
(1997) 12 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition No. 4787 of 1996

B.L. Wadehra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-12-1997

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1998) 1 AD 75 : AIR 1998 Delhi 219 : (1998) 71 DLT 610 : (1998) 44 DRJ 464

Hon'ble Judges : Dalveer Bhandari, J;Arun Kumar, J

Bench : Division Bench

Advocate : K.C. Mittal, A.K. Nigam, Gaurav Duggal, Mukul Rohatagi, Rajinder Kaur and P.S. Shroff, for the Appellant;

Judgement

Dalveer Bhandari, J.

(1) The petitioner who is a practicing advocate of this court has filed this public interest litigation in which has prayed that the Mou dated 13.2.1996 signed between the Ministry of Power and the Apollo Hospitals Group and the Pacific Gas and Electric Company for setting up 200 Mw Apollo Power Project in South Delhi be declared as null and void. It is also alleged in the petition that the clearance for setting up the said power project has been granted by the Lieutenant Governor in brazen violation of the directives of the Union Ministry of Energy and of the 26th Report of Lok Sabha's Standing Committee on Energy as it involves no Competitive Bidding and Therefore it lacks transparency.

(2) This Court issued show cause notice and in pursuance thereof counter-affidavit has been filed on behalf of respondents 2 and 3 by Mr.Rajiv Yaduvanshi, Joint Secretary, Department of Urban Development Government of N.C.T. of Delhi preliminary objection has been taken in reply that the petition proceeds on an erroneous statement of facts and the facts stated in the petition are at Variance with the record. The entire petition proceeds on the basis that the Memorandum of Understanding was executed on 13.2.1996. This is factually

incorrect. In fact the Memorandum of Intent came to be executed between the signatories thereof on 13.2.1995 and not on 13.2.1996. It may be pertinent to mention that in the rejoinder-affidavit filed by the petitioner on 26.7.97, he apologised for the typographical mistake and submitted that the Mou was signed on 13.2.95. It was, however, wrongly typed as 13.2.1996.

(3) Mr. Gaurav Duggal, counsel appearing for respondent no.1 Delhi Administration, also filed written synopsis on 18.9.97 in which it is mentioned that the Ministry of Power intended to enforce the directive of making Competitive Bidding mandatory in the month of February, 1995 and subsequently, as evident from the documents filed the cut-off date has been fixed as 18.2.95. The Mou for Apollo Project was entered into before the said cut-off date i.e. 13.2.1995, and, Therefore, the said Mou is valid and cannot be assailed on that ground.

(4) The petitioner in person under the mistaken impression of the date of Mou has preferred this petition and has treated the main ground of lack of transparency because the Competitive Bidding has not been insisted upon in this case though it is mandatory.

(5) The counter-affidavit filed by Mr.Yaduvanshi submitted that Delhi is a power deficit State and is in urgent need of power. The Government has merely communicated administrative executive approval in the light of the compulsions of the power situation in Delhi.

(6) The counter-affidavit has also been filed by Mr.Anil Kuminen, Director, Apollo Energy Co. Ltd. respondent No.7, in which it is mentioned that pursuant to economic liberalisation programme adopted by the Government of India in 1991, and keeping in view the urgent need for development of energy to meet the increasing power needs of the country, the Government formulated a policy in 1991, to encourage greater investment and participation by the private sector into the country's power sector. The Apollo Hospital Group Along with their partners in power sector, Jmc Development Company at Usa, an affiliate of the Pg & E Group, came forward with the proposal to set up a similar energy centre in India, Along with a power generating facility using the State-of-art technology proposed to be a model project and one of the most prestigious institutions aimed to serve the national interests. Some of the highlights of the project are as under :--5

(a) The power plant would act as a model for future plants to be set up near urban areas in India and South Asia. Hence, it was decided to set up this plant in Delhi.

(b) 300 Mw of clean, reliable power would be available to Delhi at competitive rates.

(c) The project as a result of the technologies used, will minimise pollution and would make beneficial use of urban wastes and solid waste and discharge from

the power plant.

(d) The entire sludge from the sewage treatment plants of Delhi would be put to beneficial use, thereby reducing the load on the overworked sewage treatment plants.

(e) Farmers around Delhi will get the benefit of scientifically proven manure for agricultural purposes at economical prices and treated water for irrigation purposes. The manure would be got by mixing sludge with water.

(f) Delhi would get a world class Energy Centre, the only one of its kind in South Asia.

(g) The Energy Centre would be the corner stone for the strategy for saving 5000 Mw of power through the use of Energy efficient techniques. The which would also help to make the energy centre viable. There are some special features of this energy centre which were also taken into consideration while entering into the Mou with respondent No.7. Some of them which have been indicated in the Said counter-affidavit are as follows:-

(i) To demonstrate and promote the utilisation of advanced energy technology in both generation and end-use consumption of electricity.

(ii) To promote technologies that minimize environmental impact and are environment friendly and to maximize resource conservation.

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(iii) To disseminate knowledge of energy strategies for energy generation, efficiency and techniques.

(iv) To utilize the most advanced, commercially proven technology for burning solid fuels (circulating-fluidized bed technology).

(v) To use the most abundant and indigenous fuel sources in India - Coal.

(vi) To exceed existing World Bank Environmental Standards for Coal.

(vii) To conserve and recycle resources wherever possible (water, ash and land).

(viii) To provide needed competitively priced power to Delhi."

(7) It is also mentioned that the Energy Centre will address critical issues in demand and supply side energy generation & conservation with a mission to educate and serve as a technology transfer base. It will show case the latest technologies in Energy.

(8) It is incorporated in the counter-affidavit of respondent No.7 that the transparency is evident throughout the power project from the time it was conceived and up to the present stage. A perusal of the project report shows that respondent No.7 has taken number of steps towards project implementation and any delay at this stage would totally derail the project and cause grave harm and

prejudice leading to delay and increases in cost of the project. The delay in project implementation would also be contrary to the public interest because there is dire need of new power plant to supply electricity to Delhi.

(9) The petitioner has proceeded on the basis that Mou was signed on 13.2.1996 whereas it was in fact signed on 13.2.1995. The date is of material and significant in the instant case. The substratum of the petitioner's case is lack of transparency and Competitive Bidding in the signing of aforesaid Mou and the same is taken away when the date of Mou is 13.2.95. The cut-off date for the Competitive Bidding has been fixed from 18.2.95 whereas the Mou for Apollo Project was entered into before the said cut-off date i.e. on 13.2.1995, and before that date. Therefore, the main grievance of the petitioner is devoid of any merit. In the counter-affidavit, it is alleged that a number of such MOUs were signed all over the country in similar manner because it became imperative to have Competitive Bidding only after 18.2.1995 whereas the Mou in the instant case was signed before the said date. It is submitted by the learned Counsel appearing for respondent No.7 that the entire cost of the project and even the cost of land is to be borne by respondent No.7.

(10) It is mentioned that signing of Mou is transparent as the Central Electricity Authority under sections 39 and 30 of the Electricity Supply Act, 1948 requires a detailed project report from the promoters of the project before giving techno-economic clearance.

(11) It is mentioned in the counter affidavit on behalf of respondent No.7 that Apollo Energy Commission has strictly followed the guidelines set out by the Central Electricity Authority and it submitted a detailed project report for obtaining techno-economic clearance.

(12) Mr. Rohtagi, learned Counsel for the respondent submitted that the Apollo Energy Commission resources have been exhausted by respondent No.7. The entire project has been held up at a stage when a detailed project report awaits finalisation by the Government and the Delhi Government has already given its approval to the said power project. It is also submitted that the power project is of the greatest importance for the development of power in the country as the said energy centre can dramatically improve the power condition in the country and such a project of national significance in the present time of acute power crisis in the country should not be permitted to be scuttled by frivolous and baseless petitions which eventually would irreparably damage the public interest.

(13) We have heard learned Counsel for the parties at length and considered the documents and affidavits placed on record. In view of the reply to the averments of the writ petition in the counter-affidavits, we do not find any merit in this writ petition. The writ petition being devoid of any merits, is accordingly dismissed. In the facts and circumstances of the this case, we direct the parties to bear their own costs.