



2024:DHC:4961-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2789/2024 & CM APPLs.11379/2024 and 15290/2024

DATTA POWER INFRA PRIVATE LIMITED

.....Petitioner

Through: Mr.Abhimanyu Mahajan, Advocate
with Mr.Harshit Malik, Ms.Anubha
Goel and Mr.Mayank Joshi,
Advocates.

versus

SOLAR ENERGY CORPORATION OF INDIA & ORS.

.....Respondents

Through: Ms.Shikha Ohri, Advocate with
Ms.Ritika Singh and Mr.Karti,
Sharma, Advocates for R-1.
Mr.Ravi Prakash, CGSC with
Mr.Taha Yasin, Mr.Astu Khandelwal,
Mr.Yasarth Shukla and
Mr.Ayushman, Advocates for R-2 &
3.

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Date of Decision: 03rd July, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, ACJ : (ORAL)**

1. Present writ petition has been filed seeking a direction to Respondent No.1-Solar Energy Corporation of India ('SECI') to publish the list of successful bidders in the bidding process, i.e., SECI-Tranche-XVI and issue Letter of Award ('LOA') in favour of the Petitioner.

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2. In the present writ petition, it has been averred that the Petitioner emerged as L1 bidder for setting up of wind power project in the State of Rajasthan for 60 MW capacity. It has further been averred that vide Office Memorandum dated 09th January, 2023, every bid was to be a composite bid comprising State specific sub-bids for each of the States and the power generated from capacity established in each of the State sub-bids was to be pooled and offered at pooled tariff to all Beneficiaries/ Discoms.
3. It has also been averred that considering the pooled tariff of all the bidders qualified as L1 bidders in the bidding process, i.e. the Petitioner, M/s JSW Neo Energy Limited, M/s Powerica Limited and M/s Torrent Power Limited, the pooled tariff works out to be Rs.3.66 per Kwh/unit of electricity.
4. It is alleged that the Respondent No.1 has issued the LOAs to M/s JSW Neo Energy Limited, M/s Powerica Limited and M/s Torrent Power Limited without declaring result of the bid and offered power for sale on back to back basis considering the pooled tariff at Rs.3.64 per Kwh/unit of electricity.
5. Today, learned counsel for the Petitioner submits that the Respondent No.1 is not empowered to withhold the issuance of LOA of any of the successful bidder when the LOAs have been issued to the other bidders under the same bidding process. He states that it was not open to the Respondents to refuse to issue LOA on the ground that no buying entity was willing to purchase wind energy at the rate offered by the Petitioner.
6. In the counter affidavit filed by the Respondents, it has been averred that the concept of pool tariff is not applicable to wind energy. It has been repeatedly emphasised in the counter affidavit that the bids were not invited



under the pool tariff regime.

7. Learned counsel for the Respondents states that the Respondent has not issued an LOA to the Petitioner at the discovered tariff because the said tariff has not been accepted by any of the buying entities.

8. She points out that the answering Respondent had written letters to the Rajasthan Urja Vikas and IT services Limited ('RUVITL') for intra-state power sale for this project which may make it cheaper for the buying entity vide letter dated 14th February, 2024. However, no response has been received from the said entity in this regard.

9. Learned counsel for the Respondents points out that previously, the Respondents had cancelled bid under SECI-Tranche-XV as the discovered tariff in the said tender was Rs.3.94/Kwh – which was a shade lower than what has been offered by the Petitioner since, even at that time, the respondent did not find any buying entity for the discovered tariff.

10. In rejoinder, learned counsel for the Petitioner states that it was only after issuance of LOA that the Respondents could have made efforts to find a buying entity.

11. Having perused the paper book, this Court finds that all the grounds in the present writ petition are based on the premise that the concept of pool tariff is applicable to wind energy.

12. Though today, during the course of arguments, learned counsel for the Petitioner has not relied upon the concept of pool tariff, yet this Court is of the view that the Petitioner cannot urge grounds contrary to its pleadings.

13. In any event this Court is of the opinion that the Petitioner has no legal vested right at this stage to demand issuance of LOA, especially when the discovered tariff in the present tender is Rs.3.98/kwh and the



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Respondents had failed to find a buyer in the previous tender being SECI-Tranche-XV for tariff at the rate of Rs.3.94/Kwh.

14. Consequently, this Court is of the view that the present writ petition is bereft of any merit. Accordingly, the present writ petition along with pending applications is dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 3, 2024
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