
(2016) 09 SHI CK 0050
In the High Court Of Himachal Pradesh
Case No : CWP No. 4194 of 2015

SRS Real Infrastructure Limited	Vs	APPELLANT
State of H.P.		RESPONDENT

Date of Decision : 07-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 HimLR 2517

Hon'ble Judges : Mr. Mansoor Ahmad Mir, C.J. and Mr. Sandeep Sharma, J.

Bench : Division Bench

Advocate : Mr. Sunil Mohan Goel, Advocate, for the Respondent No. 3; Ms. Jyotsna Rewal Dua, Senior Advocate with Ms. Charu Bhatnagar, Advocate, for the Petitioner; Mr. Shrawan Dogra, Advocate General, with M/s Romesh Verma, Anup Rattan and Varun Chandel, Addl. A.Gs.

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J. - Petitioner, by the medium of instant writ petition, has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, whereby the petitioner-Company has questioned the allotment of Achheran 4 MW Hydro Electric Project, (hereinafter referred to as the Project), in favour of respondent No.3, on the grounds taken in the memo of writ petition.2. Facts of the case, in brief, are that respondent No.2-HIMURJA, an agency of the State engaged in energy development, invited applications for allotment of 150 Small Hydro Power Projects upto the capacity of 5 MW in September, 2014, out of which 54 projects were identified by respondent No.2 itself and the rest 96 projects were identified earlier by different project proponents pursuant to the advertisement issued in September, 2010, which advertisement was cancelled because of court cases.3. Terms and conditions are contained in Annexure P-3. Petitioner-Company also applied for allotment of the Project vide Annexure P-5. However, the application of the petitioner Company was rejected and the Project was allotted to respondent No. 3. Hence, the writ petition.4. Respondents contested the writ petition by filing replies and petitioner also filed the

rejoinder.5. We have heard the learned counsel for the parties and gone through the record.6. Petitioner-Company has made the foundation of its case on Clause 9 of the "Guidelines for private investors for participation in small hydro programme (upto 5 MW) in Himachal Pradesh" (Annexure P-3). According to the petitioner, the Project in question was one among those advertised in the year 2010 and that separate criteria was to be adopted for allotment of these projects. Contention putforth by the petitioner-Company was that five additional marks were to be awarded to those desirous applicants who had reapplied in terms of the fresh advertisement issued in 2014 and the preference allowed to Himachalis was not to be given. Therefore, it was contended that respondent No.2 has violated the conditions contained in Clause 9 of Annexure P-3, brochure.7. The controversy revolves around Clause 9. It is profitable to reproduce said Clause 9 hereunder:

"9. Projects which were identified and applied under self identified category by the applicants in response to the advertisement issued during September 2010 and could not be allotted due to court case, are to be advertised now as per the order of Hon?ble Court and further clarification given by advocate General. In order to give fair chance to the applicants who have identified the projects at their own level and applied to the Government for allotment of those projects against the advertisement issued during 2010, criteria for evaluation shall be as under:<Ã?>

(i) Additional 5 marks shall be awarded to the applicants reapplying for these projects.<Ã?>

(ii) Preference allowed to Himachalis for projects above 2 MW upto 5 MW will not be applicable for these self identified projects."<Ã?>

8. Thus, Clause 9 reproduced above contains mechanism for providing edge to such applicants who had earlier applied in terms of advertisement issued in 2010 under the self identified category, which process could not be taken to its logical end, as discussed above, and also applied in terms of the fresh advertisement notice. Condition (i) states that an applicant who reapplied for the project in the year 2014 shall be entitled for five additional marks and Condition (ii) provides that preference will not be given to an applicant of his being Himachali.9. Clause 9 of Annexure P-3, referred to above, nowhere provides that the said clause will be applicable for those applicants also who have applied in terms of fresh advertisement notice issued in September, 2014 for the first time. Learned counsel for the petitioner was asked to show - whether the petitioner had applied for those projects which were advertised in the year 2010? The answer was in the negative.10. On the other hand, respondents No.1 and 2 have specifically pleaded in the reply that the petitioner has no right to seek relief in terms of Clause 9 of the Annexure P-3 for the reason that it had not applied in the year 2010. It is apt to reproduce paragraph 2(iv) of the reply as under:

"2(iv) That the averments made in this para are matter of record. However, it is

submitted that this clause is self explanatory and has been inserted to give fair chance to the applicants (Himachalis and non Hiamachalis) who so ever had identified these projects and applied to the Government for allotment during 2010. Hence the Himachalis who had identified these projects could not be deprived of the preferential marks/preference what so ever. In fact the clause 9(ii) is elaborated for the kind perusal of this Hon?ble court. For example - Himachali applicant (A) and non Himachali applicant (B) had identified and applied for the projects during 2010 and have applied afresh during 2014 too, and in addition other Himachali applicant(s) has/have also applied for the same project during 2014 only, in such instance the Himachali applicant who had applied during 2014 only (but not applied during 2010) shall not be entitled for any preference. However, if none of the applicants (who had identified and applied during 2010) applied afresh during 2014 but applications received from other fresh Himachali/Non Himachali applicants in that case the Himachali applicants are entitled for all type of preference/marks as per policy criteria."

11. The positive case of the respondents is that those persons who had applied in terms of advertisement issued in the year 2014 for the first time shall not be entitled for additional five marks. Further, in case an applicant had applied in terms of previous advertisement notice issued in 2010 and also applied again in terms of advertisement notice issued in 2014 and an Himachali applicant also applied, for the first time, in response to the advertisement issued in the year 2014, in such a situation, the Himachali applicant will not be entitled for claiming preference. It is also the case of respondents No.1 and 2 that in case a Non Himachali and a Himachali apply for the same Project in response to the advertisement issued in the year 2014 for the first time, in that case Himachali shall be entitled for preference.12. We have minutely examined Clause 9 reproduced herein above. Condition (ii), as contained in Clause 9, is not independent and flows out of condition (i). Thus, there is no ambiguity. We wonder why the petitioner has filed the writ petition. The writ petitioner has nowhere averred that he had participated in the year 2010 and has also reapplied in pursuance to the advertisement issued in the year 2014.13. Having said so, no case is made out, the writ petition merits to be dismissed and the same is dismissed, along with pending CMPs, if any. Interim directions granted by this Court, vide order, dated 28th October, 2015 and made absolute on 5th January, 2016 shall stand vacated..