

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

OP No : 15/2021

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

Date of Hearing : 08.04.2021

In the matter of : Approval of allowing 15% of price preference and 50% purchase preference for MSME's in KSEBL tender for empanelling contractors for implementing Grid Connected Rooftop Solar PV Plants of various capacities aggregating to 200 MWp under Soura Subsidy Scheme In Domestic Sector, Kerala.

Petitioner : C M Varughese (Secretary)
KREEPA, Renewable Energy Centre.

Petitioner represented by : Sri. K Iyer, President
Sri. C M Varughese, Secretary
Sri Jose Kallookkaran, Executive Member

Respondent : Kerala State Electricity Board Limited (KSEB Ltd)

KSEBL represented by : Sri Premkumar P K, Dy. Chief Engineer, TRAC
Sri Nasarudeen A, Deputy Chief Engineer, REES

Daily Order dated 12.04.2021

1. Kerala Renewable Energy Entrepreneurs and Promoters Association (hereinafter referred to as the petitioner or KREEPA) filed a petition on 05-03-2021, before the Commission with the following prayers:
 - (1) Issue necessary directions to M/s KSEB Ltd to finalise the tender No. 5/SOURA- Subsidy- Domestic/2020-21 dated 15.02.2021, only after considering G.O. (Rt) No 5382 / 2020/ Fin dated 18.09.2020.

- (2) As KSEB Ltd may finalise the tender without considering the G.O.(Rt) No 5382/ 2020/ Fin dated 18.09.2020 and shall lose opportunities for the MSMEs of Kerala who are struggling for survival in Covid-19 period, the petitioner request before the Commission to post the hearing at the earliest.

2. The summary of petition filed by KREEPA is given below.

- (1) Kerala Renewable Energy Entrepreneurs & Promoters Association (KREEPA) was established in the year 2005, with objective of accelerating the RE penetration on state level.
- (2) KSEB Ltd, vide Tender No.5/SOURA-Subsidy-Domestic/2020-21 dated 15.02.202, invited tender for empanelment of Contractors for implementing Grid connected Roof Top Solar PV plants of various capacities aggregating to 200 MW power under Soura Subsidy scheme in Domestic Sector in Kerala in line with the Phase II subsidy programme of the MNRE.
- (3) The State Government vide the order G.O.(Rt) No 5382/ 2020/ Fin dated 18.09.2020, issued the following orders for extending the benefit of public procurement policy for self reliance- announced by the Govt- to the MSMEs and PSUs in the State.

The relevant portion of the G.O is extracted below.

"Considering the new guidelines of the Govt. of India and the incentives announced for local manufacturers in other States, it is essential that a new preferential policy for procurement from local MSMEs and State PSUs is implemented for reviving them in the current difficult economic situation arising from the Covid-19 pandemic."

The order further states that *"all State PSUs and Local MSMEs in the State shall get a **Price Preference up to 15%** in all procurement of State Government Departments, Organisations, Local Self Government institutions and Public Undertakings. This means that wherever State PSUs/ local MSMEs quote a rate within a 15% price range of the L1 bidder, the State PSU/local MSMEs either singly or jointly as the case may be, would be entitled to get up to 50% of the order quantity at the lowest rate quoted among them. If there are multiple State PSU/ local MSME vendors in this category, they will be given equal proportions of this 50% order."*

With reference to the purchase preference, the said order stated as follows.

*"in any tender, if no local participating State PSUs and local MSMEs quotes within the price band of L1+15%, they shall still be entitled to an opportunity to **supply up to 50%**, of the total order by bringing down their price to L 1 Price. In such a scenario, the State PSU and local MSME, accepting such an invite, either singly or jointly, as the case may be, shall be allowed to supply up to 50% of the order quantity if there is only one such bidder; or in equal proportions out of the 50%, if there are multiple bidders in this category.*

- (4) The tender of M/s KSEB Ltd dated 15.02.2021, has not taken into consideration the Government orders for giving price and purchase preference to the MSMEs in Kerala. The State MSMEs are desirous of participating in the 200MW tender bid, the largest of its kind in Kerala. During the current pandemic situation, getting a share of this tender at affordable and just rate will be a great relief to these MSMEs struggling to survive during the Covid -19. It is to be noted that Roof Top Solar installations needs long term local servicing which shall be possible only by Local MSMEs.
- (5) KREEPA, representing MSMEs undertaking Solar EPCs in Kerala, represented to State Nodal Officer, Soura Project, KSEB Ltd vide letter No. KREPA/KSEB/1732/21 dated 23rd February 2021 requesting to consider the Govt. of Kerala Order to allow price and purchase preference as per the GO dated 18.09.2020. But during the Pre-Bid meeting on 26th February 2021, KSEB Ltd informed that the request of the petitioner cannot be considered.

The Commission vide the Order dated 30.12.2020 in OP No. 46/2020, directed that KSEB Ltd shall implement the GO (Rt) No. 5382/2020/Fin dated 18.09.2020 strictly complying the provisions of price preference and purchase preference mentioned therein.

Hence, to enable MSMEs take part actively in the tender and become part of this prestigious tender, the preference as per above GO shall be given on both price and purchase.

3. The Commission admitted the petition as OP 15/2021 and hearing was conducted on 08.04.2021 at 11 AM through video conference. Sri. C.M. Varghese, Secretary, KREEPA presented the matter on behalf of the petitioner. Sri. Premkumar, Dy.CE, TRAC and Sri. Nasarudeen A, Dy.CE, Nodal Officer, SOURA project submitted the comments on behalf of the respondent KSEB Ltd. The summary of deliberations is given below.
 - (i) KREEPA submitted that, the State Government vide the order G.O.(Rt) No 5382/ 2020/ Fin dated 18.09.2020, issued orders for extending the benefit of public procurement policy for self reliance- announced by the GoI- to the MSMEs and PSUs in the State. However, in the tender invited by KSEBL on 15.02.2021, for empanelment of Contractors for implementing Grid connected Roof Top Solar PV plants of various

capacities aggregating to 200 MW power under Soura Subsidy scheme in Domestic Sector, the provisions in the said GO is not included. The petitioner took up the issue with KSEB Ltd during the pre-bid meeting held on 25.02.2021, but KSEB Ltd informed that the request of the petitioner cannot be considered.

In a similar case, the Commission vide the Order dated 30.12.2020 in OP No.46/2020 directed KSEBL to implement the GO(Rt) No. 5382/2020/Fin dated 18.09.2020, strictly complying the provisions of price preference and purchase preference mentioned therein.

- (ii) KSEB Ltd submitted that, the petitioner has not cited any provisions in the Regulations or Electricity Act, 2003 under which the petitioner had filed the instant petition. The matter involved in the petition relates to dispute in the tender conditions of the tender invited by KSEB Ltd as per the MNRE guidelines for empanelment of contractors for implementing Grid connected Roof Top Solar PV plants of various capacities aggregating to 200 MW power under Soura Subsidy scheme in Domestic Sector in Kerala. Such a dispute on the tender documents of a licensee are not coming under the purview of Regulatory Jurisdiction. Since the project is partly funded through subsidy from MNRE and the tender conditions are based on MNRE guidelines, dispute on the tender conditions are to be referred to MNRE.

The prayer of the petitioner to consider the GO dated 18.09.2020 regarding the purchase and price preference is contrary to the guidelines issued by the MNRE. The above GO refers to the price and purchase preference related to the procurement of goods/ materials by Central/ State Government and PSUs, whereas the tender of KSEB Ltd is for empanelment of solar developers. The actual procurement of solar systems is made by the domestic consumers from among the empanelled contractors. As per the MNRE guidelines the obligation of KSEB Ltd is limited to publish the empanelled list ensuring quality and post installation service at a uniform price.

MNRE vide the guidelines dared 30.01.2020 clarified that, all the bidders within the price bracket L1+25%, shall be empanelled, provided they agree to match with L1 price. MNRE guidelines do not provide any type of preference among the bidders.

As per the MNRE, the allotted quantum of 200MW capacity have to be implemented by February 2022 to get the subsidy benefit for the consumers and the subsidy expected to be about Rs 400 crore as CFA. If the project is not completed within the time limit, it will lead to deprivation of benefits to the consumers of Kerala.

MNRE is regularly monitoring the activities and progress of the programme and any deviation from the guidelines will results in adverse action including non-release of subsidy. Hence, KSEB Ltd is not in a position to modify any provisions in the bid and if the petitioner

is aggrieved by any provisions in the guidelines, it would be appropriate to approach MNRE.

KSEB Ltd further submitted that, some members of the petitioner KREEPA filed a Writ Petition WP (C) No. 5886/2021 before the Hon'ble High Court of Kerala to stay the bidding process initiated by KSEB Ltd dated 15.02.2021. The Hon'ble High Court, after hearing the parties, vide the judgment dated 09.03.2021 ordered as follows.

“Technical qualifications which the petitioner challenges is stated to have been provided on the basis of the requirements of the KSEB. After hearing both sides, I don't find that any provisions has been incorporated so as to exclude the petitioner. The learned senior counsel submits that the demand of the petitioner in their representation were considered and the reply was published in the website on 15.02.2021 and orders were passed on 15.02.2021. The said order has not been produced by the petitioner in the Writ Petition. I don't find any reason to interdict the proceedings”.

- (iii) The petitioner further submitted that, as per the Order of the Ministry of Commerce and Industry, Gol dated 4th June 2020 in File No. P-45021/2/2017-PP (BE-II), a purchase preference of 50% shall be given to local suppliers whose goods, services or works offered for procurement, has local content equal to or more than 50% as defined in the said Order. The local content defined in the said Order as “ ‘Local content’ means the amount of value added in India which shall, unless otherwise prescribed by the Nodal Ministry, be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all custom duties) as a proportion of the total value, in percentage.

However, KSEB Ltd in their bid dated 15.02.2021, is not intending to implement the Order of the Gol dated 04.06.2020, on the pretext of MNRE guidelines.

The Commission during the hearing observed that, the Order of the Ministry of Commerce and Industry, Gol dated 04.06.2020 is applicable to all Ministries of Gol including the Ministry of New and Renewable Energy (MNRE). Hence, KSEB Ltd shall take up the issue in writing with MNRE immediately and get a clarification at the earliest. ***Till then, KSEB Ltd shall not finalise the present tender.***

4. Based on the deliberations on the subject matter, the Commission hereby direct the petitioner KREEPA and respondent KSEB Ltd the following.

- (1) KSEB Ltd shall take up the issue with MNRE as to, whether the Order of the Ministry of Commerce and Industry, Gol dated 04.06.2020 regarding the purchase preference be implemented in the tender dated 15.02.2021 for empanelling contractors for implementing Grid connected Roof Top Solar PV plants of various capacities aggregating

to 200 MW power under Soura Subsidy scheme in Domestic Sector in Kerala in line with the Phase II subsidy programme of the MNRE. KSEB Ltd shall pursue to get the clarification immediately from MNRE.

- (2) Till KSEB Ltd gets clarification on the above from MNRE, KSEB Ltd shall not finalise the tender.

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

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary (i/c)