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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5882/2021**

SOLAR POWER DEVELOPERS ASSOCIATION Petitioner

Through: Mr. Sujit Ghosh with Ms. Mannat
Waraich and Mr. Joybrata Mishra,
Advs.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Ajay Digapul, Adv, for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

O R D E R

% **04.06.2021**

[Court hearing convened *via* video-conferencing on account of COVID-19]

CM APPL. Nos.18498-99/2021

1. Allowed, subject to just exceptions.

CM APPL. No.18500/2021

2. The prayer made in the captioned application is to grant exemption from filing the court-fee, welfare stamp and duly attested affidavit. The captioned application is disposed of, with a direction to the petitioner, to place on record the duly attested affidavit and welfare stamp, and deposit the requisite court-fee, within three days of the Court resuming its normal and usual work pattern.

W.P.(C) No.5882/2021 & CM APPL. No.18497/2021[Application filed on behalf of the petitioner seeking interim relief]

3. Via this writ petition, challenge is laid to the notification dated 15.05.2021, issued by respondent no. 2, for initiating anti-dumping investigation in respect of imports of solar cells, whether or not assembled into modules/panels, originating in or exported from China PR, Thailand and Vietnam.

4. Mr. Sujit Ghosh, who appears on behalf of the petitioner, has made, *inter alia*, the following submissions in support of the prayers made in the writ petition:

(i) First, the data, which has been taken into account by respondent no.2, concerns only solar cells and not solar modules/panels. (See pages 317, 318 and 320 of the paper book.)

(ii) Second, the investigation is premised on an error of fact, which is, that, because of the alleged dumping activity being carried out, the domestic industry is unable to utilize its capacity. The contention is that, during the period covered by the investigation, the domestic industry has in fact over-utilized its capacity. It is, stated that in this period, the domestic industry worked at 170% of its rated capacity. Reliance, in this behalf, is placed on page 335 of the paper book.

(iii) Third, for the applicants to have qualified as “major producers” in the domestic industry, the data concerning the modules/solar panels manufacturers should have also been furnished. It is contended that respondent no.2 has wrongly concluded that the installed capacity (in megawatts) of the domestic industry is 1055MW. [In this context, our

attention has been drawn to the data publicly available on the website of Ministry of New & Renewable Energy, which shows that insofar as Solar PV cells are concerned, the production is 3000MW while insofar as Solar module cells are concerned, the installed capacity is 10000MW.] To be noted, although, this document has not been placed on record; the same has been screenshared during the course of the arguments.

(iv) Fourthly, for the application to be considered as viable for initiating investigation, it is required to stay clear of the following two exceptions: (a) the applicant should not be related to the exporter; and (b) the applicant should not be the importer of “alleged dumped articles”. In support of this plea, it is stated that the data concerning Jupiter International Limited i.e. one of the applicants would show that it had imported the “dumped article”; an aspect which has been suppressed. In this behalf, our attention has been drawn to page 445 of the paper book.

(v) Fifth, although, the period of investigation spans between July 2019 and December 2020, the period of injury spans between 2016-17 and 2019-20. Therefore, as to whether or not, the applicants have imported the dumped article within the purported period of injury, also becomes relevant.

4.1. Besides this, it is submitted by Mr. Ghosh that the time limit granted to the petitioner to place on record the relevant material expires on 26.06.2021. In this context, our attention has been drawn to paragraph 25 of the impugned notification.

4.2. We are also informed that, in case the petitioner were to fail to persuade respondent no.2, then provisional duty could be imposed, albeit within 60 days from the date of issuance of the impugned notification. According to Mr. Ghosh, respondent no.2 would then be in a position to impose provisional duty on or after 15.07.2021.

5. Mr. Ajay Digpaul, who appears on behalf of the respondent nos.1 and 2, says that one of the applicants, i.e., Indian Solar Manufacturers Association (ISMA) has not been impleaded. It is, however, not disputed that Mundra Solar PV Limited has rightly been excluded, as its data has not been taken into account by respondent no.2, while issuing the impugned notification.

5.1. We may note that Mr. Devnath, Advocate has interceded in the matter on behalf of ISMA.

6. Therefore, having regard to the aforesaid, we are of the view that the matter requires further examination; but before we do so, we are inclined to array Indian Solar Manufacturers Association (ISMA) as a party to the proceedings.

6.1. Mr. Ghosh says that he has no objection to ISMA being arrayed as a party. It is ordered accordingly. Indian Solar Manufacturers Association (ISMA) shall stand arrayed as respondent no. 3.

6.2. Mr Ghosh will file an amended memo of parties within two weeks.

7. Furthermore, issue notice in the writ petition and the interlocutory application.

7.1 Mr. Ajay Digpaul accepts notice on behalf of respondent nos.1 and 2 while Mr. Devrath accepts notice on behalf of the newly arrayed respondent no.3.

7.2 Counter affidavit(s) will be filed within four weeks from today. Rejoinder(s) thereto, if any, will be filed before the next date of hearing.

8. In the meanwhile, the time limit provided in paragraph 25 of the impugned notification for furnishing information shall stand extended to a date beyond the next date of hearing fixed in this Court.

9. List the matter on 19.07.2021.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JUNE 4, 2021/pmc

Click here to check corrigendum, if any