



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

Date of decision: 12th APRIL, 2022.

IN THE MATTER OF:

+ **CONT.CAS(C) 162/2021**

HERO WIND ENERGY PVT. LTD. & ANR. Petitioners

Through Mr. Yash Srivastava, Advocate

versus

MR. BALACHANDRA NADAR & ORS. Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant contempt petition has been filed for non-compliance of the Order dated 03.04.2018 passed by this Court in OMP (I) No.592/2015.

2. Shorn of details, the brief facts leading to the filing of the instant contempt petition are:-

- a) The Petitioner and Respondent No.4 entered into a Site Development, Land Acquisition and Construction Services Agreement dated 23.08.2013 for developing a wind farm of capacity of 74 MW. Dispute arose between the parties.
- b) The Petitioners filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, being OMP (I) No.592/2015. This Court referred the parties to Delhi High Court Mediation and Conciliation Centre. In the mediation proceedings, the parties entered into an amicable settlement.



Settlement agreement dated 12.05.2016 was entered into between the parties. The relevant portion of the said agreement reads as under:

"That the following settlement has been arrived at between the parties which are as under:

b) The second party has also agreed to pay a sum of Rs. 21.50 Crores to the first party towards satisfaction of its all claims, differences and disputes. After receiving the said sum of Rs.21.50 Crores, the first party will be left with no claim or grievance of whatsoever nature against the second party. The said sum of Rs. 21 50 Crores shall be free from interest if paid on or before 31.08.2016 otherwise it shall be given to the first party by the second party in following manner / instalments and shall carry 12% per annum proportionately decreasing rate of interest:-

- i) Rs. 1 Crore on or before 30.06.2016.*
- ii) Rs. 1 Crore on or before 31.07.2016.*
- iii)Rs. 1 Crore on or before 31.08.2016.*
- iv)Rs. 2 Crores on or before 30.09.2016.*
- v) Rs. 2 Crores on or before 31.10.2016.*
- vi)Rs. 2.5 Crores on or before 30.11.2016.*
- vii) Rs. 2.5 Crores on or before 31.12.2016.*
- viii) Rs. 2.5 Crores on or before 31.01.2017.*
- ix)Rs. 2.5 Crores on or before 28.02.2017.*
- x) Rs. 2.5 Crores on or before 31.03.2017.*
- xi)Rs. 1 Crore on or before 30.04.2017.*
- xii) Rs. 1 Crore on or before 31.05.2017."*

- c) The agreement was placed on record in the case and the petition under Sections 9 and 11 of the Arbitration and Conciliation Act, 1996 was disposed of in terms of the settlement agreement



dated 12.05.2016. Both the parties were bound to the said settlement agreement.

- d) It is alleged that the contemnors defaulted and flouted the terms of the settlement agreement dated 12.05.2016. The Petitioners filed an application under Section 39(1)(b) CPC being I.A. No.9227/2017 for transfer of the decree dated 25.07.2016 in OMP (I) No.592/2015. Notice was issued in the said application and when the Contemnor No.1 failed to appear, this Court imposed a cost of Rs.25,000/- and also directed that coercive steps be taken against the contemnor No.1, if he fails to appear on the next date.
- e) On 08.02.2018, the Petitioners and the Contemnor Nos.4 and 5 entered into a second settlement agreement dated 08.02.2018. The relevant portion of the second settlement agreement reads as under:

"C. The Buyer and the Developer had entered into a Settlement Agreement dated 12.05.2016 (more specifically defined below in the agreement) under which the Developer had to pay an amount of Rs.21,50,00,000/- (Rupees Twenty One Crores Fifty Laksh) along with interest out of which Developer had paid Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs) to the Buyer. However, there was default in performing the obligations stipulate under the Settlement Agreement and hence the parties are entertain into this agreement. Furthermore, the Buyer agrees that the balance outstanding amount under the Settlement Agreement to the extent of Rs.20,00,00,000/- (Rupees Twenty Crores) along with interest ("Outstanding Amount") shall be adjusted against the amount payable to the Developer under this agreement. The



balance amount payable to the Developer under this Agreement shall be paid by the Buyer to the Developer after the outstanding amount of Rs.20,00,00,000/- along with interest is set off as per this agreement.

4.2 *In the event of any issue arising in respect of any Locations including but not limited to possession of the land, claims from the third parties, objection from Government authorities, including but not limited to claim for good will express, implied warranty, change in Law, rules, regulations, by-laws, government policies etc it shall be the responsibility of the Developer, to resolve the same within forty five (45) days from the date of knowledge of such dispute. If the Developer fails to resolve the said dispute, the Buyer shall be entitled to get the refund of the entire money paid to the Developer along with the losses and damages whatsoever, including but not limited to losses due to effect on financial closure of the project as per the PPA that may be entered in the near future in respect of the locations specified in this agreement that are incurred by the Buyer due to such issue, till that date pertaining to the disputed Location. While settling the said dispute the expenses whatsoever shall be borne by the Developer.*

27. PENDING LITIGATIONS

In consideration of this agreement both the parties shall submit respective affidavits notifying the settlement terms of this agreement in all the pending litigations between the parties and shall not initiate any further litigation for default under the settlement



agreement till the successful performance of all the obligations of Developer under the timelines specified in this agreement and subject to submission and verification of work report in the manner specified in Clause 8.8 of this agreement. However, in case of failure by Developer to perform any of its obligations under this agreement the Buyer/ IPP shall be entitled to pursue the litigations against Developer in respect of performance of Settlement agreement dt. 12.05.16 and all other pending/new litigation as per applicable laws.

Provided that the applicability of the interest charged on the outstanding amount against Developer as per the settlement agreement dt. 12.05.2016 shall be discontinued in case the Developer achieves the State 1 of Schedule E within 6 (six) months from the effective date of this agreement subject to submission and verification of work report in the manner specified in Clause 8.8 of this agreement (For avoidance of doubt, it is clarified that the above interest shall apply and payable till the approval received from the Buyer/IPP on the work report provided by the Developer. However, in case the Developer fails to achieve the Stage 1 of Schedule E of this Agreement within timelines specified in this agreement and subject to submission and verification of work report in the manner specified in Clause 8.8 then the conditions stipulated in the Settlement agreement in respect of interest applicable on Developer as per the settlement shall apply over the Developer as per the Settlement agreement."

(emphasis supplied)

- f) Pursuant to the execution of the settlement agreement dated 08.02.2018, the I.A. No.9227/2017 was dismissed as withdrawn by the Court *vide* Order dated 03.04.2018. The said order reads



as under:

"I.A. No.4301/2018

This application has been filed by the petitioner placing on record "The Agreement for Wind Power Project and Land Development Service" executed between the parties on 08.02.2018.

The application is allowed and above agreement is taken on record.

O.M.P.(I) 592/2015 & IA 9227/2017

In view of the settlement, learned counsel for the petitioner prays for leave to withdraw the present petition and the pending application.

The petition and the pending application are dismissed as withdrawn."

- g) It is pertinent to mention that the Petitioners had entered into the settlement agreement for developing of a project in the State of Gujarat for producing wind energy. The Respondents/Contemnors were to provide services to the petitioner for the said project which the petitioner wanted to undertake. By a letter dated 19.04.2018, the Government of Gujarat laid down the conditions regarding allotment of the land for the said project and under the said condition, land was to be allotted to only those companies who had won wind bids invited either by GUVNL (Gujarat Urja Vikas Nigam Ltd.) or Solar Energy Corporation of India or other agencies of the Government of India, supported by a letter to that effect from GEDA (Gujarat Energy Development Agency). The Petitioner,



as a result, was not eligible for allotment of land for the said project.

- h) The Petitioner, therefore, asked for repayment for a sum of around Rs.20 Crores under the settlement agreement and for which purpose, a legal notice was issued on 25.09.2018 to the Contemnors seeking repayment for a sum of around Rs.20 crores, along with interest. The said notice was contested by the Respondents herein by issuing a reply notice on 25.09.2018 denying their liability under the service agreement.

3. The Petitioner, thereafter, filed the instant contempt petition by stating that the Respondents/Contemnors had undertaken to pay the amount of around Rs.20 Crores under the settlement agreement, and that the refusal to pay the said amount on the part of the Respondents/Contemnors attracts contempt of Court.

4. Heard learned Counsel appearing for the Petitioner and perused the material on record.

5. Learned Counsel appearing for the Petitioner draws attention of this Court to the two agreements entered into between the parties. He has also taken this Court through the various clauses of the agreement dated 08.02.2018 entered into between the parties. The land service agreement entered into between the parties postulates that the Petitioner is engaged in facilitating procurement of land and the requisite approvals for setting up renewable energy projects in the State of Gujarat and he has offered its services in relation to procurement of the Land Parcels by the Buyer from the Revenue Department, Government of Gujarat. It has been postulated that the Respondents would render services to the Petitioners herein and the



services rendered by the Respondents would be set off against the amount liable to be paid. The service agreement does not indicate the time period in which amount has to be paid. The agreement only refers to the rendering of service by the Respondents to the Petitioners in view of the amount that was liable to be paid. The said agreement cannot, therefore, be taken as an undertaking that the Respondent would pay the said amount of money to the Petitioner within a stipulated period of time under the agreement. It, therefore, cannot be stated that there is a wilful disobedience of any judgment or decree or direction of this Court or wilful breach of undertaking given to this Court by the Respondent. The contempt is not made out.

6. In the absence of a specific undertaking, this Court cannot initiate action against the Respondents solely on the premise of the wind power land development service agreement on the basis of which the I.A. No.9227/2017 was disposed of by an undertaking given to this Court that the money would be returned to the petitioner within a specific time. The service agreement only states that the service will be rendered by the Respondent to the Petitioner for developing the land for setting up renewal energy projects and the amount payable will be adjusted for the services rendered.

7. The agreement was entered into between the parties on the premise that the Petitioners would be awarded a project. The Petitioner, unfortunately, was not eligible for the project and, therefore, it cannot be said that a dispute arose between the parties regarding payment of money. In the facts of the present case, this would not make the contemnors liable to pay the said amount under the settlement agreement. Clause 27 of the settlement agreement dated 08.02.2018 will not come to the aid of the Petitioners as the said Clause also does not amount to an undertaking given



to the Court to pay the said amount to the petitioner.

8. The instant contempt petition is also barred by limitation under Section 20 of the Contempt of Courts Act, 1971. The instant contempt petition was filed in the year 2021. Section 20 of the Contempt of Courts Act, 1971 stipulates that no court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

9. In the present case, the settlement agreement dated 08.02.2018 was made a part of the Order dated 03.04.2018. The petitioner was held to be ineligible to get the project by a letter dated 19.04.2018 issued by the Additional Chief Secretary, Energy and Petrochemical Department, Government of Gujarat. The notice was issued by the Petitioner for refund of money on 27.08.2018 and the reply repudiating the claim by the Respondents/Contemnors was sent on 25.09.2018. The contempt petition should have been filed within one year from 27.08.2018.

10. The learned Counsel for the Petitioner places reliance on the judgment of the Apex Court in Firm Ganpat Ram Rajkumar vs. Kalu Ram And Others, **1989 Supp (2) SCC 418**. Paragraph No.7 of the said judgment reads as under:

"7. Another point was taken about limitation of this application under Section 20 of the Act. Section 20 states that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from date on which the contempt is alleged to have been committed. In this case, the present application was filed on or about 3-11-1988 as appears from the affidavit in support of the application. The



contempt consisted, inter alia, of the act of not giving the possession by force of the order of the learned Senior Sub-Judge, Narnaul dated 3-11-1988 (sic 12-2-1988). Therefore, the application was well within the period of one year. Failure to give possession, if it amounts to a contempt in a situation of this nature is a continuing wrong. There was no scope for application of Section 20 of the Act."

11. In Firm Ganpat Ram Rajkumar vs. Kalu Ram And Others (supra), the Contemnor was given six months' time to vacate the premises on filing of the undertaking in the Court. An undertaking was filed in the Court. Since the premises were not vacated within six months, a contempt petition was filed and even though the contempt petition had been filed after a period of one year, the said contempt petition was entertained. However, a Bench of three Judges of the Supreme Court in Pallav Sheth vs. Custodian and Others, (2001) 7 SCC 549 has observed as under:

"44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed.

45. It was submitted on behalf of the appellant that even if the provisions of Section 20 do not bar the High Court from taking action if proceedings are initiated by the filing



of an application within a period of one year of the contempt having been committed, in the present case the period of limitation must be regarded as having expired long before the filing of the application by the Custodian and, therefore, no action on such an application could be taken by the Court.”

12. It is further stated by the learned Counsel for the Petitioner that failure to pay the amount would be a continuous cause of action and, therefore, the said contempt petition could be entertained. The contention of the petitioner cannot be accepted for the reason that failure to pay the amount when the date is fixed for payment cannot be said to be a continuous cause of action. In any event, in the facts of the present case, there was no date fixed for the payment of the said amount.

13. The Apex Court in Vashdeo R. Bhojwani v. Abhyudaya Co-operative. Bank Limited And Another, (2019) 9 SCC 158 has observed as under:

"4. In order to get out of the clutches of para 27, it is urged that Section 23 of the Limitation Act would apply as a result of which limitation would be saved in the present case. This contention is effectively answered by a judgment of three learned Judges of this Court in Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan [Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan, 1959 Supp (2) SCR 476 : AIR 1959 SC 798] . In this case, this Court held as follows: (SCR p. 496 : AIR p. 807, para 31)

“31. ... In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for



the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked. Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the appellants' rights though the damage caused by the said decree subsequently continued."

Following this judgment, it is clear that when the recovery certificate dated 24-12-2001 was issued, this certificate injured effectively and completely the appellant's rights as a result of which limitation would have begun ticking."

14. Therefore, it cannot be said that every failure of payment of money on each and every date after the amount became due will raise a fresh cause of action. The Petitioner cannot place reliance on Firm Ganpat Ram Rajkumar vs. Kalu Ram And Others (supra) wherein it was held that there was a continuous cause of action as that is not the case in the instant matter. This Court is, therefore, of the opinion that contempt has not been made out in the instant case and further the instant contempt petition filed by the



Petitioner is also barred by limitation under Section 20 of the Contempt of Courts Act, 1971.

15. However, needless to state that it is always open to the Petitioner to take all such remedies, as may be available, in accordance with law for redressal of his grievance and enforcement of his rights. The time spent by the Petitioner in filing of the instant contempt petition will not be taken into account while calculating the limitation under Section 14 of the Limitation Act.

16. With the above observations, the petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 12, 2022

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