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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.390 OF 2024

M/S. DCS SOLAR ENERGY LIMITED
REP. THR. ITS AUTH. REPRESENTATIVE
AARTI JAGDISH SHAH

... Petitioner

Versus

STATE OF GOA THR. THE
CHIEF SECRETARY AND 2 ORS.

... Respondents

Mr Siddhart Chaudhary, Mr Sougata Sarkar, and Mr Kaif Noorani,
Advocates for the Petitioner.

Mr D. Pangam, Advocate General with Ms Maria Correia, Additional
Government Advocate *for Respondent Nos.1 and 2.*

**CORAM: M.S. SONAK &
VALMIKI MENEZES, JJ.**

DATED: 8th May 2024

P.C.:

1. This petition is a gross abuse of the process of the Court.
2. The Petitioner was awarded a contract for providing an International Convention Centre at Dona Paula on 01.09.2021. This was subject to the Petitioner providing a performance bank guarantee in the amount of ₹16.22 crores.
3. The Petitioner delayed/defaulted in providing this performance bank

guarantee despite several reminders from the State. Therefore, the government terminated the contract on 11.01.2022.

4. The Petitioner instituted Writ Petition No.230/2022 (Filing), questioning this termination notice dated 11.01.2022.

5. When the petition came up for hearing, the learned Senior Advocate appearing for the Petitioner, based on instructions, made a statement that the subject bank guarantee would be furnished on or before 22.02.2022 without fail. On instructions, the learned Senior Counsel made a clear statement that if for any reason whatsoever, the Petitioner is unable to furnish the bank guarantee, then the Petitioner will not pursue the grievance now raised in this petition or otherwise question the action of the Government under the termination letter dated 11.01.2022. The Court accepted these statements.

6. The Learned Advocate General also made a statement that if by 22.02.2022, the subject bank guarantee was to be furnished, the termination letter dated 11.01.2022 would not be acted upon and would stand withdrawn. Even this statement was accepted, and the petition was disposed of.

7. The Petitioner did furnish a bank guarantee purportedly from ICICI Bank. However, this bank guarantee was found to be extremely suspicious; therefore, the Government made inquiries with the ICICI Bank. The ICICI Bank responded to the Government stating that the Bank never issued such a bank guarantee. The bank guarantee which this Petitioner Company furnished was thus, nothing but a fraudulent document given in the teeth

of the undertakings given to this Court. The statement made by the Petitioner Company obviously contemplated a valid and authentic bank guarantee and not a fraudulent one, which the Petitioner had produced before the Government relying on this Court's order.

8. Upon the above fraud being pointed out to the Court by the Advocate General by filing Misc. Civil Application No.102/2022, this Court issued a contempt notice to the Petitioner Company and its Directors. Mr Deepak Shah, then the Managing Director of the Company, raised a host of defences as he was entitled to in the contempt petition. Most of such contentions were frivolous. Still, much judicial time was wasted on pursuing such objections. The objections were dismissed, and even the Special Leave Petition No.8452/2023, questioning such dismissal, was dismissed.

9. After action under the Contempt of Court's Act appeared imminent, Deepak Shah, the Managing Director, finally filed an affidavit expressing his unconditional apology to the Court. The learned Advocate General pointed out that the State had filed a police complaint regarding furnishing a fraudulent bank guarantee, and investigations were pending.

10. Therefore, by clarifying that the investigations must go on, we accepted Mr Shah's unconditional apology. However, we noted our *prima facie* impression about attempting to take this Court for a ride by solemnly undertaking to furnish a bank guarantee within a stipulated period and then furnishing a fraudulent one. The Petitioner had not only taken this Court for a ride but has delayed an all-important project of setting up an international convention centre in Goa from 2021. Mr Deepak Shah also

offered to pay costs of ₹50,000/- to the Goa State Legal Services Authority and ₹50,000/- to the Goa High Court Bar Association. Ultimately, the contempt notice was discharged on cumulative consideration of all these circumstances.

11. The Petitioner Company has now instituted this petition by simply stating in paragraph 16 of the petition that Mr Deepak Shah is no longer with the Company. This statement is quite vague as vagueness can be. There is no categorical statement about Mr Shah's stake in the Company or other details as to how it is claimed that he is no longer in the Company. Besides, Mr Deepak Shah's being with the Company or not is an irrelevant circumstance. The Company is a legal entity, and it is the Company which has abused the indulgence which this Court showed by producing a false bank guarantee to the Government pursuant to the liberty granted by this Court. The liberty, as noted earlier, was for the production of a valid and authentic bank guarantee and not a fraudulent bank guarantee.

12. Moreover, the Petitioner had solemnly undertaken to this Court that if, for any reason whatsoever, the subject bank guarantee is not produced, then the Petitioner will not pursue the grievance now raised in this petition or otherwise question the action of the Government under the termination letter dated 11.01.2022. This undertaking was accepted as an undertaking to this Court.

13. Despite all this, the Petitioner has now requested that the Government review its decision to terminate the contract. This petition is instituted with a seemingly innocuous prayer to direct the Government to consider this representation dated 21.03.2024. This representation is now

backed by a certificate purportedly issued on the letterhead of ICICI Bank about the alleged solvency of one Dipti Ranjan Patnaik.

14. Learned Advocate General correctly pointed out that Dipti Ranjan Patnaik, proprietor of M/s Dipti Ranjan Patnaik, has nothing to do with the Petitioner Company. Mr Chaudhary, the learned Counsel for the Petitioner, states that he is the company's shareholder. That would make no difference because the Company has its own corporate identity, distinct from that of its shareholders.

15. Learned Advocate General has produced a document issued by the Union Bank stating that Mr. Deepak Shah, Mr. Jagdishbhai Shah, Mrs. Nehaben Deepakbhai Shah and Mrs. Aartiben Jagdishbhai Shah are declared as wilful defaulters for defaulting in the payment of ₹37.39 crores to the nationalised bank. However, we do not consider this circumstance because the Petitioner Company has its own corporate identity. We only noted this fact because of the submissions made by the Petitioner Company trying to involve Dipti Ranjan Patnaik.

16. Learned Advocate General pointed out that even now, the petition does not contain any statement that the Petitioner is ready and willing or in a position to give any bank guarantee. Learned Advocate General pointed out that it is too late to give any bank guarantee or seek any review of the termination letter.

17. The contract terms require the Petitioner to provide a performance security through a performance bank guarantee. The proposal that one Dipti Ranjan Patnaik is solvent and the ICICI Bank will provide a bank

guarantee based on his solvency is literally neither here nor there. Based upon such material, which hardly inspires confidence given the Petitioner's conduct, which is now well documented, there is no question of showing any further indulgence to the Petitioner. In fact, even the institution of this petition seeking a seemingly innocuous relief amounts to an abuse of the process of the Court.

18. By seeking a review of the termination letter, the Petitioner is seeking to renege on its undertaking to this Court, which was specifically recorded in our order dated 08.02.2022 disposing of Writ Petition No.230/2022 (Filing). To seek this Court's help to breach its undertakings amounts to an abuse of the Court's process. The petitioner cannot be allowed to reopen concluded causes in this manner.

19. In *A. P. SRTC & Ors vs. G. Srinivas Reddy & Ors.*¹, the Hon'ble Supreme Court has cautioned the High Courts, in the matter of disposing of petitions with a direction to the authority to consider the petitioner's representation without being alive to the consequences of such directions.

20. The Hon'ble Supreme Court has observed that there are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court

¹ (2006) 3 SCC 674

with an innocuous prayer to direct the authority to “consider” and dispose of the representation. When the court disposes of the petition with a direction to “consider”, the authority grants the relief, taking shelter under the order of the court directing him to “consider” the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order “to consider” as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to “consider”, may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of court’s direction to “consider” the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it.

21. In this case, any direction as prayed for by the Petitioner would be counterproductive. Such a direction would in fact assist the Petitioner from reneging from its undertaking not to pursue the issue of termination letter dated 11.01.2022 once there was a failure to furnish a performance bank guarantee by 22.02.2022. In this case, the Petitioner has not only failed to furnish the performance bank guarantee but almost succeeded in abusing the judicial process by furnishing a fraudulent bank guarantee. The Petitioner, through its Senior Counsel, had made a clear statement that if for any reason whatsoever, the Petitioner was unable to furnish the bank guarantee, the grievance about the termination letter dated 11.01.2022 would not be pursued. Therefore, considering the conduct of the Petitioner and the observation of the Hon’ble Supreme Court in *A.P. SRTC & Ors.*

V/s.G. Srinivas Reddy (supra), no case is made out for grant of any reliefs. Instead, this is a fit case where this petition should be dismissed with exemplary costs.

22. Accordingly, despite Mr Siddhart Chaudhary's persuasiveness, we think it is our duty to dismiss this petition with costs of ₹50,000/-. The costs should be paid within six weeks to Respondent No.2, i.e. The Director, Department of Public Private Partnership, Government of Goa, and a compliance report must be filed in this Court.

23. This petition is accordingly dismissed with costs.

VALMIKI MENEZES, J.

M.S. SONAK, J.

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