

KERALA STATE ELECTRICITY REGULATORY COMMISSION THIRUVANANTHAPURAM

**Present: Shri. Preman Dinaraj, Chairman
Adv. A.J Wilson, Member (Law)**

OP No : 60/2021

In the matter of : Petition regarding wrong purchases of ACSR Dog and Wolf etc. being made by KSEB Ltd. in Tender No. KSEB/SCM/eP.86/2020-21 dt. 04.02.2021. G.O. (Rt) No.5382/2020/Fin. dt.18.09.2020 issued by Govt. of Kerala to be complied.

Petitioner : M/s Shankar Conductors Pvt Limited
Petitioner represented by : Sri Sanjay Damia
Respondents : Kerala State Electricity Board Limited (KSEBL)
KSEB Ltd represented by : Adv Sakthidharan Nair, Counsel
Sri Manuseenan, AEE, TRAC

Date of Hearing : 07.02.2022

Daily Order dated 09.02.2022

1. M/s Shankar Conductor's Private Limited (hereinafter referred to as the petitioner) on 26.10.2021 filed a petition before the Commission with the following prayers:

- (A) *As per our para No. 2 (iii), 4, 5 (v), 5 (vi) and 7 (vi) etc. order for 17.33% of Wolf and Dog i.e. for 260 KM Wolf and 35 Km Dog should be placed on us.*
- (B) *Tender conditions should be suitably modified so that there remains no difference between New Entrants and others. Thus, condition that New Entrant can offer for maximum 10% of tender quantity is to be deleted.*

In this tender itself, tender conditions were amended and MSME of Kerala were exempted from EMD and Bid submission fee on orders of this Hon'ble Commission in case No. OP No. 16/2021 as explained in our para 5 above. There is no reason, why this amendment cannot be made in the tender conditions itself in this tender.

All MSMEs of Kerala should be treated equally. Actually, except for TRACO Cables Co. Ltd., no other MSME of Kerala has supplied Wolf or Dog to KSEB Ltd. because KSEB Ltd. has not placed yet order for "bigger than Raccoon" ACSR on any local MSME unit. Not placing order on plea that local MSME has not supplied Wolf or Dog to KSEB Ltd. is like a person killing his father and then, pleading for mercy on the ground that he is orphan.

- (C) *If required, as explained above, if equal quantity order for Wolf and Dog is not possible among MSME and PSU of Kerala according to terms of present tender, the tender should be cancelled and new tenders should be invited so that equal quantity orders may be given and G.O. (Rt) No. 5382/2020/Fin. dt. 18.09.2020 can be complied.*
- (D) *Any relief, which this Hon'ble Commission deems fit may be given to us. If This Hon'ble Commission feels that we are entitled to order of different quantity of ACSR, the same may kindly be given to us.*

2. The summary of the petition filed by M/s Shankar Conductors Private Ltd is given below.

- (1) The petitioner is an MSME in the State of Kerala, duly registered with the Industrial department Government of Kerala, having their factory in Kerala. The petitioner is regularly supplying ACSR Conductors as per IS 398/1996 since last 20 years. The petitioner is solely depending on KSEB Ltd for Orders of ACSR. The petitioner also has a license No.CM/L/6279481 issued by BIS.
- (2) State Government vide the Government Order RT.No.5382/2020Fin dated 18.09.2020 provide as follows.
 - a) Purchase Preference for 50% of order quantity is to be given to State MSME and PSU's.
 - b) Price Preference up to 50% is to be given to State MSME and PSU's.
 - c) Part of para (a) read as "If there are multiple vendors in this category, they will be given equal proportion of 50% of this order"
- (3) The petitioner submitted that, KSEB Ltd vide tender No. KSEB/SCM/eP.86/2020-21 floated the tender in 04.02.2021 for the purchase of 1500 KM Wolf conductor and 200 KM Dog conductor. In that tender 3 participants submitted their tender that is, 2 – MSMEs including petitioner and 1- PSU (M/s TRACO cables) participated.

Petitioner further claimed that, as per the GO dated 18.09.2020 they were to receive 17.33 % of the total quantity that is 260 KM Wolf and 35 KM Dog.

- (4) This Commission in the Order in OP No.46/2020, petitioner M/s Kerala Electrical and Allied Engineering Company Ltd, Respondent: KSEB Ltd, decided that all Government orders including GO dated 18.09.2020 is binding on KSEB Ltd.
- (5) In the annexure (1) of the "conditions for Pre-qualification of tender 04.02.2021" the condition provided as follows.

"The "New Entrants" will be considered for a trial order, if they satisfy pre-qualification condition limited to 10% tendered quantity, if technically qualified and financially L1. The "New Entrants" will be considered for a trial order, if they satisfy prequalification condition limited to 10% tendered quantity, if technically qualified and financially L1."

The petitioner objected that this condition as it was contrary to the GO dated 18.09.2020.

- (6) Petitioner also submitted that they were forced to give their offer for tender as a new entrant and claimed 10% of the total order that is, 150 KM ACSR Wolf and 20 KM ACSR Dog.
- (7) Commission vide Order dated 23.02.2021 exempted the EMD and Bid submission fee. However, KSEB Ltd yet to refund the EMD to the petitioner, and the exemption of EMD was not included as a tender

3. The petitioner, M/s Sankar Conductors Private Ltd submitted additional information vide their submission dated 11.01.2022 and its summary is given below.

- (1) In the tender dated 04.02.2021, Orders have been placed to the following units.
 - (a) M/s M.K cables (MSME unit of Kerala) for 100 KM wolf and 20 Km Dog.
 - (b) M/s TRACO Cables Co. Ltd (PSU of Kerala) for 400 KM wolf and 80 KM Dog.
 - (c) M/s Prem cables (out of State units) for 500 KM wolf and 100 KM Dog
No order was placed with the petitioner.

- (2) The petitioner claimed that, they are eligible for getting 1/3rd quantity, i.e, 500 km Wolf and 67 km as per the G.O dated 18.09.2021.

Petitioner further submitted that if the other units are not willing to accept the order for this quantity, M/s Sankar Conductors are ready to accept the order.

- (3) The petitioner also submitted a copy of the factory inspection report dated 28.09.2021, conducted by inspection team of KSEB Ltd, wherein the inspection team reported that, the petitioner have no facility to manufacture ACSR wolf in a single stretch. It is also reported that, no technically qualified persons are available for supervision and testing.

4. The petitioner, vide submission dated 24.01.2022 submitted the following:

- (1) The petitioner submitted copy of the KSEB letter dated 7/2000, offer received from KSEB for supplying Dog conductors. The petitioner also produced a copy of the KSEB letter dated 25.05.1999 for supplying Wolf conductors. This indicate that the petitioner is capable of producing Dog and Wolf conductors from the years 1999 and 2000 onwards, i.e, since the year 1999 onwards.
- (2) The Dog and Wolf manufactured at Shankar conductors are BIS marked. The petitioner submitted that, they could not produce the type test for Dog conductors, but submitted type test certificate for Wolf conductor, which is bigger than Dog conductor.
- (3) The petitioner submitted that, they are qualified to produce Wolf and Dog and also the entitled quantity may be placed on them

5. KSEB Ltd, on 24.01.2022, filed its counter affidavit against the petition filed by M/s Shankar Conductors (Pvt) Ltd. Its summary is given below.

- (1) The petition is not maintainable either in law or facts and devoid of any merits and bonafides.
- (2) The petitioner is an unsuccessful bidder in tender No. KSEB/SCM/ep.86/2021 dated 04.02.2021. The petitioner want to cause impediments to

the supply of ACSR Dog, Moose and Wolf Conductors, thereby sabotage the urgent transmission works of KSEB Ltd. The present petition is a clear abuse of the process of the Hon'ble KSERC. Hence the petition may be dismissed.

- (3) The Commission, vide Order dated 26.05.2021 in OP 16/2021 has observed that the ensuring quality of the product to be supplied by the bidders/suppliers come under the domain of tendering authority. The Commission also observed that, the tender document is a legally valid documents and cannot be modified to suit the prospective bidders requirement. Further, during hearing of OP16/21, the Commission clarified that it does not normally interfere in the tender procedure of the licensee. Based on this, the petitioner did not press on the said prayer and accordingly rejected the said prayer. Order XXIII, Rule 4 of the Code of Civil procedure, 1908 preclude the petitioner from instituting a fresh petition in respect of subject matter of such petition.
- (4) The tender was a two-part bid system comprising of pre-qualification bid and price bid. **In the pre-qualification stage itself the petitioner was disqualified by the pre-qualification committee since, the factory inspection report was not satisfactory for the ACSR Wolf conductors and no type test report was submitted for ACSR Dog conductor.**
- (5) KSEB Ltd concluded the bid process and purchase orders were issued to the following successful bidders on 29.11.2021.
 - (i) M/s M.K cables (MSME unit of Kerala) for 100 KM wolf and 20 Km Dog.
 - (ii) M/s TRACO Cables Co. Ltd (PSU of Kerala) for 400 KM wolf and 80 KM Dog.
 - (iii) M/s Prem cables (out of State units) for 500 KM wolf and 100 KM Dog
- (6) After the technical evaluation itself, the EMD was returned to the bidder, on 23.10.2021.
- (7) KSEB Ltd further submitted that,
 - (i) Tender No. KSEB/SCM/eP.86/2020-21 dated 04.02.2021, was invited for procuring 1500 KM of ACSR Wolf, 13 KM of ACSR Moose and 200 KM of ACSR Dog conductors.
 - (ii) The petitioner participated in the bid as a **new entrant**. If New Entrant bidder is qualified, they will be awarded 10% of the tendered quantity after the pre-qualification. In the tender 15 participants participated out of that, three (3) firms including the petitioner were participated in the bid as new entrant. KSEB Ltd further submitted that the petitioner as a new entrant submitted the type test certificate for ACSR Wolf type conductor only. The petitioner has not submitted any test certificate for ACSR Dog type conductor. Although, KSEB Ltd requested the certificate to the petitioner but, the petitioner not given any certificate.
 - (iii) The pre-qualification committee meeting held on 20.10.2021 found that the petitioner has not satisfied the pre-qualification condition.

Once more company M/s Pairiwal Industries Ltd, Ranchi also not qualified as new entrant. The price bids of the pre-qualified tenders were opened on 23.10.2021.

- (iv) KSEB Ltd on 24.11.2021 decided to reduce the purchase quantity of ACSR Wolf conductor from 1500 KM to 1000 KM.
- (v) KSEB Ltd further submitted that, as per G.O (Rt) No.5382/2020 Fin dated 18.09.2020, 50 % of the purchase order quantity given to M/s Prem cables private Limited, the L1 bidder, who is an out of State bidder. Out of the balance 50% reserved for MSME, 10% was given to M/s M.K Cables, the new entrant. Balance 40% given to M/s TRACO Cable Co Ltd.

The petitioner was disqualified at the bid stage itself.

6. The Commission admitted the petition as OP 60/2021 and conducted the first hearing on 07.02.2022, through video conference. Sri Sanja Dalmia presented the matter on behalf of the petitioner. Adv Sakthidharan Nair and Sri Manuseenan, AEE, TRAC, KSEB represented the respondent KSEB Ltd. The summary of the deliberations during the hearing is given below.

- (1) During the hearing the petitioner submitted the following.
 - (i) The petitioner participated in the tender invited by KSEB Ltd for supply of 1500 KM Wolf conductor and 200 KM Dog conductor. The company was not pre-disqualified in the tender. The following are main issues raised by the Committee.

The general remarks of inspection report dated 28.09.2021 is as follows:

At present the firm have no facility to manufacture ACSR wolf in a single stretch. The production process involves three stages. So this is more time consuming process compared to single machine. Only manual inspection is seen to ensure the production line quality of the product. The labourers seen in the factory are skilled but no technically qualified persons are available for supervision and testing.

- (ii) The petitioner further submitted that, KSEB in the year 1999 and 2000, had issued two purchase orders to the firm for the supply of (1) for Dog conductor during July 2000 and (2) for wolf conductor during May 1999. The petitioner submitted that, they did not accept the offer of KSEB at that time. However, the reason for not accepting the offer was not explained.
- (2) KSEB Ltd submitted that, the petitioner had participated in the bid as a New Entrant. In the case of New Entrant, in order to ensure the capability of the bidder to manufacture the item in an efficient and qualitative manner, the factory inspection report is mandatory as specified in the Notice Inviting Tender. Further, the petitioner was disqualified in the pre-bid stage itself for supplying Wolf conductors and the petitioner could not produce the type test certificate for the Dog Conductor.

- (3) The Commission during the hearing, sought the following clarifications from KSEB Ltd.
- (i) Whether KSEB Ltd had issued purchase orders for supplying Wolf and Dog conductors to the petitioner?
 - (ii) Whether the petitioner could supply the Wolf and Dog conductors as per the specification of KSEB?
 - (iii) Whether there is any change in the specifications (including ISI/BIS specifications), and quality standards on the Wolf and Dog conductors purchased by KSEB/KSEB Ltd between 1999 and 2021.

But during the hearing, none of the Officers of KSEB Ltd from the O/o the Chief Engineer (Supply Chain Management) was present to answer the queries of the Commission. The Commission has viewed this laxity on the part of the KSEB Ltd very seriously.

Hence, the Commission hereby direct the Management of KSEBL that, hence forth, senior officers including Chief Engineers of all the concerned departments shall be present with files and documents for answering the queries of the Commission during the deliberations of the matters, in which KSEB Ltd is the petitioner or one of the respondent.

7. Based on the deliberations during the hearing, the Commission hereby issues the following directions to the petitioner and the respondent, latest by 14.02.2022
- (1) KSEB Ltd shall submit a detailed clarification on the issues raised by the Commission as detailed under paragraph 6(3) above, with a copy to the petitioner.
 - (2) The petitioner shall submit detailed explanation on not accepting the offer of KSEB for supplying Wolf and Dog conductors in the year 1999 and 2000.
 - (3) Hence forth, senior officers including Chief Engineers of all the concerned departments shall be present before the Commission with files and documents for answering the queries of the Commission during the deliberations/ hearings of the matters in which KSEB Ltd is the petitioner or one of the respondent.

**Sd/-
Adv. A.J. Wilson
Member (Law)**

**Sd/-
Preman Dinaraj
Chairman**

Approved for issue

C R Satheeshchandran
Secretary