

**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 dated 04.02.2021. G.O. (Rt) No.5382/2020/Fin dated 18.09.2020 issued by Govt. of Kerala to be complied.

Petitioner : M/s Shankar Conductors Pvt Limited

Petitioner represented by : Sri. Sanjay Dalmia

Respondent : Kerala State Electricity Board Limited (KSEB Ltd)

KSEB Ltd represented by : Adv B. Sakthidharan Nair

Date of hearing : 07.02.2022

Order dated 16.07.2022

1. M/s Shankar Conductor's Private Limited (hereinafter referred to as the petitioner or Sankar conductors) 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 if 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 Government Order RT.No.5382/2020Fin dated 18.09.2020 provides as follows.
 - a) Purchase Preference for 50% of order quantity is to be given to State MSME and PSUs.
 - b) Price Preference up to 50% is to be given to State MSME and PSUs.
 - 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).

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 is 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 LI. 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 LI.”

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 is yet to refund the EMD to the petitioner, and the exemption of EMD was not included in the tender.
3. The petitioner, M/s Sankar Conductors Private Ltd submitted additional information vide their submission dated 10.01.2022 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 DogNo 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 18.09.2020.

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 has 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 letter dated 7/2000 from KSEB, offer received from KSEB Ltd for supplying Dog conductors. The petitioner also produced a copy of the KSEB Ltd 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 the type test certificate for Wolf conductor, which is bigger than the Dog conductor. Hence the stand taken by KSEB Ltd is deliberate with malafide intentions.
 - (3) The petitioner further submitted that, they are qualified to produce Wolf and Dog and 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 wants 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 document and cannot be modified to suit the prospective bidder's 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 through pool account of Government of Kerala 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 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 has requested the certificate to the petitioner, the petitioner has 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. One more company M/s Pairiwal Industries Ltd, Ranchi also did not qualify as a 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 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, 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 main issues raised by the pre-qualification Committee is the general remarks of inspection report dated 28.09.2021 as given below:

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 Ltd 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 Ltd at that time.
- (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.

7. Based on the deliberations during the hearing, the Commission, vide Daily Order dated 09.02.2022, issued 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 respondents.
8. KSEB Ltd has submitted clarification vide their submission dated 15.02.2022 and its summary is given below;
- (1) KSEB Ltd had not issued any purchase order for supplying Wolf & Dog conductors to the petitioner at any point of time.
 - (2) KSEB Ltd further submitted that in the factory inspection conducted by KSEB Ltd, it was revealed that the petitioner could not supply materials as per the specifications mentioned in the tender conditions. It was noticed that, in case of ACSR Wolf conductor, there was no machinery available in the factory for manufacturing it in a single stretch.
 - (3) Further in the case of ACSR Dog conductor, the firm has not submitted the type of test reports, which was a condition for pre-qualification. Hence, the petitioner was disqualified.
 - (4) KSEB Ltd further clarified that the technical specification for aluminum conductors for overhead transmission purpose is based on IS 398(Part 2) of 1996. The Indian Standards have been amended in March 1999, 2000 and December 2002 respectively and the technical specification updated accordingly.
 - (5) KSEB Ltd, further pleaded before the Commission that there was no willful negligence or laches on the part of Officers attached to the Chief Engineer (SCM) as pointed out by the Commission, as in the notice issued by the Commission, it was stated that the respondents may enter appearance in person or through authorized agent on the date of hearing. It was submitted that KSEB Ltd had duly engaged an Advocate to represent them and was under the belief that their presence was not necessary. Hence, it was requested to excuse the absence of Officers this time and the concerned officers as deputed by the HODs (CE) shall be present in all future sittings.
9. The petitioner, vide submission dated 14.02.2022 submitted the following:
- (1) Since 01.05.1999 and 01.07.2000 there was no change in any quality standards (including ISI / BIS specification) of Wolf and Dog conductors respectively.
 - (2) KSEB Ltd was ready to place order of ACSR Dog conductor with them in the year 1999 and 2000.

- (3) The petitioner further submitted that, type test needs to be submitted for the largest tendered quantity, i.e., for ACSR Wolf Conductor. It was further submitted that, if KSEB Ltd required to submit Type Test Certificate of ACSR Dog Conductor separately, they have undertaken to submit the same on receipt of the Purchase Order for ACSR Dog conductor under the above tender.
10. The petitioner, vide submission dated 19.2.2022 submitted the following additional information.
 - 1) The Petitioner has submitted copy of letter No. REC/SS&TLC/34/1000 dt. 7/2000 written by the Chief Engineer (SS&TLC), KSEB, Ernakulam that KSEB were ready to place order of ACSR Dog conductor on them, if they agree to forgo price preference and accept order at L1 rate of M/s Apar Industries which they did not agree on.
 - 2) It was submitted that they had also given earnest money of Rs. 2,50,000/- in this tender of the year 2000 by Demand Draft.

Analysis and Decision of the Commission:

11. The Commission has carefully examined the petition filed by M/s Shankar Conductors Pvt Ltd dated 26.10.2021, the additional submission dated 10.01.2021, the counter affidavit of the respondent KSEB Ltd, the deliberations during the hearing held on 07.02.2022, additional clarifications submitted by KSEB Ltd and the petitioner M/s Sankar Conductor as per the provisions of the Electricity Act, 2003, and other Rules and Regulations notified by the Commission, and decides the following:
12. The main prayers raised by the petitioner are:
 - (i) Direct KSEB Ltd to place order for 260 KM Wolf conductor and 35 KM Dog conductor to the petitioner
 - (ii) Direct KSEB Ltd to modify tender conditions so that there remains no difference between New Entrants and others.
 - (iii) If equal quantity order for Wolf and Dog is not possible to issue 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. dated 18.09.2020 can be complied.
13. The Commission examined the issues raised by the petitioner in detail. 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". The State Government Order, GO(Rt)No.5382/2020/Fin dated 18.09.2020 stipulates as follows:

Price Preference: All State PSUs & 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 which is within a 15% price range of the L1 bidder, the state PSU / local MSME, 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.

Purchase Preference: In any tender, if no local participating state PSUs & 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 L1 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.

14. KSEB Ltd vide tender No. KSEB/SCM/eP.86/2020-21 floated the tender on 04.02.2021 for the purchase of 1500 KM Wolf conductor and 200 KM Dog conductor. In that tender, 15 participants submitted their tender out of which 3 firms including petitioner were new entrants.
15. The petitioner claimed that, they are eligible for getting 1/3rd quantity, i.e., 500 KM Wolf and 67 KM Dog as per the G. O dated 18.09.2021. 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 has no facility to manufacture ACSR Wolf in a single stretch. It was also reported that, no technically qualified persons were available for supervision and testing. Petitioner submitted that slow speed, should not be projected as a valid reason to deny them the order.
16. KSEB Ltd submitted that the petition is not maintainable either in law or facts and devoid of any merits and bonafides. It was also submitted that the petitioner is an unsuccessful bidder in tender No. KSEB/SCM/ ep.86/2021 dated 04.02.2021.

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 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.

KSEB Ltd further submitted that 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.

KSEB Ltd on 24.11.2021 decided to reduce the purchase quantity of ACSR Wolf conductor from 1500 KM to 1000 KM.

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, a State Government owned PSU.

It was further clarified that the technical specification of aluminum conductors for overhead transmission purpose is based on IS 398(Part 2) of 1996. The Indian Standards have been amended in March 1999, 2000 and December 2002 respectively and the technical specification updated accordingly.

17. The Commission noted that in the tender dated 04.02.2021, KSEB Ltd placed orders with the following firms 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

The Commission noted that 50 % order was placed on outside state unit, 10 % to new entrant as per NIT conditions and remaining 40% to Kerala PSU. Thus, KSEB Ltd had complied with the GO(Rt)No.5382/2020/Fin dated 18.09.2020.

As such, the Commission has no intention to intervene in the tender procedure of KSEB Ltd.

18. The Commission also examined the argument of the petitioner that KSEB Ltd during the period 1999-2000 itself was satisfied that the petitioner had capability of manufacturing ACSR Wolf and ACSR Dog type conductors. However, KSEB Ltd submitted that, there is no concluded contract between KSEB Ltd and the petitioner during 1999 or 2000 in supplying Dog/ Wolf conductor. KSEB Ltd has submitted that it has not issued any Purchase Order for Wolf and Dog conductors to M/s Sankar Conductors till date. The communication between the petitioner and KSEB Ltd cannot be treated as a valid document to establish that KSEB Ltd is satisfied with the capability of petitioner in supplying these conductors. The Commission cannot rely on the communications between KSEB Ltd and the petitioner in 1999-2000, that too by which no supply has been materialized.

Moreover, each tender can be considered as stand-alone only. Tender conditions and other technical and financial parameters for each tender will be different. The

tendering authority can specify tender conditions based on their requirement in each tender, subject to the condition that it does not violate any rules and regulations in force, and any prudent practices.

19. The Commission also noted that the documents from BIS submitted by the petitioner on amendment of license of the petitioner vide letter dated 18.10.2019 indicates that the petitioner has obtained license to manufacture *ACSR conductor for overhead transmission line purposes upto and including 150 sqmm nominal aluminum.*
20. But the issue raised by KSEB Ltd is based on the inspection on 28.09.2021 assessing facilities as on the date of inspection, in which the inspection team was not satisfied with the facilities at the premises of the petitioner for manufacturing Wolf conductors. As already pointed out, the Commission is of the considered opinion that the tendering authority have every right to fix terms for prequalification - technical and financial.
21. KSEB Ltd submitted that the petitioner was disqualified by the pre-qualification committee since the factory inspection report was not satisfactory for Wolf conductor and no type test report has been submitted for Dog conductor.
22. The Commission also noted that, the Notice Inviting Tender (NIT) issued by KSEB Ltd clearly specifies the pre-qualification conditions for new entrants vide para 28, which includes the following;

(a) All type test certificate of the tendered item has to be produced at the time of bid

.....

(d) Factory inspection will be carried out, to assess their capability.

.....

As such, the firm, after submitting tender based on the NIT, cannot claim that factory inspection is not needed. Further, the NIT specifies that type test of all item shall be submitted. Hence there is no merit in the argument of the petitioner that if type test for higher capacity conductor is submitted, type test for lower capacity conductor is not required.

23. The Commission noted that, while issuing Order dated 26.05.2021 in OP 16/2021, the Commission clarified as follows;

In view of the foregoing, 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 reiterates that the Commission does not intend to interfere in the tendering procedure.

24. The Commission noted that the petitioner is requesting to amend the conditions / cancel tender. As per the details submitted, the respondent KSEB Ltd has already issued purchase orders for supplying ACSR Wolf and ACSR Dog conductors as per the tender as detailed under para-17 above. Hence the Commission cannot interfere on the matter at this stage.

With the above observations, the Commission decides to reject the prayers of the petitioner.

Order of the Commission

25. The Commission after examining the petition filed by M/s Shankar Conductors Pvt. Ltd., respondent KSEB Ltd's counter affidavit, the deliberations and arguments presented by both parties during the hearing, the relevant provisions of the Electricity Act, 2003 and other facts and documents placed before it during the proceedings on the subject matter, hereby rejects the petition.

The petition is disposed of. Ordered accordingly.

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

Sd/-
Preman Dinaraj
Chairman

Approved for issue

C R Satheeshchandran
Secretary