

IN THE HIGH COURT OF JUDICATURE AT PATNA
(From Official Chambers via Video Application)
Civil Writ Jurisdiction Case No.2413 of 2016

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Gautam Buddha Harijan Adivasi Picchada Varg Kalyan Samiti, having its registered office at Chitragupta Nagar, Kankarbagh, Patna-20 through its General Secretary Sri Lal Babu Singh

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Department of Energy, Government of Bihar, Patna
2. Principal Secretary, Energy Department, Bihar, Patna.
3. The State of Jharkhand through the Principal Secretary Energy Department, Jharkhand, Ranchi.
4. The Principal Secretary, Department of Energy, Jharkhand, Ranchi.
5. The Bihar State Hydroelectric Power Corporation Ltd. Sone Bhawan , Birchand Patel Marg, Patna through its Managing Director.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Amar Nath Deo, Advocate
For the Respondent No. 5:		Mr. Lalit Kishore, Sr. Advocate
		Mr. Awanish Nandan Sinha, Advocate
For Res. No. 3 & 4	:	Mr. Nishi Nath Ojha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

31 17-02-2021

Heard learned counsel for the parties.

The petitioner in this public interest litigation is seeking a writ in the nature of Mandamus commanding the respondents to restore the functioning of ongoing projects of Bihar State Hydro-Power Corporation Limited (hereinafter referred to as the 'BSHPCL').

In sum and substance, the submission of learned counsel for the petitioner is that the 'BSHPCL' being a



government company had undertaken a number of Hydel Electric Projects, the projects, however, could not be completed due to poor and unskilled management of the 'BSHPCL'. Various issues have been raised with regard to apportionment of the assets of 'BSHPCL' pursuant to coming into force of Bihar Reorganization Act, 2000 (hereinafter referred to as the "Reorganization Act 2000").

Learned counsel for the petitioner points out that altogether 17 power projects which were to be constructed and were to be ready for commissioning much earlier are waiting for their completion.

During pendency of the writ application the petitioner amended the writ application by filing I. A. No. 6763 of 2017. The petitioner further sought for quashing of the office order no. 34 dated 28.12.2015 issued by the Energy Department, appointing the then Managing Director on Ad-hoc basis under the approval from the Hon'ble Minister, Energy, Government of Bihar. It is their grievance that the appointment of Managing Director and the permanent Directors on the Board of the Government Company has not been made in accordance with Articles 48 and 49 of the Articles of Association of 'BSHPCL' as well as in terms of the Reorganization Act, 2000 and the



directions of the Government of India under sub-sections (i) (ii) of Section 65.

The State respondents have filed counter affidavit. Paragraph Nos.'5', '6', '7', '8' and '9' of the counter affidavit are being reproduced hereunder:

“5. That the Government of Bihar is serious and committed in turning around the Bihar State Hydroelectric Power Corporation (BSHPC) into a viable unit. A number of steps have been taken for ensuring the same and have been elaborated in the succeeding Paragraphs.

6. That seventeen (17) under construction suspended projects were reviewed technically by the Alternate Hydro Engineering Center (A.H.E.C.), I.I.T. Roorkee and after the analysis of cost of generation, twelve (12) under construction projects were found to be viable and as such revised estimate for the same was prepared. Three (3) projects were found to be unviable.

Two (2) projects were found to be non starter due to lack of land availability.

7. That the State Government has sanctioned the proposals:-

- (a) Completion of under construction 12 projects found viable at a revised cost estimate of Rs. 143.98 Crores.
- (b) Closure of 3 Projects after final measurement and payment.
- (c) Cancellation of 2 projects where land was unavailable.
- (d) Transfer of all the projects situated in the Jharkhand State to the Government of



Jharkhand on “as is where is” basis.

8. That it is further submitted that for operation and maintenance of thirteen (13) commissioned projects and to operate at maximum efficiency a new Standard Bidding Document has been prepared by A.H.E.C., Roorkee.

9. That it is further submitted that in order to man these above mentioned projects Engineers (JEE/AEE/EEE) have been deputed from the Bihar State Power Holding Company Ltd. (BSPHCL).

This Court has also been informed that a regular Managing Director has been appointed vide notification No. 13046 dated 29.09.2018 issued by the General Administration Department, Government of Bihar.

It is further revealed from the counter affidavit that in the writ petition being W.P. (PIL) No. 3118 of 2014 (Jitendra Kumar Vs. The State of Jharkhand & Ors.) the Hon’ble Jharkhand High Court had issued a direction to transfer to the State of Jharkhand all the eight projects lying in the territory of the State of Jharkhand within a period of eight weeks and in compliance of the said order necessary steps and action has already been taken.

Learned Amicus Curiae has assisted this Court. Learned counsel submits from the records that there are 25 under construction Power Hydel Projects in which 17 projects are within jurisdiction of the State of Bihar and 8 projects are in



the jurisdiction of the State of Jharkhand and the under construction work in Bihar is being reviewed by M/s AHEC, IIT, Roorkee and are in the process of completion.

Learned counsel has also referred the position of Hydel Power in Bihar as has been reported in the Bihar Economic Survey, 2019. According to this report, the 'BSHPCL' has started exploring possibilities for major power Hydel Projects. There are 12 minor hydel projects that are presently operational in the State with a total installed capacity of 54.3 MW. It is submitted that the data available is with regard to Hydel Projects presently in operation and in its installed capacity but the State has to verify whether these projects are generating Hydro-electricity according to their full potential or not and whether all the turbines of the aforesaid projects are in working condition or not as also the steps which are required to be taken by the 'BSHPCL' for their maintenance.

After hearing learned counsel for the parties and learned Amicus Curiae, this Court is of the considered opinion that this public interest litigation has outlived its utility at this stage. The State respondents and 'BSHPCL' have placed on record that they are serious in making the 'BSHPCL' viable and for this purpose they have taken a number of steps. From the



last affidavit placed before this Court, it also appears that after review of the 17 under construction suspended projects, 12 have been found viable and revised estimates for the same have been prepared. Three projects have been found not viable and two projects were found non-starter due to lack of land availability. The State Government has also sanctioned the proposals for completion of under construction 12 projects which have been found viable at a revised cost estimate of Rs. 143.98 Crores.

We are disposing of this writ application with a direction to the respondent State and its authorities (Respondent Nos. 1 & 2) that in terms of their various affidavits before this Court they shall ensure completion of all the viable under construction projects, make suitable arrangements for operation and maintenance of all the running units and take all such steps which are required to make viable the 'BSHPCL' within a reasonable time frame. So far as the issue of appointment of Managing Director is concerned, we find no force in that, particularly, in view of the information on the record that a regular Managing Director has already been appointed.

Liberty is granted to the petitioner to pursue the matter with the respondents for completion of the projects and other related issues in public interest. In case, the respondents



do not abide by their statements made on affidavit before this Court, the petitioner may bring the matter to the office of this Court.

The writ application stands disposed of accordingly.

(Sanjay Karol, CJ)

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

