the case of *West Bengal State Electricity Board V. Patel Engineering Co. Ltd. and others* ((2001) 2 SCC 451). He draws specific attention to paragraph 34 that reads as follows:

34. For the reasons abovementioned, though the impugned order of the High Court insofar as it relates to quashing of letter of the appellant dated 18-12-1999, falls within the purview of judicial review, yet the direction to the appellant to permit correction of errors by Respondents 1 to 4 in their bid documents and consider their bid along with other bid, goes far beyond the scope of judicial review, as elucidated by this Court in [Tata Cellular](#). In the result, we uphold the impugned order of the Division Bench insofar as it relates to quashing of communication and letter dated 18-12-1999 and set aside that part of the impugned order giving direction to the appellant to permit Respondents 1 to 4 to correct bid documents and to consider their bid after correction along with other bids. The appeal is thus allowed in part. On the facts and in the circumstances of this case we leave the parties to bear their own costs.



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12. The aforesaid judgment is, prima facie, distinguishable. At paragraph 34, the Court has opined that the positive direction issued to the Electricity Board for correction of errors would fall beyond the ambit of judicial review.

13. This Court does not intend to give any positive direction and only proposes to direct the respondents to dispose representation dated 21.12.2023 in accordance with the terms of the bid, Instructions to bidders as well as other relevant documents. The discretion to be exercised, as to whether the error committed by the petitioner would disqualify their bid as 'non-responsive', must be tested in light of the clauses of the tender itself as well as the judgments that have been cited by the parties.

14. I am also convinced that there is no delay in the petitioner approaching this Court in light of the following sequence of events. The petitioner has filed W.P.No.93 of 2024, wherein also, the prayer was for quashing of order dated 16.12.2023. That Writ Petition was closed on 09.01.2024 as infructuous in light of the order passed by the learned single Judge in W.P.Nos.28778 of 2023 and batch dated 04.01.2024 cancelling the tender, and liberty to revive the matter, if necessary, was preserved.

15. However, with the reversal of the order of the learned single Judge by the Division Bench in W.A.Nos.175, 180 and 201 to 206 of 2024 by order



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dated 31.01.2024, the present Writ Petition has come to be instituted on 01.02.2024.

16. In fine, mandamus is issued to the respondent to hear the petitioner and dispose representation dated 21.12.2023 in accordance with the tender documents and all relevant rules and regulations, as expeditiously as possible. Let the financial bid not be opened till such time representation dated 21.12.2023 is disposed.

17. This Writ Petition is disposed in terms of this order. No costs. Connected Miscellaneous Petitions are closed.

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Index : Yes / No

Speaking order/Non-speaking order

Neutral citations: Yes/No

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Note: Registry is directed to upload this order today (08.02.2024).

To

Chief Engineer/IT & RAPDRP
Tamil Nadu Generation & Distribution Limited
6th Floor, Western Wing,
NPKRR Maaligai, 144, Anna Salai,
Chennai-600 002.

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