

CWP No.18959 of 2017

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.18959 of 2017
Date of decision:24.08.2017**

M/s Green Energy Pvt. Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Saurav Verma, Advocate,
for the petitioner.

Rakesh Kumar Jain, J. (Oral)

This petition is filed for seeking quashing of the order dated 06.06.2017 passed by respondent no.2.

In short, the petitioner-company entered into an agreement with the Government of Punjab through Punjab Energy Development Agency (PEDA) on 03.07.2009 for the purpose of establishing, operating and maintaining the Biomass Power Projects on build, own and operate basis and sell power from these projects to the Punjab State Electricity Board (PSEB) as per tariff fixed by the Punjab State Electricity Regulatory Commission (PSERC) as per its order dated 13.12.2007. Clause 4.4 of the said agreement provides for supplementary agreements, in which it is mentioned that the petitioner-company would enter into a separate Power Purchase Agreement (PPA) with PSEB in accordance with the tariff approved by the PSERC regarding the sale of power within 45 days of the submission of requisite documents to PSEB by the company.

Accordingly, a PPA was entered into between the PSEB and the

petitioner-company on 14.10.2009, according to which the petitioner-company was to establish 10 MW Biomass fuel based power project at village Binjon, Thesil Garhshankar, District Hoshiarpur. As per the PPA, respondent no.2 was to purchase and transmit the electricity from the generating company, namely, the petitioner. It is alleged that Clause 16.4.0 of the PPA provides that *“notwithstanding the existence of any question, disputes and difference referred to arbitration the Parties hereto shall continue to perform their respective obligation under this Agreement and the payment of any bill preferred shall not be withheld by the Board for any reason whatsoever including the pendency of the arbitration”*.

Earlier, the PEDDA (respondent no.3 herein) allegedly terminated the contract and the petitioner made a representation which was not decided. Consequently, the petitioner filed CWP No.7425 of 2017, which was disposed of by this Court on 07.04.2017 with the following order:-

“Through instant writ petition, the petitioner has challenged the legality of notice Annexure P-9 threaten to terminate the allotment of MOUs and IAs for Hoshiarpur, Jalandhar and Moga sites for setting up Biomass Power Plant on BOO basis.

The petitioner has submitted a reply Annexure P-11 dated 05.04.2017 to the notice Annexure P-9.

It appears that as per the terms of the agreement between the petitioner and the respondents, the parties would continue to perform their respective obligations even if any dispute or differences arise.

In view of said circumstances when no decision has been taken on the representation/reply to the notice, the writ petition appears to be pre-mature.

There being no cause of action to the petitioner, at this stage, this petition is disposed of as pre-mature with liberty to the petitioner to avail the legal remedy available to him or to file writ petition after consideration of the reply Annexure P-11.

In case, the claim of the petitioner in Annexure P-11 is not considered in accordance with law within reasonable time, it will be open to the petitioner to avail the legal remedy available to it.”

It is submitted that on 21.06.2017, the PEDDA informed the petitioner to the following effect:-

“Reference to your letter dated 05.04.2017 vide which your company has submitted representation to PEDDA seeking extension in timelines to complete the above 3 biomass power projects while submitting your explanation as to delay in commissioning of these projects, in response to the termination notice no.1621 dated 08.03.2017 rendered by PEDDA.

In this regard, it is informed that in view of the fact that the projects are at advanced stage of completion and huge investments have already been made by your company, therefore, PEDDA is hereby granting extension to complete/commission the above 3 biomass projects by 31.3.2018 in all circumstances subject to the following conditions:

1. Submission of enhanced performance Bank Guarantees @ Rs.5 Lac/MW for all these biomass projects, valid uptill 30.9.2018, within 10 days from the date of issue of this letter.
2. No revision in tariff shall be sought by you on the ground of extension granted by PEDDA.

You are requested to ensure commissioning of these projects by 31.3.2018 failure thereof shall lead to forfeiture of Performance Bank Guarantee and termination of Implementation Agreement.”

But before that on 06.06.2017, the impugned order was passed by respondent no.2, terminating the contract on the ground that the petitioner has failed to generate the electricity required by respondent no.2 for the purpose of transmission.

Counsel for the petitioner has submitted that Clause 16.4.0 of the PPA clearly provides that if there is any dispute then it would be referred to the arbitration and the parties shall continue to perform their respective obligation

under the agreement. It is, thus, submitted that the petitioner made a representation on 25.07.2017 to respondent no.2, which has not been decided. Thus, he has prayed that respondent no.2 may be directed to decide the representation.

After hearing learned counsel for the petitioner and examining the available record, I am of the considered opinion that there is no need for issuing a direction to respondent no.2 to decide the representation as they had already taken a decision on 06.06.2017 of terminating the contract with the petitioner. The petitioner may, if so advised, seek reference of the dispute to the arbitrator as it is provided in the agreement itself as a mode of redressal of dispute between the parties.

With these observations, the present petition is hereby dismissed.

August 24, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No