



W.P.Nos.27567 of 2022 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.06.2024

Pronounced on : 02.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.27567, 27569, 27573, 27576 & 25930 of 2022
and

WMP.Nos.26815, 25013, 26817, 26818 & 26820 of 2022

WP.No.27567 of 2022

M/s.Electro Meck Industries,
Rep. By Authorised Representative M.K.Sekar,
Having Office at No.45, Premier Industrial Estate,
Krishnarayapuram,
Coimbatore 641 006

... Petitioner

Vs.

The Chief Engineer,
Materials Management,
TANGEDCO,
4th Floor, NPPKRR Maaligai,
144, Anna Salai,
Chennai 600 002

... Respondent

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari calling for the records of the respondent in Lr.No.CE/SE/MM-II/EEDT/A2/SPECN.NO:M-18/17-18/D.No:1699/22 dated 22.08.2022 and to quash the same.

For Petitioner
in all WP's

: Mr.J.Srinivas Mohan
for M/s.TVJ Associates

For Respondent



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in all WP's

: Mr.P.S.Raman,
Advocate General
Assisted by
Mr.D.R.Arun Kumar,
Standing Counsel

COMMON ORDER

These writ petitions have been filed challenging the respective orders of the respondent, thereby ordered to recover payment already released to the petitioners for the belated supplies which was made in excess.

2. Though these writ petitions have been filed by different petitioners, the issue is common in all the writ petitions. Therefore, this Court is inclined to pass common order in all the writ petitions.

3. In respect of WP.No.27567 of 2022, the petitioner is in the business of manufacture and supply of transformers to TANGEDCO and others. The respondent floated tender, in which the petitioner had participated in e-tender specification for supply of 100 KVA/11 KVA / 433 V energy efficient level-2 distribution transformers. The petitioners were awarded contract and the respondent placed purchase orders for



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supply of transformers. However, there was delay in supplying transformers. Even then, the supply was completed and the demands were made for the supply of transformers by the respondent. In view of the delay in supplying transformers, there was delay in release of payment by the respondent about 8 to 12 months.

3.1 As per the purchase orders - clause No.8.5, there should be no declining trend in the prices. Payment will be released as per the recent purchase orders rates or lowest rate obtained during the recent tenders opened subject to levy of liquidated damages (hereinafter called as 'LD') for belated supplies. After supply of transformers, the respondent floated new tender for procurement of 10000 numbers of energy efficient level 2 distribution transformers against earlier tender specification. The respondent finalised the price at Rs.2,57,800/- as on 17.07.2020. It is less than the rate obtained by the petitioner's tender specification. The first purchase order was issued for 500 numbers of transformers dated 18.12.2017 at Rs.2,68,595/- and the extension purchase order was issued for 125 additional numbers of transformers dated 06.03.2019 at the rate of Rs.2,81,531/- Therefore, the respondent issued order to recover payment already



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released to the petitioners for the belated supplies which was made in excess.

4. The learned counsel appearing for the petitioners submitted that the recovery is totally arbitrary, contrary to the terms of tender and it is violation of Article 14 of Constitution of India. The respondent had acted only on the audit objection. Audit cannot be done at later stage and the price difference cannot be calculated retrospectively, revise and levy LD. As per the clause 8.5 in the first tender floated by the respondent, the payment will be released as per the recent purchase order, rates or lowest rate obtained during the recent tenders opened subject to levy of LD for belated supplies. Whereas as per new tender floated by the respondent, clause No.8.5 says that the payment will be released as per the lowest rates obtained during the recent tenders opened with effect from the date of price bid opening subject to levy of LD for the belated supplies. In fact, the petitioner concerned had completed supply of transformers before the subsequent tender floated by the respondent dated 18.12.2017. Now the respondent ordered to recover the amount by the audit has been shifted backward from 15.12.2018 to 03.11.2017 being the date on which



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the price bid was opened and the rate is being applied retrospectively.

Therefore, the respondent applied new clause 8.5b in the subsequent tender and ordered to recover the differential amount between Rs.2,59,600/- and Rs.2,83,667/- for the transformers supplied after the price bid opening date for subsequent tender, but before the date of purchase order.

5. The respondent filed counter and the learned Advocate General appearing for the respondent submitted that the petitioners ought to have supplied the transformers as per the purchase order, but they failed to supply the same in due date from the first schedule. Therefore, there was delay as per the purchase order. When there is a delay in supply of transformers, cost will be imposed on them as LD as per clause No.12 of the purchase order. Further, belated supply of transformers also attracts clause No.8.5 of the purchase order. Accordingly, the liquidated damages will be applicable if there is no decline in price, but as per the new tender its price bid opened on 13.05.2020 and one of the petitioner also participated in the tender. Thereafter, negotiation was conducted with lowest bidder and it has reduced their quoted price of Rs.2,57,830/- to



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Rs.2,57,800/-. Therefore, there was a change in quoted rate after negotiation. Hence the purchase order was placed on L1 tenderers after approval from TANGEDCO on 17.07.2020. However, though the petitioners made supply belatedly, their bills were cleared during the internal audit. It was found that instead of subsequent tender's final price arrived date, the respondent had mistakenly calculated the liquidated damages. Therefore, the revised recovery calculated as per the clause No.8.5b and ordered against the petitioners.

6. He further submitted that after the price bid opening, the ranking will be assigned to all the tenderers based on the rates quoted by all the tenderers and the L1 tenderer will be negotiated. Sometimes, L1 tenderer might reduce the quoted rate and sometimes, they may not reduce the quoted rate. However, L1 had reduced some amount and placed purchased orders. The lowest rate taken for adaptation to the delayed suppliers was after issuing the purchase orders for those finalised tenders. Therefore, the respondent rightly issued the orders demanding LD against the petitioners.



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7. Heard, the learned counsel appearing on either side.

8. It is relevant to extract clause No.8.5b of the subject tender M-68/16-17 and the modified clause of the recent tender M-13/2022-23 hereunder:

Tender M-68/16-17 Subject Tender	Recent Tender M-13/2022-23 Where the clause is modified
Clause 8.5 b) Payment will be released as per the recent purchase order rates or lowest rate obtained during the recent tenders opened subject to levy of LD for belated supplies	Clause 8.5 b) Payment will be released as per the lowest rates obtained during the recent tenders opened with effect from the date of price bid opening, subject to levy of liquidated damages for belated supplies

9. As per the notification, the petitioner in WP.No.27576 of 2022 had quoted price at the rate of Rs.2,83,667/- and purchase order was placed on 09.08.2017 for supply of 117 transformers. Thereafter, subsequent tender notification was floated by the respondent and purchase order was issued on 18.12.2017 at the rate of Rs.2,59,600/-. Therefore, the petitioner had completed the supply of transformers even before 18.12.2017. As per clause 8.5 of both the purchase orders, the rate shall be the one arrived at after negotiation leading to purchase order and



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not the rate one quoted at the time of tender. The words used in clause 8.5 is 'rate obtained' and not 'rate quoted'. Therefore, the rate is obtained after negotiation and the rate so obtained is the basis for the issuance of the purchase order. The rate mentioned in the purchase order being the rate obtained can alone be the basis for levying liquidated damages or price payable. Until the negotiation completed, tenders finalised, there is no guarantee that the purchase orders will be issued. The proposed recovery of differential price as insisted by the audit is contrary to the terms of the tender and without reference to the category of tenderers. The respondent now ordered to levy differential price from the date of opening the price bid and not the date of purchase order.

10. Further the purchase order was issued for the subsequent tender, for which the date of applying the liquidated damages or recovery for price difference goes with the date of the purchase order. The purchase order reflects lesser rate and it is only the date that can be the basis for demanding recovery of price difference. Instead the respondent, on the basis of the audit objection, raised demand which has no relevance to the delay clause 8.5 of purchase order. After supply of transformers,



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the respondent had settled the entire amount and accordingly the petitioners also had paid GST for the amount paid by the respondent.

11. In view of the above, the impugned orders cannot be sustained and the same are liable to be quashed. Accordingly, all the writ petitions are allowed and the impugned orders dated 08.08.2022, 22.08.2022 and 29.08.2022 of the respondent are quashed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

02.07.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To
The Chief Engineer,
Materials Management,
TANGEDCO,
4th Floor, NPPKRR Maaligai,



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