

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 22.04.2014

LPA 420/2013

INRAM SOLAR PRIVATE LIMITED & ORS.

..... Appellants

versus

MINISTRY FOR NEW AND RENEWABLE ENERGY & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellants : Mr Garud M.V.

For the Respondents : Ms Karuna Chhatwal with Mr Joginder Sukhija for respondent No.1
Mr Sanjay Bhatt with Mr Abhishek Anand for respondent No.2.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL , J

1. The present appeal has been filed challenging the judgment dated 15.05.2013 passed by a learned Single Judge of this Court in WP(C) No.3177/2013. The writ petition being WP(C) No.3177/2013 was filed by the appellants, challenging the order passed by the respondents rejecting the representation of the appellants to be considered for the Rooftop PV & Small Solar Power Generation Programme, launched by the respondents.

2. Brief facts necessary for the present adjudication are enunciated in the succeeding paragraphs.

3. The respondent No.1 has launched, what is known as the Rooftop PV & Small Solar Power Generation Programme (in short 'the programme'), with Generation Based Incentives (in short GBI), payable to distribution utilities, for the power purchased from solar power projects installed by project proponents. This programme was envisaged under the Jawahar Lal Nehru National Solar Mission. As per the guidelines, issued under the aforementioned programme, it was intended that network would have an installed capacity of 100 KW.

4. The appellants in the first round came to court with the case that the respondents had wrongly put them on the wait list. Their grievance was that contrary to the reason trotted out that the entire installed capacity of 100 MW had been allocated among selected and registered project proponents, capacity equivalent to 11 MW was yet to be commissioned. It is on the basis of this broad allegation, the court in WP(C) No.7256/2012 had directed the respondents to consider the representations of the appellants.

5. The appellants had argued before respondent No.1 that the bank guarantees of waitlisted project developers have been returned and the waitlist has been cancelled even though there are project developers who failed to commission their solar projects under the scheme within the stipulated period. It was canvassed that the capacity so made available could be allocated to the waitlisted project developers.

6. By a detailed order, the respondents have considered the representation of the appellants, in particular, with regard to the wait-listed

projects. As noticed above, the appellants were part of those projects, which had been put on the wait-list.

7. The sum and substance of the order of respondent is that, a decision has been taken to scrap and cancel the wait-listed projects, on the ground that the tariff offered by them is far higher than that which is offered by the other concerns. The order by the respondent No.1 indicates that the programme was a pilot project intended to give a fillip to the use and development of solar energy. Since solar energy, at that particular point in time, was priced exorbitantly, a GBI scheme was devised to enable capacity building. However, in the wisdom of the respondents, if wait-listed projects are taken forward, it would result in the respondents forking out incentives contrary to public interest.

8. The learned Single Judge has considered the aforesaid submissions and observed that merely because the appellants were duly registered, no contract came into being. And even if that were to be the case, a writ petition would not be a remedy for the same.

9. Perusal of the order of the respondent No.1 demonstrates that out of 16 waitlisted projects, 7 project developers had withdrawn their bank guarantees while 9 other project developers had not opted for their withdrawal. Admittedly, the appellants did not opt to withdraw their bank guarantees. The matter regarding waitlisted project proponents was reviewed by the Committee constituted by MNRE under clause 8 of the programme guidelines "Power to remove difficulties" and in accordance with the

recommendation of the Committee, the decision to cancel the waitlist was taken for the following reasons:-

- The aforesaid programme was a pilot project intended to give a huge thrust to the development of solar energy in the country. At the time of the formulation of the programme, the solar energy was priced very high. In order to encourage the Local Distribution Utilities to purchase the power at higher tariffs of around Rs.18/- per kWh as fixed by the Central/State Electricity Regulatory Commissions, the programme provided for payment of incentives in the form of GBI.
- The aforesaid programme envisaged purchase of solar power from the project proponent at the rate determined by the Central/State Electricity Regulatory Commissions, which is around Rs.18/- per kWh for the entire duration of the project i.e. for 25 years. The respective Distribution Utility would pay the base rate of Rs.5.50 per kWh to be escalated @ 3% per year and the balance would be paid by MNRE as Generation Based Incentive (GBI) per kWh for the entire duration of the programme, i.e. for 25 years, to each developer as per provisions made in the scheme.
- The object of providing GBI through the programme was to create an enabling environment for development of solar technology and to make solar power price competitive. After creation of such enabling environment, the Government introduced a new scheme in late 2010 to promote larger capacity projects on tariff based bidding route. The scheme has led to intense competition amongst solar power developers and consequently to significant reduction of bidded solar PV tariff to as low as Rs.7.49 per kWh as against the tariff of Rs.10.39 per kWh announced by the CERC for 2012-13. In view of the drastic drop in the cost of solar energy and the fact that there are a number of entrepreneurs who are setting up solar power plants without GBI. It may also be mentioned that in the draft regulation of CERC determining tariff of renewable energy for the control period 2013-14 the solar PV tariff is proposed to be Rs.8.75 per kWh.

- In this context it is also mentioned that in case any project is allotted at such a high tariff of Rs.17.91 per kWh at this stage as being demanded by the petitioners, the same will not only be against public interest but also may lead to agitation from the developers who have been allotted solar power projects at lower tariffs based on a competitive tariff bidding process. The cancelled projects are not intended to be allotted to any other person in view of the above said facts.

10. It is noticed, that the underlying object for cancellation is twofold. Not only is the demand for higher tariff against public interest but it would also lead to agitation amongst developers who have been allotted projects at lower tariffs based on competitive tariff bidding process. The appellants, when they were placed on the waitlisted projects at most may have a legitimate expectation of being duly considered for the same. In our view, the respondent No.1 has by way of a well reasoned order considered their candidature and explained the reasons for such cancellation. In view of these facts, it cannot be argued that the appellants merely being registered for the programme, the respondents were under a legal obligation to carry forward with the project. Neither can the appellants claim to be legally entitled to be substituted in place of developers who are in breach of their project commitments.

11. As rightly pointed out by the learned Single Judge, the fact of registration does not prima facie lead to formation of a contract and even if that were the case, a writ petition would certainly not lie.

12. For the aforementioned reasons, in our view, the instant appeal does not merit interference and is accordingly dismissed. There shall be no order as to costs.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

APRIL 22, 2014
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