

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH.P.

WEDNESDAY, THE 13TH DAY OF MAY, 2020/23RD VAISAKHA, 1942

W.P(C) NO. 9872 OF 2020

PETITIONER:

G.J. ECO POWER PRIVATE LIMITED, HAVING ITS REGISTERED OFFICE AT DOOR NO. X/63, SARAYU COMPLEX, SEAPORT AIRPORT ROAD, KAKKANAD, ERNAKULAM - 682 030, REPRESENTED BY ITS DIRECTOR, JAMES ADAI.

BY ADVS.

SRI. S. SANAL KUMAR

SMT. BHAVANA V.

SMT. T.J. SEEMA

RESPONDENTS:

1. KOCHI MUNICIPAL CORPORATION,
REPRESENTED BY ITS SECRETARY,
PARK AVENUE ROAD, MARINE DRIVE, ERNAKULAM - 682 011.
2. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
3. THE STATE LEVEL ADVISORY COMMITTEE ON WASTE
MANAGEMENT, KSIDC, THIRUVANANTHAPURAM -695033.
4. KERALA STATE INDUSTRIES DEVELOPMENT CORPORATION,
KOWDIAR, THIRUVANANTHAPURAM, KERALA 695033

BY SRI.K.P.HARISH, GOVERNMENT PLEADER

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON 13.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court challenging Ext.P31 Government Order and Ext.P32 notice issued by the Corporation of Cochin. The petitioner was awarded the concession to execute a project, namely, the Municipal Solid Waste to Energy Project (MSWTEP) at Brahmapuram. An agreement in this regard was executed on 17.2.2016.

2. I have heard Sri.S.Sanal Kumar, the learned counsel for the petitioner, Sri.K.P.Harish, the learned Government Pleader and Sri.S.Sudheesh Kumar for the Corporation of Cochin.

3. It is the case of the respondents that despite the passage of substantial period of time, the petitioner has not been able to achieve any progress with regard to the project. It is pointed out that there were several timelines to be complied with by the petitioner and one of them was to achieve financial closure. It is the case of the petitioner that he had been repeatedly representing to the authorities that the financial closure can be achieved only if the licence arrangement for occupation of land is converted into a lease arrangement as this is a condition which is insisted upon by

the proposed lenders. It appears that the matter was referred to the State Level Advisory Committee headed by the Chief Secretary to Government. The State Level Advisory Committee appears to have issued directions/recommendations to the Corporation of Cochin to convert the licence arrangement contemplated in the agreement into a lease arrangement. The counsel of the Corporation of Cochin had passed a resolution against the conversion of the proposed licence arrangement into a lease arrangement. The Government of Kerala interfered with that resolution as well in exercise of power under Section 57 of the Kerala Municipality Act, 1994. It is the case of the petitioner that the Corporation is yet to agree to convert the licence arrangement into a lease arrangement. According to the petitioner, this is the reason for the substantial delay in starting work on the project.

4. The learned Government Pleader would, however, alertly pointed out that the petitioner has failed to comply with various other timelines also apart from financial closure.

5. Sri.S.Sanal Kumar, learned counsel for petitioner would, however, contend that there were provisions in the

agreement for waiver of conditions and the timelines could also be extended by the Corporation. He would state that there had been a waiver of the strict timelines contemplated in the agreement by conduct. The Government has now chosen to issue Ext.P31 order cancelling the approval granted to the project through Ext.P1 order and consequently the Corporation has issued Ext.P32 terminating the agreement entered into with the petitioner.

6. When the matter came up for consideration today, the learned Government Pleader, on instructions, would submit that the petitioner has already approached the Government with a petition seeking review of Ext.P31 order and since Ext.P31 is not issued in exercise of any specific statutory power, this Court need not examine the question as to whether any provision to review Ext.P31 is available with the Government and that there will be no legal bar in the Government reconsidering the matter at the instance of the petitioner.

7. The learned counsel appearing for the petitioner would invite my attention to Section 21 of the General Clauses Act and states that the power to issue an order includes the power

subsequently modify or revoke the same. I am of the view that Section 21 does not apply in the case of orders in the nature of Ext.P31. However, this contention of the learned counsel for the petitioner need not detain me as Ext.P31 is not issued in exercise of any specific statutory power and this Court need not examine if there is any legal bar in directing the petition filed by the petitioner to be considered.

8. In the totality of the facts and circumstances of the case, I am of the opinion that since the petitioner has approached the Government by way of a petition seeking review/reconsideration of Ext.P31, I deem it appropriate that the said application/petition is disposed of after affording an opportunity of hearing to the petitioner.

Considering the substantial public interest involved in the case, this Writ Petition is disposed of directing the author of Ext.P31 order, namely, the Principal Secretary to Government in the Local Self Government Department, to consider the petition/application submitted by the petitioner for reconsideration of Ext.P31 order (the application is not on record in this case) within a

period of two weeks from the date of receipt of a copy of this judgment. The petitioner as well as the concerned officer of the Corporation of Cochin shall be afforded an opportunity of hearing before orders are passed as above. Till orders are passed as above, the proposal in Ext.P31 to initiate proceedings for selection of a new agency for implementation of the project shall be kept in abeyance. Encashment of the Bank guarantee shall also be kept in abeyance till orders are passed by the Government in the manner directed above, unless, as submitted by the learned counsel for the Corporation of Cochin, the same has already been encashed.

**GOPINATH.P.
JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1 - A TRUE COPY OF THE ORDER OF THE GOVERNMENT OF KERALA GO(MS) NO. 1/2016/LSGD DATED 4.1.2016

EXT. P2 - A TRUE COPY OF THE LETTER OF THE AWARD ISSUED BY THE 1ST RESPONDENT DATED 8.1.2016

EXT. P3 - A TRUE COPY OF THE CONCESSION AGREEMENT DATED 17.2.2016 BETWEEN THE PETITIONER AND THE 1ST RESPONDENT

EXT. P4 - A TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 24.6.2017

EXT. P5 - A TRUE COPY OF THE ORDER OF THE GOVERNMENT OF KERALA GO(MS) NO. 39/2018/REVENUE DATED 3.2.2018

EXT. P6 - A TRUE COPY OF THE GO(RT) NO.488/2018/LSGD DATED 20.2.2018

EXT. P7 - A TRUE COPY OF THE ORDER OF THE GOVERNMENT OF KERALA NO. GO(MS) NO.108/2018/LSGD DATED 9.8.2018

EXT. P8 - A TRUE COPY OF THE POWER PURCHASE AGREEMENT EXECUTED BY THE KERALA STATE ELECTRICITY BOARD

EXT. P9 - A TRUE COPY OF THE COMMUNICATION OF THE PETITIONER TO THE 1ST RESPONDENT DATED 29.2.2016

EXT. P10 - A TRUE COPY OF THE MINUTES OF THE 8TH MEETING OF THE SLAC DATED 7.3.2018

EXT. P11 - A TRUE COPY OF THE MINUTES OF THE 18TH MEETING OF THE SLAC DATED 7.11.2018

EXT. P12 - A TRUE COPY OF THE MINUTES OF THE 19TH MEETING OF THE SLAC DATED 22.11.2018

EXT. P13 - A TRUE COPY OF THE MINUTES OF THE 20TH MEETING OF THE SLAC DATED 12.12.2018

EXT. P14 - A TRUE COPY OF THE MINUTES OF THE 21ST MEETING OF SLAC DATED 11.1.2019

EXT. P15 - A TRUE COPY OF THE MINUTES OF THE 22ND MEETING OF SLAC DATED 5.2.2019

EXT. P16 - A TRUE COPY OF THE MINUTES OF THE 25TH MEETING OF THE SLAC DATED 29.4.2019

EXT. P17 - A TRUE COPY OF THE MINUTES OF THE 24TH MEETING OF SLAC DATED 23.3.2019

EXT. P18 - A TRUE COPY OF THE MINUTES OF THE 26TH MEETING OF THE SLAC DATED 21.5.2019

EXT. P19 - A TRUE COPY OF THE MINUTES OF THE 27TH MEETING OF SLAC ON 27.6.2019

EXT. P20 - A TRUE COPY OF THE MINUTES OF THE 29TH MEETING OF THE STATE LEVEL ADVISORY COMMITTEE DATED 2.9.2019

EXT. P21 - A TRUE COPY OF THE MINUTES OF THE 30TH MEETING OF SLAC DATED 21.10.2019

EXT. P22 - A TRUE COPY OF THE MINUTES OF THE 31ST MEETING OF SLAC DATED 15.11.2019

EXT. P23 - A TRUE COPY OF THE ORDER OF THE GOVERNMENT OF KERALA GO(RT) NO. 144/2020/LSGD DATED 16.1.2020

EXT. P24 - A TRUE COPY OF THE GOVERNMENT ORDER GO(RT)NO.259/2020/LSGD DATED 31.1.2020

EXT. P25 - A TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER DATED 5.2.2020

EXT. P26 - A TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DATED 11.3.2020

EXT. P27 - A TRUE COPY OF THE MINUTES OF THE 33RD MEETING OF SLAC DATED 7.2.2020

EXT. P28 - A TRUE COPY OF THE MINUTES OF THE 34TH MEETING OF THE SLAC DATED 13.3.2020

EXT. P29 - A TRUE COPY OF THE MINUTES OF THE 35TH MEETING OF THE SLAC DATED 13.4.2020

EXT. P30 - A TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT DATED 27.2.2020

EXT. P31 - A TRUE COPY OF THE GO(RT)NO.805/2020/LSGD DATED 30.4.2020

EXT. P32 - A TRUE COPY OF THE NOTICE NO.MOE2/6224/14 DATED 4.5.2020 ISSUED BY THE 1ST RESPONDENT