

Transmission Utility (STU) not to Central Transmission Utility (CTU) wherein power could be scheduled only within the State of Maharashtra and to schedule power through CTU, the generator has to bear the transmission charges and loss which will add to the generation cost. For these reasons, M/s. SaiWardha Power Generation Pvt. Ltd would not have participated in the recent medium term tender floated by GUVNL, REMCL for Indian Railways tender. That be the case, now raising objections clearly shows their malafied intention only to vitiate the process of finalization of the tender floated by TANGEDCO.

7.20. TANGEDCO had filed additional affidavit No.2 on 04.03.2022 intimating the price details of the tender and praying to allow TANGEDCO to finalize the discovered landed cost tariff of RsA.66 /Kwh (Fixed Cost - Rs.2.02 per unit and Variable Cost - RS.2.02 per unit excluding transmission charges and transmission loss) in the medium term tender floated for a period of five years and to issue Letter of Acceptance (LOA) to successful bidders and Signing of Power Supply Agreements with the aggregator.

7.21. TANGEDCO got approval of the commission to procure 1500 MW power under Pilot Scheme-II issued by Ministry of Power, Govt. of India. However, as generators did not extend their Bid validity, PTC India Ltd. (Aggregator under Pilot Scheme-H) could not allocate the entire quantum and allocated only 400 MW power to TANGEDCO. Agreements for which were signed in October, 2021 and subsequently Tariff was adopted by the Commission.

7.22. To meet the balance power requirement of the state of Tamil Nadu, TANGEDCO proposed to float a tender in line with Pilot Scheme-II with some changes as suitable to TANGEDCO. Accordingly, TANGEDCO floated a tender on 20.12.2021 for procurement of 1500 MW power on Medium Term basis for 5 years after obtaining TANGEDCO Board approval and further obtained direction to go ahead with the tender process from the Commission.

7.23. TANGEDCO had submitted the draft tender document along with 6 deviations from standard bidding document well in advance i.e on 15.12.2021 wherein it was clearly indicated that the tender document has been prepared to align with Pilot Scheme-II wherein Generating companies are eligible bidders and obtained the direction to go ahead with the tender process from the Commission.

7.24. Bidding process followed by TANGEDCO is in terms of Bidding Documents notified by the Government of India with certain deviations for which TANGEDCO obtained approval from the Commission.

7.25. There are many guidelines issued by government of India wherein 10 trading licensees are not eligible to participate. Namely Pilot Scheme-I for procurement of 2500 MW power under Medium Term, Pilot Scheme-II for procurement of 2500 MW power under Medium Term. Trading licensees are also not eligible to participate in Model Bidding Document issued by Government of India for procurement of power under Long Term. Further, in the same Model Bidding Document the intervenor is referring, trading licensees are excluded from

participating when the choice of fuel is allocated coal linkage. Therefore, participation of a trading licensee is not mandatory for procurement of power. Trading licensees participate on behalf of a generator. In case trading licensees are not eligible to participate, generators participate directly in the bidding process. Financial criteria was waived off for the generators/bidders. Generators to fulfil technical criteria only which they do even when they participate through a trading licensee.

7.26. As TANGEDCO floated tender for procurement of power in line with Pilot Scheme-I wherein generators were eligible to participate in the tender, accordingly, TANGEDCO incorporated the deviations in Model Bidding Document issued by Government of India and obtained direction to go ahead from the Commission. The Commission has all the powers to approve the deviations in Model Bidding Documents issued by Government of India for procurement of power.

7.27. The objective of the bidding process is to ensure competition and & 12 TANGEDCO is well aware and has taken care of it. All the generating companies whether CTU connected or STU connected, within the state of Tamil Nadu or outside the state of Tamil Nadu, operating on imported coal or domestic coal including renewable energy were eligible to participate. Financial Criteria like net worth was also waived-off in line with Pilot Scheme -II so that every generator who are willing to participate can participate. A trading licensee participates on

behalf of generator. In case trading licensees are not eligible to participate, generators participate directly in the bidding process. Therefore, TANGEDCO has ensured full competition in the tender.

7.28. TANGEDCO has submitted the Petition to the Commission to 15 along with the proposed deviation from the Model Bidding Document. Proposed deviations were separately submitted to the Commission wherein eligibility criteria of bidders were clearly mentioned. The Commission vide daily order dated 21.12.2021 directed TANGEDCO to go ahead with the process. Therefore, the question of not highlighting the Commission about the deviation does not arise.

7.29. TANGEDCO had submitted the Petition to the Commission along with the proposed deviation from the Model Bidding Document. Proposed deviations were separately submitted to the Commission wherein eligibility criteria of bidders were clearly mentioned. The Commission vide daily order dated 21.12.2021 directed TANGEDCO to go ahead with the process. Therefore, the Commission was well appraised by TANGEDCO and eligibility criteria was clearly mentioned. Further deviations after Pre-bid meeting were also submitted to the Commission.

7.30. Bidding process including the adoption of tariff is within the jurisdiction of the Commission and therefore TANGEDCO has appraised and brought the proposed deviations to the Commission and obtained go ahead. There is no need to revise the bidding document issued by TANGEDCO as the Commission's concurrence has already been obtained on the deviations from the Model Bidding

Document. Further, bidding process has been concluded and the same has been appraised to the Commission. Final approval/adoption of the commission is sought for issuance of LOAs and signing of agreements.

7.31. There are no restrictions imposed by TANGEDCO to disqualify a generating company to participate. M/s SaiWardha Power Generation Pvt.Ltd, or any generator for that matter, in case willing to participate in the tender process could have participated and submitted the Bid like other generating companies. In case there is any arrangement between M/s Manikaran Power Limited and M/s SaiWardha Power Generation Pvt. Ltd., TANGEDCO is not aware of any such arrangement. Even in such cases where there are prior arrangements between a trading licensee and a generating company for sale of power, generating company participates directly for sale of power in case trading licensees are not eligible to participate. Therefore, TANGEDCO did not restrict any party from selling its power to TANGEDCO through this tender and did not compromise with the extent of competition. TANGEDCO only followed the process and sought the deviations from the Model Bidding Document and obtained the go ahead from the Commission and also appraised the commission from time to time about other deviations and progress on the bidding process.

7.32. Further, almost all the distribution licensees take deviations from the Model Bidding Document and obtain approval/concurrence/go ahead from their respective regulatory commission. TANGEDCO has also done the same and

obtained go ahead from the Commission. Queries raised by participants were well addressed in Pre-bid meeting and suitable Amendments/clarifications were issued subsequently after apprising the same to Commission. No objections were brought to the notice of this Commission in last two and half months for the same. Now after discovery of tariff and selection of successful bidders, all of a sudden objections are raised by M/s Manikaran Power Limited/ Ms.SaiWardha Power Generation Pvt. Ltd. with the Commission with malafide intention only to vitiate and delay the process.

7.33. In fact, it would have been more appropriate for SaiWardha to explain the difficulty which has prohibited it from participating in the tender given the fact that total 11 nos. of generators have participated in the tender without any difficulty and financial criteria have removed to enable larger participation of generators.

7.34. It is not the last available opportunity for the Intervenors for selling power which would cause irreparable damage to them. In fact, a new opportunity has come for the Intervenors to participate in the 1000 MW medium term tender floated by Haryana Utilities. On the other hand, in case this tender process is vitiated then it will cause irreparable damage to the public of Tamil Nadu as the successful bidders are likely to move for other available opportunities in the current market scenario.

7.35. In the facts and circumstances mentioned above, the Commission reject the objection filed by M/s Manikaran Power Limited/ M/s. SaiWardha Power

Generation Pvt. Ltd. and grant the approval/adoption for issuance of LOAs and signing of Agreements so that much needed power supply can start for benefit of the state of Tamil Nadu.

7.36. It is therefore prayed that the Commission may accord approval for the following:-

1. Allow TANGEDCO to finalise the discovered tariff of Rs.4.66 /Kwh at Tamil Nadu Periphery in the medium term tender floated for a period of five years.
2. To issue Letter of Acceptance (LOA) to successful bidders Mis. M/s.GMRKamalanga Energy Ltd (102 MW), M/sJindal Power Ltd (200 MW) M/s.D.B.Power Ltd (150 MW) and M/s.MB Power Madhya Pradesh Ltd (175 MW) for purchase of 627 MW RTC Power through medium term for a period of five years based on FOO (Finance, Own, Operate) guidelines through Aggregator M/s.PTC India Ltd.
3. To sign Power Supply Agreement with the aggregator M/s.PTCIndia Ltd.

8. Findings of the Commission:-

8.1. The petitioner filed M.P No.48 of 2021 seeking approval for the deviations from the Model Bidding Document to float a medium term tender.

The prayer of the petitioner is as follows:

- i) To accord approval to float a medium term tender under FOO guidelines with the deviations proposed in the bidding documents in line with Pilot Scheme II for procurement of 1500 MW RTC power for a period of 5 years appointing M/s.PTC as aggregator.
- ii) To pass any other order as deemed fit in the interest of justice in the facts and circumstances of the present case.

8.2 Ministry of Power has issued revised guidelines and model Bidding documents for procurement of electricity for Medium Term from power stations set up on Finance, Own and Operate (FOO) basis under section 63 of the Electricity Act 2003.

The important features of the Guidelines are as follows:

- i) The application of these Guidelines shall be restricted to projects from which power is procured in accordance with an Agreement for Procurement of Power for a period between one and five years, with a provision to extend the period up to 25% of the initial contract period or one year whichever is lower, with mutual consent.
- ii) The tariff determined through the DEEP e-Bidding process using e-reverse Auction based on these Guidelines comprising the Model Bidding Documents

shall be adopted by the Appropriate Commission in pursuance of the provisions of Section 63 of the Act.

iii) Any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents from Power Stations set up on Finance, Own and Operate (FOO) basis.

8.3 The provisions as per the model bidding documents and the deviations sought by the petitioner have been detailed in para 3.16 of this order.

The deviations sought are encapsulated below:

- i) Signing of the Agreement for Procurement of Power between PTC, the aggregator and successful bidder and back to back Power Supply Agreements between the Distribution Licensee and PTC.
- ii) Bidder to be paid only Fixed charge and Variable charge with transmission charges and losses to the account of utility.
- iii) Bids called only from owner and operator of the power stations. The applicants not to have any PPA for the bid quantum.
- iv) In addition to an assured supply of fuel, an undertaking /commitment letter for firm fuel arrangement for supply of power.
- v) The bidder to have an installed capacity at least equivalent to the capacity to be bid.
- vi) Financial capacity of Rs.1 crore per MW and provision to increase the capacity at e-reverse auction;

- vii) Deletion of Option to extend the contract period prior to 3 months of expiry of contract.
- viii) Aggregator liable for payment of all charges under applicable laws for inter State transmission of electricity upto the Delivery point.
- ix) Aggregator liable for transmission losses upto delivery point.
- x) Supplier liable for payment of all charges applicable to SLDC,RLDC to the aggregator. Right to schedule power on Short Term Open Access (STOA) basis till MTOA becomes operational.
- xi) Performance security upto expiry of agreement.
- xii) Right to refuse power through alternate source without any liability on payment of fixed charge to supplier without claim on compensation/damages from supplier.
- xiii) Fixed charge to remain constant for the entire contract period.
- xiv) For reduction of deemed availability for any shortfall in supply of electricity due to transmission constraints, aggregator not liable for payment of any fixed charge.
- xv) Aggregator not liable to pay fixed charge for non availability arising due to fuel shortage.
- xvi) 100% of fixed charge deduction for any reduction in normative availability.
- xvii) Taxes and duties where payable by/ to the utility to be paid to the aggregator.
- xviii) Payment by aggregator within 32 days
- xix) Rebate of 2% in bill for payment within 5 days.
- xx) Payment security through Default Escrow Account and hypothecation deleted.
- xxi) The term 'UI' regulations referred as 'Deviation Settlement Mechanism' regulations.
- xxii) Change in Law in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 dated October 22, 2021 .
- xxiii) Defaulting party to pay interest at rates equal to the Bank rate.

xxiv) Letter of credit equal to one month's energy bill payable by utility to supplier for normative availability and to be renewed once every year to reflect the revision in average monthly payment of previous year.

8.4. The main prayer of the petitioner was to conduct the bidding in line with Pilot II scheme introduced by the Ministry of Power with PTC as aggregator who signs back to back to power purchase and power sale agreements. The bid of the petitioner was to include all generators.

8.5. Initially, Commission approved purchase of 500 MW of RTC power through the Pilot scheme II at a tariff of Rs.3.26 per unit in June 2020 for a period of 3 years of which TANGEDCO could contract 400 MW of power. In M.P No.41 of 2021, Commission approved for purchase of additional quantum of power for 1000 MW for a period of 3 years under pilot scheme II.

8.6. The petitioner has submitted that M/s PTC was addressed vide letter dt.18.11.2021 to furnish the list of generators to supply 1100 MW RTC power to TANGEDCO under Pilot scheme II and make arrangements to execute Power Supply agreement. However, the power procurement as per the approval accorded by the Commission in M.P No.41 of 2021 could not be made due to the refusal of the generators to extend the price validity. The petitioner has thus come with this alternative proposal to float the bid with PTC as aggregator.

8.7. The deviations sought to the model bidding document by way of relaxing technical capacity of the bidders to have a capacity equal to the bidding and relaxation of the 'net worth' conditions does not fetter competition. In view of the

urgency and inability to procure power based on previous approvals, and to obviate any delay in processing bids and procuring at best rates to tide over the peak summer and deficits in supply, during the hearing on 21.12.2021 Commission approved in principle to commence the bidding process. Since the petitioner failed to secure bids for the approvals granted earlier, this petition was kept live to note the end process.

8.8. After the pre-bid meeting on 3.1.2022, the following deviations have been retained as per the Model Bidding Document:

- i) Providing Performance security has been retained to a period of six months instead of the entire contract period.(Article 9.1.1.)
- ii) Clause on Substitute supply retained as per bid document(Article 10.3)
- iii) Revision of fixed charge annually on the basis of 20% variation in Whole sale Price Index(Article 11.3) and payments in shortfall in supply (Article 11.4.4 and 11.4.5)
- iv) Damages payable for reduction in availability(Article 11.6.2); Damages are not payable for reduction in Availability on account of transmission constraint

8.9. The deviations sought by the petitioner are mainly to safeguard its interests in guaranteeing supply and manage billing and payments.

8.10. After nearly two months of hearing of the case, the intervenors M/s.Manikaran Power Ltd. and M/s SaiWardha Power Generation Pvt. Ltd. have raised objections to the bidding process conducted by TANGEDCO. Their objections primarily relate to the eligibility of the bidders prescribed in the bid document as to be 'the owner and operator of the power station' by not including

'trading licensee'. Their main contention is that TANGEDCO has unilaterally made the amendments and has carried out the bidding process before obtaining approval of the Commission and competition has been thwarted by not including trading licensees.

8.11. TANGEDCO in their rejoinder to the aversions made by the intervenors have explained that the inability to tie up with PTC under the Pilot II scheme for the approval already accorded by the Commission in M.P No.41 of 2021 to procure 1000 MW RTC power, due to the non extension of validity of price bids, made them go for a bid process in line with the Pilot scheme II and as a result has sought for many deviations to fall in line with the conditions of pilot scheme II of which one was the clause on 'eligibility' criteria of bidders to call for bids from generators. The petitioner further states that no objections were raised by M/s.Manikaran and M/s.SaiWardha during hearings prior to 8.3.2022 and raising objections after knowing that the tender process is at its final stage during the hearing on 8.3.2022 was to delay the power purchase activities. TANGEDCO also contends that there are many guidelines issued by the Government of India where trading licenses are not eligible to participate like in Pilot schemes I & II, model bidding document for long term power purchase and therefore participation of a trading licensee is not mandatory for procurement of power. Trading licensees participate on behalf of a generator. The petitioner has further stated that if this tender process is vitiated, it will cause damages to the consumers of this State whereas the successful bidders would move out for other available

opportunities and has indicated that a 1000 MW medium term tender has been floated by Haryana utilities.

8.12. Clause 4, extracted below, of the Revised Guidelines of the Ministry of Power for Procurement of Electricity for Medium term from Power Stations set up on Finance, Own and Operate(FOO) basis provides for the Distribution Licensee to make deviations from the Model Bidding Documents with prior approval of the Commission.

‘Any deviation from the Model Bidding Documents shall be made by the Distribution Licensees only with the prior approval of the Appropriate Commission. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.’

8.13. Accordingly, the petitioner has floated the bid after obtaining approval of the Commission on 21.12.2021 which approval was accorded considering the deviations filed by the petitioner. As to the allegation of thwarting competition, the relaxation of many of the conditions like technical capacity, financial worth provided a wide reach to all generators and therefore the contention of the intervenors lacks rationale. TANGEDCO submits that the generator M/s.SaiWardha is connected to the State Grid of Maharashtra and to schedule power through CTU, the generator has to bear the transmission charges and losses which would only add to the generation cost. Let alone the cost of

generation, M/s.SaiWardha being a generator could have very well participated in the bidding process conducted by the petitioner.

8.14. The intervention of M/s.Manikaran and M/s.SaiWardha after the bidding process was over is an afterthought and lacks credibility. To a query to the intervenor whether power could be supplied below the rates discovered in the bid process for medium term power procurement, the intervenors remained silent. M/s.SaiWardha has participated in the pre bid meeting and could have participated in the bidding. Without participating in the bidding, M/s.SaiWardha has chosen to contest the action of the petitioner in conducting the e bidding and e reverse auction.

8.15. The petitioner has filed the petition seeking approval to conduct the bid in line with Pilot scheme II with M/s.PTC as aggregator, and has accordingly proposed for deviations from the Model Bidding Documents for medium term procurement of power on FOO basis for approval from the Commission which is in accordance with the guidelines of Ministry of Power, and Commission has accorded approval to conduct the bidding. The petitioner after obtaining approval has conducted the bidding process in a transparent manner. A pre-bid meeting has been conducted and all clarifications have been issued. According to section 63 of the Electricity Act 2003 reproduced below, Commission has to adopt the tariff when such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

8.16.In the petition filed on 4.3.2022, the petitioner has requested to allow them to finalise the discovered tariff of Rs.4.04 per unit added with transmission charges, losses and to issue letter of acceptance to successful bidders and sign the Power Supply Agreement with the aggregator M/s.PTC.

8.17.The tariff of Rs.4.04 per unit (fixed cost of Rs.2.02 and variable cost of Rs.2.02) for supply at interconnection point as stated by the petitioner is less than all the present power purchase costs through short term, power exchanges, long term and some of the petitioner's own power stations. The annual escalation is stated to be 5 to 6 paise per unit which at the end of the contract period added with the transmission charges, losses would still be less than Rs.5 per unit. The petitioner is presently purchasing power under short term and from the power exchange where per unit costs exceeds Rs. 5/-.

8.18. Commission approves the deviations sought and modified by the petitioner after the pre bid meeting with the bidders. Adoption of tariff is possible only when a petition is filed for adoption. However, in view of the submissions made, considering the urgency, in principle approval is accorded to finalise the process and approach the Commission through a petition, namely P.P.A.P for adoption of tariff paying required fee.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(M.Chandrasekar)
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/True Copy /

Secretary
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