



W.P(MD)No.4988 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4988 of 2024

and

W.M.P.(MD)Nos.4764 & 4767 of 2024

Kaashvi Solutions
Represented by its Manager,
Anoop Rajput
S/o.Prahalad,
Office at Plot No.226-C, Manwali Colony,
Gurugram-1220222,
Haryana.

... Petitioner

Vs.

- 1.The Chairman cum Managing Director,
TNEB,
6th Floor, TANTRANSCO Building,
144, Anna Salai, Chennai-2.
- 2.The Chief Engineer-Distribution,
TANGEDCO,
Maharaja Nagar,
Tirunelveli.
- 3.The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Anna Building, Thiyagaraja Nagar,
Tirunelveli-627 011.
- 4.AVB TEKNOSOLVES,
Rep. by its Managing Director,
No.1, 2nd Floor, 43, NA Laxmi Ammal Layout,



W.P(MD)No.4988 of 2024

Lakshmipuram,
Peelamedu,
Coimbatore,
Tamil Nadu-641 004.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned E-Tender notification of the 3rd Respondent in Specification No. ET-W.77/23-24 dated 02.02.2024 and set aside the same with a consequential direction directing the 3rd Respondent to call for a fresh E-Tender according to the procedures established by law.

For Petitioner : Mr.K.Porkodi

For Respondents : Mr.S.Deenadhayan
Standing Counsel for R1 to R3
: Mr.M.Prabhakaran for R4

ORDER

Heard both sides.

2. TANGEDCO issued the notification dated 02.02.2024 inviting applications from eligible tenderers for the following work.

“Provision of Annual Maintenance Contract without Spares for
SCADA/DMS Control Centre, RTU's and FRTU's of
SCADA/Tirunelveli for one year in respect of Tirunelveli EDC”

The petitioner was one of the persons who responded to the tender notification.



W.P(MD)No.4988 of 2024

Both the petitioner as well as the fourth respondent passed muster at the technical scrutiny stage. It appears that the fourth respondent is the lowest tenderer. Price bid negotiations are presently going on. At this stage, the present writ petition was filed challenging the clearance given to the fourth respondent at the technical scrutiny stage.

3. According to the petitioner, the fourth respondent is not eligible to take part in the tender process. The learned counsel appearing for the petitioner drew my attention to the relevant clause in the tender notification. It reads as follows:-

“1. The bidder may be OEM (or) Authorized dealer/Contractor/Sub Contractor OEM (or) having experience in maintenance of electrical SCADA system (Control Centre, Sub-Station RTU, LDMS and FRTU). Necessary document evidence should be enclosed.

2. The tenderer shall furnish the documentary evidence with details of various orders placed on them and ongoing projects for AMC for SCADA system by other state electricity boards or power utility (Govt/Private) during the last 5 years as on date of tender opening.

3. The bidder should have an annual financial turnover of more than 25% of Tender Value during any one of the last 3 financial years (2020-21, 2021-22, 2022-23). Necessary documentary evidence such as Audited annual statement of accounts certified by Chartered Accountants (or) Auditors Certificate (or) the attested copy of income tax return filed by the bidder in proof of the financial turnover should be furnished along with the offer.”

The learned counsel would contend that as per the said requirement, the tenderer should have bagged contracts from the State Electricity Boards or



W.P(MD)No.4988 of 2024

Power Utility. The tender notification includes even a private power utility player. In this case, the fourth respondent has not been awarded any contract directly by any private power utility or State Electricity Board. This fact is beyond dispute. The contention of the petitioner is therefore that the second respondent ought to have disqualified the fourth respondent.

4. This contention of the petitioner's counsel is correct if the said clause is read in isolation. Clause 1 obviously permits the sub contractor also. In the very nature of things, any sub-contractor would not be directly awarded contract. If clause 2 is applied literally, then clause 1 which enables sub-contractors to participate in the tender will be rendered otiose. Hence, these two clauses will have to be reconciled. When the tender notification suffers from an apparent ambiguity, it is only the tender inviting authority who has to clarify. I therefore called upon TANGEDCO to file their counter. TANGEDCO has clarified that the impugned notification permits even sub contractors to participate in the tender process provided they fulfil the other requirements. Therefore, the fourth respondent cannot be disqualified on the ground that they have not been awarded contract directly by the state electricity boards or power utilities. I would however expect TANGEDCO to appropriately draft tender clauses in future. They must be free from ambiguities.



W.P(MD)No.4988 of 2024

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5. With this observation, the Writ Petition is dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

08.04.2024

Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.4988 of 2024

G.R.SWAMINATHAN, J.

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W.P(MD)No.4988 of 2024

08.04.2024