

(2011) 01 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : CWP No. 4922 of 2009

L and T Power Development Ltd.

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Citation : (2011) 01 SHI CK 0048

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—It is not necessary to give detailed facts of the case or refer to all the contentions raised by the parties in view of the stand now taken by the State as will be reflected in the latter part of the order.

2. Briefly stated, the facts of the case are that the State of Himachal Pradesh in terms of its Hydro Electric Policy invited bids for setting up of Hydro Electric Projects (HEP) on various rivers including a 420 MW HEP known as "Reoli-Dugli Project".

3. The admitted facts are that, as per the terms of the notice inviting bids and the Hydro Electric Policy of the State, every party had to give fixed amount of Rs. 20 lakhs per megawatt of the electricity as per the capacity of the Project. Therefore, for the 420 megawatt "Reoli-Dugli Project" Rs. 84 crores had to be paid as down payment within 30 days of the acceptance of the bid. The Projects were to be operated on Build, Own, Operate and Transfer (BOOT) basis. As per the terms and conditions laid down, for the first 12 years the Project proponent was to supply minimum 12% free power to the State government by way of royalty. For the next 18 years, the Project proponent is required to supply 18% free power by way of royalty and for the last 10 years of the Project 30% free power by way of royalty. This free power is in addition to the down payment of Rs. 84 crores. The bids were invited on the basis as to which bidder would offer more free power in addition to the minimum free power to be supplied in terms of the bid documents and policy of the State.

4. It is not disputed that the applicant Moser Baer was the highest bidder and had offered 14.41% additional power over and above royalty amount and free power. Second highest bidder was M/s. Jindal Steel and Power Limited which had offered 12.9% over and above the royalty and free power. M/s.JSW Energy Ltd. had offered 12.3% over and above the royalty and free power and the Petitioner M/s.L&T Power Development Ltd. was the 4th highest bidder and offered 9.9% over and above the royalty amount and free power.

5. According to the State, M/s. Moser Baer was allotted the Project but it did not deposit the amount during the time of 30 days given under the bid documents and also the additional time granted to it by the State. Thereafter an offer was made to the second highest bidder M/s. Jindal Steel and Power Ltd. who also did not comply with the terms of the bid and finally an offer was made to the Petitioner herein to match the offer of the highest bidder M/s. Moser Baer. The Petitioner did not accept this offer and thereafter it was asked to match the offer of M/s. Jindal Steel & Power Ltd. which it accepted and offered to supply additional free power of 12.9% over and above the free power to be supplied in terms of the bid agreement. Thereafter, the Petitioner was directed to deposit a sum of Rs. 84 crores within 30 days which it admittedly deposited within 26 days. This amount was later returned to the Petitioner on withdrawal of the letter of allotment.

6. A newspaper report appeared that in case competitive bidding was done again, higher bids may be received. On 23rd November, 2009 the State decided to review its earlier decision and took a decision to cancel the allotment of Reoli-Dugli HEP made in favour of the Petitioner only on the basis of the newspaper reports. This decision was conveyed to the Petitioner vide order dated 26th November, 2009. This order is challenged by the Petitioner in this petition.

7. It would also be pertinent to mention that on 3.12.2009 the Petitioner Company also offered to match the highest offer made by M/s. Moser Baer for supply of 14.41% additional free power.

8. Arguments in the matter were heard on 15th December, 2010 and Sh. Ravi Shanker Prasad, learned Senior Advocate for the Petitioner had completed his submissions. Then the learned Additional Advocate General made a submission that he had instructions to state that the Respondents are favourably considering the proposal made by the Petitioner vide letter dated 3rd December, 2009. Thereafter, the following order was passed on 15.12.2010:

"After arguments were heard at length and in fact Shri Ravi Shanker Prasad, learned Senior Advocate has completed his submissions. Shri Vivek Thakur, Additional Advocate General made a submission that he has instruction to state that the Respondents are favourably considering the proposal made by the Petitioner vide letter dated 3rd December, 2009 made after the order of cancellation dated 26th November, 2009 was issued. By this letter the Petitioner-company has made a firm offer matching the highest (H1) offer of 14.41%

Additional Free Power. In view of the fresh offer made and keeping in view the larger interest of the State and to ensure that the Project is completed at the earliest, I feel that it would be in the interest of State to reconsider the fresh proposal made by the Petitioner. The needful be done latest by 30th December, 2010."

9. The matter was thereafter listed on 30th December, 2010 when an application was filed by M/s. Moser Baer for being added as party Respondent in the proceedings.

Today, Sh. Vivek Thakur, learned Additional Advocate General has placed before me the decision of the Hon"ble Chief Minister of the State whereby it has been decided in principle to accept the proposal of the Petitioner Company dated 3rd December, 2009. In view of this development the petition has become infructuous.

The Petitioner is at liberty to deposit the amount of Rs. 84 crores with the Respondents.

10. I would however like to clarify that I have not given any findings on merits and have not considered the rival contentions of the parties. The applicant M/s. Moser Baer, if it is so advised, is free to challenge this decision of the State.

11. The petition is disposed of in the aforesaid terms. All applications are also disposed of. No costs.