

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of Decision: 4th September, 2015

1. Civil Writ Petition No. 26101 of 2014

Asopus Infrastructure Limited. ..Petitioner
versus
Punjab Energy Development Agency and another ..Respondents

2. Civil Writ Petition No. 18191 of 2015

Crocus Infrastructure Reality Limited. & another ..Petitioners
versus
Punjab Energy Development Agency and another ..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?

Present : Mr. Sanjay Kaushal, Senior Advocate with
Mr. Rohit Khanna, Advocate,
Mr. Sumeet Goel, Advocate,
Mr. Manav Bajaj, Advocate for the petitioners.

Mr. Rajinder Goyal, Addl. Advocate General, Punjab,
for the respondent-State of Punjab.

Mr. Aditya Grover, Advocate, for respondent No.1-PEDA.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Mandeep S.Khillan, Advocate, for respondent No.3-
Punj Lloyd Infrastructure Ltd.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Petitioner No.2 in both the petitions is POENA Power Development Limited. The petitioners in both the petitions are associated companies. In both the petitions, the petitioners have sought a writ of certiorari to quash and set-aside the notices issued to the first petitioners calling upon them to show cause why the letter of allotment, Implementation Agreement and Power Purchase Agreement entered into between the parties

should not be terminated and the bank guarantees be not invoked and the performance security be not forfeited. The show cause notices in Writ Petition No. 26101 of 2014 and Writ Petition No. 18191 of 2015 are dated 14.11.2014 and 07.08.2015 respectively. The petitioners in each of the petitions have also sought a writ of mandamus directing respondent No.2 i.e. State of Punjab to approve the change in public purpose and change in land use and permission for long lease to petitioner No.1 in respect of the lands which had been acquired for petitioner No.2-POENA; a writ of mandamus directing the respondents to extend the time lines for commissioning the projects and all other activities from the date of such approvals; an order directing the respondents to allow petitioner No.1 in each of the petitions to develop solar power projects in accordance with the NRSE Policy, 2012 and in accordance with the Implementation Agreement dated 19.03.2015 and Power Purchase Agreement dated 31.03.2015 so as to enable petitioner No.1 to supply power at the tariff specified therein and a writ of mandamus directing respondent No.2 to consider the representations of petitioner No.2 to transfer (by means of lease) a part or whole of the subject land in favour of any of its affiliate companies to use by any means and to raise funds by mortgage for the purpose of developing the Power Projects. Consequential orders restraining the respondents from taking any coercive steps pursuant to the show cause notices and from issuing contracts to any other parties and from cancelling the agreements entered into with petitioner No.1 are also sought.

2. We will for convenience refer to the facts from Civil Writ Petition No. 26101 of 2014. In the year 2010, the Government of Punjab entered into a Memorandum of Understanding (MOU) with petitioner No.2-

POENA under which petitioner No.2 was to set up a Thermal Power Plant. In this regard, about 800 acres of land was acquired by the Government of Punjab for petitioner No.2. The compensation aggregating to about ₹ 220 crores was paid by petitioner No.2. However, soon thereafter, the Government of India took a decision not to give any fresh linkages of coal. This according to the petitioners resulted in frustration of the project. This arrangement is not the subject matter of these writ petitions. The first petitioners in each of the petitions, however, desire utilizing this land for the purpose of implementing the agreements entered into by them with the respondents which we will now refer to.

3. The Government of Punjab resolved to undertake the development of solar power under the NRSE Policy, 2012 through private sector participation under the “New Grid Connected Solar Photo Voltaic Power Projects under Phase-1”. The Government of Punjab appointed PEDDA as the State Nodal Agency for facilitating the said development. The PEDDA accordingly invited proposals by a request for proposal dated 11.03.2013. After evaluating the proposals, PEDDA accepted the bid of petitioner No.1 and issued a letter of award dated 22.07.2013 inter-alia for the execution of an Implementation Agreement. An Implementation Agreement dated 19.09.2013 was accordingly entered into between the first petitioners and “Punjab Energy Development Agency” (PEDDA) under the Department of Non-Conventional Energy Sources, Government of Punjab. One of the issues is whether it is respondent No.1-PEDDA or respondent No.2-State of Punjab that is the contracting party. The agreement has been executed “for and on behalf of the Governor of Punjab”. There is some uncertainty in this regard. The term agreement is defined to mean the

Implementation Agreement signed between “PEDA and the company”. The agreement defines PEDA to mean the Nodal Agency of the Government of Punjab for the development of New and Renewable Energy Sources. For the purpose of this order and judgment, it is not necessary to decide which of the respondents is the contracting party.

4. Pursuant thereto the Power Purchase Agreement was entered into between petitioner No.1 and the Punjab State Power Corporation Ltd. (PSPCL). The Implementation Agreement was to be treated as an integral part of the Power Purchase Agreement. Under the Power Purchase Agreement, petitioner No.1 was to sell to PSPCL the electric energy generated in the solar power plant to be set up and PSPCL agreed to purchase such energy upon the terms and conditions contained therein.

5. Mr. Kaushal, learned Senior Counsel appearing on behalf of the petitioners relied upon the NRSE Policy of 2012 inter-alia to emphasize that the Government intended encouraging and promoting solar power keeping in mind inter-alia the environmental benefit in the use of solar energy. Petitioner No.1 in its bid had stated that it proposed setting up the solar power project on the lands which had been acquired for petitioner No.2 for setting up the Thermal Power Plant. Petitioner No.2 by a letter dated 06.09.2013 referred to the above facts and stated that it would be in the interest of all concerned including the general public that the land be utilized for the purpose of development of solar power plants to be set up pursuant to the aforesaid agreements and that the change of public purpose of a Thermal Power Plant to a solar power plant would be legal and valid. Petitioner No.2, therefore, requested the State of Punjab to change the public purpose of the land acquired for PPDL from use for setting up a thermal power plant to a

solar power plant in respect of approximately 723 acres. Although the letter does not state it expressly we will presume that implied therein was a request to grant a lease or to permit a sub-lease of the lands to the first petitioners for the purpose of implementing the agreements entered into by them with the respondents. Infact by a letter dated 24.07.2014, which we will refer to again in another context, petitioner No.2 stated that it planned to use the land for development of a solar power project to be set up by petitioner No.1. It appears, therefore, that at that stage petitioner No.2 believed that it was entitled to and in any event would be allowed to permit its group companies to use the said land. It is thereafter that the Implementation Agreement dated 19.09.2013 was entered into between petitioner No.1 and the respondents and the Power Purchase Agreement was entered into between the petitioners and the PSPCL.

6. As there was no response to the petitioners' request for change in public purpose, the petitioners were unable to commence the implementation of the solar power project. By a letter dated 20.06.2014, petitioner No.1 sought an extension of time for submission of land documents and Grid feasibility Certificate. Correspondence ensued between the petitioners on the one hand and the authorities on the other in this regard. For instance, respondent No.1 by an e-mail dated 29.07.2014 called upon petitioner No.1 to submit the land registration papers. Petitioner No.1 by its reply dated 30.07.2014 (Annexure P-8) stated that the said land had already been mutated in favour of its group company, namely, petitioner No.2 and that the Government of Punjab had already been requested to allow the change of public purpose of the said land. Petitioner No.1 stated that it

would submit the land documents as soon it got approval of the change of land use from the Government of Punjab.

7. Several reminders were addressed by the petitioners with respect to the sanction for change in public purpose. The petitioners claim to have in the meantime taken various steps towards the implementation of the solar power project. The Government of Punjab has still not taken a decision in this regard. The petitioners' grievance is that despite the same the said show cause notices dated 14.11.2014 and 07.08.2015 were issued to the first petitioners in both the Writ Petitions. The first petitioners have replied to the show cause notices.

8. Mr. Kaushal, strongly urged us to issue a writ directing the State of Punjab to grant its request for change of land use and to execute the lease or to permit petitioner No.2 to execute the lease(s) in favour of the first petitioners in respect of the said land at least to the extent required for the implementation of the solar power projects by the first petitioners pursuant to and in accordance with the aforesaid agreements. He submitted that the petitioners had already invested a huge amount towards the implementation of the aforesaid projects. He sought to address us on the point that it was permissible for the 2nd respondent to grant both the requests. He further submitted that justice demands that in the facts and circumstances of this case the request ought to be granted. Infact he contended that the same would be in the interest of the public at large and would be in furtherance of the policy of the Government to encourage and promote solar energy.

9. Respondent No.1-PEDA on the other hand contended that the petitioners had misled them into believing that they had the requisite land to implement the solar power project though in fact they did not have the land

necessary to implement the project and that they had delayed in implementing the project. Accordingly, they submitted that the notices calling upon the first petitioners to show cause were justifiably issued. Respondent No.1 also contended that the first petitioners are not entitled as a matter of right to a lease or sub-lease of the said land which had been acquired for petitioner No.2. They submitted, therefore, that the petition ought to be dismissed.

10. We agree with the respondents that the petition is liable to be dismissed but not on the basis of the submissions on their behalf on merits. In our view, the writ petition is pre-mature. We are not inclined to entertain these petitions at this stage for more than one reason. Firstly, the matter regarding the first petitioners' request for change of land use is pending before the Government of Punjab. The Government of Punjab must take a decision one way or the other and it must do so expeditiously. We intend expediting the matter not for the benefit of the petitioners but for the benefit of the State and the public at large. It is not necessary to explain the importance of the power projects. It is far too obvious. The matter has been pending with the Government of Punjab for some time. The same must be decided expeditiously. Secondly, if the Government of Punjab grants approval, it is possible that respondent No.1 or respondent No.2 as the case may be would take the same into account while considering whether or not to terminate the agreements and to encash the bank guarantees. Moreover, even assuming that the concerned respondents terminate the agreements including the Implementation Agreement and Power Purchase Agreement, they may not necessarily take any further action including invoking the bank guarantees. A final decision in this regard has obviously not been taken and

indeed ought not to be taken at this stage. It must await the decision of the State of Punjab to grant or not to grant the petitioners' request for change in the public purpose.

11. In the circumstances, the writ petitions are disposed of with the following directions:-

- i) Respondent No.2 shall take a decision on the petitioners' request for change in public purpose in respect of the said 883 acres of land acquired for petitioner No.2 and on the petitioners' request for the grant a lease and/or sub-lease in respect thereof in favour of the first petitioners for the purpose of implementing the solar power projects. Thereafter the respondents concerned shall take a decision/pass an order in respect of the show cause notices.
- ii) In the meantime and if the decisions are adverse to the petitioners, for a period of eight weeks after the decisions on the show cause notices are served upon the petitioners, the respondents shall not invoke the bank guarantees. This order, however, is subject to the petitioners keeping the bank guarantees alive from time to time for the amounts stated therein together with interest at 12% per annum subject to the final rate of interest being decided. The guarantees shall be amended to include the provision for interest by 15.10.2015. The guarantees shall be renewed and written intimation thereof shall be served upon the respondents four weeks before the expiry thereof failing which the respondents shall be entitled to invoke the same. It would be open to the parties to have the

rate of interest changed in appropriate proceedings including by way of an application in these petitions in the event of the bank guarantees being invoked.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

04.09.2015
'ravinder'

(TEJINDER SINGH DHINDSA)
JUDGE