

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

PRESENT

**Shri. T.M.Manoharan, Chairman
Shri. P. Parameswaran, Member
Shri. Mathew George, Member**

O.P. No.18/13

In the matter of

Dispute between M/s. Global Energy Pvt. Ltd. and Kerala State Electricity Board regarding certain deviations from the terms and conditions of Tender No. 13/2012-13, issued for short term purchase of Power.

13th December 2013

Petitioner : Ms. Global energy Pvt. Ltd., New Delhi
Respondent : Kerala State Electricity Board.

ORDER

Introduction:

M/s. Global Energy Pvt. Ltd, New Delhi, the Petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in trading of Electricity, having a licence issued by the Central Electricity Regulatory Commission. On 22.2.2013, Kerala state Electricity Board, the Respondent (KSEB) issued a Tender bearing Tender No. 13/2012-13 for the purchase of 300 MW RTC SR power / power that could be made available to SR through dedicated lines on short term and firm basis for the period from 11.3.2013 to 30.6.2013.

M/s. Global Energy Pvt. Ltd filed a petition against K.S.E.Board in the matter of disputes regarding certain deviations from the terms and conditions of Tender No.13/12-13, issued for Short Term Purchase of Power. The Petition is filed under Sn. 86(1)(f) of the

Electricity Act, 2003, seeking cancellation of certain LoIs, placed by K.S.E.B. on the Petitioners.

Petitioner's version

The Petitioner has been constrained to file the petition before the Commission in order to challenge the unilateral deviation by the Respondent from the express terms and conditions of the tender issued by it. As a result of the impugned deviation from the terms of the tender, KSEB has reduced the RFP stipulated contract period and issued LoIs for such truncated period, without seeking the consent of the Petitioner. The said LoIs constitute a counter offer by the Respondent, which was neither discussed with the Petitioner nor has ever been admitted by the Petitioner. The Petitioner has made efforts in good faith to convince the generating companies to supply power during the reduced contract period. Since the generators were unable to make supplies for a reduced contract period of about 50 days on account of the change in the financial parameters of the price bid, the Petitioner could not have accepted the said counter offer, communicated by the Respondent. The decision of the Respondent to alter the contract period and the consequent failure of execution of binding contracts, deprived the Petitioner of substantial economic gains and resulted in losses on account of disruption on account of supply arrangements.

The prayers of the Petitioner are:

1. To quash the Letters of Intent 17,18 and 19 dt.8/3/13, placed by the Respondent on the petitioner or direct the Respondent to withdraw the impugned LoIs,
2. To pass an order, permanently restraining Respondent from deducting any compensation, damages, penalty etc from the amount payable KSEB to the petitioner in respect of the power currently being supplied from various suppliers and
3. To direct KSEB to pay a sum of Rs. 50Lakhs to the petitioner towards the expenditure incurred by the petitioner in tying up the purchase arrangements.

Counter arguments of the Respondent, KSEB:

In order to tide over the critical power situation of the State, KSEB has floated bids vide **Tender No. 13/12-13** on 22-2-13 for the supply of 300MW RTC power from SR or that can be made available at SR through dedicated feeders from 11.3.13 to 30.6.13. Considering the variations in demand and uncertainty in getting short term open access (S.T.O.A.), for the power already tied up through traders from other regions etc, it was specifically

mentioned in the tender that *“the bidder shall quote rates separately for each month”*. **Para 4 of the Bid document** clearly specified that *“the bids shall be evaluated separately for each month and finalised accordingly”*. Para 9 of the Bid document specified *“the KSEB’s right to accept /reject the bid.”* Further as per **Annexure III of the Bid document**, *“ the bidder shall quote the quantum and rate for each month separately”*. In response to KSEB’s bids, three firms, viz., NVVN, PTC and Global submitted the bids. The Petitioner, M/s. Global submitted 5 offers. In the offer #1, for 150 MW (through JSW Energy Ltd.), the petitioner clearly mentioned that KSEB has to accept procuring the entire quantum of power offered from 11.3.13 to 30.6.13 and in the other 4 offers, the bidder had not specified any such conditions.

Considering the critical power situation, KSEB has decided to tie up the entire quantum offered by the 3 traders for the months March and April 2013 and Lol issued accordingly. Anticipating reduction in demand during 5/13 and 6/13, Board has issued Lol for 550 MW out of the offers for 677MW received for May 2013 and 150 MW out of 277MW for June 2013. The Board has rejected offers for 127MW power in the range of Rs. 6.87 to 7.45 per Unit. It is submitted that KSEB has rejected part of three offers from all the 3 traders including the Petitioner for 5/13 & 6/13. After receiving rock-bottom rates for the accepted quotes, Lol was issued to all then3n traders on 8/3/13.

Lol issued to the Petitioner, M/s. Global Energy Pvt. Ltd was as follows:

Sl. No	Lol No.	Seller	Period	Quantum in MW	@ Rs./kWH
1	16/8.3.13	JSW Energy Ltd	11.3.13 – 30.6.13	150	6.28–7.03
2	17/8.3.13	CPPs in Karnataka	11.3.13 – 30.4.13	36	6.87
3	18/8.3.13	CPPs in A.P.	11.3.13 – 30.4.13	15	7.45
4	19/8.3.13	CPPs in Karnataka	11.3.13 – 30.4.13	6.5	6.90
5	20/8.3.13	CPPs in Karnataka	11.3.13 – 30.4.13	10	7.45

The Petitioner supplied power as per Lol with respect to the offer No.1 for 150MW and No.5 for 10 MW, whereas they have not supplied power as per offer no.3, 4 & 5, without citing any valid reasons. The Petitioner subsequently informed the Respondent

that they have made the offer and negotiations with the generators that KSEB shall avail power for the entire 4 months and the generators have refused to accept the curtailment of period. Considering the breach of Lol conditions, the Petitioner was intimated that KSEB would blacklist them for participating in future tenders.

It is further submitted that the other traders, M/s. PTC and NVVN, who are prominent traders in the country, have accepted the curtailment and there is no reason for the Petitioner's argument that they had presumed that KSEB would avail the entire offered quantum at excessive rates for the whole months, irrespective of the demand of the State. The rejection of the offers made by the bidders had been done strictly as per the terms in the bid notice. The offers put up by the Petitioner are from CPPs who want to make maximum profit. It is well known that the tariff for June will be comparatively low. The offer from M/s. Global which were not considered for 6/13 was above Rs. 6.80.

In order to meet the demand, even though the rate quoted by the Petitioner was more than Rs. 6.80 per Unit, Board was forced to purchase this high cost power during peak summer in 3/13 and 4/13. KSEB has not curtailed the period of supply. Board has evaluated bids month wise as per tender conditions and issued Lol on merit order. During the month wise evaluation, if the quoted rates of supplier is high, such supplier cannot expect to be successful during that month. It is also submitted that the Petitioner intimated their inability to supply power after 2 weeks from the scheduled "start date". They have not conveyed any communication earlier that they have not accepted the Lols.

Hearing on 18.6.2013

A preliminary hearing was conducted on 18/6/2013. The Petition was admitted and heard the arguments of both Petitioner and the Respondent. In the interim order on 18.06.2013, the Commission directed that during the pendency of this Original Petition, no punitive action shall be taken by the Respondent against the Petitioner on account of the non - acceptance of the Lols . The Petitioner was allowed to amend the Original Petition as desired by them , in view of the show cause notice dated 18.5.2013 issued to blacklist them by the Respondent.

Amended Petition:

The Petitioner filed the amended petition on 11.10.13, together with fee of Rs. 10,000/-, which was refunded on 6/11/13. It is submitted in the amended Petition that only

after filing the Original Petition they have received a letter dt. 18.5.13 from the Respondent directing to show cause why they should not be blacklisted from participating in future tenders. It was further submitted that the Petitioner has requested the Respondent to drop such punitive steps vide their letter dt. 12.06.13, for which the Respondent has not given any response.

It is submitted in the amended petition that the Petitioner being a Trading licensee, will be gravely prejudiced if the Respondent proceed to debar them from participating in the future tenders. Such blacklisting will not only have adverse financial consequences for the Petitioner, it will also entail loss of credibility for the Petitioner before the other distribution companies and will result in loss of potential business opportunity of the Petitioner. It is prayed to pass an order to restrain KSEB from the punitive steps proposed, along with the existing prayers in the Original petition.

Hearing on 25.11.13

The final hearing was held on 25.11.13. The Respondent informed that they do not propose to proceed further with the show cause notice and further action with regard to the show cause notice is dropped, accepting the explanation submitted by the Petitioner. M/s. Global Energy Pvt. Ltd also informed that they are withdrawing their claims for compensation and both the parties have agreed to treat the disputes raised as settled.

Orders of the Commission.

In view of the fact that both the Petitioner and the Respondent have agreed to treat the disputes as settled, the Commission do not wish to proceed further on the matter.

The Petition is disposed of without any orders on the matter.

Sd/-
P.Parameswaran
Member

Sd/-
Mathew George
Member

Sd/-
T.M.Manoharan
Chairman

Approved for issue

Secretary

