
(2015) 11 RAJ CK 0043
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5458/15

Gajendra Kunwar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 11 RAJ CK 0043

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : Arpit Bhoot, for the Appellant; O.P. Boob, Government Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—By way of this writ petition, the petitioner has questioned legality of communication dated 18.11.13 issued by the Deputy Secretary, Department of Revenue, Government of Rajasthan addressed to the District Collector, Jaisalmer, whereby it has been clarified that the restriction imposed by introducing clause (h) after existing clause (g) of Rule 5 of Rajasthan Land Revenue (Allotment of Land for Setting up of Power Plant based on Renewable Energy Sources) Rules, 2007 (for short "Rules of 2007") shall not apply to the allotment made and lease executed prior to issuance of the notification dated 4.10.13. That apart, the petitioner has sought directions to the respondents to remove entire infrastructure and constructions raised by respondent-M/s. Vish Wind Infrastructure Limited ("the Respondent Company"), for setting up Wind Farm Project and to act in accordance with the amendment made in the Rules of 2007 by the State Government vide notification dated 4.10.13.

2. It is to be noticed that earlier the petitioner had filed a D.B. Civil Writ Petition being No. 8955/11, questioning the legality of the allotment of 1890.01 bighas of land in the villages Damodara, Dujasar, Jamra, Khabha, Khabhiya, Kanoi, Dedha, Salkha, Keshvo-Ki-Basti and Siyalo-Ki-Basti, Tehsil and District Jaisalmer in

favour of the Respondent Company for establishment of 159.2 Megawatt Wind Energy Farm. That apart, the petitioner had also prayed for setting aside the lease deed dated 24.2.11 executed by the District Collector, Jaisalmer of the land measuring 1792.11 bighas in the aforesaid villages for the period of 30 years, in favour of the Respondent Company for setting up the Wind Farm Project as aforesaid, with the provision for further extension after permission of the State Government.

3. The writ petition preferred by the petitioner as aforesaid, which was treated to be a PIL stands dismissed by the Division Bench of this court vide order dated 1.10.14 with the findings and observations as under:

"10. After hearing learned counsel for the parties, we are of the view that this writ petition is wholly meritless. It does not seek to protect any valid interest. The tourism is not affected by the setting up of Wind Mills. There is no such thing as "visual pollution" recognized in law for the purpose of giving cause of action to the petitioners to file the writ petition. The geographical status, historical & heritage monuments, rich culture and sand-dunes of District Jaisalmer are not going to be affected by the installation of Wind Mills as non-conventional energy source. There is no pollution caused by the setting up of Wind Mills. We are not impressed by the submission that the Wind Mills will spoil the beauty of the desert as there is no study undertaken by any person, which may establish the proposition that the setting up of Wind Mills will obstruct the views of the desert and thus affect the tourism.

11. A writ petition was earlier filed in public interest by Libra India challenging the procedure for allotment of land and lease deed in favour of the respondent-Company for setting up of Wind Farm. The writ petition was found to be mischievous and was dismissed with cost of Rs. 25,000/-. The same issues cannot be permitted to be raised again by the petitioners.

12. We find that despite a clear objection taken in the reply that the petitioner No. 1 has not given the location of her "Resort Rawala", which is alleged to be running from 2001, and recognized by the Tourism Department. No details of the location nor any recognition or registration from the Department of Tourism has been produced.

13. We are not satisfied with the credentials of the petitioners, which are necessary for the purpose of filing any writ petition in public interest. We also do not find that any private interest has been affected or that the allotment of the land for setting up of Wind Mills has affected the health of any person or is likely to affect the health of any person or animal in the District of Jaisalmer.

14. Learned counsel for the petitioners has not been able to establish that the allotment of land for setting up the non-conventional energy source was not made in accordance with the procedure provided under the Rules. We do not find that any of the provisions of the Act or Rules has been violated in issuance of the allotment order and execution of the lease deed for setting up of Wind Mill Farm.

The land belongs to the State Government and has been allotted by the District Collector after taking care and compliance of the revenue laws. The conditions of allotment clearly provide that in case of misuse of the site, the same was liable to be cancelled.

15. We further find that the allotment of land and execution of lease deed in the present case were made prior to the enforcement of the Rajasthan Tourism Trade (Facilitation and Regulation) Act 2010, which came into effect on 24.2.2011. In any case, the objections of the Assistant Director, Tourism Department have been considered and that in a State Level meeting, a decision has been taken that in future, the setting up of any industry will require clearance from the Tourism Department. The Tourism Department will carry out a "Tourism Impact Assessment" of such activity on the tourism in the State.

16. For the aforesaid reasons, there is no merit in this writ petition. The writ petition is dismissed."

(emphasis added)

4. Learned counsel appearing for the petitioner contended that the State Government by amending the Rules of 2007 has imposed complete restriction on establishment of Wind Mill within an area of 2 kms. from the middle of Jaisalmer to Sam Road, however, the respondent No. 5 vide letter dated 18.11.13 has nullified the restriction imposed as aforesaid, which is absolutely without authority of law. Learned counsel submitted that in lease deed executed in favour of the petitioner, there is a specific condition incorporated in terms that the lessee shall set up Wind Farm Project on the land leased out within a period of two years from the date of allotment of land and in case of failure to do so, the plot shall revert to the lessor unless period of two years is extended by the State Government on valid grounds. Learned counsel submitted that since the Respondent Company has failed to establish the plant within a period of two years and no extension has been granted by the State Government, therefore, the plot allotted stands reverted to the State Government and the Respondent Company now cannot proceed with the construction over the land in question. Learned counsel would submit that in view of the amendment introduced by the State Government imposing restrictions on establishment of Wind Mill within the area specified, the Respondent Company cannot proceed with the establishment of the plant at this stage and encroachment made by it by raising construction over the government land, deserves to be removed.

5. On the other hand, learned Government Counsel submitted that the issues raised by the petitioner in the writ petition stand concluded by a Bench decision of this court and therefore, the fresh writ petition preferred is barred by principle of res judicata/constructive res judicata. Learned counsel submitted that none of the petitioner's enforceable right is infringed and therefore, she cannot be permitted to invoke the extra ordinary jurisdiction of this court under Article 226 of the Constitution of India. Learned counsel submitted that the matter with

regard to the extension of time for setting up the Wind Mill Project is to be dealt with by the State Government and the petitioner, whose none of the legal right is infringed, cannot maintain this petition.

6. Learned counsel appearing for the respondent No. 5 submitted that the petition filed by the petitioner is not maintainable as no legal right of the petitioner has been violated. Learned counsel submitted that the writ petition preferred by the petitioner challenging the order of allotment as well as execution of the lease deed in favour of the respondent No. 5 having been dismissed by a Bench of this court vide order dated 1.10.14, the fresh petition filed is not maintainable. Learned counsel submitted that the amendment introduced by the State Government imposing restriction on allotment of the land in no manner operate against the Wind Mill Project under the process of establishment. Learned counsel submitted that the process for establishment of Wind Mill has already commenced and the work upto the stage of construction of road, platform, PCC work has already been completed and now only the foundation work and installing of Wind Mill is to be undertaken to commission the generation of electricity. It is submitted that for this purpose, Wind Turbine Generators are already stored in the yards of the Respondent Company at Jaisalmer. It is submitted that Wind Mills which are being installed are ergonomically highly advanced placed on an elevated platforms and the height of the towers is approximately 52 meters to 76 meters depending on the category of wind turbine generator. Learned counsel submitted that the Wind Mill contributes to the generation of electricity without any pollution and does not affect tourism in any manner and thus, the allegations levelled are absolutely unfounded and baseless. Learned counsel submitted that by now the Respondent Company is producing 13.6 megawatts of electrical energy and rest of the production target shall be achieved within the term fixed by Rajasthan Renewable Energy Corporation Ltd. (RRECL) Learned counsel submitted that the Respondent Company has already been accorded extension for setting up the project upto 22.10.15.

7. I have considered the rival submissions and perused the material on record.

8. It is to be noticed that the matter with regard to the setting up of Wind Mills affecting the tourism has already been dealt with by a Bench of this court while deciding the earlier writ petition preferred by the petitioner. As noticed hereinabove, the court specifically held that the geographical status, historical and heritage monuments, rich culture and sand-dunes of Jaisalmer are not going to be affected by the installation of Wind Mills as non-conventional energy source. The court specifically observed that there is no pollution caused by setting up of the Wind Mills. The court found that no private interest is affected by setting up of Wind Mill Project and it is not likely to affect health of any person or animal in the District Jaisalmer.

9. Coming to the amendment introduced by the State Government in the Rules of 2007, vide notification dated 4.10.13, a bare perusal of the provisions of Rule

5(h) reveals that it already puts restriction on allotment of the land for establishment of the Wind Mill falling within the limits of 2 kms. of both the sides from the middle point of Jaisalmer and Sam Road. Obviously, the restriction imposed for allotment of the land shall be operative prospectively and it cannot in any manner, adversely affect the allotment already made. Thus, the contention sought to be raised by the petitioner on the strength of Rule 5(h) in terms that the restriction has been imposed on establishment of the Wind Mill on the land falling within 2 kms. from the middle point of Jaisalmer and Sam Road, is apparently misleading and devoid of any merit.

10. A perusal of the documents on record reveals that the Respondent Company has already been granted extension by RRECL in commissioning schedule upto 22nd October, 2015. In this regard, Annexure R-5/5 placed on record by the Respondent Company is self explanatory. Be that as it may, the matter with regard to the grant of extension for establishment of the plant in terms of the lease deed, is to be exclusively dealt with by the State Government appropriately and the petitioner, whose none of the legal right is infringed, cannot be permitted to inter meddle in the matter and question the establishment of the Wind Mill Project by the Respondent Company on the ground that the period for establishment of the Wind Mill as specified in the lease deed, has expired.

11. For the aforementioned reasons, the writ petition preferred by the petitioner is devoid of any merit and deserves to be dismissed.

12. Accordingly, the writ petition is dismissed. No order as to costs.