
(2011) 08 SHI CK 0053
In the High Court Of Himachal Pradesh
Case No : CWP No. 4041 of 2010

Uttam Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Citation : (2011) 08 SHI CK 0053

Hon'ble Judges : Sanjay Karol, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—The Petitioner by means of this petition has prayed that the Respondents be restrained from setting up a project known as Swad Hydro Electric Power Project in village Shikawari, Tehsil Thunag, District Mandi mainly on the ground that the setting up of such a project would be harmful to the ecology and environment of the area. It is specifically pleaded by the Petitioner that such a project would cause damage to his property. According to the Petitioner previously slate mines were existing in the area but as far back as the year 1983 the Government had banned the slate mines on the ground that it affected the ecology of the area.

2. The State of Himachal Pradesh entered into a memorandum of understanding with Respondent No. 4 as far back as on 14th May, 2001 where by the Respondent No. 4 was permitted to set up a micro hydro electric power project of 1 M.W., namely, Swad Project in the area in question. It is also apparent from the record that before grant of final approval, notices (Annexure R4/1) were issued in Hindi and English newspapers as required by law and objections were invited from the people of the local area. No objection was received. The explanation given by the Petitioner is that he was not aware about such notice inviting such objections. The explanation of the Petitioner that he was not aware of such notification cannot be accepted. These notifications were issued as far back as in the year 2004. Thereafter, the H.P. State Electricity Board vide annexure P-5 dated 16.6.2008 granted Techno Economic Clearance to the project. This Court

can take judicial notice of the fact that before such clearance is granted the party seeking clearance has to go to the area, carry out the investigation and a detailed project report has to be submitted. The area in question is not a thickly populated area and if any activity was carried out the villagers should have been aware of the same.

3. It is also not disputed that initially the Gram Panchayat concerned gave its no objection for the setting up of the project. It was only thereafter that the villagers started agitating the matter and the Gram Sabha cancelled the resolution passed by the Gram Panchayat. In our considered opinion, the Gram Sabha has no authority to cancel the resolution passed by the Gram Panchayat. Even if such a cancellation is done, can the elected village body change their stand time and again. If on the basis of no objection granted by the Gram Panchayat, a party, in the present case Respondent No. 4, spends a huge amount of money to go into the detailed investigation, at a latter stage such no objection cannot be withdrawn unless it is shown that the same has been obtained by fraud, misrepresentation etc. Though there are general allegations that Respondent No. 4 had obtained the help of some local villagers there is no clear cut allegation of fraud qua the present case. The petition was filed in the year 2010 and there is no explanation why the Petitioner remained silent for so many years.

4. Even on the merits of the case, we find that the main apprehension of the Petitioner is that due to the setting up of the project especially the underground tunnels which have to be constructed there is likely to be some damage to the strata of the land. The Assistant Geologist has given a detailed report after filing of the present petition and his conclusion and recommendations are as follows:

i) The alignment of the tunnel proposed to be constructed will pass below the Shikawari and Bah Villages at vertical distances of about 250-550 mtrs. and the horizontal distance of about 300-650 mtrs. The rock strata likely to be encountered are favourable for the construction of the tunnel. Construction of tunnel shall require blasting for the rock cutting. There is no doubt that the heavy charged blasting without any standard can disturb the existing strata. If the blasting is carried out in controlled manner and by taking extra precautions the vibration impact of blasting can be minimized. Keeping this factor in view and the objection raised by the local people, it is strongly recommended that blasting shall be carried out with minimum charge and shallow holes to prevent opening of new joints and fractures in the overlying rock mass. Hence, before resorting to the blasting for construction of the different components of the project it is advised that the study may be got conducted through the National Institute of Rock Mechanics, Champion Reefs P.O. Kolar Gold Fields - 563117 Karnataka, India or Central Institute of Mining and Fuel Research, Barwa Road, Dhanbad - 826001, Jharkhand, India who are the expert agencies to fix the minim charge and pattern of holes for the blasting. The executing agency is advised to carry out blasting as per the standard fix by the expert agency for the blasting.

Keeping in view the safety of the habitants and properties of adjoining villages, the executing agency is advised to keep record of each blast and vibration impact with the help of seismograph to be installed at the nearest boundary of the Shikawari and Bah villages.

ii) Before starting any constructional activity for the said project, the executing agency is advised to keep record of present condition of existing houses, other structures and springs by mean of video graphing. So that any future impact on these structures can be appraised.

iii) As already discussed, at present the hill slope is considered stable and there is no apprehension of any land sliding, if it remains in its natural configuration. However, when cutting of hill slope is carried out for construction of civil structures it will render the existing hill slope steep and vertical. When the material is incompetent and back height becomes more it has the tendency to attain the angle of repose through minor land slips/slumping which is a common phenomena in hilly terrain. It is, therefore, recommended that the excavated hill slope may immediately be provided with suitably designed retaining structure to avoid further damage/slide towards uphill side.

iv) As no civil structure is proposed to be constructed along the hill slope where the remnants of old cracks developed during 1983 are observed. There shall no probable affect of blasting during the execution of project work to this location if the blasting will be carried out as per the standards fixed by the expert agency for the blasting. However, keeping in view the steep slope, safety of inhabitants of the village buildings and horticultural fields located along hill slope up hill side, of the location where the evidences of old crack are visible it is recommended that properly designed drainage system with concrete lining should be designed uphill side of this location to diverted the percolating water to the nearby natural channel to avoid the percolation of water into the overburden.

v) During constructional work waste/muck shall be generated which will be dumped at the defined sites for the purpose. It is suggested that proper retaining walls should be constructed to check the flow of waste material/muck.

5. In his report he has categorically stated that if the recommendations made by him are followed there will be no damage to the strata. Whenever, any such project is taken up some damage is likely to be caused to the environment. A balance has to be struck between the need to protect the environment and the need to ensure that progress and industrialization also takes place. This is a well known concept of sustainable development. The report of the Assistant Geologist referred to above clearly indicates that if certain protective measures are taken the project is feasible and will not damage the ecology.

6. We, therefore, dispose of the petition with a direction to the Respondents, especially the Respondent No. 4 in the present case that work is carried out strictly in accordance with the aforesaid recommendations and conclusion of the Assistant Geologist, which has been purposely incorporated as a part of this

order and shall be read as an order of the Court. No costs.