

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 2652 OF 2021**

**IN**

**WRIT PETITION NO. 2995 OF 2021**

**WITH**

**WRIT PETITION NO. 2995 OF 2021**

GMR Warora Energy Ltd

...Applicant/  
Petitioner

V/s.

Union Territory of Dadara and Nagar  
Haveli & Daman and Diu & Ors.

...Respondents

Mr. Kevic Setalvad, senior advocate with Mr. Vishroff Mukherjee, Mr. Yashavi Kant, Mr. Yohaann Limathwalla and Mr. Ahsan Allaha i/by J. Sagar Associates for applicant/original petitioner.

Mr. H.S. Venegaonkar i/by Mr. Saurabh Kshirsagar for respondent nos. 1 and 2.

Mr. Anil C. Singh, Additional Solicitor General with Mr. Aditya Thakkar and Mr. D.P. Singh for respondent no. 3 – Union of India.

Mr. Janak Dwarkadas, senior advocate with Mr. Dinyar Madon, senior advocate, Ms. Deepa Chawan, Mr. Arsalan, & A. Thaver, i/b Vishal Shriyan for respondent no. 4 in IA/2652/2021.

**CORAM: DIPANKAR DATTA, CJ &  
M. S. KARNIK, J.**

**DATE: MARCH 11, 2022**

**P.C.:**

**INTERIM APPLICATION NO. 2652 OF 2021:**

**1.** IA/2652/2021, filed on 29<sup>th</sup> October 2021, is an application in Writ Petition No. 2995 of 2021. It is at the instance of the writ petitioner, which seeks *inter alia* the following relief: -

“(a) That this Hon’ble Court be pleased to Stay the implementation and execution of the Proposed Transfer, i.e., the Notice Inviting Bid dated 07.12.2020, Request for Proposal dated 08.12.2020 and the Draft Dadra and Nagar Haveli and Daman and Diu Electricity (Reorganisation and Reforms) Transfer Scheme, 2020 along with Information Memorandum and Details of Contingent Liability of Respondent No. 2;

(b) To pass an order/direction prohibiting and restraining from the Respondent Nos. 1 and 2, from acting in furtherance or pursuance of the Proposed Transfer, i.e., the Notice Inviting Bid dated 07.12.2020, Request for Proposal dated 08.12.2020 and the Draft Dadra and Nagar Haveli and Daman and Diu Electricity (Reorganisation and Reforms) Transfer Scheme, 2020 along with Information Memorandum and Details of Contingent Liability of Respondent No. 2;

(c) Pending the hearing and final disposal of the Writ Petition, to pass an order/direction to injunct Respondent Nos. 1 and 2 from transferring its assets in favour of Respondent No. 4.

(d) For ad-interim reliefs in terms of prayers (b) and (c) above;

**2.** *Inter alia*, a tender process initiated by the Administrator of the Union Territory of Dadra & Nagar Haveli and Daman & Diu vide notice inviting bid dated 7<sup>th</sup> December 2020 is under challenge in the writ petition on multiple grounds urged in support of the relief claimed in such petition. The substantive relief claimed in the writ petition is to the following effect: -

“(a) Hold and declare that the Proposed Transfer, i.e. the Notice Inviting Bid dated 07.12.2020, Request for Proposal dated 08.12.2020 and the Draft Dadra and Nagar Haveli and Daman and Diu Electricity (Reorganisation and Reforms) Transfer Scheme, 2020 along with Information Memorandum

and Details of Contingent Liability of Respondent No. 2 (**Exhibit :A:**) are unreasonable, unjustified, arbitrary and violative of Articles 14 and 300A of the Constitution of India and Electricity Act.

(b) Issue a writ of Mandamus or any other appropriate writ or order or direction quashing the Proposed Transfer, i.e. the Notice Inviting Bid dated 07.12.2020, Request for Proposal dated 08.12.2020 and the Transfer Scheme along with Information Memorandum and Details of Contingent Liability of Respondent No. 2 framed by Respondent No. 1 (**Exhibit :A:**);

(c) Issue a writ of Mandamus or any other appropriate writ or order or direction restraining servants, agents, officers and subordinates acting through the said Respondents from in any manner acting in furtherance or pursuance of the Proposed Transfer, i.e. the Notice Inviting Bid dated 07.12.2020, Request for Proposal dated 08.12.2020 and the Transfer Scheme along with Information Memorandum and Details of Contingent Liability of Respondent No. 2 framed by Respondent No. 1 (**Exhibit :A:**);

(d) In the alternative and without prejudice to prayers (a), (b) and (c), issue an appropriate writ or order or direction directing the Respondent No. 1 to include the amounts owned to the Petitioner in the opening balance sheet and the transfer scheme for the Transferee Company;"

The interim prayers in such writ petition read as follows:

"(e) Pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to stay the implementation and execution of the Proposed Transfer, i.e. the Notice Inviting Bid dated 07.12.2020, Request for Proposal dated 08.12.2020 and the Draft Dadra and Nagar Haveli and Daman and Diu Electricity (Reorganisation and Reforms) Transfer Scheme, 2020 along with Information Memorandum and Details of Contingent Liability of Respondent No. 2 (**Exhibit :A:**)

(f) Pending the final hearing and disposal of this Petition, Respondent Nos. 1 and 2 and their servants, agents, officers and subordinates acting through the said Respondents be restrained from in any manner acting in furtherance or pursuance of the Proposed Transfer, i.e. the Notice Inviting Bid dated 07.12.2020, Request for Proposal dated 08.12.2020 and the Draft Dadra and Nagar Haveli and Daman and Diu Electricity (Reorganisation and Reforms) Transfer Scheme, 2020 along with Information Memorandum

and Details of Contingent Liability of Respondent No. 2  
(**Exhibit :A:**)”

**3.** Writ Petition No. 2995 of 2021 [previously WP (L) No. 3083 of 2021] was considered by a coordinate Bench of this Court on 3<sup>rd</sup> March 2021 when the following order was passed: -

- “1. Not on board. Upon mentioning, taken on board.
2. Heard the parties. Rule, returnable on **March 31, 2021 at 02.30 p.m.**
3. Reply-affidavit may be filed by the respondents by March 26, 2021; rejoinder thereto, if any, may be filed by the petitioner by March 30, 2021.
4. Since there is a prayer for setting aside the notice inviting bid dated December 07, 2020 and Torrent Power Limited, represented by Mr. Madon, learned senior advocate has been identified as the H-1 bidder in such process, we consider its presence necessary for effective decision on the writ petition. Hence, the prayer for impleadment, on oral application, is allowed.
5. Cause title of the writ petition shall be amended suitably here and now by the learned advocate-on-record for the petitioner. Copy of the writ petition shall be furnished to the advocate-on-record for the additional respondent by March 04, 2021.
6. The additional respondent and the petitioner shall also be at liberty to exchange their affidavits within March 30, 2021.”

**4.** Immediately before the consideration of Writ Petition No. 2995 of 2021, the same coordinate Bench had the occasion to consider Public Interest Litigation (St.) No. 1355 of 2021 wherein the same tender process, which is under challenge in the instant writ petition, was also under challenge. While issuing rule on the PIL petition and inviting the parties to exchange their affidavits, the Court granted interim relief, limited till 30<sup>th</sup> April 2021, suspending the tender process. The order dated 3<sup>rd</sup> March 2021 in PIL (St.) No. 1355 of 2021 was

carried to the Supreme Court by the Union of India by instituting SLP (Civil) No. 8254 of 2021. The Supreme Court by its order dated 9<sup>th</sup> July 2021 issued notice and stayed the operation of the impugned order dated 3<sup>rd</sup> March 2021. It is not in dispute that after the order dated 3<sup>rd</sup> March 2021 passed by the coordinate Bench of this Court had been stayed by the Supreme Court, several steps in connection with the tender process were taken resulting in, *inter alia*, issuance of an advisory on 7<sup>th</sup> February 2022 calling upon Torrent Power Limited, the qualified H-1 bidder (represented by Mr. Dwarkadas and Mr. Madon, learned senior advocates), to tender payments which have since been tendered on 25<sup>th</sup> February 2022 and 26<sup>th</sup> February 2022 in an aggregate sum of Rs.555 crore.

**5.** These facts in the background, prayer for circulation of the interim application made by Mr. Setalvad, learned senior advocate for the applicant/writ petitioner was granted pursuant whereto the application is on board today.

**6.** While Mr. Setalvad has prayed for relief as claimed in the interim application, such prayer has been vehemently opposed by Mr. Singh, Additional Solicitor General for the Union of India, Mr. Venegaonkar, learned advocate for the Administrator, and Mr. Dwarkadas assisted by Mr. Madon.

**7.** Having heard Mr. Setalvad as well as the parties opposing his prayer for interim relief, we decline the prayer for more reasons than one.

**8.** First, by the order dated 3<sup>rd</sup> March 2021, the Court had directed impleadment of the H-1 bidder (Torrent Power Limited) as an additional respondent in the writ petition.

However, such impleadment has not been effected with the result that Torrent Power Limited, which would be materially affected if interim relief were granted, is yet to be brought on record. Law is well-settled that no order ought to be passed to the detriment of any party unless it is on record and heard. Although the petitioner has impleaded Torrent Power Limited as respondent no. 4 in IA/2652/2021, such impleadment without amendment having been carried out in terms of the order dated 3<sup>rd</sup> March, 2021 is of no consequence. We, however, grant extension of time to the learned advocate-on-record for the applicant/writ petitioner to comply with the order dated 3<sup>rd</sup> March 2021 within a week.

**9.** The second reason for which we are not inclined to grant ad/interim relief is because of the conduct of the applicant/writ petitioner. The principles of law relating to grant of *ex-parte* ad interim relief are well-settled. We may refer to the decision of the Supreme Court in **Morgan Stanley Mutual Fund vs. Kartick Das**<sup>1</sup> in this connection. The interim application shows 29<sup>th</sup> October 2021 as the date of verification. The application came to be filed in the department on 8<sup>th</sup> November 2021. Although the Administrator and Torrent Power Limited were served copies of the interim application on 25<sup>th</sup> February 2022, service on Union of India has not yet been effected. It is, thus, clear that an order is claimed without service. We do not approve of the conduct of the applicant/petitioner in attempting to obtain relief without effecting service on the Union.

**10.** Thirdly, we place on record being informed by Mr.

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<sup>1</sup> (1994) 4 SCC 225.

Setalvad that initially circulation was sought for on 2<sup>nd</sup> December 2021 but circulation was not granted; however, by that time too, the application had not been served on any of the respondents. It is only after payments had been tendered by Torrent Power Limited that fresh circulation was sought for, resulting in placing of the interim application on board today. Law is again well-settled that where a party seeks interim relief, it has to approach the Court with utmost expedition. The interim order passed on PIL (St.) No. 1355 of 2021 had protected the interest of the applicant/writ petitioner and, probably, that was the cause for which there was no real endeavour on its part to have an interim order passed on this writ petition on 3<sup>rd</sup> March 2021, when the coordinate Bench had the occasion to consider the PIL petition as well as the writ petition. As and when the interim order passed on the PIL petition was stayed by the order of the Supreme Court dated 9<sup>th</sup> July 2021, it was open to the applicant/writ petitioner to immediately come before the Court and seek interim protection *qua* its grievances, if any. We find that the interim application was filed more than three months after the Supreme Court had stayed the operation of the interim order dated 3<sup>rd</sup> March 2021; and more than three months thereafter, the copies of the application were served on a couple of parties without service being effected on the Union of India.

**11.** In such circumstances, we do not see any reason to hold that the Court was approached with utmost expedition, so as to warrant consideration of the relief claimed in the application during pendency of the writ petition.

**12.** The fourth reason for which interim relief as prayed for by the applicant/writ petitioner ought to be refused is that of *res judicata* or principles analogous thereto. Explanation (v) to Section 11 of the Code of Civil Procedure, 1908 ordains that if a relief claimed in a plaint is not expressly granted by the decree, the same shall for the purpose of Section 11 be deemed to have been rejected. Such principle applies in respect of prayers for interim order/interim relief and, therefore, the order dated 3<sup>rd</sup> March 2021 in Writ Petition No. 2995 of 2021 must be deemed to amount to a refusal of interim prayers (e) and (f) of the writ petition. Such interim prayers having been refused and in view of applicability of the principle of *res judicata* at different stages of the same proceedings, interim relief as prayed for by the applicant/writ petitioner by filing IA/2652/2021 must be held to be barred by *res judicata*.

**13.** Finally, we are of the opinion that the tender process having been stayed by this Court by its order dated 3<sup>rd</sup> March 2021 whereafter such order has been stayed by the Supreme Court by its order dated 9<sup>th</sup> July 2021, it would be absolutely inappropriate for the High Court to make any order for interim relief which would have the effect of tinkering with the order of the Supreme Court dated 9<sup>th</sup> July 2021. Judicial discipline demands that we refrain from granting any interim relief at this stage.

**14.** For the reasons aforesaid, the interim application (IA/2652/2021) stands dismissed. There shall be no order as to costs.

**Writ Petition No. 2995 of 2021:**

- 1.** The Rule may be listed for final hearing on 28<sup>th</sup> April 2022.
- 2.** Reply-affidavit tendered by the Union of India through Mr. Singh shall be taken on record. The petitioner shall be at liberty to file rejoinder-affidavit within three weeks from date.

**(M. S. KARNIK, J.)**

**(CHIEF JUSTICE)**

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KULKARNI

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