

THE STATE OF MAURITIUS V CT POWER LTD & ORS
[The Judicial Committee of the Privy Council]
2019 UKPC 27
SUMMARY

Facts: This appeal was concerned with the negotiation of a commercial contract for the implementation of a project for the construction of a new electricity generating plant for Mauritius (the "Project"). CT Power (the "Respondent") proposed to build and run the plant and the customer, for the electricity it would produce, was to be the Central Electricity Board (the "CEB"). In December 2006, the Respondent and the CEB entered into several agreements including the Power Purchase Agreement (the "PPA"). It was a condition of the PPA that before coming into effect, the Government would have to enter into an "Implementation Agreement" with the Respondent containing a guarantee by the Government to ensure payment of the price due from the CEB to the Respondent for supplies of electricity to be made under the PPA. The Respondent obtained its EIA license subject to the condition that it should provide proof of its financial capabilities for the duration of the Project to the satisfaction of the Ministry of Finance ("Condition 15"). The proof of financial capability was provided by the Respondent in the form of a joint letter of comfort from Bank of America and Bank of India. However, there was soon a change of Government after the general elections held in 2014 and meetings were held between the parties on the 15th and 16th of January 2015. At those meetings, the representatives of the relevant Ministry stated that a letter of comfort was required in relation to equity financing of the Project. Such a letter of comfort was provided by Avendus Bank in UK on behalf of the Respondent. The Cabinet decided, however, not to proceed with the Project inasmuch as the letter did not comply with the Government's requirements and the Respondent had not satisfied Condition 15 of the EIA license. The Implementation Agreement was, thus, never signed. The Respondent subsequently lodged judicial review proceedings and obtained relief in its favour.

Held:

On appeal, the Board held that: **(1)** there was no abuse of process involved in bringing the judicial review proceedings before pursuing a claim in damages as the Respondent had proper arguable claims and both claims give rise to different remedies; **(2)** refusal by the Ministry of Finance to confirm that the Respondent had satisfied Condition 15 and refusal by the Ministry of Energy to cause the Government to enter into the Implementation Agreement was amenable to judicial review inasmuch as the Ministry of Finance was required to act in accordance with usual standards of public law. It went on to say that where a public authority is a proposed party to a contract, the way in which it may behave is subject to rules of public law; and whether the public authority has acted lawfully in accordance with those rules is a matter which may be subject to judicial review; **(3)** the Ministry of Finance acted lawfully in taking its decision and there was no suggestion that it acted in bad faith, irrationally or improperly; **(4)** the decision of the Minister of Energy not to finalise and sign the Implementation Agreement was not affected by fraud, corruption or bad faith; and **(5)** there was no legitimate expectation in Clause 7 of the draft Implementation Agreement which provided for proof of financial capability as a condition subsequent inasmuch as it was never signed. Moreover, the text of Clause 7 was put forward by the Respondent and hence it did not constitute a promise or representation by the Minister.

The Board allowed the appeal and quashed the order made by the Supreme Court.

This summary is provided to assist in understanding the Court's decision. The full judgment of the Court is the only authoritative document.

Short Summary

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In the present matter, the Board allowed the appeal of the State against the Respondent, having found that the Minister of Finance was entitled to come to the conclusion that the letter of Comfort did not comply with the Government's requirements and that the Ministry of Energy's decision not to finalise the Implementation Agreement was not tainted by fraud, corruption or bad faith. Moreover, no legitimate expectation arose in the Respondent's favour.

Ravindra Chetty, SC appeared together with Yashley Reesaul for Co-Respondent No. 5