

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

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

OP No : 59/2021

In the matter of : Prayer for giving directions to KSEB Ltd. for implementation of (i) G.O. R(t)No.54/2018/SPD dt.19.12.2018 of Stores Purchase Dept., Kerala Govt. (ii) G.O. (Rt)No.5382/2020/Fin dt. 18.09.2019 of Stores Purchase Dept., Kerala Govt. (iii) terms written in tender form that G.O. dt 18.09.2020 will have to be complied by the KSEB Ltd. and (iv) for implementation of Notification No.S.O.2119(E) dt.26.06.2020 and injustice done to us should be rectified.

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

Respondent : Kerala State Electricity Board Limited (KSEBL)
KSEB Ltd represented by : Adv B. Sakthidharan Nair

Date of hearing : 07.02.2022

Order dated 09.02.2022

1. M/s Shankar Conductor's Private Limited (hereinafter referred to as the petitioner), on 06.10.2021, filed a petition (before the Commission with the following prayers:
 - (A) *As per our para No. 7 (b) extra order for 3,305 KM Rabbit should be placed on us at the same rates, terms and condition as order for 354 KM Rabbit has been placed on us.*
 - (B) *As per our para No. 18 to 21, we have explained that orders for 2331 KM Rabbit or 3882.72 KM Rabbit should be placed on same rate and terms as order No. SCM.51/2021-22/2870 dt. 26.07.2021 for 354 KM Rabbit has been placed on us by KSEB Ltd.*
 - (C) *If we have been made to suffer by non-compliance or distortion in compliance of any GO, we should be fully compensated by (i) giving us orders for balance quantity, to which we are entitled or (ii) if it is not possible,*

we should be monetarily compensated i.e. cash compensation should be given to us.

(D) *Unsupplied portions of such illegal orders, as explained in para 21 above, we submit, should be cancelled and the same quantity should be purchased from MSME of Kerala according to Notification No.S.O.2119 (E) dt.26-6-2020 (Annex-4).*

(E) *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 Pvt. 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 for the last 20 years. The petitioner solely depends on KSEB Ltd for Orders of ACSR. The petitioner also has a license No.CM/L/6279481 issued by BIS.

(2) State Government vide Government Order RT.No.5382/2020 Fin dated 18.09.2020 provided 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 15% is to be given to State MSME and PSU's.

(c) Part of para (a) reads as "If there are multiple vendors in this category, they will be given equal proportion of 50% of this order"

(3) This Commission in the Order in OP No.46/2020, (Petitioner: M/s Kerala Electrical and Allied Engineering Company Ltd, Respondent: KSEB Ltd), confirmed that all Government orders including GO dated 18.09.2020 is binding on KSEB Ltd.

(4) KSEB Ltd issued tender No. KSEB/SCM/eP/59/2021 dated 21.12.2020 for purchase of 65865 KM Rabbit conductors and 7310 KM Raccoon. Probable amount of contract was ₹296 Crores.

(5) The tender was issued circle wise for 25 Electrical Circles and the bidder had the possibility to bid for one or more distribution circles.

(6) The Petitioner submitted that they offered 1414 KM Rabbit and 241 KM Raccoon in the above tender.

(7) In the Annexure (1) of the "Conditions for Pre-qualification of tender 21.02.2020" the condition provided as follows.

"The firm should have sufficient financial capacity to manufacture and supply the item within KSEB Ltd.'s desired delivery schedule. The firm should have a minimum annual turnover of 75% PAC of the quoted

Circle for the last 3 consecutive years and furnish the turnover along with Profit and loss account and Balance Sheet for the last 3 financial years on year wise basis.”

As per the petitioner, this condition was put by KSEB Ltd only to reduce the quantity of orders which will be placed on SSI of Kerala.

- (8) The petitioner submitted that in the tender floated in December 2020, KSEB Ltd had purchased only Rabbit conductor and no Raccoon was placed at all, with any of the tenderer.

Out of the total tendered quantity for 25 Electrical Circles, 50% of the Order, that is, 32932 km (477.25 MT) Rabbit was to go to “out of State units’ and balance 32932 km (477.521 MT) should have gone to 9 State units (8 MSME and 1 PSU) as per the GO dated 18.09.2020.

But the petitioner contented that they had received order only for 354 KM Rabbit having Aluminium content 51.33 MT. However, one of the State PSU M/s TRACO Cables was placed with an order for 22076 KM Rabbit. According to the petitioner, the petitioner and M/s TRACO Cable Co. Ltd are entitled to receive the Order for 3659 KM Rabbit conductors. M/s TRACO cable Co. Ltd got illegal benefits. In summary, the petitioner submitted that out of the total tendered quantum of 65865 KM Rabbit the order was placed as follows.

- (a) 32933 KM Rabbit was placed on out of state units.
- (b) 22076 KM Rabbit on M/s TRACO Cables
- (c) 3493 KM Rabbit distributed among 8 MSMEs including the petitioner.

- (9) The petitioner further submitted that though the Petitioner is eligible to get an order for 3659 KM Rabbit, as per the GO dated 18.09.2020, they got order for 354 KM Rabbit only. The petitioner is eligible to get 1/9 th share of 32932 KM of Rabbit purchased from 8 MSME and 1PSU in Kerala.

The petitioner also alleged that KSEB Ltd issued tender dated 21.12.2020 for 7310 KM Raccoon when they had 10,000 KM Raccoon in Stock. KSEB Ltd not purchased Raccoon at all.

- (10) Petitioner also submitted that M/s TRACO cable Co. Ltd was entitled to receive 3,659 KM Rabbit only, but they received 22,076 KM Rabbit. Thus, the action of KSEB Ltd provided undue benefit to M/s TRACO Cables.
- (11) The petitioner also submitted that as per GO dated 19.02.2018, KSEB Ltd is required to procure ACSR conductors from M/s TRACO Cables and Kerala based MSMEs at 55: 45 proportion. The petitioner questioned as to whether this GO dated 19.12.2018 is applicable in this tender or not.

3. M/s Sankar Conductors Pvt. Ltd, on 11.01.2022, submitted additional submission and its summary is given below.

- (1) Order for 56.29% was placed on out of State units and only 43.71% of the total quantity to MSME and PSU in Kerala, though the quoted price was well within L1+15%. As per GO dated 18.09.2020, only 50% of the Order can be placed on outside State units.
- (2) Since 8 MSME and 1 PSU had participated in the tender, each of the bidders should have got 1/9th order of 43.71%, i.e., 25, 569KM. But KSEB Ltd arbitrarily, allotted 86.34 % of the 50% Order to M/s TRACO Cables Co. Ltd and only the balance 13.66% was distributed among the other 8 MSME of Kerala.
- (3) As per tender condition, only MSME of Kerala are exempted from EMD and tender submission fee. But none of the out of state units submitted EMD and tender submission fee.
- (4) Hon. High Court of Kerala in judgement dated 20.10.2021, while considering dispute on purchase of LED under 'Nilavu' scheme directed that price and purchase preference ordered by State Govt need to be honoured.

4. 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 petition has become infructuous, duly considering the following.
 - (i) KSEB Ltd invited e-tender for procuring 65,865 km ACSR Rabbit and 7,310km ACSR Racocon conductors, to be supplied to '25 electrical circles of KSEB Ltd. The bid was invited strictly in compliance with the GO No. 5382/2020 Fin dated 18.09.2020. The bidders could offer quantity for one Circle alone or more. Quantity requirement of each Circle was specified separately in the Notice Inviting Tender (NIT).
 - (ii) Purchase Orders for 50% of the tender quantity was given to L1 bidders (out of State bidder) a and the balance 50% to the local MSMEs strictly as per the GO dated 18.09.2020.
 - (iii) M/s TRACO Cable Co. Ltd, a State PSU quoted for all the 25 Electrical circles. In all the 19 circles, their rate was within

L1+15%, and in the remaining 6 circles their quoted rate was above L1+15%.

- (iv) The State MSMEs quoted only in 5 electrical circle, and their quoted rate was within L1+15%. In view of the above and considering the fact that in 19 Electrical Circles Only M/s TRACO Cable Company had quoted, purchase orders were issued to them on 20.07.2021 subject to their rates being within L1+15%.
- (v) In 5 electrical circles were M/s TRACO Cable Co. Ltd and State MSMEs had quoted, purchase orders for the balance 50% quantum reserved for State MSME and PSUs, were awarded to State MSME alone, with the consent of M/s TRACO Cable Co. Ltd.
- (vi) As above, out of the 25 electrical circles, the State MSME quoted only for 5 Circles, whereas M/s TRACO Cable Co. Ltd quoted in all the 25 Circles. Obviously, in the Circles where M/s TRACO Cable Co. Ltd alone had quoted, the 50% quantum reserved for State PSUs/ MSMEs was awarded to them provided their rate being within L1+15%.
- (vii) KSEB Ltd further submitted that the petitioner had quoted the quantity only for Alappuzha circle, whereas another MSME and the State PSU M/s TRACO Cable Co. Ltd also quoted for this Circle. M/s TRACO on request by KSEB Ltd consented to give 50% of the bid quantum reserved for State PSU and MSMEs to the two MSMEs who participated for the Alappuzha circle. The 50% quantum reserved for State PSU and MSME at Alappuzha circle was 707 km. Accordingly the petitioner was awarded purchase order for 354 km.
- (viii) The petitioner accepted the offer to supply and accepted the bid conditions. But after accepting the bid, the petitioner was now challenging the bid conditions. KSEB Ltd further stated that to ensure the financial capability and to ensure timely delivery as per the requirement of KSEB Ltd it is specified in the Bid conditions that, 'The firm should have a minimum annual turnover of 75% PAC of the quoted circle for the last 3 consecutive years and furnish the details of turn over along with Profit and Loss Accounts and Balance Sheet for the last 3 financial years on year wise basis". It was also stipulated in the tender condition that the "Bidders can quote for one electrical Circle or more'. The petitioner who had accepted all the tender conditions and submitted the Bid was thereafter estopped from challenging the tender conditions.

- (ix) Hon'ble Commission has already held in the Order dated 26.05.2021 in OP No. 16/2021 that "the tender document is legally valid document and it cannot be modified to suit the prospective bidders' requirements".
 - (x) Considering the above facts, KSEB Ltd submitted that the prayers of the petitioner is contrary to the tender conditions are devoid of merits and liable to be dismissed in limine.
 - (xi) KSEB Ltd also submitted that, the Hon'ble Commission lacks jurisdiction to interfere with the bid process and tender conditions of the utility for procuring materials etc. for its day-to-day conditions. However, the Commission can undertake its prudence at any stage.
 - (xii) KSEB Ltd submitted that, regarding the procurement from MSME, the latest Order dated 18.09.2020 only is applicable, since the same came into force superseding all the previous orders.
- (3) KSEB Ltd further submitted that, the petitioner quoted to supply for Alappuzha circle only. The tender quantity for Alappuzha circle was 1414km. As per the GO dated 18.09.2020, purchase order for 50% of the tender quantum (707kM) was placed with the L1 bidder M/s Venketeswara Wires Pvt Ltd. The remaining 50% equally divided among M/s Vijaya Conductors Pvt Ltd and M/s Shanker Conductors Pvt Ltd who quoted in the circle, with the consent of the TRACO Cable Company, who also was eligible for getting orders.

5. The Commission admitted the petition as OP 59/2021. Sri Sanjay Dalmia, presented the matter on behalf of the petitioner. Sri. B. Sakthidharan Nair, Advocate presented the counter argument on behalf of the Respondent KSEB Ltd. The summary of the deliberations during the hearing is given below.

- (1) The petitioner during the hearing submitted the following:
 - (i) The petitioner submitted that KSEB Ltd has not implemented the Order of the State Government 'GO(Rt)No.5382/2020/Fin dated 18.09.2020' in Tender No. KSEB/SCM/eP59/2020-21 dated 21.12.2020 for purchase of 65,865 KM ACSR Rabbit and 7310 KM and ACSR Raccoon conductors. The petitioner is one among the 9 local MSME including 1 PSU in the State of Kerala, who submitted bids for the tender. Accordingly, the petitioner is eligible to get order for 3659 KM ACSR Rabbit, which is 1/9th of the 50% of the total order quantum of 65,865 KM ACSR Rabbit conductors.
 - (ii) The Petitioner further submitted that they are constrained to bid in one of the 25 electrical circles due to the following conditions

specified in the Notice Inviting Tender (NIT) dated 21.12.2020. Which is extracted below:

“The firm should have sufficient financial capacity to manufacture and supply the item within KSEB Ltd.’s desired delivery schedule. The firm should have a minimum annual turnover of 75% PAC of the quoted Circle for the last 3 consecutive years and furnish the turnover along with Profit and loss account and Balance Sheet for the last 3 financial years on year wise basis.”

- (iii) The petitioner also alleged that, though KSEB Ltd has invited tender dated 21.12.2020 for supplying 7310 KM ACSR Raccoon conductors when KSEB Ltd is having 10,000 KM ACSR Raccoon in stock. So, the Respondent KSEB Ltd has not purchased any Raccoon conductor at all. This is to limit the petitioners from participating in the bid for supplying in other circles.
- (iv) On a query to the Commission, the petitioner clarified that they have participated in the bid for supplying ACSR Rabbit conductors for Alappuzha Circle only. They have also got the order to supply 354 KM ACSR Rabbit conductors at Alappuzha Circle.

(2) The respondent KSEB Ltd during the hearing submitted the following:

- (i) The e-tender dated 21.12.2020 was for purchasing ACSR Rabbit and ACSR Raccoon conductors for the use at 25 Electrical Circles of the licensee in the State. In the e-tender, the requirement of ACSR Rabbit and ACSR Raccoon conductors of each electrical circles were specified separately. It is also specified in the Notice Inviting Tender (NIT) that “the bidders can quote for one electrical circle or more”.
- (ii) The petitioner accepted the tender conditions and participated in the bid for supplying 1414 KM ACSR Rabbit conductors at Alappuzha circle. The petitioner did not offer any quantum for supplying Rabbit/ Raccoon conductors in Circles other than Alappuzha Circle.
- (iii) M/s TRACO Cable Co. Ltd one of the State PSU participated in the bid for supplying conductors in all 25 Electrical Circles. Further they were the only bidder for 19 Electrical Circles and the rate was within L1+15%.
- (iv) KSEB Ltd further submitted that the petitioner participated for supplying ACSR conductors at Alappuzha Circle only. The L1 bidder at Alappuzha Circle was M/s Venkadeswara Wires Pvt Ltd. Accordingly, purchase order for supplying (707 KM) ACSR Rabbit conductor was placed with M/s Venkadeswara Wires Pvt Ltd, for 50% of the required quantum at Alappuzha Circle,

For the balance 50% quantum reserved for MSME in the State of

Kerala, the petitioner, M/s Vijaya Conductors Pvt Ltd and M/s TRACO Cable Co. Ltd had also participated in the bid for Alappuzha circle for the 50% MSME quota. However, M/s TRACO Cable Co. Ltd company consented to give 50% MSME quota among the two local MSME's, M/s Shankar Conductors Pvt Limited (petitioner) and M/s Vijaya Conductors Pvt Ltd. Accordingly, vide the Purchase Order dated 26.07.2021, the order for supplying 354 KM ACSR Rabbit conductors was placed with the petitioner.

- (v) KSEB Ltd further submitted that they have fully complied the Government Order dated 18.09.2020, while issuing order to the petitioner. KSEB Ltd also submitted that the petitioner had accepted all the tender conditions and accepted the Purchase Order issued to the petitioner dated 26.07.2021. After accepting NIT and participating in the bid, and after accepting Purchase Order, now the petitioner is challenging the bid conditions. Hon'ble Commission, in the Order dated 26.05.2021 in OP No:16/2021 held that "Tender document is a valid document and cannot be modified to suit the bidder's requirement".
- (vi) KSEB Ltd further submitted that, the prayers of the petitioner are contradictory to the tender conditions and devoid any merits. Hence the petition is liable to be dismissed with cost.

Analysis and Decision of the Commission:

6. The Commission has carefully examined the petition filed by M/ Shankar Conductors Pvt Ltd dated 06.10.2021, the additional submission dated 11.01.2021, the counter affidavit of the Respondent KSEB Ltd on 24.01.2022, the deliberations during the hearing held on 07.02.2022 with the provisions of the Electricity Act, 2003, and other rules and Regulations notified by the Commission, and decides the following:
7. KSEB Ltd is a State Government owned distribution licensee in the State of Kerala. The Commission vide Order dated 30.12.2020 in the petition OP No: 46/2020 ordered that "KSEB Ltd shall implement the Government of Kerala Order GO(Rt)No.5382/2020/Fin dated 18.09.2020 strictly complying the Price Preference and Purchase Preference specified therein".
8. The Commission also clarified vide the Order dated 26.05.2021 in OP No: 16/2020 that,

"the Commission is of the considered view that specifying the tender conditions to ensure the quality of the product and materials to be supplied by the bidders fall within the domain of the tendering authority. The tender document is a legally valid document and it cannot be modified to suit the prospective bidder's requirements. The Commission will not normally intervene in the licensee's tendering procedures, except when it is of the opinion that consumer interest is compromised or there is malafide intent"

9. The petitioner, M/s Shankar Conductors Pvt Ltd is an MSME in the State of Kerala regularly supplying ACSR conductors to the KSEB/KSEB Ltd during the last 20 years.
10. The issue raised by the petitioner is that, KSEB Ltd had not complied with the Government Order, GO(Rt)No.5382/2020/Fin dated 18.09.2020, in the e-tender No. KSEB/SCM/eP 59/2020-21 dated 21.12.2020.
11. The Commission has examined the argument of the petitioner and the respondent in detail and noted the following.

- (1) KSEB Ltd vide the bid number in the NIT (Notice Inviting Tender) KSEB/SCM/eP 59/2020-21 dated 21.12.2020 invited bid for supplying Rabbit and Raccoon conductors from genuine manufactures to its 25 Electrical Circles in the State. In the tender notice, it is also specified the quantities of Rabbit and Raccoon conductors required in each Electrical Circles separately. KSEB Ltd also specified in the NiT that, the bidders can quote for one electrical Circle or more. The total quantity quoted shall be mentioned in the documents cover 1. KSEB Ltd also specified under Annexure 1, conditions for pre-qualification, which form part of NiT, as follows:

“The firm should have sufficient financial capacity to manufacture and supply the item within KSEB Ltd.’s desired delivery schedule. The firm should have a minimum annual turnover of 75% PAC of the quoted Circle for the last 3 consecutive years and furnish the turnover along with Profit and loss account and Balance Sheet for the last 3 financial years on year wise basis.”

- (2) The petitioner M/s Shankar Conductors Pvt Ltd participated in the bid for supplying 1414 KM of Rabbit conductors for Alappuzha Circle only.
- (3) As per NiT, and as per the details placed before the Commission, the requirement of ACSR Rabbit conductors and Racoon conductors at Alappuzha Circle was 1414 KM and 119 KM respectively.
- (4) The lowest bidder at Alappuzha circle was M/s Venkadeswara Wires Pvt Ltd. KSEB Ltd issued Purchase Order for procuring 50% of the bid quantum i.e., for purchasing 707 KM ACSR Rabbit conductors with M/s Venkadeswara Wires Pvt Ltd, which is an outside State unit.
- (5) The Commission also noted that 3 MSMEs, including 1 PSU, (M/s Shankar Conductors Pvt Ltd, M/s Vijaya Conductors Pvt Ltd and M/s TRACO Cable Co. Ltd) had participated in the bid for Alappuzha circle for the MSME quota. Thereafter M/s TRACO cable Co. Ltd had consented to give the 50% bid quantum to the two MSMEs who had quoted for the Alappuzha Circle. Accordingly, the remaining 50% of the

quantum i.e., 707 km ACSR Rabbit conductors were equally divided among the petitioner M/s Shankar Conductors Pvt Ltd and other bidder M/s Vijaya Conductors Pvt Ltd. Accordingly, the petitioner got the Purchase Order for supplying 354 km ACSR Rabbit conductors to Alappuzha Circle, the petitioner also accepted the Purchase Order. The Commission noted that, in the Alappuzha Circle under question, KSEB Ltd has strictly implemented the GO(Rt)No.5382/2020/Fin dated 18.09.2020.

- (6) The Commission also noted that the petitioner has not participated / offered ACSR Rabbit conductors in the other 24 Circles included in the NIT dated 21.12.2020. Hence the Petitioner is not eligible to get any Purchase Order for the bid quantum specified for other Electrical Circles in the State.
- (7) The petitioner had accepted the bid conditions in the NIT of the bid No: KSEB/SCM/eP 59/2020-2021 dated 21.12.2020, the conditions for the pre-qualification as specified in annexure No:1. The petitioner also accepted the Purchase Order for supplying 354 KM ACSR Rabbit conductors to Alappuzha Circle. Hence, the petitioner cannot challenge the tender condition after participating in the bid, accepting the tender conditions and also accepting the Purchase Order for 354 KM ACSR Rabbit conductors.
- (8) The Commission hereby reiterate its original decision in OP No:16/2021 dated 26.05.2021 that,

“the Commission is of the considered view that specifying the tender conditions to ensure the quality of the product and materials to be supplied by the bidders fall within the domain of the tendering authority. The tender document is a legally valid document and it cannot be modified to suit the prospective bidder’s requirements. The Commission will not normally intervene in the licensee’s tendering procedures, except when it is of the opinion that consumer interest is compromised or there is malafide intent”.

Hence the Commission decided not to interfere in the tender conditions and procedures adopted by the KSEB Ltd for procuring materials for its transmission and distribution business. However, KSEB Ltd is bound to implement the orders of the Central and State Government for the MSMEs and PSUs in the State of Kerala.

In the present case, the petitioner could not convince the Commission regarding the allegation of non-compliance of the Government Order GO(Rt)No.5382/2020/Fin dated 18.09.2020, while issuing purchase order for procuring 354km of ACSR Rabbit conductors for the use at Alappuzha Electrical circle, the only Electrical Circle where the petitioner participated in the bid dated 21.12.2020. Hence, the Commission did not find any violation of any GO by the tenderer KSEB Ltd and decided to reject the petition filed by M/s Shankar Conductors Pvt Ltd.

Order of the Commission

12. The Commission after examining the petition filed by M/s Shankar Conductors Pvt Ltd, the counter affidavit of the respondent KSEB Ltd, deliberations and arguments presented by both parties during the hearing held on 07.02.2022, and other facts submitted to the Commission during the proceedings of the subject matter, as per the provisions of EA-2003, hereby rejects the petition dated 06.10.2021 for the reasons cited in the preceding paragraphs.

The petition is disposed of. Ordered accordingly.

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

**Sd/-
Preman Dinaraj
Chairman**

Approved for issue

**Sd/-
C R Satheeshchandran
Secretary**