

(2018) 05 SHI CK 0072
In the High Court Of Himachal Pradesh
Case No : CMPMO No.489 of 2017

Greenko Him Kailash Power Project Limited	APPELLANT
Vs	
Sub Divisional Magistrate, Chamba & Anr.	RESPONDENT

Date of Decision : 01-05-2018

Acts Referred:

Constitution of India — Section 227

Citation : (2018) 05 SHI CK 0072

Hon'ble Judges : SANDEEP SHARMA

Bench : Single Bench

Advocate : K.D.Shreedhar, Sameer Thakur, Dinesh Thaur, Vikrant Chandel, Shama Khan

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J.

1. Being aggrieved and dissatisfied with the impugned order dated 24.5.2017 (Annexure P-13), passed by the Sub Divisional Magistrate, Chamba,

District Chamba, Himachal Pradesh (for short "SDM"), whereby learned "SDM" while dealing with the application having been filed by

respondent No.2, ordered petitioner-Company to engage respondent No.2 against any vacant post within a period of 10 days from the date of passing

of the order, petitioner-Company has approached this Court by way of instant proceedings filed under Section 227 of the Constitution of India, praying

therein to set-aside and quash the impugned order passed by the learned "SDM".

2. Necessary facts, as emerge from the record are that respondent No.2, filed an application before the learned "SDM" Chamba, District

Chamba, Himachal Pradesh on 31.3.2015, seeking therein, directions to the

petitioner-Company to provide him employment in lieu of the land acquired by the petitioner-Company for the construction of power project. Learned â??SDMâ?? having taken note of the averments contained in the application, directed the petitioner-Company to offer appointment to the applicant against any vacant post. In the aforesaid background, petitioner-Company has approached this Court.

3. Mr. K.D.Shreedhar, learned Senior Advocate, duly assisted by the Mr. Sameer Thakur, Advocate, representing the petitioner- Company, while inviting attention of this Court to Memorandum of Understanding/ implementation agreement (Annexure P-2), arrived inter se petitioner-Company and

State of Himachal Pradesh, contended that in terms of clause 10.2, of the agreement, Company is/was under obligation to provide employment to one member of each of the displaced families or adversely affected persons on account of the acquisition of land for the construction of project. He

further stated that after completion of the construction of project, petitioner-Company in terms of clause 10.2, is/was only required to give preference

in employment to members of displaced families for operation and maintenance of the project and not to the persons or families whose some part of

the land was acquired and they were not wholly displaced. It would be profitable to reproduce clause 10.2 of the agreement hereinbelow:- â?? The

Company shall provide employment to one member of each of the displaced families or adversely affected as a result of the acquisition of land for the

project, as covered in the Rehabilitation Plan referred to in paragraph 10.1 above, during the construction of the Project. During the Operation &

Maintenance stage the Company shall give preference in employment to members of displaced families.â??

4. Mr. Shreedhar, further contended that learned â??SDMâ?? had no authority, whatsoever to entertain the application made by respondent No.2,

because in terms of Memorandum of Understanding/ Implementation Agreement (Annexure P-2), learned â??SDMâ?? has no authority to

adjudicate/decide the contravene, if any, of the terms and conditions by either of the parties, rather in this regard matter is required to be referred to

the Arbitration in terms of clause 19.1 of the Memorandum of Understanding/ Implementation Agreement. It would be profitable to reproduce clause

19.1 hereinbelow:- Any dispute or difference whatsoever arising between the parties to the agreement out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity of the breach thereof shall be settled by arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the award thereunder shall be final and binding upon the parties, subject to legal remedies available under the law.

5. Mr. K.D.Shreedhar, further submitted that as per clause 12 of the Memorandum of Understanding/ Implementation Agreement, employment is required to be offered to Himachalis subject to availability and suitability and at present majority of staff is from Himachal, as is evident from

Proforma for Inspection of Hydro Electric Project and Industrial Unit (available at page 58). Mr. Shreedhar, further contended that

findings/observations made by learned SDM that no record was made available is contrary to the factual position because entire record

suggestive of the fact that only Himachalis are being employed in the project was made available to the learned SDM during the proceedings

initiated at the behest of respondent No.2. While inviting attention of this Court to communication, dated 20.11.2007 (Annexure P-5), Mr. Shreedhar,

contended that the applicant/respondent No.2 was offered appointment on account of acquisition of his land and he was discharging his duties till

commissioning of project in the year, 2008 and as such, findings to the contrary recorded by the learned SDM, is not sustainable and deserves

to be quashed and set-aside. While inviting attention of this Court to the material placed on record, Mr. Shreedhar, contended that as per periodical

report submitted by the authority concerned, it is quite apparent that conditions contained in clause 12.1 of the implementation agreement, employment

is being given to Himachalis not to the outsiders.

6. Ms. Shama Khan, learned counsel representing respondent No.2, while refuting aforesaid submissions having been made by learned counsel

representing the petitioner-Company, contended that the petitioner-Company taking undue advantage of ignorance of respondent No.2, exploited him

by not giving him appointment in terms of Memorandum of Understanding. She further contended that respondent No.2 is a poor man and has a family

to support and in case he is not provided employment, great prejudice would be

caused to him. She further contended that it is apparent from the order, passed by the learned â??SDMâ?? that terms and conditions contained in Memorandum of Understanding, are being flouted with all impunity and outsiders are being given preference in the employment by the petitioner-Company and as such, there is no illegality and infirmity in the impugned order passed by the learned â??SDMâ??.

7. Having heard learned counsel for the parties and perused the record, this Court finds from the record that clause 10.2 i.e.

Rehabilitation/Resettlement provides for offering employment to one member of each of the displaced families or adversely affected on account of the

acquisition of land for the project, but careful perusal of clause 10.2, which is reproduced hereinabove, suggests that such employment shall be

provided during the construction of the project, whereafter during operation and maintenance stage Company shall give preference in employment to

the members of wholly displaced families. Bare reading of clause 10.2, suggests that members of displaced families or adversely affected on account

of acquisition of land would be provided work/employment during the construction of project not beyond that. Clause 10.2 further suggests that during

operation and maintenance, Company is only under obligation to give preference to the members of the displaced families. In the case at hand, as is

evident from the record, land measuring 00-14-00 biswa of respondent No.2 came to be acquired for construction of power project. It is not in dispute

that respondent No.2 received compensation on account of acquisition of his aforesaid land. Mr. Shreedhar, stated that in case entire land of

respondent No.2 is/was acquired, recommendation from the Deputy Commissioner for offering him permanent employment is required, but in the case

at hand, no such recommendation ever came from Deputy Commissioner, meaning thereby, his total land was not acquired, rather partial land came to

be acquired for construction of project. Material available on record i.e. jamabandi filed by the respondent No.2 alongwith the reply further suggest

that some land had come to the share of father of respondent No.2, but that may not be sufficient to conclude that entire land belonging to respondent

No.2 or his father was acquired by the petitioner for construction of power project, making petitioner eligible for permanent employment in terms of

clause 10.2 of Memorandum of Understanding.

8. Another question which needs to be determined in the instant proceedings is whether learned â??SDMâ??, Chamba in terms of Memorandum of

Understanding arrived inter se the petitioner and State of Himachal Pradesh, is/was competent to order/direct the Company to engage the applicant

against any vacant post or not? Though, there is no specific authority defined/prescribed under the Implementation agreement, where the aggrieved

party can lodge/initiate complaint for violation of the conditions, especially clause 10, but if agreement is read in its entirety it can be concluded that

complaint, if any, for violation of the terms and conditions contained in the implementation agreement can be made to State of Himachal Pradesh or

Him Urja, who can refer the matter to arbitration in terms of clause 19.1 of implementation agreement. In the case at hand, â??SDMâ?? simply

having received complaint proceeded to issue directions to the petitioner Company to offer appointment to respondent No.2, who admittedly remained

on the rolls of the petitioner-Company till the commissioning of the project. It is not understood that on what basis learned â??SDMâ?? arrived at a

conclusion that petitioner Company has violated the terms and conditions of â??MOUâ?? by not providing 70% employment to Himachalis because

as has been taken not above, periodical inspection report placed on record suggests that more than 90% employees of the petitioner Company are

from Himachal Pradesh.

9. Consequently, in view of the detailed discussion made hereinabove, this court has no hesitation to conclude that learned â??SDMâ?? by

entertaining the application filed on behalf of respondent No.2 not only exceeded its jurisdiction, rather without any authority issued directions to the

petitioner-Company to offer appointment to respondent No.2, who in fact was provided employment, as is evident from the record in terms of clause

10.2, which only talks about employment during the construction work. Had learned â??SDMâ?? bothered to peruse the implementation agreement in

its entirety, probably he would not proceeded to pass the impugned order. Accordingly, the impugned order is quashed and set-aside.

10. Before parting, this Court wish to observe that in case any post is lying vacant in the petitioner Company, first preference shall be given to

respondent No.2. Accordingly, the present petition stands disposed of alongwith

pending application(s), if any.