

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.25091 OF 2017

ORDER:

Heard learned Senior Counsel Sri D.V.Sitarama Murthy for petitioners and learned standing counsel for respondents 1 to 3 and 4.

The first petitioner entered into a Memorandum of Understanding (MoU) with the erstwhile Government of Andhra Pradesh on 13.01.2012 for establishment of 2,850 MW Wind Power Projects with the proposed investment of Rs.17,100 crores. It is submitted that the first petitioner submitted a Capacity Allotment Application for setting up of 500 MW Wind Power Projects on 31.01.2014 to the erstwhile fourth respondent being the Nodal Agency while identifying new locations for the development of the Wind Power Projects, especially in the Telangana region. The fourth respondent was designated as Nodal Agency by the State Government vide G.O.Ms.No.48, dated 11.04.2008. The sites identified for the development of Wind Power Projects are as follows.

S. No.	Name of the site & District	Wind Mast Location	UTM Coordinates	C-WET Reg.No.	Capacity Allotment Required
1	Madanapalle, Rangareddy District	Madanapalle	N 1926191 E 43Q 802835	C-WET-PM-967	100 MW
		Navapet	N 1930826 E 43Q 815883	C-WET-PM-968	
2	Kodangal, Mahbubnagar District	Kodangal	N 1896544 E 43Q 780188	C-WET-PM-959	100 MW
		Rudram	N 1899191 E 43Q 764489	C-WET-PM-957	
		Raichur	N 1887898 E 43Q 771585	C-WET-PM-967	
3	Gingurthy, Rangareddy District	Gingurthy	N 1928370 E 43Q 774506	C-WET-PM-963	100 MW
		Rampally	N 1931100 E 43Q 783914	C-WET-PM-962	
4	Aspari, Kurnool District	Aspari	N 1707069 E 43P 756546	C-WET-PM-974	200 MW
Total Capacity					500 MW

After bifurcation of the erstwhile State of Andhra Pradesh, the first petitioner submitted a letter on 22.03.2014 giving regionwise breakup to

the fourth respondent for setting up 500 MW Wind Power Project identifying the locations separately for the States of Telangana and Andhra Pradesh. The first respondent received the proposals for 300 MW in Telangana and 200 MW in Andhra Pradesh and the first petitioner by its letter dated 11.04.2014 intended to proceed with further activities expecting a favourable sanction from the first respondent. The first petitioner commissioned 100.40 MW Wind Power Projects in the State of Andhra Pradesh with an investment of more than Rs.650 crores, out of which 63 MW Wind Farm was commissioned at Vajrakarur, Anantapur District during 2012 and 37.40 MW Wind Power Project was commissioned at Burgula in two phases as 22.1 MW and 15.3 MW on 21.02.2014 and 15.03.2014 respectively. The fourth respondent by its proceedings dated 02.05.2014 recommended the proposals submitted by the first petitioner to the second respondent for setting up Wind Projects of 300 MW in Telangana region. The first petitioner also paid the Grid Connectivity Fee towards evacuation of 300 MW Wind Power Project to the second respondent vide letter dated 21.05.2014 along with the connectivity application and the relevant required documents for approval and sanction of 300 MW Wind Power Project, but the respondents 1 to 4 failed to communicate further development with the first petitioner. However, the first petitioner addressed a letter dated 14.07.2014 to the fourth respondent for consideration of the proposal submitted by the first petitioner, but the fourth respondent failed to respond to the said communication. Since the fourth respondent recommended for proposal of the first petitioner, and sanction and approvals are awaited from respondents 1 to 3, the first petitioner addressed a letter dated 04.09.2014 to the first respondent. The second respondent by proceedings dated 26.06.2015 communicated to the first petitioner that in principle the second respondent accorded approval for grid connectivity for 300 MW

and for evacuation, the first petitioner has to construct 132 KV pooling station at generating side and shall connect radially to respective sub-stations and that the first petitioner may get the line, bay construction and associated works accomplished by the second respondent or with an option to get the entire work executed by the second respondent by depositing the scheme cost and instructed the first petitioner to furnish security deposit of Rs.2 lakh per MW vide Bank Guarantee (BG) from Nationalised Bank within 30 days from the date of receipt of the letter dated 26.06.2015. Accordingly, the first petitioner furnished Bank Guarantee. The second respondent accepted the said Bank Guarantee of Rs.6 crores on 24.07.2015 and the first petitioner is awaiting the final approval and sanctions from the respondents 1 to 3. Though the sanctions were not received, the first petitioner submitted an Undertaking on 01.10.2015 accepting the terms and conditions of the letter dated 26.06.2015 and also expressed its willingness to surrender the evacuation proposal if the first respondent failed to sanction the capacities requested by the first petitioner. The first respondent addressed a letter on 17.03.2016 to the second respondent to submit status report in respect of the sanction for 300MW Wind Power Project proposal submitted by the first petitioner. Since the first petitioner could not get the approvals for 300 MW Wind Power Project, the second respondent wanted to invoke the Bank Guarantee and in those circumstances, the present writ petition is filed.

As on today, there is no sanction for the Project by the first respondent.

Pursuant to the persuasion of the first petitioner, the second respondent granted grid connectivity subject to the conditions mentioned in the letter. Since the first petitioner could not secure the sanction, the second respondent wanted to invoke the Bank Guarantee furnished on

23.07.2015. Though the second respondent is a 'State' within the meaning of Article 12 of the Constitution of India, the relationship between the first petitioner and the second respondent is a private arrangement without the element of public law, and this Court in W.P.No.24437 of 2017, by its order dated 07.08.2017, held that though the respondents satisfy the requirements of the 'State', no relief can be granted in respect of invocation of Bank Guarantees in the absence of any element of public law. The nature of Bank Guarantees was also examined in the said writ petition. It was also held that in the absence of plea of fraud or irretrievable harm or injustice, no relief can be granted to the petitioners. The said decision is applicable to the instant case also and as such, no relief can be granted in the instant writ petition.

The writ petition is accordingly dismissed. Consequently, miscellaneous petitions, if any pending, in this writ petition, shall stand closed.

07.09.2017
pln

A.RAMALINGESWARA RAO, J

