
(2003) 08 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1703 of 2003

Shilpa Engineering Contractors and Suppliers

APPELLANT

Vs

Northern Power Distribution Company of Andhra Pradesh

RESPONDENT

Date of Decision : 08-08-2003

Acts Referred:

Citation : (2003) 6 ALD 735 : (2003) 5 ALT 802 : (2003) 3 APLJ 138 : (2004) 2 BC 143 : (2004) 1 CTLJ 30

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : D. Bhaskara Reddy, for the Appellant; M. Vinobha Devi, SC for AP TRANSCO, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondent-A.P. Northern Power Distribution Company Limited (APNPDCL).

2. The petitioner is a registered Contractor with the respondent. Pursuant to the Tender Notice No. 03/2002-2003, issued by the respondent, inviting sealed tenders from registered contractors for manning and maintenance of 33/11 KV sub-stations in Nizamabad Circle, the petitioner submitted his tender. According to the petitioner, as per the terms and conditions of the Tender Notice, the sealed tender covers which do not contain the superscription of the particulars such as, tender specification number, E.M.D. particulars, validity period, acceptance of terms and conditions of the Board/NPDCL, valid licence number from Chief Electrical Inspectorate to Government of Andhra Pradesh and registration number with APNPDC Ltd., Warangal, will be returned unopened. The petitioner claims to have submitted the Tender Schedule by signing on each page, including the page relating to acceptance of terms and conditions of the tender. It is the case of the petitioner that on the ground that the sealed tender cover submitted by him did not contain the superscription of his acceptance of the terms and

conditions of the Board/NPDCL, the respondent returned the sealed tender cover unopened. The petitioner is assailing this action of the respondent in this writ petition.

3. The learned Counsel for the petitioner would submit that the Tender Notice published by the respondent in the newspapers merely states that the sealed tender covers which do not contain the superscription of the particulars such as name of the work, E.M.D. particulars, date of opening, tender specification number etc., will be returned unopened, and it nowhere indicates that the tenderer should superscribe the acceptance of the terms and conditions of the Board/NPDCL on the sealed tender cover. Inasmuch as the Tender Notice published by the respondent in the newspapers does not indicate that the sealed tender covers should contain the superscription of the acceptance of the terms and conditions of the Board/NPDCL by the tenderer, the learned Counsel for the petitioner submits that non-superscription of the acceptance of the terms and conditions of the Board/NPDCL by the petitioner on the sealed tender cover, cannot be treated as a ground by the respondent for returning the sealed tender cover unopened. Alternatively he would submit that inasmuch as the petitioner signed on all the pages of the Tender Schedule, including the page relating to acceptance of terms and conditions of Part-I of the Tender Schedule, non-superscription of the acceptance of the terms and conditions of the Board/NPDCL by the petitioner on the sealed tender cover, cannot be taken as a serious omission so as to warrant the respondent to return the sealed tender cover unopened.

4. The Superintending Engineer, APNPDCL, filed counter-affidavit on behalf of the respondent. The learned Standing Counsel for APTRANSCO, reiterating the averments made by the respondent in the counter, justified the action of the respondent in not opening the sealed tender cover of the petitioner. She submitted that inasmuch as it was clearly mentioned in the Tender Schedule that the tender covers which do not contain the superscription of the important particulars such as tender specification, E.M.D. particulars, validity period, acceptance of terms and conditions of the Board/NPDCL, valid licence number from the Chief Electrical Inspectorate to Government of Andhra Pradesh and Registration number with APNPDCL, Warangal, will be returned unopened, non-opening of the sealed tender cover of the petitioner by the respondent, which did not contain the superscription of the acceptance of the terms and conditions of the Board/NPDCL by the petitioner, cannot be found fault with. She further submitted that in pursuance of the Tender Notice, near about 100 tenders were received, and all the tenders, save those which did not contain the superscription of the particulars mentioned in the Tender Schedule were returned unopened. As the sealed tender cover submitted by the petitioner did not contain the superscription of the acceptance of the terms and conditions of the Board/NPDCL, which is one of the important condition to be complied with, no exception can be taken to the action of the respondent in returning the sealed tender cover of the petitioner unopened.

5. I have perused the Tender Notice published in the newspapers as also the terms and conditions appended to the comprehensive Tender Schedule.

6. None of the grounds urged by the petitioner in support of the writ petition are worthy of acceptance and they do justify rejection. The contention of the petitioner that inasmuch as the Tender Notice published the respondent in the newspapers does not mention superscription of the acceptance of the terms and conditions of the Board/NPDCL by the tenderer on the sealed tender cover, non-superscription of the same by the petitioner on the sealed tender cover, cannot be taken as a ground for returning the same without opening it, is misplaced. It should be noted that normally the Tender Notices, which are advertised in newspapers, do not contain all the details of the Tender Schedule for the reason that they are merely notices inviting tenders from eligible and interested parties to participate in the tender. One cannot expect the Tender Notices advertised in newspapers to give complete details and full picture of the tender Schedule. Any party interested or intending to participate in the tender has to look into the tender schedule for greater and minute details of the terms and conditions of the tender. The terms and conditions mentioned in the tender notices advertised in the newspapers being incomprehensive, cannot be treated as a code in themselves so as to bind the person issuing such an advertisement. To have full details and full knowledge of the terms and conditions of the tender, one is always expected to look into the Tender Schedules, and not merely go by the terms and conditions mentioned in the tender notice advertised in the newspapers. Be that as it may, a reading of Condition No.6 of the tender notice advertised in the newspapers would disclose that the sealed tender covers without superscription of tender particulars such as, name of the work, E.M.D. particulars, date of opening tender specification number etc., will be returned unopened. It is no doubt true that the particulars relating to acceptance of the terms of the Board/NPDCL are not mentioned in the advertisement to be superscribed on the sealed tender cover, but going by the wording used in Condition No. 6 "etc." which denotes that there are other particulars to be superscribed on the sealed tender cover, it cannot be said that non-superscription of the acceptance of the terms and conditions of the Board/NPDCL by the petitioner on the sealed tender cover, cannot be a ground for the respondent to return the sealed tender cover of the petitioner unopened.

7. The contention of the petitioner inasmuch as he has signed on all the tender papers, including on the page relating to acceptance of terms and conditions of the tender, non-superscription of the acceptance of terms and conditions of the Board/NPDCL by the petitioner on the sealed tender cover, should not be a ground for the respondent to return the tender of the petitioner unopened, cannot be accepted. A reading of the comprehensive tender specification would indicate that the tenderer is required to mention the name of the work for which he tendered, last date and time for receipt of tender, date and time of opening, place of opening, earnest money deposit, security deposit, completion period, validity of the tender. Apart from the above, it may be noted that under the

caption "IMPORTANT", it is stated that in addition to the name and address of the tenderer, the sealed tender covers not containing the superscription of the particulars, namely, tender specification, E.M.D. particulars, validity period, acceptance of terms and conditions of Board/NPDCL, valid licence number from Chief Electrical Inspectorate to Government of Andhra Pradesh and Registration number with APNPDCL, Warangal, will be returned unopened Inasmuch as acceptance of terms and conditions of the Board/NPDCL is one of the essential and important particular to be superscribed on the sealed tender cover for opening the tender of a tenderer, non-superscription thereof by the petitioner on the sealed tender cover, was rightly returned to the petitioner unopened. It should be noted that the processing of the tender covers would depend upon the acceptance of terms and conditions of the Board/NPDCL, and if the petitioner has failed to superscribe the acceptance of the terms and conditions of the Board/NPDCL on the sealed tender cover, which is one of the precondition for opening the sealed tender cover, returning the sealed tender cover of the petitioner unopened by the respondent, cannot be faulted. Merely because the petitioner has signed on all the pages, including on the page relating to acceptance of terms and conditions of the tender, it does not mean that the petitioner has indicated his acceptance of all the terms and conditions of the tender and there was no need for him to superscribe the acceptance or otherwise of the terms and conditions of the Board/NPDCL on the sealed tender cover. When the Tender Schedule was clear in its language that non-superscription of the particulars mentioned under the caption "IMPORTANT" would entail returning the tender cover unopened, it was imperative on the part of the petitioner to superscribe all the details as asked for by the respondent in the Tender Schedule on the sealed tender cover.

8. For the reasons aforementioned, no exception can be taken to the action of the respondent in returning the sealed tender cover of the petitioner unopened for not containing the superscription of the acceptance of the terms and conditions of the Board/NPDCL by the petitioner, on the sealed tender cover submitted by him.

9. The writ petition is bereft of any merits, and it is accordingly dismissed. No costs.