

WITNESS CALLED AND DULY SWORN ON 24.05.2023.**FURTHER CROSS EXAMINATION BY SENIOR COUNSEL SRI.PROMOD N.KHANTAVI, FOR THE PLAINTIFF:-**

3. It is not true to suggest that, there is no obligation on the part of KPCL to award the coal transportation contract merely because the rate quoted by the plaintiff was lowest. It is not true to suggest that, KPCL as state govt. undertaking, it has discretion to reject the plaintiff's bid even if it is the lowest. It is not true to suggest that, contract Ex.P.172 was for a period of one year and therefore the KPCL ought to have terminated the contract by or on 30.09.2014.

Question: What compelled to KPCL to continue the subject contract with CTA after 30.09.2014 ?

Answer: As per performance of the CTA was satisfactory and as the materialization of supply of coal was above 80%, KPCL has continued the service of CTA.

Question: Did the KPCL assess the performance of CTA during the 1st year of the contract and if yes has it recorded such assessment any where ?

Answer: Yes, the performance has been assessed by the KPCL and the same is recorded in the fuel management system portal of KPCL.

Question: Why the record of such assessment of performance of CTA is not produced before this court in the present case ?

Answer: I do not know.

Question: Which authority takes decision for extension of contract period in KPCL ?

Answer: Chief Engineer, Fuel Management, RTPS takes decision.

Question: Who assesses the performance of contract in KPCL ?

Answer: The staff working under Chief Engineer, Fuel Management assess the performance of the contract.

It is true to suggest that, this assessment forms the basis for the extension or termination of the contract.

Question: Before extension of period of contract, did KPCL called plaintiff/CTA and discussed with it ?

Answer: No, Since there is a clause in the contract that the extension of the contract is at the discretion of the KPCL, KPCL extended the contract and in this respect it has addressed letter to CTA.

4. It is not true to suggest that, at the end of 1st year on or 30.09.2014, it was open to CTA to terminate the contract or it could have refused to continue the contract. I do not know, whether the CTA at the end of 1st year contract i.e. 30.09.2014, the CTA did not agree with KPCL's extension of the contract. It is not true to suggest that, there is no provision in subject contract (Ex.P.172) which provides for unilateral extension of contract. It is not true to suggest that, KPCL compelled these plaintiff/ CTA to continue with contract even after completion of one year under the threat of invoking the bank guarantee given by the CTA at the time of entering

into contract with KPCL. It is not true to suggest that, the KPCL did not want to relieve plaintiff/ CTA after completion of one year of the subject contract, because the rates quoted by the CTA were the lowest.

Question: What compelled to KPCL to continue the subject contract with CTA after completion of 2nd year ?

Answer: As the KPCL is public serving company, the power supply to the state is prime importance and as the performance and materialization of agency is satisfactory and if this contract was terminated, KPCL has to answer to Auditor General of the state. In view of this KPCL was unable to terminate the contract.

Question: Did the KPCL during the 1st year or at the end of 1st year, did KPCL float any tender for transportation of coal from SCCL to RTPS, Raichur ?

Answer: I do not know.

Question: Before the end of 2nd year i.e. September-2015, CTA had filed W.P. before the Hon'ble High Court of Karnataka, do you know anything about that ?

Answer: I do not know.

Question: The said W.P. was filed by the plaintiff to relieve it from the two contracts i.e. SCCL and WCL ?

Answer: It is true.

It is true to suggest that, Hon'ble High Court of Karnataka has passed an interim order as directing the KPCL not to invoke bank guarantee.

Question: Is there an interim order also passed as not to extend the contract by the Hon'ble High Court of Karnataka ?

Answer: I need to verify the records.

Question: When did KPCL finalize the tenders floated by it in the years 2014-15 ?

Answer: These tenders were not finalized.

Question: Why were these tenders not finalized ?

Answer: these tenders were not finalized because the rate quoted by the l1-bidder in this tender was far higher than the rate at which the existing cta was performing the service, in view of this, this proposal were placed before the board of directors, headed by Hon'ble Chief Minister of Karnataka, as the deviation was between the quoted L1 rate and the existing rate the proposal did not got the approval of the board.

5. It is true to suggest that, CTA has no role or control over finalization of the tender floated by the KPCL. It is not true to suggest that, KPCL did not finalize the tender because it did not want to release the CTA of subject contract.

Question: Has KPCL paid to CTA the amounts due and payable under the contract for the 1st year ?

Answer: Not paid.

Question: Why KPCL has not paid to CTA even after it has rendered the service satisfactorily during the 1st year ?

Answer: Since, deductions were more than the service bills, so KPCL did not paid.

Question: During the 1st year of service, how was the quality of service rendered by the CTA ?

Answer: It was satisfactory.

Question: CTA did not give scope for any complaints about quality of service rendered by it ?

Answer: Yes.

It is not true to suggest that, there were not defaults committed by the CTA during the 1st year of contract.

Question: What kind of defects did KPCL noticed in the performance of the contract by the CTA during the 1st year ?

Answer: Performance was good, but there were issues like shortage of coal, overloading of wagons and under-loading, these issues were brought to the notice of CTA.

Question: How were these issues brought to the notice of CTA by KPCL ?

Answer: By oral communication.

Question: When did KPCL noticed these issues happening during the 1st year of the contract ?

Answer: I do not know.

Question: How periodically are the bills of CTA required to be settled as per the contract by the KPCL?

Answer: Month wise.

Question: How many defects were noticed by the KPCL in a month during 2013-14 ?

Answer: I do not know.

It is true to suggest that, once the CTA submits its bill, within 30 days thereafter, KPCL have to settle the bill in its entirety. It is true to suggest that, CTA has submitted bills every month during the 1st year of the contract. I do not know that, how many bills of the CTA were settled by the KPCL during 1st year of the contract.

Question: Has KPCL placed anything before this Hon'ble court to show that, the bills submitted by CTA were not settled for the reasons stated above ?

Answer: No.

FURTHER CROSS EXAMINATION: DEFERRED AT THE REQUEST OF COUNSEL FOR PLAINTIFF.

(Typed to my dictation in open court.)

R.O.I & A.C.,

(SUMANGALA S. BASAVANNOUR)
LXXXII ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.