



WEB COPY



W.P.No.34815 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.34815 of 2023

and

W.M.P.Nos.34819, 34821 & 34823 of 2023 4578 of 2024

M/S.Reco Process Pumps

By its Proprietor,

S. Savitha No 208/3B Idigarai Road,

NGGO Colony, Coimbatore - 641 022

... Petitioner

Vs.

1.M/s. TANGEDCO

(Tamil Nadu Generation And Distribution Company Limited)

By its Chairman And Managing Director,

5th Floor TANTRANSOCO Building,

144 Anna Salai Chennai- 600 002

2.The Project Director

North Chennai Thermal Power Station,

TANGEDCO,

5th Floor, Tantransco Building,

144 Anna Salai, Chennai -600 002

3.M/s. Bharat Heavy Electricals Limited Ranipet Unit

Sipcot Ranipet, Tamil Nadu -632 403

4.M/s. Bharat Heavy Electricals Limited Hyderabad Unit

Ramachandrapuram Hyderabad- 502 032

5.The Union of India



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Represented by Secretary to Government,
Ministry of Power,
Shram Shakthi Bhavan, New Delhi

6.The Union of India

Represented by Secretary to Government,
Ministry of Finance, New Delhi.

7.The Deputy Director

Department of Promotion of Industries
and Internal Trade,
Government of India,
Udyog Bhavan, New Delhi.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for records leading to the issuance of “Global Tender” dated 14.11.2023 in Notification No.F7AIW54369 by the 4th respondent for the procurement of re-circulation slurry pumps for 800 MW power plant at North Chennai stage III, M/s.TANGEDCO and quash the same and consequently direct the 4th respondent herein to procure re-circulation slurry pumps for the aforesaid project as per the technical specification / pre-qualification requirements specified by the respondents 1 and 2 in clause 4.13.0.

For Petitioner	: Mrs.Hema Sampath, Senior Counsel for Mr.C.Jagadish
For Respondents	:
(for R1 & R.2)	: Mr.K.Arun Prasad, SC for TANGEDCO;
(for R3 & R4)	: Mr.John Zacharia for M/S.Fox Mandal and Associates;
(R5 to R7)	: Mr.B.Rabu Manohar, SCGSC



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ORDER

The lis on hand has been instituted questioning the validity of the “Global Tender” dated 14.11.2023 in Notification No.F7AIW54369 by the 4th respondent for the procurement of re-circulation slurry pumps for 800 MW power plant at North Chennai stage III, M/s.TANGEDCO and quash the same and consequently, direct the 4th respondent herein to procure re-circulation slurry pumps for the aforesaid project as per the technical specification / pre-qualification requirements specified by the respondents 1 and 2 in clause 4.13.0.

2. The petitioner is M/S.Reco Process Pumps. The petitioner is one of the 100% MSE -make in India category-I , 100% local content women owned industry pump manufacturer. Admittedly the petitioner participated in the Global Tender, notified by the BHEL. After participating in the tender, the petitioner has chosen to challenge the Global Tender notification on the ground that it is contrary to 'Make in India Policy' announced by the Government of India. The learned senior counsel Tmt.Hema Sampath would further submit that Clause 20(B) of the tender document regarding border country sharing would indicate that “any



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bidder from a country shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the competent authority, to be referred for latest details of the competent authority and exemptions". As far as the above clause is concerned, it is unconnected with the participation of the petitioner in the global tender notification.

3. Tmt.Hema Sampath, learned Senior Counsel, appearing on behalf of writ petitioner, would submit that Make in India Policy has been reiterated by the Government of India on several occasions and Policy is mandatory in nature. Two tender notifications were issued prior to the issuance of Global Tender notification. However, it was not materialised on account of some reasons. The third tender notification, which is impugned is a Global Tender and the clause prohibiting the Global Tender has been deleted by the respondents and therefore, the impugned Global Tender notification is liable to be set aside.

4. The learned senior counsel, Tmt. Hema Sampath, would draw the attention of this Court, with reference to the policy of the Government of India in Make in India projects and several orders, office memorandum issued by the Government of India, reiterating the Make in India Policy.



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Pertinently, the learned Senior Counsel referred the office memorandum relied on by the respondents dated 12.03.2021 and 12.10.2022, wherein permission was granted to respondents BHEL to adopt Global Tender. The said letter do not specify the materials to be procured and therefore, cannot be relied upon. The respondents have not furnished the details regarding the procurements to be made with reference to the impugned Global Tender. Therefore, letter, issued in general, cannot be presented before this Court for the purpose of protecting the Global Tender notification, which is otherwise issued contrary to the Make in India Policy of the Government of India. The learned counsel for the respondent BHEL, Mr. John Zachariah, would oppose by stating that two tender notifications earlier issued were not responded by the qualified companies / contractors. Since enough competition was not available, the respondents preferred to go for Global Tender and made a request to the Government of India, and the Government of India granted permission to the BHEL to go for Global Tender notification. The relaxation on Global Tender enquiry, under Rule 161(IV) of the General Financial Rules (GFR) 2017, was issued in proceeding dated 12th march 2021 and in 12th Oct. 2022. Since the Ministry of Finance Government of India granted permission to flout Global Tender notification for procurement of quality materials, the BHEL



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has opted to issue the third Global Tender notification. Pertinently, the petitioner company participated in the tender and submitted their applications. Since they have participated in the tender process, now they are estopped from challenging the initial notification issued and on that ground also the present writ petition is liable to be rejected.

5. Learned counsel for the Government of India, Mr.Rabu Manohar would submit that the Government of India authorised the BHEL to defend the case and the defence taken by the BHEL are approved by the Government of India. In this regard, Mr.Rabu Manohar submitted a copy of the letter issued by the Under Secretary (Procurement Policy), Ministry of Finance, dated 04.04.2024. Therefore, the stand of the BHEL in defending the present writ petition has been approved by the Ministry of Finance Government of India.

6. This Court is of the considered opinion that the BHEL initially had taken an action to provide opportunity to local manufacturers. Two tender notifications were issued permitting the local manufacturers under the Make in India Policy and they failed, since there was no adequate competition and further, they found that they may not get suitable or



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quality materials as per the requirements and specifications. Under those circumstances, the BHEL addressed a letter to the Government of India Ministry of Finance, who in turn relaxed the rules and granted permission to the BHEL to flout Global Tender. Pursuant to the permission granted by the Ministry of Finance Government of India, the impugned Global Tender notification was issued. The petitioner admittedly participated in the Global Tender notification and submitted their applications. The learned counsel for the BHEL would submit that required documents had not been produced by the petitioners despite the fact that they are asked to produce the relevant documents relating to the products, needs to be supplied.

7. Under these circumstances, this Court do not find any infirmity in respect of the Global Tender notification issued by the BHEL which is under challenge in the present writ petition. Therefore, this Court is not inclined to consider the same. The petitioner is at liberty to submit all relevant documents to the BHEL for their consideration by scrupulously following the due process and with reference to the terms and conditions stipulated in the tender notifications.



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8. With the above observations, the writ petition stands dismissed.

No costs. Consequently, connected miscellaneous petitions are closed.

(sha)

24.04.2024

Index : Yes

Speaking Order

Neutral Citation : Yes

To

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5th Floor TANTRANSCO Building,
144 Anna Salai Chennai- 600 002

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S.M.SUBRAMANIAM. J.,

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