

**KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

Present: **Shri. Preman Dinaraj, Chairman**

**761/D(T)/2020/KSERC/**

In the matter of : Petition filed by Mr. Terance Alex, to recall the order of the Commission dated 11.03.2020 in OP No. 03/2020 and provide the waiver proposed to ANERT empaneled contractors in the Technical eligibility criteria and Financial eligibility criteria for submitting the bids.

Petitioner : Sri. Terance Alex

Respondents : 1. Agency for Non Conventional Energy and Rural Technology (ANERT)  
2. Kerala State Electricity Board Limited

Petitioner represented by : Sri. Terance Alex

ANERT represented by Sri Aneesh S Prasad

KSEB Ltd represented by Sri. Nazarudeen, State Nodal Officer, SOURA  
Smt. Deepa, R, AEE, SOURA

**Order dated 30.06.2020**

1. Mr. Terance Alex, an Individual, filed a petition on 5.6.2020, before the Commission with the following prayer,

*“Hon’ble Commission may be pleased to pass an order recalling the order dated 11.03.2020 in OP 3/2020 and provide the waiver proposed to ANERT*

*empaneled contractors in the Technical eligibility criteria and Financial eligibility criteria for submitting the bids’.*

Further, the petitioner also sought Interim relief as follows.

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*For the reasons stated in the petition, it is most humbly prayed that the respondent herein may be refrained from proceeding with the bidding process pursuant to Ext P4 pending consideration of the above review petition.”*

Exhibit P4 is the bid document of KSEB Ltd for empaneling contractors for implementing grid connected rooftop solar PV plants of various capacities under MNRE Subsidy scheme in domestic sector in the State of Kerala.

**2. The summary of the issues raised by the petitioner is given below.**

- (1) The petitioner is one of the ANERT empaneled contractor stated to be affected by the Order of the Commission dated 11.03.2020.

ANERT has empaneled 69 agencies/ EPC contractor for implementing Solar Roof Top Program for the year 2019-20.

The maximum capacity (kW) allowed under ANERT schemes ranges from 2 kW to 500 kW, after appraising their technical and financial capabilities.

- (2) Earlier MNRE followed the system of empanelment of agencies for implementation of solar power projects. MNRE followed rigid conditions and selection process, and those agencies having adequate technical and financial capacity alone were empaneled.

Subsequently in the year 2017, for implementing the Solar projects in the State of Kerala under subsidies, ANERT, an agency under State Government empaneled the contractors, by adopting the conditions followed by MNRE.

- (3) Now, the subsidy scheme in roof top solar PV projects of MNRE is being implemented through State DISCOMs. KSEB Ltd is implementing the subsidy scheme under domestic sector in the State of Kerala. Accordingly, while submitting the bid documents for approval vide the petition OP No.

03/2020 dated 03.01.2020 for inviting bids grid connected Solar PV Roof top systems under MNRE Phase II subsidy scheme, KSEB Ltd has proposed some waiver in Financial and Technical eligibility criteria for ANERT empaneled agencies.

However, the Commission vide the order dated 11.03.2020, did not approve the waiver proposed by KSEB Ltd for ANERT empaneled contractors. The Commission observed that, "the complete waiver on Annual Turnover and Net worth may permit the entry of financially incapable bidders to participate in the bid and consequent delays or non completion of allocated capacities'. According to the petitioner, this is a misconception, as far as ANERT empaneled contractors are concerned, since all of them were empaneled after a procedure conducted by agencies. The financial capacities of the vendors were also taken into consideration before granting empanelment. Insisting on stringent technical eligibility criterion again is not warranted.

- (4) On the basis of the order of the Commission dated 11.03.2020, the respondent KSEB Ltd published a notification bearing Tender No. 3/SOURA- Subsidy- Domestic/ 2019-20 dated 13.03.2020, inviting bids, as per which the bids are to be submitted on or before 09.06.2020. Since the waiver proposed were declined, the petitioner and other similarly situated persons who are otherwise qualified, are prevented from submitting the respective bids. Therefore urgent orders in the matter is highly warranted.
- (5) The petitioner further submitted that, the order of the Commission is issued without taking into consideration the views of the affected parties, i.e., ANERT empaneled contractors.

**3. The background of the order of the Commission dated 11.03.2020 in OP No. 03/2020.**

- (1) Ministry of Power, GOI, vide the notification dated 3<sup>rd</sup> August 2017 notified the guidelines for Tariff based Competitive Bidding process for procurement of power from Grid connected solar PV power projects.

The said guidelines prescribes the various articles of the bidding documents including the financial and technical eligibility criteria to be met by the bidders to participate in the bid. ***The bidding guidelines offer no relaxation to the contractors empaneled by MNRE or State Agencies***

***to participate in the bids floated by State DISCOMS for the procurement of power from the Grid connected solar PV power projects.***

As per the Clause-18 of the said bidding guidelines, any deviations from the guidelines shall be subject to the approval of the Appropriate Commission.

- (2) MNRE vide their Office Memorandum dated 20.08.2019 has issued 'Operational Guidelines on Implementation of Phase-II of Grid connected Rooftop Solar program (RTS) for achieving 40 GW capacity from roof top solar by the FY 2022.
- (3) KSEB Ltd on 03.01.2020, filed a petition before the Commission for the approval for inviting bids for procurement of power from 50 MWp Solar Rooftop PV systems under subsidy program in residential sector in MNRE's phase II of the RTS programme.

State Government vide GO (Rt) No. 05/2020/Power dated 13.01.2020 granted sanction for implementing the project.

The Commission admitted the petition as OP No. 03/2020 and conducted public hearing on 28.02.2020.

It is pertinent to note that neither the petitioner nor any other ANERT empaneled contractor participated in the public hearing or offered any comments on the bid documents floated by KSEB Ltd.

Based on the details submitted in the petition dated 03.01.2020, the deliberations during the public hearing held on 28.02.2020, and other documents placed before it, the Commission vide the order dated 11.03.2020, approved the bidding documents with certain modifications, as detailed in the order.

- (4) KSEB Ltd in the petition dated 03.01.2020 has proposed certain relaxation on 'financial eligibility criteria and technical eligibility criteria' for the contractors empaneled by ANERT. The proposal of KSEB Ltd and observations and decisions of the Commission on this issue, as per the order dated 11.03.2020 is extracted below.

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### **18. Financial eligibility criteria.**

*The minimum bid capacity is 1 MWp and the maximum bid capacity is 50 MWp. For quoting for the maximum capacity, KSEB Ltd proposed the following financial eligibility criteria to be satisfied by the bidders;*

- (1) Solvency – Rs 1.5 crore/MW of the quoted capacity.*
- (2) Annual turnover –Rs 1.0 crore/MW of the quoted capacity for three years in the last five years immediately proceeding the bid opening date).*
- (3) Net Worth in the last three years immediately preceding the bid opening date shall be positive.*

*For the companies incorporated within the last three financial years, the net worth shall be Rs 0.75 crore per MW or more.*

*However, KSEB Ltd proposed the following relaxations on financial eligibility criteria for ANERT empanelled Solar PV developers and start ups;*

*“For ANERT empanelled Solar PV developers with grading SP1A, SP1B, SP1C, SP2A, SP2B, SP2C, SP3A, SP3B, SP3C, SP4A, SP4B, SP4C, SP5A and SP5B and start ups, the above financial eligibility criteria with respect to Annual Turnover and Net worth is waived”.*

*As extracted above, KSEB Ltd proposed to waive the financial eligibility criteria with respect to Annual Turnover and Net Worth for the ANERT empanelled Solar PV developers and start-ups. The Commission is of the view that, the complete waiver on ‘Annual Turnover and Net Worth’ may permit the entry of financially incapable bidders to participate in the bid and consequent delays on non completion of allocated capacities..*

***Hence the Commission is of the considered view that, for the ANERT empanelled Solar PV developers and for start ups also, the bidder(s) shall meet the following financial eligibility criteria.***

- (1) Solvency – Rs 1.5 crore/MW (as proposed by KSEB LTd)***
- (2) Net worth- shall be positive,***
- (3) Annual turnover- Rs 0.50 crore/MWp (Relaxation is limited to 50% of the Annual Turn Over fixed for general categories).***

***KSEB Ltd shall modify the financial eligibility criteria in the bid documents incorporating the above, criteria.***

### **19. Technical eligibility criteria.**

*KSEB Ltd proposed the following technical eligibility criteria on the bidding documents.*

- (1) For quoting for the minimum bid capacity of '1MW', the bidder should have installed and commissioned at least 3 MWp capacity of **roof top/ ground mounted solar PV in India** . However for the ANERT empanelled developers with grading SP1A, SP1B, SP1C, SP2A, SP2B, SP2C, SP3A, SP3B, SP3C, SP4A, SP4B, SP4C, SP5A and SP5B and start ups, the bidders need to install and commissioned at least 0.50 MWp instead of 3 MWp. For quoting for more than the minimum capacity, all the bidders including the ANERT empanelled bidders and start-up also should demonstrate installing and commissioning of at least 50% of the quoted capacity.
- (2) Since the above capacity is either from ground mounted/ roof top or its combination, KSEB Ltd proposed the following additional technical criterion that;

*'all the bidders participating in the bid should have commissioned grid connected roof top solar PV with capacity of 0.50 MWp. For ANERT empanelled bidders and start ups, this is relaxed to 0.25MWp'.*

**The Commission is of the considered view that, for the ANERT empanelled Solar PV developers and for start ups should have installed and commissioned at least 1MWp roof top/ ground mounted solar PV in India as against the 0.5 MWp proposed by KSEB Ltd. Further, the Commission noted that, there is not much significant changes or technology on the installation of the 'Ground Mounted' and "Roof Top" solar PV systems. Hence the minimum eligibility criterion on installation on the roof top capacity need not be separately insisted on the bidders. KSEB Ltd shall modify the 'Technical eligibility criterion' accordingly."**

As extracted above, the Commission has explained in detail the reasons for not approving the entire relaxations on 'financial eligibility criterion and technical eligibility criterion' as proposed by KSEB Ltd. However, as mentioned above, the Commission did approve relaxations in Financial eligibility criterion and Technical eligibility criterion for ANERT empanelled contractor.

However, the petitioner is not satisfied with the relaxation approved by the Commission vide the Order dated 11.03.2020, for the ANERT empaneled contractors for participating in the bids floated by KSEB Ltd. Aggrieved by the Order of the Commission dated 11.03.2020, the petitioner filed this petition.

#### **4. Admissibility hearing and decision of the Commission**

The Commission conducted admissibility hearing on the petition on 23.6.2020 at 11 AM through video conference. Sri Terance Alex, the petitioner, presented the petition before the Commission. Representatives from ANERT and KSEB Ltd also participated in the hearing.

Commission noted that, the prayer in the petition filed by the petitioner is to “recall the order of the Commission dated 11.03.2020” in OP No. 03/2020. During the hearing, Commission directed the petitioner to explain, under which provisions of the Electricity Act, 2003 and Regulations, the petitioner has prayed to recall the original order of the Commission dated 11.03.2020. Commission also explained to the petitioner that, as a quasi-judicial body functioning as per the provisions of the Electricity Act, 2003, the Commission cannot deviate from the provision of the Electricity Act, 2003 while discharging its statutory functions.

However, the petitioner Sri. Terance Alex failed to point out any of the provisions in the Electricity Act, 2003 or any of the Commission’s Regulations, relied on by the petitioner to file the petition to recall the order of the Commission dated 11.03.2020. Hence the Commission during the hearing itself ordered that the petition filed by Mr. Terance Alex is not maintainable and hence the petition is rejected at the admission stage itself.

#### **Order of the Commission**

5. The Commission after examining the petition as per the provisions of the Electricity Act, 2003, hereby orders that, the petition dated 05.06.2020 filed to recall the order of the Commission dated 11.03.2020 in OP No. 03/2020 is not maintainable and hence rejected at the admissibility stage itself.

Petition disposed off.

**Sd/-  
Preman Dinaraj  
Chairman**

Approved for issue

Secretary