



GOVERNMENT OF KERALA

Abstract

Local Self Government Department - Cancellation of the approval granted to the project of M/s G. J. Nature Care Consortium for the implementation of a Waste to Energy project at Brahmapuram, Kochi and termination of the Concession Agreement between Kochi Municipal Corporation and M/s G.J. Eco Power Pvt. Ltd. - Review Petition submitted for reconsidering G.O.(Rt.)No. 805/2020/LSGD dated 30/04/2020 - Rejected - Orders issued.

LOCAL SELF GOVERNMENT (DC) DEPARTMENT

G.O.(Rt)No.1064/2020/LSGD Dated,Thiruvananthapuram, 05/06/2020

- Read 1. G.O.(Ms.)No.01/2016/LSGD dated 04/01/2016
2. G.O.(Rt.)No.805/2020/LSGD dated 30/04/2020
3. Representation submitted by the Chairman and Managing Director, M/s. G. J. Eco Power Pvt. Ltd. dated 01.05.2020
4. Judgment dated 13/05/2020 in WP(C)No.9872/2020 of Hon'ble High Court.

ORDER

As per the G.O. read as 1st paper above, Government had approved the project of M/s. G.J.Nature Care Consortium submitted by KITCO for the implementation of a Waste-to-Energy project at Brahmapuram, Kochi. Accordingly the Concession Agreement for the implementation of the project was signed by Kochi Municipal Corporation with M/s. G.J. Eco Power Pvt. Ltd. on 17th February 2016. Consequent on the signing of Concession Agreement the concessionaire approached Kochi Municipal Corporation with a request to handover an extent of 8 hectares of land for the implementation of the project. The Kochi Municipal Corporation Council held on 25.07.2016 decided (Resolution No.118) to handover 8 hectares of land to the concessionaire for the purpose of implementation of the project detailed in the Concession Agreement invariably. Formal proceedings No.MoE(2)/6224/2014 dated 10.08.2016 in the matter was also issued by the Secretary, Kochi Municipal Corporation. Besides the survey sketch with survey number based land boundary measurements was also handed over to the concessionaire vide Proceedings of the Kochi Corporation Secretary dated 24.06.2017. Thus the entire process of handing over of the land to the concessionaire was completed on 24.06.2017.

2. Article 3.1(a) of the Concession Agreement clearly specifies that the award

of the concession shall be subject to satisfaction of the 'Conditions Precedent' mentioned therein. One of the Conditions Precedents [3.1(a)(vii)] to be satisfied is the furnishing of the Concessionaire's Financing Plan and Financing Documents for the project and demonstrating Financial Close. In Article 3.2 it is stated that the conditions precedent shall be complied within 180 days of the date of agreement. Eventhough the stipulated time for furnishing the above documents and demonstration of financial close is 180 days from 17.02.2016, the concessionaire failed to furnish the same as mandated in the agreement even after 1400 days of signing the agreement. Though formal declaration of Project Payment Mechanism is not a condition/clause in the Concession Agreement, Government issued GO(Rt)No.259/2020/LSGD dated 31.01.2020 specifying the mode of payment of the expenses over and above the power tariff fixed by Kerala State Electricity Regulatory Commission, on the basis of the request submitted by the concessionaire. It is only an additional assurance given by Government with an intention to commence the project at the earliest considering the public health aspect involved in the matter. 30 days time was also granted to the concessionaire for achieving the financial closure as per the G.O. dated 31.01.2020. The 30 days time so allowed to the concessionaire for achieving financial closure is the last chance given by the Government which expired on 01.03.2020.

3. Mandated clearances required for the implementation of the Projects and it's date of receipt are given below.

Sl No.	Mandated Clearances	Date of receipt
1	Consent to establish from Pollution Control Board	30/08/2018
2	Plan approval from Factories and Boilers Department	18/04/2018
3	Permission from Social Forestry Division to cut trees in the site	11/06/2018
4	NOC from Aviation Department	13/08/2018
5	License from District Medical Officer	15/03/2018
6	Clearance form the Chief Town Planner	06/07/2018
7	NOC from Fire and Rescue	29/12/2018
8	Development permit from Vadavucode Puthencruz GP	07/01/2019
9	Environmental Clearance from SEIAA	05/10/2019
10	Building permit from Vadavukode Pethenkruz GP	06/11/2019

4. The concessionaire even after obtaining all statutory clearances and permits has not demonstrated the financial close; instead the concessionaire has been asking for further relaxations and modified support like conversion of concession agreement into lease agreement, providing 100% Government guarantee for raising loan etc. which have only served to delay execution and raise questions about the ability of the company to achieve financial closure. Government had taken all possible support and measures for the implementation of the project and granted time from 17.02.2016 to 30.04.2020 to achieve the financial closure of the project. Since the concessionaire miserably failed to achieve the financial closure, Government had cancelled the approval granted to the project, as per G.O. read as 2nd paper above.

5. The Chairman and Managing Director, M/s. G.J. Eco Power Pvt. Ltd. has then submitted the representation read as 3rd paper above for reconsideration of the decision taken by Government as per G.O. read as 2nd paper above. Besides, the Director, M/s.G.J. Eco Power Pvt. Ltd. has filed WP(C)No.9872/2020 before Hon'ble High Court challenging the order read as 2nd paper above (Ext. P31). The Hon'ble High Court as per judgment dated 13.05.2020 disposed of the Writ Petition directing the author of Ext.P31 order (Principal Secretary, LSGD) to consider the petition/application submitted by the petitioner for reconsideration of Ext.P31 order within a period of 2 weeks from the date of receipt of copy of the judgment. It is also ordered therein that, the petitioner as well as the concerned officer of the Corporation of Kochi shall be afforded an opportunity of hearing, before orders are passed.

6. Accordingly, the Principal Secretary (Urban), LSGD heard the petitioner and authorities of Kochi Municipal Corporation at 10 am on 26.05.2020. During hearing, the representatives of M/s. G.J. Eco Power Pvt. Ltd. made an introductory description of the project and the events that led to the termination of the project. They informed that, the Government decided to cancel the agreement in the light of the fact that the financial closure did not materialize. When enquired about the status of financial closure, the representatives of the company produced certain documents and informed that the source of investment is not a bank; but an investment firm from Dubai. On further enquiry as to whether concurrence is sought from Reserve Bank of India in bringing so much money as investment to India from overseas, the representatives of the company informed that they have not made such a move. Besides they informed that, the so called investment is done through an Indian subsidiary company of theirs and placed documents in support of their claim. When the documents are examined it is found that, the documents of incorporation allows the subsidiary to bring in the agreed equity in form of viable technology and not in terms of transferring money. The agreement reads that "it does not create anything in their obligation that they will bring in money". The aspects raised by M/s. G.J. Eco Power Pvt. Ltd. in the Writ Petition filed before Hon'ble High Court that they never faulted on any of the obligations set in the concession agreement was also examined. Where there is short fall/lack of obligation there is a

collateral responsibility that is too included in the agreement which is claimed to be in their favour. The normal termination on account of force majeure / non force majeure is not applicable when the condition precedents are not met. This goes to say that termination clause of the agreement can be invoked only when the concession is in operation. This itself forfeits the claims of the company for a 90 days notice period before cancellation of agreement. The concession agreement hardly gives any scope for supporting the pleas raised by the company. The relaxations allowed by Government in due course is with an aim to start the project.

7. Government have examined the matter in detail in view of the circumstances mentioned above and found that the concessionaire cannot implement the project even if more time is allowed. Therefore the request of the Chairman and Managing Director, M/s. G. J. Eco Power Pvt. Ltd. in the representation read as 3rd paper above, for reconsidering the decision taken in G.O(Rt)No. 805/2020/LSGD dated 30.04.2020 (Ext.P31) lacks merits and hence rejected. The direction of Hon'ble High Court in the Judgment read as 4th paper above is complied with accordingly.

8. The Managing Director, KSIDC shall take immediate steps to float RFP for the selection of a suitable concessionaire for setting up of a Centralized Waste Treatment Plant at Brahmapuram Kochi, as ordered in G.O. read as 2nd paper above.

(By order of the Governor)
BISHWANATH SINHA IAS
PRINCIPAL SECRETARY

To:

The Hon'ble Mayor, Kochi Municipal Corporation(with C/L)
The Advocate General, Kerala (with C/L)
The Managing Director, M/s. G. J. Eco Power Pvt. Ltd, 3rd Floor,
Sarayu Complex, Sea Port- Air Port Road, Kakkanad, Kochi 682 030
The Managing Director, KSIDC, Thiruvananthapuram
The Secretary, Kochi Municipal Corporation
The Principal Accountant General(A&E/G&SSA/E&RSA)Kerala, TVPM
The Executive Director, IKM
The Information & Public Relations(Web & New Media Department)
Stock File/ Office Copy

Forwarded /By order

Section Officer

Copy to

PS to Hon'ble Chief Minister
PS to Hon'ble Minister (LSGD)

Special Secretary to Chief Secretary
PA to Principal Secretary, LSGD
PA to Principal Secretary(Urban), LSGD