<u>IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH</u>

Civil Writ Petition No. 17804 of 2015 (O&M)
Date of Decision: 6th November, 2015

<u>Supreme Infrastructure India Ltd. and another</u> …Petitioners

Versus

<u>The State of Punjab and others</u> …Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

<u>Present :</u> Mr. Puneet Jindal, Sr. Advocate with
Mr. Siddhant Kant, Advocate, for the petitioners.
Mr. Mayank Sharma, Advocate, for respondent No.1.
Mr. Aditya Grover, Advocate, for respondent No.2.
Mr. Akshit Chaudhary, Advocate, for respondent No.3.

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<u>S.J.VAZIFDAR, ACTING CHIEF JUSTICE</u>

Petitioner Nos.1 and 2 are Supreme Infrastructure India Ltd. and Lumen Power Pvt. Ltd. Respondent Nos. 1, 2 and 3 are the Punjab State Power Corporation Ltd. (PSPCL), Punjab Energy Development Agency and the Punjab State Regulatory Commission, respectively.

2. The petitioners have challenged a notice dated 14.08.2015 terminating the allocation of a 4 MW Solar PV Project and forfeiting the performance security on the ground that the petitioners had failed to fulfill their contractual obligations. The petitioners have also challenged a consequential order dated 19.08.2015 passed by respondent No.3 which was consequent to the said notice cancelling the project allocation, an I.A. and a Power Purchase Agreement (PPA) entered into between petitioner No.1 and the other respondents. The challenge essentially, therefore, is to the notice of termination

dated 14.08.2015.

3. Respondent No.2-PEDA is the nodal agency for promoting new and renewal energy projects in the State of Punjab. Respondent No.2 issued a request for proposal dated 11.03.2013 for the development of Solar PV power projects in the State of Punjab. The same was amended on 09.04.2013. Petitioner No.1 submitted its bid for allocation of a 4 MW Grid Connected Solar PV Power Project.

4. Respondent No.2 issued a Letter of Award (LoA) dated 22.07.2013 informing petitioner No.1 that it had been selected for setting up a 4 MW Grid Connected Solar PV Power Project. Paragraph-3(g) of the aforesaid letter reads as under:-

> "3. Please note that acceptance of your bid is subject to compliance to the following terms and conditions:-
>
> (a) to (f)................
>
> (g) The Project Developer shall report tie up of Financing Arrangements for the project and submit the following documents within 180 days from the date of signing Power Purchase Agreement (PPA):-
>
> 1.1 ....
> 1.2 ....
> 1.3 ....
> 1.4 Land Documents:-
>
> * Record of Revenue Rights/certified copy of title deeds showing that ownership rights or lease hold rights for at least 30 years in respect of project land in the name of the Project Company. The title deeds must be only registered as per the provisions of the Registration Act.
> * Affidavit from the Authorized signatory of the Solar Power Developer listing the details of the land and certifying total land required for the project under clear possession of the Project Company.
> * A certified English translation copy of title deeds from an approved translator, in case above title deeds/documents are in language other than

English/Punjabi languages.

5. Petitioner No.1 furnished a guarantee in the sum of Rs. 1.60 crores and deposited a sum of Rs. 17.80 lacs as facilitation charges. An implementation agreement dated 18.09.2013 was signed between the parties. On 06.01.2014, a Power Purchase Agreement (PPA) was signed between petitioner No.1 and respondent No.1. Under the terms of the aforesaid agreements, the project was to be completed within 30 months from the date of signing of the PPA i.e. by 05.02.2015.

6. By its letter dated 28.08.2014 addressed to respondent No.2, petitioner No.1 inter-alia stated as under:-

> "We are in the process of finalization of land and grid feasibility for the project. Presently, we are facing some issues related to achieve the Financial closure for our project. The primary reason is that the flagship Company has already raised lot of funding for present projects in infrastructure and got stuck and delayed due to multiple issues and bottleneck/hindrances beyond our control, which compelled us reducing infusion of fresh funds as required for this project at this stage.
>
> We are under process and trying to bring in new investors to support for the Solar Project, but as the IA and PPA are signed under M/s Supreme Infrastructure India Ltd. and investors are not likely to invest in our parent company i.e. M/s Supreme Infrastructure India Ltd. and has shown much interest to have stake for this Solar Project, rather than our parent company. It is possible only, when we may run the project in SPV (Special Purpose Vehicle) mode and definitely we will find new investors as stakeholders for this Solar Project.
>
> Considering the above said issues and parameters, it is advised that incorporation of the SPV (Project Company) would help for execution of the project. We have already initiated the process of incorporation of the Project Company.

> Thereby, we seek your in-principle approval for switching the project to Project Company, wherein the terms of the PPA and IA would be complied alongwith the clause for infusion of equity in the Project Company."

7. By a further letter dated 26.12.2014 addressed to respondent No.2, petitioner No.1 referred to a termination notice dated 11.11.2014 and requested respondent No.2 to transfer the project to petitioner No.2 which was a newly formed Special Purpose Vehicle (SPV) for implementing the project. In paragraph-5 of the letter, petitioner No.1 stated that petitioner No.2 had entered into a 30-year lease rental agreement for 20 acres of land to set up the project. Petitioner No.1 enclosed alongwith the letter a lease rental agreement, revenue map and details of the site.

8. By a letter dated 31.12.2014 addressed to petitioner No.1, respondent No.2 considered the first petitioner's aforesaid request and extended the time for completion and commissioning of the project upto 15.03.2015 through the newly formed SPV i.e. petitioner No.2. The other terms and conditions of the implementation agreement and Power Purchase Agreement were to remain the same.

9. Mr. Puneet Jindal, the learned Senior counsel appearing on behalf of the petitioners emphasized that this letter dated 31.12.2014 refers to the said letter dated 26.12.2014 under cover of which the land documents had been forwarded and that no objections were raised as regards the land documents. He submitted therefore that the objection now taken to the effect that the documents were not registered is unsustainable.

10. The submission is not well founded. The documents referred to in paragraph-5 of the letter dated 26.12.2014 pertain to the land which is now admittedly not to be used for the purpose of implementing the project. Thus

assuming that by not raising any objection to the non-registration of the lease deed, respondent No.2 accepted the documents enclosed under cover of letter dated 26.12.2014, it would make no difference. The alleged acceptance of the documents enclosed with the letter dated 26.12.2014 is irrelevant as admittedly the land to which they pertain is now not intended to be used for implementing the project. After the said letter of termination, the petitioners admittedly submitted a registered lease deed of another plot of land.

11. By a letter dated 01.01.2015, petitioner No.1 stated that the project would now be undertaken by petitioner No.2 and therefore, requested respondent No.2 to inform respondent No.1 of the same and to assist it in signing a supplementary Power Purchase Agreement with petitioner No.2. Mr. Jindal submitted that if the supplementary agreement had been signed with petitioner No.2, it would have saved the petitioners' about Rs. 25,00,000/- by way of stamp duty. Mr. Jindal submitted that if the PPA had been entered into in the name of petitioner No.2, no stamp duty would have been payable. That he submitted was the reason why the lease deed had not been registered at that point of time.

12. Even assuming that to be true, it is difficult to understand this attitude in a project of this nature. This surely cannot be an excuse for not having the documents registered. The need for a registered lease deed is obviously justified. Petitioner No.1 could have had registered the lease deed in its name. As the PPA had been entered into in its name, petitioner No.1 would have been entitled to exemption from payment of stamp duty. Subsequently the name of petitioner No.2 could have been brought on the record of the PPA. Thus, in any event, there would have been no difficulty in having the lease deed registered by availing the benefit of waiver of stamp duty as contended on

behalf of the petitioners.

13. In this view of the matter, reliance upon the respondents not having responded to the petitioners' letter dated 01.01.2015 can be of no assistance to the petitioners. The petitioners were bound to comply with the terms and conditions of the letter of allotment, the IA and the PPA. The respondents having not replied to the letter dated 01.01.2015 did not absolve them of doing so.

14. In the circumstances, the impugned notice of termination dated 14.08.2015 cannot be faulted. The difficulty on the petitioners' part in complying with their obligations appears to be elsewhere.

15. There is an additional difficulty for the petitioners. Under the LoA, it was necessary for the petitioners to produce a lease under which the lease hold rights were for at least 30 years in respect of the project land. We were informed that the lease deed produced by petitioner No.2 was in respect of 20 acres in respect whereof the lease was only for a period of six months with an option to petitioner No.2 to renew the same for 30 years. This would not be in accordance with the LoA. There is a substantial difference between a lease deed for a period of six months with an option to renew the same and a lease deed for a period of 30 years.

16. In these circumstances, the petition is dismissed. The interim orders shall continue upto and including 07.12.2015.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

6th November, 2015
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