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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1628/2016 & CM No.7042/2016 (for stay)

M/S VOLUPTAS DEVELOPER PVT. LTD. Petitioner
Through: Mr. Rajiv Nayar, Sr. Adv. with Mr.
Lakshmeesh S. Kamath, Ms. Shally
Bhasin, Ms. Ayushi Chadha and Mr.
Raghav Pandey, Advs.

Versus

UNION OF INDIA & ANR Respondents
Through: Mr. Rakesh Kumar and Mr. Chetan
Lokur, Advs. for R-1/UOI with Mr.
Praveen Kumar, Deputy
Commandant, MHA.
Mr. Anuj Sarma, Mr. Santosh S.
Rebello and Ms. Purna Bhandari,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **31.03.2016**

1. The petition impugns the decision of the respondent No.1 Union of India (UOI) denying security clearance to the petitioner and which has led to denial of consideration of the petitioner by the respondent No.2 Directorate of Civil Aviation, Government of Goa for award of contract for development, operation and management of a proposed Airport at Goa through Public-Private Partnership, on design, build and transfer basis.

2. The petition came up first before this Court on 26th February, 2016 when the counsels for both the respondents appearing on advance notice

candidly admitted that they were not aware of the reasons for denial of security clearance to the petitioner.

3. Notice of the petition was issued and the respondent No.1 UOI directed to produce before this Court the concerned file containing reasons for denial of security clearance and the report of the investigation if any done in that regard.

4. On the next date of hearing i.e. 4th March, 2016, the counsel for the respondent No.1 UOI handed over in the Court the files and the flagged pages thereof were perused by me.

5. Since the respondent No.1 UOI claims confidentiality over the material, need for inviting a counter affidavit was not felt and hearing begun. The statement of the counsel for the respondent No.2 Government of Goa to the effect that the petitioner had qualified in the technical bid and that the financial bids were to be opened on 16th May, 2016 was also recorded in the order dated 4th March, 2016 and the respondent No.2 Government of Goa directed to give Request For Proposal (RFP) to the petitioner to enable the petitioner to submit its financial bid, subject to the final outcome of the petition.

6. After perusing the files produced by the counsel for the respondent No.1 UOI and hearing the counsels, the counsel for the respondent No.1 UOI was directed to obtain instructions, whether the respondent No.1 UOI was agreeable to grant an opportunity to the petitioner to clarify its stand and / or satisfy that it is entitled to security clearance. It was however clarified that the same shall not partake the character of giving an opportunity of hearing, which according to the respondent No.1 UOI is not to be granted in such

cases. Accordingly, the files produced were also returned to the counsel for the respondent No.1 UOI with a direction to bring copies of the relevant papers on further hearing in a sealed cover.

7. On 21st March, 2016, the counsel for the respondent No.1 UOI informed that the respondent No.1 UOI was not agreeable to the suggestion, as made on 4th March, 2016. Accordingly, the matter was posted to today for further hearing.

8. Today also the counsel for the respondent No.1 UOI has handed over a sealed cover containing the photocopies of the relevant papers containing the reasons for denial of security clearance to the petitioner and the same have been perused by me.

9. The senior counsel for the petitioner has referred to judgment dated 11th June, 2012 in W.P.(C) No.2775/2012 titled ***Global Vectra Helicorp Vs. Directorate General of Civil Aviation, Lalit Kumar Modi Vs. Union of India*** 2014 LawSuit(Del) 3184, judgment dated 26th July, 2015 in W.P.(C) No.6891/2015 titled ***Digital Radio (Mumbai) Broadcasting Ltd. Vs. Union of India*** (appeal against which was dismissed on 29th January, 2016 in SLP(C) No.34468-69/2015), order dated 11th February, 2010 in W.P.(C) No.13457/2009 titled ***R.K. Machine Tools Ltd. Vs. Union of India*** and ***A.K. Sharma Vs. Director General of Civil Aviation*** 2002 (98) DLT 738 and the counsel for the respondent No.1 UOI has referred to ***Ex. Armymen's Protection Services P. Ltd. Vs. Union of India*** AIR 2014 SC 1376, ***Bycell Telecommunications India Pvt. Ltd. Vs. Union of India*** 185 (2011) DLT 494 (DB) and ***Bycell Telecommunications India P. Ltd. Vs. Union of India*** 2010 IV AD (Delhi) 529.

10. In my opinion, the scope of interference in challenges to non-grant of security clearance if the Court finds that the reasons for which the security clearance has been denied require re-consideration and / or if the Court is of the opinion that the possibility of the denial of security clearance for reasons to oust commercial competition or for other oblique reasons cannot be ruled out, is confined to referring back the matter for re-consideration, if possible by a higher authority than which has refused security clearance on an earlier occasion. However if the authorities concerned still are of the view that the person concerned poses a threat to security of the State, the Court will ordinarily not interfere. I say so because the Division Bench of this Court in *Parveen Kumar Beniwal Vs. Government of NCT of Delhi* MANU/DE/1304/2015, though in the context of grant of arms licence, held that whether there is perception of threat to the security of a citizen has to be considered by the authority concerned and the Court cannot substitute its own opinion for that of the authority concerned and would be outside the purview of judicial review.

11. Though considering the nature of the reasons given in the documents shown to me, it is not appropriate for me to spell out the same in the order but suffice it is to state that on a consideration thereof a doubt arises as to sufficiency thereof and finding, that security clearance in the past and as late as in the year 2015 with respect to several other projects requiring security clearance has been granted to the constituents of the petitioner because of whom security clearance has now been denied, I am of the view that a case for directing reconsideration is made out.

12. On enquiry, the counsel for the respondent No.1 UOI, under

instructions from the official present in Court, states that the decision in the first round has been taken at the level of the Secretary, Ministry of Home Affairs.

13. In the circumstances, the petition is disposed of with a direction to the respondent No.1 UOI to, on or before the end of April, 2016, reconsider the issue of denial of security clearance to the petitioner at the highest level possible and if possible in consultation with the Minister / State Minister for Home Affairs and the said decision be communicated to the petitioner, again before the end of April, 2016.

14. The documents today handed over in a sealed cover be again sealed by the Court Master and returned to the counsel for the respondent No.1 UOI.

Copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

MARCH 31, 2016

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