

# KERALA STATE ELECTRICITY REGULATORY COMMISSION THIRUVANANTHAPURAM

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

**OP No : 16/2021**

**Date of Hearing : 23.04.2021**

In the matter of : Petition filed by Shankar Conductors Pvt Limited for giving directions to KSEBL for (i) implementing GO (P) No 3/2016/SPD/dated 18.2.2016 of Store Purchase Department, Kerala, (ii) treating Kerala State MSME BIS licensee holder of the tendered items as technically qualified in tender No. KSEB/SCM/ eP/ 86/ 2020-21 dated 04.02.2021 inter-alia for 1500km ACSR wolf, 200km Dog etc (iii) giving fair and non-discriminatory treatment to the petitioner.

Petitioner : M/s Shankar conductors Pvt Limited  
Petitioner represented by : Sri. Sanjay Dalmia

Respondents : Kerala State Electricity Board Limited (KSEBL)  
KSEBL represented by : Sri Premkumar P K, Dy. Chief Engineer, TRAC  
Sri Praseedu Kumar K K, TRAC

## **Daily Order dated 30.04.2021**

1. M/s Shankar Conductors Pvt Ltd, Umayanalloor, Kollam filed a petition before the Commission on 23.02.2021, with the following prayers:
  - (i) No EMD or bid submission fee (cost of tender paper) should be required to be paid by MSME of Kerala as per the GO (P) No. 03/2016/SPD dated 18.02.2016. Hence the tender of KSEB Ltd dated 04.02.2021 suitably amended accordingly.
  - (ii) MSME of Kerala, who registered by BIS, should be considered technically qualified and no factory inspection should be required. The tender form should be modified accordingly.
2. Summary of the Petition filed by M/s Shankar Conductors Pvt Ltd is given below.
  - (1) The petitioner M/s Shankar Conductors Pvt Ltd is a MSME, which is duly registered with Industries Department, Government of Kerala. The petitioner also having the license issued by BIS.
  - (2) The petitioner, regularly supplying ACSR conductors, viz, Squirrel, Weasel, Rabbit and Raccoon (80 sq.mm) etc as per IS 398/1996 since

last more than 20 years. The petitioner solely dependent on KSEB Ltd for orders of ACSR.

- (3) The petitioner developed two bigger sizes ACSR Dog (100 sq.mm) and ACSR Wolf (150 sq.mm). BIS included these two items also in their license.
- (4) KSEB Ltd has issued tender No. KSEB/ SCM/ eP/ 86/2020-21 dated **04-02-2021** (tender bid uploaded in public domain on 12.02.2021). The is for purchase of 1500 KM ACSR Wolf, 200 KM Dog etc. The probable amount of contract is ₹ 20,44,52,200/-. Due date of tender is 26-02-2021.
- (5) The petitioner M/s Sankar Constructions intends to submit tender for 10 % quantity of ACSR wolf and ACSR Dog as **New Entrant**, for which tenders have been invited. In the tender KSEB Ltd demanded an amount of ₹.204460/- as EMD for New Entrant, and ₹ 44,250/- as bid submission.
- (6) The Commission vide Order dated 30.12.2020 in OP 46/2020 filed by KEL has ordered that

*“KSEB Ltd. shall implement the Government of Kerala Order no. G.O (Rt) No.5382/2020/Fin dated 18.09.2020 strictly complying with the provisions of Price Preference and Purchase Preference mentioned therein.”*

KSEB Ltd extended the said benefit in their tender dated 04.02.2021.

- (7) Govt. of Kerala issued an Order, GO. (P) No. 03/2016/SPD dated 18-02-2016 extended certain benefits to Micro, Small and Medium Enterprises and exempted MSMEs from payment of EMD, cost of tender forms etc but the same is not complied by KSEB L.td But, KSEB Ltd specified that, new entrants shall pay EMD Rs 2,04,460/- and Bid submission fee of Rs 44,250.00/-.

The petitioner prayed that, no EMD or bid submission fee required to be paid by MSME of Kerala and the tender should be suitably amended accordingly.

- (8) KSEB Ltd in their tender specified that, “In the case of **New Entrants**, factory inspection should be carried out, to assess their capability”.

The petitioner further submitted that, MSME in Kerala registered with BIS should be considered technically qualified and no factory inspection should be required. The tender should be modified accordingly.

According to the petitioner, factory inspection is subjective. The petitioner submitted that, in the alternative, factories of all out State units should be inspected by the same team.

3. The Commission admitted the petition as OP 16/2021 and heard on 23.04.2021 at 11.00 AM through video conference. Sri Sanjay Dalmia presented the matter on behalf of the petitioner and Sri. Premkumar, Dy.CE and Sri. Praseedu Kumar, Senior Assistant presented the remarks of KSEB td. The summary of the deliberations during the hearing is given below.

- (i) The petitioner submitted that, M/s Sankar conductors is an MSME and hence as per the GO dated 18.02.2016, they are exempted from payment of EMD and bid submission fee for participating in the tender. But KSEB Ltd in the tender specified that, in the case of New Entrant shall remit Bid submission fee @10% of the total EMD. Accordingly, the petitioner remitted the Bid Submission fee as specified in the Notice Inviting Tender to avoid the rejection of their tender. Claiming the EMD from MSME is against the GO dated 18.02.2016.

The petitioner further submitted that, they obtained all required licenses and BIS certification for the manufacture of ACSR Dog (100 sq.mm) and ACSR Wolf (150 sq.mm) conductors. The MSME in Kerala registered with BIS should be considered technically qualified and no factory inspection should be required. The tender should be modified accordingly. According to the petitioner, factory inspection is subjective. The petitioner submitted that, in the alternative, factories of all out State units should be inspected by the same team. The petitioners further apprehend that KSEB Ltd may reject their product on some flimsy grounds in the name of factory inspection.

- (ii) KSEB Ltd submitted that the petition is not maintainable, since the petitioner failed to point out the provisions of the EA-2003 under which the present petition filed before the Commission. This Commission in its order dated 30.12.2020 in OP 46/2020 stated that it does not normally interfere in any purchase or tender process of its distribution licensees.

The Hon. Supreme Court, in many judgments held that the Commission has no authority to entertain individual complaints. The Supreme Court while considering the petition of Essar power has affirmed that only if there is any violation of statutory obligation of the licensee, the affected person can approach the Commission. The petitioner has purposefully remitted the EMD, only to find a reason to approach this Commission on that basis. The petition miserably fails in locus standi.

Without prejudice to the above, KSEB Ltd submitted that, in the NiT, it is specified that, MSME with Udyog Aadhar Registration is exempted from remitting EMD and Bid submission fee. Two other MSME as New entrant participated in the tender without remitting EMD and Bid Submission fee. KSEB Ltd further submitted that the same petitioner has filed a petition before the Hon. High Court in the same subject and was rejected.

KSEB Ltd as the procurer has the right to ascertain the capability of the bidders participated as New Entrant in the tender, for manufacturing and supplying the materials as per the specifications. The factory inspection is insisted for all New Entrants participated in the tender.

- (iii) The Commission during the deliberations of the subject petition, clarified that, as per the provisions of the EA-2003, the petition is maintainable since the matter involve investment of the distribution licensee by utilising the public money. The cost incurred by the licensee for procurement of good and materials for carrying out its distribution business is ultimately pass on to the consumers though tariff. The licensee KSEB Ltd also bound to implement the orders on preferences and exemptions granted to the MSME by the State Government.

The Commission also clarified that, it does not intend to interfere in the procedure followed by the licensee to ascertain the capability of the bidders participated in the tender to supply the materials and goods as per the requirements as specified in the tender.

The Commission also noted that, the respondent KSEB Ltd not submitted their counter affidavit on the petition.

4. Based on the deliberations during the hearing, the Commission issue the following directions to the petitioner and respondent for immediate compliance.

- (1) KSEB Ltd shall submit the counter affidavit on the petition, including the copies of the judgement of the Hon'ble High Court in the subject matter, with a copy to the petitioner, latest by 30.04.2021.

KSEB Ltd shall also clarify, whether MSME in Kerala has to get Udyog Aadhar Registration as per the GO dated 18.02.2016 to get the exemption from the payment of EMD and Bid Submission fee.

- (2) The petitioner M/s Shankar Conductors shall submit their additional comments, if any, latest by 12.05.2021.

The next hearing on the subject petition is scheduled on **17<sup>th</sup> May 2021** at 11 AM through video conference.

**Sd/-**

**Preman Dinaraj**

**Chairman**

Approved for issue

C R Satheeshchandran

Secretary(i/c)