
(2011) 01 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : CWP No. 1601 of 2007

Nand Lal

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) 01 SHI CK 0005

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in both the petitions, the same were taken up together for hearing and are being disposed of by a common judgment.

2. In order to maintain the clarity, the facts of CWP No. 1601/2007 have been taken into consideration. Case of the Petitioner, in a nutshell, is that Respondent No. 6 has been allotted Micro Hydel Power Generation Project on "Haripur Nullah". The Petitioner has assailed the setting up of project by Respondent No. 6 on the following grounds:

- i) "No objection certificates" have not been issued by the Gram Panchayats Halan and Seol;
- ii) No permission has been sought from the Ministry of Environment and Forestry for diversion of forest land.
- iii) "No objection certificate" has not been obtained from the Fisheries Department;
- iv) The Water Channels will be destroyed affecting the cultivation of his land;
- v) Land has not been acquired in accordance with law;
- vi) No public hearing was given to the residents of the area.

3. Respondents have filed detailed replies. According to Respondent No. 1, the Memorandum of Understanding was entered into between the State and Respondent No. 6 on 5.7.2002 and the Implementation Agreement was signed on 20.7.2004. Riparian rights have not been affected. Respondent No. 1 has ensured that there shall be compulsory discharge of 15% water.

4. Respondent No. 2 has reiterated the stand taken by the Respondent-State. According to Respondent No. 3 "no objection certificate" has been issued in favour of Respondent No. 6 on 20.6.2008. According to Respondent No. 4, necessary permission has been accorded for the diversion of forest land by the Ministry of Environment and Forestry on 2.11.2007. According to Respondent No. 4, it is a D.P.F. and not P.F. Respondent No. 5 had initially taken objection that hatchery at Batahar will be adversely affected, however, subsequently Respondent No. 5 has granted permission on 25.9.2009 to Respondent No. 6.

5. Case of Respondent No. 6 is that all the mandatory permissions have been obtained to install the micro hydel project on "Haripur Nullah". According to the reply filed by Respondent No. 6, land has been acquired, strictly as per the provisions of the Land Acquisition Act, 1894. The necessary "no objection certificates" have been issued by the concerned Gram Panchayats.

6. Petitioner has filed rejoinder to the replies filed by the Respondents.

7. Mr. Atul Jhingan has vehemently argued that Respondents No. 1 to 5 are remiss in the discharge of their statutory duties.

8. Mr. Vivek Thakur, learned Addl. A.G., Mr. Vikrant Thakur, Mr. Suneet Goel and Mr. Anil Chauhan have strenuously argued that all the mandatory conditions have been complied with by Respondent No. 6. Mr. Debender Ghosh appearing on behalf of Respondent No. 6 has argued that all the necessary permissions/sanctions have already been granted under various environmental laws and according to him, the land has been acquired in accordance with the provisions of the Land Acquisition Act, 1894.

9. We have heard the learned Counsel for the parties and have perused the material placed on record carefully.

10. The State Government has entered into memorandum of understanding with Respondent No. 6 on 5.7.2002 and the Implementation Agreement was signed on 20.7.2004. According to the reply filed by Respondent No. 4, necessary permission has been granted by the Ministry of Environment and Forestry on 2.11.2007 whereby forest land measuring 0.9583 hectares has been approved for diversion. According to the reply filed by Respondent No. 4, the forest is Demarcated Protected Forest and not Protected Forest. Petitioners have failed to place on record any tangible evidence to establish that the land in question has not been acquired as per the provisions of the Land Acquisition Act, 1894. The compensation has been paid to the land owners @ Rs. 7,40,000 lakhs per bigha. Initially, Respondent No. 5 had raised objection as far as scarcity of water of

"Batahar hatchery" was concerned, however, subsequently, "no objection certificate" has been issued by Respondent No. 5 to Respondent No. 6 on 25.9.2004.

11. Mr. Vivek Thakur, learned Addl. A.G. has strenuously argued that as far as the release of water is concerned, Respondent No. 6 is bound to release 15% of the water compulsorily.

12. Mr. Vikrant Thakur has also brought to the notice of the Court notification dated 15.7.2003 filed in CWP No. 1018/2008 whereby objections were called from the interested parties.

13. Mr. Vivek Thakur has also brought to the notice of the Court that vide notification dated 14.9.2006, Environment Impact Assessment is not mandatory for small hydel project less than 25 MW. In the instant case, the micro hydel project being set up by Respondent No. 6 is 1.5 MW and Environment Impact Assessment is not required.

14. Mr. Debender Ghosh has submitted that the Gram Panchayats, Halan and Seol have already issued "no objection certificates", in favour of Respondent No. 6.

15. Mr. Vivek Thakur has also taken us through the report of a Committee constituted by the Deputy Commissioner, Kullu on 27.4.2010 for the purpose of inspecting the site, i.e. 1.5 MW Micro Hydel Project constructed by Respondent No. 6. The Committee has looked into various issues, including irrigation channels, drinking water supply schemes, Gharats, Fisheries and environmental issues. The Committee has drawn the following conclusions:

Haripur Project:

In view of the foregoing elaborations, it is but evident that Hripur Nalla hydel project shall use remaining water after meeting the requirements of IPH and Fisheries departments and the requirement of water for these purposes, for the present as well for the future, shall have precedence over requirement of the project. The apprehension of the local people that the construction of this project will affect water availability appears to be unfounded and not based upon facts as the NO Cs given by departments concerned ensure adequate availability of water for irrigation, drinking and fish rearing purposes thus safe guarding the interests of the local people.

Further the weir site being much below the Jamdangni water mill and the Kuhal from where the local deities Devi Khandashini and Devta Basuki Nag are said to release the water for irrigation on a particular date are also not affected by this project. Notwithstanding the Project authorities are bound to ensure that they abide by the stipulations of land transfer by Govt. of India and the terms and conditions of various NO Cs issued by different departments. All departments shall have scrupulous compliance of their provisions/conditions and any violation of the conditions is supposed to be dealt sternly.

Keeping in view the policy of the State to harness natural resources in a most sustainable way in the larger interest of the society and the nation, hydel projects are the need of hour being most eco friendly source of energy. Thus, the Committee is of the considered opinion that at this stage it will not be desirable to stop the work of this project either in the interest of the State or the user agency. The apprehensions of the local people are already taken care of by all the departments while issuing the NO Cs and there appears no legitimate reason to stall the execution of this project. It is also worth while to mention here that a titled Nand Lal v. State of H.P. and Ors. PIL No. 1601/2007 filed in September 2007 on similar grounds stands dismissed in default on 30.4.2010 by Hon''ble Division Bench of H.P. High Court.

16. In view of the facts enumerated hereinabove, it is clear that Respondent No. 6 has obtained all the necessary permissions/sanctions for setting up 1.5 MW Micro Hydel Project on "Haripur Nullah". The report of the committee constituted by the Deputy Commissioner is also exhaustive. However, in order to allay the fears of Petitioners and the residents of area, we direct Respondents No. 1 to 5 to ensure that all the mandatory conditions imposed are punctually obeyed by Respondent No. 6. It is also made clear that necessary steps shall also be taken by Respondent No. 6, as per the recommendations of the Committee constituted by the Deputy Commissioner. The Deputy Commissioner, Kullu shall file his personal affidavit whether precautionary/remedial measures, suggested in the report, are being complied with by Respondent No. 6 or not, within a period of eight weeks from today before the Registrar General.

17. In view of above observations/discussions and directions, both the petitions are disposed of. There shall, however, be no order as to costs.