

CHAPTER I: DEPARTMENT OF ATOMIC ENERGY

Nuclear Power Corporation of India Limited

1.1 Violation of CVC guidelines and loss due to not availing refund of terminal excise duty

NPCIL placed purchase order for End Shields on nomination basis instead of through competitive bidding in violation of guidelines laid down by the CVC based on the judgement of Hon'ble Supreme Court of India and forfeited the benefit of refund of terminal excise duty resulting in a loss of ₹ 5.93 crore.

Central Vigilance Commission (CVC) issued orders (July 2007) asking all Chief Vigilance Officers to apprise their respective Boards/managements about the observations contained in the judgement¹ of the Hon'ble Supreme Court on transparency in works, contracts and consultancy contracts awarded on nomination basis. The CVC re-emphasised that tendering process or public auction was a basic requirement for award of contract by any Government agency as any other method, especially award of contract on nomination basis, would amount to a breach of Article 14 of the Constitution guaranteeing the right to equality, which implies right to equality to all interested parties.

According to the aforesaid judgement of the Hon'ble Supreme Court of India, contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons. The judgement also laid down rare and exceptional circumstances e.g., natural calamities and emergencies declared by the Government, where the supplier or contractor has exclusive rights in respect of goods or services, in which cases contracts may be awarded through private negotiations.

The above instructions of the CVC were placed by the Nuclear Power Corporation of India Limited (NPCIL) before the Board in its meeting held in December 2007 and were duly noted by it.

Furthermore, as per Foreign Trade Policy (FTP) of GOI (effective from 27 August 2009), supplies made to Nuclear Power Projects would be eligible for benefits of deemed export in cases where procedure of competitive bidding was followed. For availing the benefit of refund of excise duty in respect of supplies, it was necessary that the company invite competitive bids through public/limited tender.

A test check of records of NPCIL revealed that for supply and manufacture of End Shields for RAPP 8,² the purchase order (PO) for ₹ 59.80 crore was issued on nomination basis to M/s L&T without inviting competitive bids though several firms/vendors were available in this field. This award of contract by NPCIL on nomination basis without inviting public tender from eligible persons was in contravention of the judgement of the Hon'ble Supreme Court of India and the CVC instructions. Besides, as a result of such action, NPCIL forfeited the benefit of refund of ₹ 5.93 crore (₹ 57.55

¹ *Arising out of SLP (Civil) No. 10174 of 2006*

² *Rajasthan Atomic Power Project 8*

crore @ 10.3 per cent) paid towards terminal excise duty as provided under the para/clause *ibid*. The PO was placed (March 2011) on L&T at a negotiated price of ₹ 57.55 crore (excluding delivery charges) for manufacture, inspection, testing, packing, supply and delivery of End Shields assemblies and associated components for RAPP 8.

In response, the Management (March 2012 & May 2012) stated that after considering all aspects such as cost of the proposed work, experience in manufacturing and salvaging procedure of sub assemblies, project schedule for delivery of End Shield, the Board sub-committee approved (October 2010) placement of purchase order on nomination basis on M/s L&T. Competitive price was arrived at after negotiation based on the actual value of job obtained from competitive bidding carried out (December 2009) on similar requirement in KAPP 3*, 4 and RAPP 7. It was further contended that it would not have been proper to issue tender enquiry on other firms and reject them during technical evaluation on ground of them not meeting the time schedule merely for the sake of availing of fiscal concession.

It was further stated (September 2012) by NPCIL that M/s. L&T was better placed to meet the demanding delivery schedule of June 2013 as per Master Control Network (MCN) of RAPP-8. Moreover, any firm other than L&T would have to add or incur additional cost of ₹ two crore for transportation and packing of partially manufactured inner sub-assemblies of suspended TAPP-3 project lying at the Hazira compound of M/s. L&T which was to be used for the proposed project. The additional financial implication of ₹ 5.93 crore towards excise duty due on non-availment of fiscal benefit under FTP by NPCIL as pointed out by Audit would be considerably reduced, if the additional cost of ₹ two crore that had to be incurred by firm other than L&T was taken into consideration. The Ministry in its reply (November 2012) endorsed the view of the NPCIL.

The reply of the Management is not acceptable since the tendering process of NPCIL in the instant case was in violation of the orders of the Hon'ble Supreme Court. Further, it is not clear how NPCIL without actually having gone in for competitive bidding through public/limited tender, concluded (November 2010) that awarding contract to M/s L&T on nomination basis for the said work would be more economical and technically acceptable than other firms which had experience in the field. The actual techno-commercial competitiveness of a company could have been discovered only by way of competitive bidding through public/limited tender.

Audit also observed that though NPCIL selected M/s L&T on nomination basis on the plea that other firms would not be able to meet demanding delivery schedule of June 2013 as per MCN, the delivery date was subsequently extended to April 2014 in favour of M/s L&T.

Thus, by awarding contract on nomination basis without going in for competitive bidding process, NPCIL not only violated CVC instructions of July 2007 based on the judgement of the Hon'ble Supreme Court, but also lost the opportunity to avail refund of terminal excise duty as provided for in FTP resulting in a loss of ₹ 5.93 crore.

* *Kakrapar Atomic Power Project 3*