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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14827 OF 2023

Ashoka Sthapatya Pvt. Ltd., through its authorized ... Petitioner
representative Sanjay K. Sawant
vs.

The State of Maharashtra, through its Principal ... Respondents
Secretary, the Water Resource Dept.

Mr. Sangram Singh Bhonsle, Mr. Siddharth A. Mehta, Mr. Nrupal
Dingankar, Pushkara Bhonsle, Harshada Shrikhande, Naman Shreshtra,
Mahesh Jadhav, for the Petitioner.

Ms. S. D. Vyas, Addl. Govt. Pleader with Ms. P. N. Diwan, AGP for the
State.

Mr. Sachin Gite, for Respondent No.3.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 5 April, 2024

P.C.

1. This petition under Article 226 of the Constitution was filed praying for
the following reliefs:-

a) That this Hon'ble Court be pleased to issue a Writ of
Mandamus or a Writ in the nature of Mandamus or any other
appropriate Writ, order or direction under Article 226 of the
Constitution of India, thereby, directing the Respondent No. 1 or the
appropriate officer of the Respondents to comply with the obligations
under the Government Resolution dated 15.09.2005 issued by the
Respondent No. I being a State Hydel Policy for the State of

Maharashtra with respect to the Project of the Petitioner viz. Tarali Hydro Electric Project (2X2.5 MW) at Dist. Satara.

b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, thereby, directing the Respondent No. 1 or the appropriate officer of the Respondents to act in accordance with provisions of the Government Resolution dated 15.09.2005 issued by the Respondent No. 1 being a State Hydel Policy for the State of Maharashtra with respect to the Project of the Petitioner viz. Tarali Hydro Electric Project (2X2.5 MW) at Dist. Satara;

c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, thereby, directing the Respondent No. 1 or the appropriate officer of the Respondents to issue a Letter to the Petitioner in terms of Clause A-4.5 of the Government Resolution dated 15.09.2005 issued by the Respondent No. 1 being a State Hydel Policy for the State of Maharashtra, directing the Petitioner to deposit the amount of Upfront & Threshold Premium offered by the Petitioner in pursuance of the Hydro Power Development Agreement dated 21.05.2013 entered into between M/s D.M. Corporation and the Respondent No. 1 and Supplementary Agreement to Hydro Power Development Agreement entered into between M/s D.M. Corporation and the Respondent No. 1 dated 05.02.2201 r/w Supplementary Hydro Power Development Agreement signed between the Petitioner and the Respondent No. 1 on 25.11.2022;

d) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, thereby, directing the Respondent No. 3 to act in accordance with the directions passed by the Respondent No. 1 and the Respondent No. 2 for completion of the registration of the Supplementary Hydro Power Development Agreement signed between the Petitioner and the Respondent No. 1 on 25.11.2022;

e) That pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to direct the Respondent that no coercive action shall be taken against the Petitioner in terms of Prayer Clause (a) & (d);

f) ad-interim / interim reliefs in terms of prayer clauses (e) and (f) above be granted;

g) for costs of this petition;

h) for such further and other relief as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.”

2. We had heard the proceedings on 28 March 2024 when we had passed a detailed order which reads thus:-

“ We adjourn the present proceedings to enable the Respondents to communicate its approval to the Petitioner in terms of clause a (4.5) of the Government Resolution dated 15th September, 2005 and place the same on record of this proceedings on the adjourned date of hearing.

2 We have no manner of doubt that these steps are to be urgently taken as the Petitioners had communicated all compliances in the month of December, 2022, hence, what had remained was the communication of the appropriate acceptance in terms of clause 4.5 of the State Government Resolution.

3 Any further delay in issuing the same is not only prejudicial to the public interest but also contrary to the policy which is being implemented by the State Government Resolution. This more particularly, when the respondents have acted upon the agreement has entered into between the Petitioner and the Respondents.

4 Mr. Gite, learned Counsel for Respondent No.3 has fairly pointed out these two documents. However, as we await the aforesaid compliance, at this stage, we do not intend to comment on these documents and/or to pass an order considering the purport of these documents. We hope that we are not required to do so, even on the adjourned date of hearing unless the circumstances are otherwise. We accordingly, order that copies of such document be kept in a sealed cover with the Registrar (Judl.-I).

5. Stand over to Wednesday, the 3rd April, 2024- HOB.

Parties to act on an authenticated copy of this order.”

3. Thereafter as respondent No.3 had placed on record two documents in regard to which further steps were not taken. Considering the contention of the petitioner that an approval in terms of Clause 4.5 of the State Hydal Policy

would be required to be granted by the State Government, we had adjourned the proceedings by passing the following order on 3 April 2024:-

“1. Despite our clear order dated 28 March 2024, Ms. Diwan, learned AGP informs that she had not received any instructions. This is quite unfortunate and considering the seriousness of the matter, and more particularly, two letters as tendered by Mr. Gite being kept in sealed envelope and not being commented by the Court. For convenience, we note our order dated 28 March 2024 which reads thus:

"We adjourn the present proceedings to enable the Respondents to communicate its approval to the Petitioner in terms of clause a (4.5) of the Government Resolution dated 15th September, 2023 and place the same on record of this proceedings on the adjourned date of hearing.

2 We have no manner of doubt that these steps are to be urgently taken as the Petitioners had communicated all compliances in the month of December, 2022, hence, what had remained was the communication of the appropriate acceptance in terms of clause 4.5 of the State Government Resolution.

3 Any further delay in issuing the same is not only prejudicial to the public interest but also contrary to the policy which is being implemented by the State Government Resolution. This more particularly, when the respondents have acted upon as the agreement has entered into between the Petitioner and the Respondents.

4 Mr. Gite, learned Counsel for Respondent No.3 has fairly pointed out these two documents. However, as we await the aforesaid compliance, at this stage, we do not intend to comment on these documents and/or to pass an order considering the purport of these documents. We hope that we are not required to do so, even on the adjourned date of hearing unless the circumstances are otherwise. We accordingly, order that copies of such document be kept in a sealed cover with the Registrar (Judl.-I).

5 Stand over to Wednesday, the 3rd April, 2024-HOB. Parties to act on an authenticated copy of this order."

2. Mr. Gite who appears for respondent No.3 has placed on record a communication addressed to the petitioner by the executive engineer of the project, which inter alia records thus:-

"(Translation of a photocopy of a GOVERNMENT LETTER typewritten in Marathi).

GOVERNMENT OF MAHARASHTRA,
Maharashtra Krishna Valley Development Corporation, Pune-11.
(Government of Maharashtra Undertaking)
Kanher Canals Division No. 2, Karawadi (Karad)-415105.
Tele. No. 7774041850
e-mail: kcd2karawadi@gmail.com.

Outward No.KCD-2/Admin-3/1095/2024. Date: 03.04.2024.

To,
M/s. Ashoka Architecture Pvt. Ltd..
Yehswant Nagar-Aklooj,
Taluka Malshiras,
District-Solapur-413118.

Subject Regarding getting registered Supplementary Agreement
"(Supplementary HPDA)" in respect of the Project viz.
Tarali Hydroelectric Project (2 X 2.5 Mega Watt), located
at Taluka Patan, District - Satara.

- Reference 1) Orders dated 28.03.2024 passed during the course of hearing in the Writ Petition No. 14827 of 2023, filed in the Hon'ble High Court, Mumbai, by M/s. Ashoka Architecture Private Limited.
- 2) The discussion in respect of the order under reference, held between the Superintending Engineer, Satara Irrigation Project Board, Satara and the Chief Engineer (Vi. Pra.), Water Resources Department, Pune, on mobile phone, on the date 02.04.2024.
- 3) "State Hydel Policy For Development Of Small Hydro Power Projects through Private Sector Participation.
Government Resolution No. PVT-1204/(160/2004)/HP,
Mantralaya, Mumbai 400 032, dated 15th September, 2005."

Orders of the Hon'ble High Court, Mumbai, referred to hereinabove at Sr. No.1, passed during the course of hearing, have been received for making registration of Supplementary Development Agreement "(Supplementary HPDA)" in respect of the Project viz. Tarali Hydroelectric Project (2 2.5 Mega Watt), located at Taluka Patan, X District-Satara. In pursuance thereof, the Water Resources Department is ready to get registered the Supplementary Agreement. For the purpose of getting done said registration, you shall complete all process at your end as mentioned in the Government Resolution referred to at Sr. No. 3 hereinabove and shall obtain a date from the Office of the Sub Registrar and shall also intimate to this Office in this regard 3 days in advance.

(sd)
Executive Engineer,
Kaner Canals Division No.2.
Karawadi (Karad)

Copy humbly submitted to the Superintending Engineer, Satara Irrigation Project Board, Satara, for information and for further necessary action."

3. The learned counsel for the petitioner would submit that there would not be any difficulty on the part of the petitioners in entering into supplementary HPDA, however, the same cannot be undertaken unless the appropriate acceptance in terms of a clause (4.5) of the Government Resolution dated 15 September 2023 (15 September 2005) is issued by the Government of Maharashtra Water Resources Department, for which State Government will have to place the same on record, on the adjourned date of hearing.

4. Accordingly, as a matter of last chance, we adjourn the proceedings, at the request of Ms. Diwan to 5 April 2024 to be listed on "Supplementary Board".

5. Parties to act on authenticated copy of the order."

4. Today on the above premise, the proceedings are before us when Ms. Vyas, learned Additional Government Pleader has placed on record a communication dated 4 April 2024 addressed by the Superintending Engineer, Satara Irrigation Project Circle, Satara, Maharashtra Krishna Valley Development Corporation, Pune-11, Government of Maharashtra, to the petitioner-M/s. Ashoka Sthapatya Pvt. Ltd., accepting the compliances granting approval in terms of clause No.A-4.5. The contents of the said letter read thus:-

"E mail/RPAD
Out No. SIPC/PB-6/HEP/1909/2024

Date: 04/04/2024

To,
M/S Ashoka Stahpatya Pvt. Ltd.

Yeshwantnagar Akluj
Tal-Malshiras Dist-Solapur-413118 (MS)
Email-asplhydro@gmail.com,asho

Sub:- Tarali Hydro Electric Project(2x2.5 MW) Tal-Patan Dist- Satara
Regarding registratation of Supplementary HPDA (Notice Under State
Hydel Police for DSHPP Clause A-4.5)

Ref:- 1. High court writ petition No. 14827 Of 2023 Date 28032024
2. EE, KCD2, Karawadi Office Marathi letter Ref.Lr.No.KKDn-2/ PB-
3/HEP/1095 dt. 03/04/2024

As per above reference, Considering provision under State
Hydal Policy development of Small Hydro Power Projects through
private Sector Participation clause no. A-4.5, you have produced
necessary clearances & financial closure, now you deposit the amount
Of Upfront Premium within one month. This may please be noted,
You are requested to acknowledge this notice please.

Thanking You,

Your's Faithfully.

(JS Shinde)
Superintending Engineer,
Satara Irrigation Project Circle, Satara”

5. The aforesaid letter is taken on record and marked “A-1” for
identification.

6. In this view of the matter, learned Counsel for the petitioner has fairly
stated that as consent is issued by the Government of Maharashtra, further
adjudication of the petition is not called for, however, the concern of the
petitioner is in relation to the direction of the Superintending Engineer calling
upon the petitioner to deposit the amount of Upfront Premium within one
month, and which according to the petitioner, needs to be deposited on the
date on which the supplementary agreement gets registered. We accordingly

permit the petitioner to deposit the said amount after the registration of the said agreement. Mr. Gite fairly acceded to the said request as made on behalf of the petitioner. Mr. Gite submits that necessary steps shall be taken and all instructions would be provided to the department so that the agreement could be registered as expeditiously as possible.

7. Let such exercise be undertaken within ten days from today as the petitioner is required to undertake appropriate compliances / formalities, to get the documents registered, for which all co-operation to the petitioner be also extended by the concerned department.

8. The petition is accordingly disposed of in the aforesaid terms. No costs.

9. The communications which were placed on record and kept in a sealed envelop be returned to Mr. Gite, learned Counsel for respondent No.3.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)