

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7<sup>TH</sup> DAY OF JANUARY 2015

PRESENT

THE HON'BLE MR. JUSTICE K.L.MANJUNATH

AND

THE HON'BLE MRS. JUSTICE S.SUJATHA

**WRIT APPEAL NO.5815/2012**

**c/w**

**WRIT APPEAL NO.885/2013**

**W.A.No.5815/2012**

**BETWEEN:**

1. KARNATAKA POWER CORPORATION LTD.,  
NO.82, SHANTHI BHAVAN, III FLOOR  
RACE COURSE ROAD  
BANGALORE-560001  
REP. BY IT'S MANAGING DIRECTOR
2. THE SUPERINTENDING ENGINEER  
(ELECTRICAL)-RO  
KARNATAKA POWER CORPORATION LTD  
NO.82, SHANTHI BHAVAN, III FLOOR  
RACE COURSE ROAD  
BANGALORE-560001.

**... APPELLANTS**

(BY SRI. PROMOD NAIR, ADV.)

**AND:**

PRODIGY HYDRO POWER (P) LTD  
HAVING ITS REGISTERED ADDRESS AT  
NO.311, SHAHID UDHAMSINGH NAGAR

JALLANDHAR-144 001  
BRANCH OFFICE:  
NO.31, 28TH CROSS, INDUSTRIAL LAYOUT  
BANASHANKARI II STAGE  
BANGALORE-560 070  
REP. BY ITS DIRECTOR  
MR HARISH YECHREDYY

**... RESPONDENT**

(BY SRI T SURYANARAYANA, ADV.)

**W.A.No. 885/2013**

**BETWEEN:**

M/S DAKSHINA KANNADA POWER PVT LTD  
NO.4, 2<sup>ND</sup> FLOOR, 1<sup>ST</sup> CROSS,  
NEHRU NAGAR, 1<sup>ST</sup> MAIN ROAD  
BANGALORE-560 020,  
REP.BY ITS MANAGING DIRECTOR.

**... APPELLANT**

(BY SRI JAGADEESH, SR.COUNSEL FOR SRI  
LOHITASVA BANAKAR, ADV FOR M?SOLJ ASSTS)

**AND:**

1. PRODIGY HYDRO POWER (P) LTD  
HAVING ITS REGISTERED OFFICE AT  
NO.311, SHAHID UDHAMSINGH NAGAR,  
JALLANDHAR-144 001.  
BRANCH OFFICE NO.31,  
28<sup>TH</sup> CROSS, INDUSTRIAL LAYOUT,  
BANASHANKARI 2<sup>ND</sup> STAGE,  
BANGALORE-560 070,  
REP.BY ITS DIRECTOR.
2. KARNATAKA POWER CORPORATION LTD.,  
NO.82, SHANTHI BHAVAN 3<sup>RD</sup> FLOOR,  
RACE COURSE ROAD,

BANGALORE-560 001,  
REP.BY ITS MANAGING DIRECTOR.

3. THE SUPERINTENDING ENGINEER  
(ELECTRICAL)-RO,  
KARNATAKA POWER CORPORATION LTD.,  
NO.82 SHANTHI BHAVAN  
3<sup>RD</sup> FLOOR, RACE COURSE ROAD,  
BANGALORE-560 001.

**... RESPONDENTS**

(BY SRI VIKRAM HUILGL & SRI T SURYANARAYANA,  
ADV. FOR M/S KING & PARTRIDGE FOR R.1,  
PRAMOD NAIR – ADV.FOR R.2 & 3)

THESE APPEALS ARE FILED U/S 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET  
ASIDE THE ORDER PASSED IN THE WRIT PETITION  
NO.4375/2011(GM-TEN) DATED 09/08/2012.

THESE APPEALS COMING ON FOR *HEARING*,  
THIS DAY, **K.L.MANJUNATH J.**, DELIVERED THE  
FOLLOWING:

**JUDGMENT**

These two appeals are filed against the order  
passed by the learned Single Judge in Writ Petition  
No.4375/2011 dated 09.08.2012.

2. Heard learned counsel appearing for all the  
parties.

3. The facts leading to these appeals are as hereunder:

The writ petitioners M/s Prodigy Hydro Power (P) limited filed the writ petition challenging the legality and correctness of the tender notification dated 10.12.2010 contending that the same is arbitrary discrimination and violative of Article 14 and to quash Annexure "A", rejection of the technical bid of the petitioner and to issue a further direction by issuing a writ of mandamus to consider the tenders submitted by the petitioner.

4. The Karnataka Power Corporation which is a wholly owned State Corporation invited tenders on 10.12.2010 to take the four mini hydal projects situated in Mallapur, Sirwar, Ganekal and Kalmala for renovation, operation and maintenance. The technical details of each of the four units are as hereunder:

- (a) Mallapur Unit – 2 units of 4.5 MW each
- (b) Sirwar Unit – 1 unit of 1` MW
- (c) Kalmala – I unit of 0.4 MW
- (d) Ganekal – 1 unit of 0.35 MW

Pursuant to the tender invited by the KPCL, the writ petitioners requested the KPCL to extend the time limit to participate in the bid and also on other grounds. The same was rejected. However, it also submitted its tender. Similarly the appellant in Writ Appeal No.885/13 also participated in the tender. The tender documents submitted by M/s Dakshina Kannada Power Private Limited was accepted by KPCL by rejecting the tender submitted by the writ petitioners. Challenging the same, writ petition came to be filed.

5. Though several grounds were urged in the writ petition, the learned Single Judge quashed the tender notification only on the ground that tender notification is not in accordance with Rule 17 of the Karnataka Transparency in Public Procurement Rules, 2000 (For short "The Rules"). Rule 17 reads as hereunder:-

"Rule 17: Minimum time for submission of tenders:-  
(1) The Tender Inviting Authority shall ensure that adequate time is provided for the submission of tenders and a minimum time is allowed between date of publication of the Notice Inviting Tenders in the relevant Tender Bulletin the last date for submission of tenders. This minimum period shall be as follows:-

- (a) for tenders upto rupees two crores in value, thirty days; and
- (b) for tenders in excess of rupees two crores in value, (sixty days).

(2) Any reduction in the time stipulated under sub-rule (1) has to be specifically authorised by an authority superior to the Tender Inviting Authority for reasons to be recorded in writing”.

According to the tender notification, the tender notification was published on 10.12.10 informing the intending bidders that last date to receive the application as 15.12.10 and the last date to issue bid document is 16.12.2010 and last date to receive completed bids is on 30.12.2010.

6. Relying upon these dates, the learned Single Judge came to the conclusion that there shall be a minimum period of 60 days since the value of the tender was more than two crores and the learned single judge also came to the conclusion in view of Sub-rule 2 of Rule 17, there was no specific order passed by an authorised authority superior to the tender inviting authority for recording the reasons in writing to reduce the time stipulation of 60 days. Only on this technical

ground, the writ petition came to be allowed and directed the KPCL to invite fresh tenders in accordance with law.

7. The order of the learned Single Judge is challenged by the KPCL – tender inviting authority and also the other bidder whose bid is yet to be accepted. Therefore, these two matters are heard together.

8. Mr.D L Jagadeesh, learned Sr.counsel appearing for the appellant submits that the rules are not applicable to the facts of this case. According to him, the rules are applicable to the categories of projects as detailed under Rule 3. According to him, the rules are applicable only in respect of the procurement which involves construction and supply of goods and services. He further contends that the tender has been invited by the tender inviting authority for lease, renovation, operation and maintenance of KPCL's Mini Hydel Stations at Mallapur, Sirwar, Ganekal & Kalmala in Raichur District. Therefore, he contends that rules are not applicable to the tender in question. Therefore,

learned single judge has committed an error in allowing the writ petition and learned counsel for the KPCL also submits that the Managing Director of KPCL has approved the tender notification. Therefore, it amounts to an order passed under Sub-rule (2) of Rule 17 and that the learned Single Judge has not considered the same properly.

9. Learned counsel appearing for the respondent/writ petitioner contends that the tender was invited for lease which contains renovation, operation and maintenance which includes services and also amounts to construction as the meaning of the word 'consideration' includes alternation and additions and it also involves the services as the successful tenderers is required to renovate the plant and machinery and building so also procurement of the goods, materials which are required for renovation, alteration and maintenance. He further submits that the contention of KPCL that the Managing Director has approved the tender notification amounts to an order passed under



Sub-rule (2) of Rule 17 cannot be accepted because even if the managing director is empowered to reduce the time, he is required to pass an order in writing giving reasons for reduction of the time. Therefore, he contends that such an order is not passed by the Managing Director recording the reasons for reduction of the time stipulation under Rule 17(1). In the circumstances, he requests this Court to dismiss the appeal.

10. Having heard the learned counsel for the parties, the only point to be considered in these appeals is, "Whether learned Single Judge has committed an error in allowing the writ petition quashing the tender notification holding that the same is contrary to Rule 17 of the rules.

11. Facts in these appeals are not disputed as stated above, we have to consider only two points

(1) Whether the rules are applicable to the facts of this case as contended by learned Sr. counsel Mr Jagadeesh

(2) If the rules are applicable, whether there is an order passed under Sub-rule (2) of Rule 17 by the superior officer to the tender inviting authority recording the reasons for reduction of the time.

12. So far as the first point is concerned, admittedly the four units consists of plant and machinery and building. KPCL has invited tenders not only to lease the land, building, plant and machinery but also for maintenance and operation of the four units. The word used "construction" has to be considered as it includes renovation and alteration. Similarly supply of goods and services includes procurement of machineries for maintenance and operation. These facts are not in dispute. If really transparency in public procurement rules are not applicable, there was no necessity for the KPCL to invite tenders following the procedure. It is not the case of the KPCL the tender inviting authority that these rules are not applicable to them. When KPCL and tender inviting authority admits that these rules are made applicable to

the tender in question, in view of the meaning of “construction” and word “supply of goods and services’, the contention of Mr.Jagadeesh has to be rejected. Accordingly, we hold point no.1 against the appellant in the second appeal.

13. So far as the second point is concerned, the original records produced by the KPCL is verified by us. The Managing Director has only signed the tender notification as if he is approving the same. But he has not assigned any reasons to reduce the time. When there is no order passed by the Managing Director recording the reasons for reduction of time in the usual course, if he has only approved the notification, it cannot be contended by KPCL or by the other appellant that there is an order in writing by the Managing Director for reduction of time as contemplated under Sub-rule (2) of Rule 17 of the Rules. Accordingly, we hold point no.2 also against the appellant.

14. When the learned Single Judge has given a categorical finding that the tender inviting authority has committed an error in not following the procedure as contemplated under Rule 17 and if a direction is issued to the KPCL to invite tenders afresh, this Court cannot find fault with the order of the learned Single Judge.

15. In the result, we do not see any merit in these appeals. Accordingly, the appeals are dismissed.

**SD/-  
JUDGE**

**SD/-  
JUDGE**

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