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W.P.Nos.2911, 2912, 2914 and 2915 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.Nos.2911, 2912, 2914 and 2915 of 2024
& WMP.Nos.3148, 3149, 3151, 3152 of 2024

1.Eficaa Ensmart Solutions Private Limited

rep. by its wholetime director

Mr.Rabinder Deshmukh,

having office at fortune 9 - tower 3,

floor 5, 6-3-1091/c/1, Raj Bhavan Road,

Somajiguda, Hyderabad-500 082.

... Petitioner in the above W.Ps

Vs

1.The Government of Tamil Nadu

rep. by its Secretary to Government,

Energy Department,

Fort St.George,

Chennai-600 009.

2.Tamil Nadu Generation and Distribution

Corporation Limited (TANGEDCO)

Rep by its Managing Director,

No.144, Anna Salai, Chennai 600 002.

3.Tamil Nadu Generation and Distribution

Corporation Limited (TANGEDCO)

Rep by its Chief Engineer (IT and RAPDRP),



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No.144, Anna Salai, Chennai 600 002.

.... Respondents in the above W.Ps

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COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 1st respondent to dispose of appeals dated 05.02.2024 filed by the petitioner under section 11 of the Tender Transparency Act expeditiously, within a time frame stipulated by this Honorable Court.

For Petitioner : Mr.Srinath Sridevan
Senior Counsel
for Mr.S.Senthil

For Respondents : Mr.D.R.Arunkumar
Standing Counsel

COMMON ORDER

Mr.D.R.Arunkumar, learned Standing Counsel accepts notice for the respondents and is armed with instructions to enable final disposal of these Writ Petitions, even at the stage of admission. Hence, by consent, the following order is passed.

2. 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.

3. 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



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under Revamped Distribution Sector Scheme under Global Open Tender Two Part System, issued on 18.08.2023.

4. The tender itself had been the subject matter of litigation at the instance of the petitioner who 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.

5. 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 allowed the appeals. As against the order of the Division Bench, the petitioner has approached the Hon'ble Supreme Court by filing SLP Civil Nos.2825 to 2828 of 2024, which was rejected vide order dated 05.02.2024.

6. In the meantime, on 13.10.2023, the petitioner had participated in the bids and had submitted four tenders. 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. Mr.Srinath Sridevan, learned Senior Counsel appearing for Mr.S.Senthil, learned counsel on record for the petitioner would submit that the petitioner had, along with the Technical bid, enclosed a bank guarantee obtained from a foreign institution.



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7. The technical bid came to be rejected vide communication dated 16.12.2023 as non-responsive, as the accompanying bank guarantee was not in consonance with the tender conditions. The petitioner has immediately filed a representation on 18.10.2023 providing explanation that the petitioner was a subsidiary to an entity based in Abu Dhabi, United Arab Emirates and attempting to justify the same on that ground.

8. Notwithstanding the pendency of the representation, the petitioner has filed statutory appeals under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998 (in short 'Act') challenging communication dated 16.12.2023 and also has filed the present Writ Petitions seeking a mandamus directing R1 to dispose the appeals expeditiously.

9. The first objection raised by Mr.Arunkumar, who appears for the respondents are that the appeals are itself not maintainable. He points out that Section 11 of the Act provides for an appeal to be filed as against the order of the Tender Accepting Authority. The orders impugned in those statutory appeals are orders passed by the Tender Inviting Authority and do not constitute final orders.

10. In this regard, he would also draw attention to a judgment of the Hon'ble Supreme Court in the case of *National High Speed Rail Corporation Limited V. Montec Arlo Limited and another* ((2022) 6 SCC 401), particularly



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paragraphs 43.1 to 43.3. According to him, this judgment, would support the aforesaid argument. He states that the observations at paragraph 43.3 would result in a situation where there could be no interference in the various stages constituting tender process, till a final decision to award the contract is taken.

11. Faced with this position, learned counsel on record for the petitioner would prefer not to pursue the appeals but would rather pursue their representation dated 18.10.2023. This submission appeals to the Court. The representation had been filed proximate to the submission of the technical bids on 13.10.2023 in anticipation of the respondents objecting to the bank guarantee from a foreign institution.

12. The order of rejection is dated 16.12.2023 and, admittedly, had been passed without grant of an opportunity of hearing to the petitioner. I am of the considered view that it was incumbent upon the respondents to have heard the petitioner prior to passing of order dated 16.12.2023.

14. Since that order is itself not the subject matter of challenge, nothing further need be said in regard to that, save observing that if, after hearing the petitioner and disposing representation dated 18.10.2023, the respondents choose to accept the same, order dated 16.12.2023 would, as a result lapse.

15. In fine, mandamus is issued to the respondent to hear the petitioner and dispose representation dated 18.10.2023 in accordance with the tender



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documents and all relevant rules and regulations, as expeditiously as possible.

Let the financial bid not be opened till such time representation dated 18.10.2023 is disposed.

16. These Writ Petitions are disposed in terms of this order. No costs. Connected Miscellaneous Petitions are closed.

08.02.2024

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

1. The Government of Tamil Nadu
rep. by its Secretary to Government,
Energy Department,
Fort St. George,
Chennai-600 009.
2. Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
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Dr.ANITA SUMANTH,J.

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