

(2012) 06 SHI CK 0120
In the High Court Of Himachal Pradesh
Case No : CWP No. 1519 of 2010-B

Sundru Power Venture	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 11-06-2012

Acts Referred:

Citation : (2012) 06 SHI CK 0120

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Advocate : Bimal Gupta, for the Appellant; J.S. Guleria, Assistant Advocate General and Mr. Vikrant Thakur, Advocate, for the Respondent

Judgement

V.K. Ahuja, J.—The petitioner is aggrieved by the act of the respondents in rejecting its application for allotment of Small Hydro Project. Briefly stated, the facts of the case are that the Hydro Projects upto 5 MW were transferred to respondent No. 2 for purpose of their identification, allotment and establishment etc. Respondents No. 1 and 2 in order to have more participation of private investors for small hydro potentials in the State invited proposals from private investors for setting up of Small Hydro Projects at various sites i.e. "identified projects" and projects identified by IPPs as "self identified projects". The notification inviting the private investors was issued vide Annexure P-1. Vide this notification, Himachal Pradesh Government had invited proposals from private investors at various sites and these projects were "Identified Projects" and projects identified by the IPPs as "Self Identified Projects". It also mentioned that the private investors will have to take the work from concept to commissioning including pre-feasibility, survey and investigation and preparation of DPR etc. The list of such small Hydro Projects upto 5 MW capacity is there as per Annexure P-2. The name of the project is entered in serial No. 124 in Annexure P-2 in the capacity of 3 MW with tentative elevation of 3200/2600 Mtrs. on the stream of Sundrru/Pabbar. In pursuance to this advertisement, the petitioner submitted an application Annexure P-3, in which it had mentioned the name of the project,

namely, "Sundru Power Venture". The elevations mentioned were 2600-3200 Mtrs. The name of the stream was Pabbar and it is clear from perusal of this application that the petitioner had applied for identified project under the first category and not as self identified project. In the application/questionnaire to be filled in by the private investor, there is no column as to whether it was identified project or self identified project. However, it is clear that it was identified project, in which the name of the project, its capacity, stream etc. and all particulars were given therein.

2. The application of the petitioner was rejected and the petitioner was informed vide letter Annexure P-5 dated 26.8.2009 that its application has been examined and applied project is overlapping with identified/advertised project of Himurja, namely, Sundru (3200-2600m). Thereafter, the respondents changed their stand and replied vide Annexure P-6 dated 13.10.2009 that the application received against Himurja identified projects were considered by the Government, wherein it was decided to re-advertise the same only after proper survey and investigation and fixing up two main parameters i.e. optimum capacity of each project and clear-cut elevation ranges. It was mentioned therein that its application for Sundru (3MW) could not be considered for allotment.

3. In reply by respondent No. 2, they pleaded that it was not mentioned as to whether it is self identified project or the application is for the project identified by the respondents. It was also pleaded in the reply that the petitioner has also not attached pre-feasibility report, survey and investigation report with the original application/proposal.

4. From a perusal of the application form, it was clear that there was no column as to whether it was identified project or self identified project and there was no requirement that pre-feasibility report, survey and investigation report should also be attached with the original application/proposal. Therefore, this plea of the respondent is not substantiated from a perusal of the record mentioned above.

5. Coming to the question as to the grounds on which petitioner's application has been rejected, the respondents have pleaded in their reply supported by a letter dated 31.7.2008 from the Principal Secretary (NES) to the Government of Himachal Pradesh, regarding allotment of 19 projects, that the State Cabinet had approved 15 projects of less than 2 MW and 4 projects between 2 to 5 MW capacity to sole qualified applicants. It was mentioned in the said letter that all other projects are to be to be advertised again. The reasons given in the reply are not in consonance with this letter, but this letter qualifies the point on which the application of the petitioner was rejected and the project report must have gone to the Cabinet, who have taken a conscious decision to approve 15 projects out of 19 projects and the remaining projects including the project, for which the application was filed by the petitioner, were directed to be re-advertised after proper resurvey/investigation by Himurja and after fixing up 2 main parameters.

6. Thus, it is clear that the reasons for not allotting the project to the petitioner

were that this project was not approved by the Cabinet and it had decided to re-advertise the same alongwith three other projects.

7. Coming to the question that the petitioner has spent huge amount on pre-feasibility, report etc., there was no mention of the amount spent by the petitioner in the petition filed in this case. There is no mention in the application submitted by the petitioner that it had undertaken these works and accordingly, it did not attach any pre-feasibility report etc. alongwith the application. Therefore, this plea of the petitioner that it spent huge amount in carrying out the survey etc. is not tenable and as such, the petitioner is not entitled to any amount. No malafides were alleged in the said decision taken by the respondents in rejecting the application of the petitioner for allotment of the project. Therefore, the decision taken by the State Cabinet for re-advertising the project is sufficient to hold that the petitioner is not entitled to the relief claimed by it. In view of the above discussion, I accordingly hold that there is no merit in the petition filed by the petitioner, which is dismissed accordingly, so also the pending miscellaneous application(s), if any. However the parties are left to bear their own costs.