

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P. No.30767 of 2016

and WMP Nos.26661 & 26662 of 2016

M/s.Busiwindi Park Energy Private Limited,
Represented by its Director,
Mr.S.P.Gopalakrishnan
Having its registered office at
No.19, Rajaji Nagar, 4th Street,
Tirupur 641 602

.... Petitioner

Vs

1.The State of Tamil Nadu
Represented by Secretary to Government,
Ministry of Energy,
Fort St. George,
Chennai - 600 001.

2.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited,
10th Floor, NPKRR Maaligai,
144 Anna Salai,
Chennai - 600 002.

3.The Chief Engineer / NCES
Tamil Nadu Generation and Distribution
Corporation Limited,
2nd Floor, Eastern Wing,
144 Anna Salai, Chennai - 600 002.

4.The Superintending Engineer / NCES,
O/o Superintending Engineer
TANGEDCO, Anna Building,
Thiyagaraja Nagar,
Tirunelveli - 627 001.

5.The Executive Engineer/WFP, TNEB
Sivanthipatti Road,
Thiyagarajanagar, Tirunelveli - 627 011.

6.M/s.Suzlon Energy Limited,
5, Shrimali Society, Near Krishna Complex,
Navrangpura, Ahmedabad - 380 009.

7.M/s.Suzlon Gujarat Wind Power Limited,
One Earth, Hadapsar,
Pune - 411 028.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorarified Mandamus calling for the records of the 3rd respondent relating to the impugned notice bearing Lr.No.CE/NCES/EE/WPP/AEE2/F, Vellapaneri 230 Kv SS/D.1611/16 dated 26.08.2016 and quash the same as illegal, ultra vires, unconstitutional and arbitrary and consequently direct the respondents 1 to 5 not to interfere with the dispute between the petitioner company and the 6th and 7th respondents.

For Petitioner : Mr.M.Suresh Kumar

For R-1 : Mr.V.Jayaprakash Narayanan
Special Govt. Pleader

For R-2 to R-5 : Mr.S.K.Raameshwar

For R-6 & R-7 : Mr.T.Mohan for
Mr.Ravi

O R D E R

The petitioner is engaged in the development of wind farm and solar energy. The respondents 1 to 5 are the statutory bodies authorised to give sanction for setting up wind farms in the State of Tamil Nadu and the 6th and 7th respondents are engaged in the business of manufacturing Wind Energy Generators (WEG) in India.

2. The petitioner company proposed to set up 50 MW wind power projects in the villages coming under the districts of Tuticorin & Tirunelveli and entered into an arrangement with the 6th & 7th respondent for supply of WEG. As per the understanding, the petitioner company agreed to procure lands to jointly develop wind power project. The 6th respondent was awarded contract for setting up 10(1) sub-station at Vellappanerri Village. The joint development of the wind power

projects between the petitioner company and the 6th & 7th respondents should be connected to the 10(1) sub-station at Vellappanerri Village. The petitioner company has to procure suitable lands for development of wind power project at 23 locations and apply for NOC before the 3rd respondent. The 3rd respondent had granted NOC for 20 locations and out of the 20 locations, the petitioner company had completed the projects for 9 locations and for the other two locations, NOC has been surrendered and fresh NOC was obtained in the name of the 6th respondent. Presently, there are 9 locations for which NOC is standing in the name of the petitioner company where the WEG are proposed to be installed.

3. When things stand so, the 3rd respondent issued impugned notice dated 26.08.2016 to the petitioner stating that out of 9 locations, the lands in connection with five applications are not in the name of the petitioner company and the lands in connection with the balance four applications are also under dispute and therefore, called upon the petitioner to submit the proof of ownership for the above lands failing which the applications will be cancelled and the request of the 6th respondent will be processed.

4. Heard Mr.M.Suresh Kumar, learned counsel appearing for the petitioner who would submit that without even issuing any notice for extraneous consideration, steps have been taken to cancel the petitioner's application.

5. However, Mr.T.Mohan, learned counsel who accepts notice on behalf of the 6th and 7th respondent would submit that the lands connected with Registration Nos.692(T)/10-11/dt:09.11.2010, 752(T)/10-11/dt:30.11.2010, 767(T)/10-11/dt:02.12.2010, 881(T)/10-11/dt:07.01.2011 and 887(T)/10-11/dt:07.01.2011 have been sold to third parties and as on date, there are no lands standing in the name of the petitioner to process the application for NOC. Similar argument was also advanced by Mr.S.K.Raameshwar, learned Standing Counsel appearing for the respondents 2 to 5.

6. By way of reply, the learned counsel appearing for the petitioner would submit that the lands connected with three applications viz. Registration Nos.692(T)/10-11/dt:09.11.2010, 752(T)/10-11/dt:30.11.2010 and 767(T)/10-11/dt:02.12.2010 alone not in the name of the petitioner and as far as the balance two applications viz. Registration Nos.881(T)/10-11/dt:07.01.2011 and 887(T)/10-11/dt:07.01.2011 are concerned, they are in the standing in the name of the petitioner.

7. The impugned notice is only a Show Cause Notice. Normally, no writ petition is maintainable against a Show Cause Notice. Following paragraphs of the impugned notice would

reveal that it is only a Show Cause Notice.

Further as per our SE/NCES/Tirunelveli report, it is learnt that the lands for the 5 No. applications are not in your name and the lands for the balance 4 No. applications are also under dispute.

Hence you are requested to submit the proof of ownership of the lands related to the above WEG applications within 7 days, failing which your applications will be cancelled without further notice and M/s.Suzlon Energy Limited request will be processed.

8. In view of the above, it is the bounden duty of the petitioner to respond to the impugned notice and produce relevant documents to the third respondent, in proof of their ownership. Accordingly, the petitioner is directed to produce the required documents to the third respondent to prove his ownership, on or before 07.09.2016 and after hearing both the petitioner as well as the 6th & 7th respondent, the 3rd respondent shall pass appropriate orders, on merits and in accordance with law, within a period of one (1) week thereafter. While considering the response of the petitioner, the third respondent is also bound to take into consideration the application of the 6th & 7th respondent.

9. With the above direction, the writ petition is disposed of. No costs. Consequently, connected W.M.Ps are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Ministry of Energy,
Fort St. George,
Chennai - 600 001.

WEB COPY

2.The Chairman cum Managing Director,
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Tirunelveli - 627 011.

+1 cc to Mr.M.Ravi Advocate sr 50043
+1 cc to Mr.M.Sureshkumar Advocate sr 50052

W.P. No.30767 of 2016

aa06/09/2016

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