

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 5138 of 2010 a/w
CWP Nos. 6336 and 9179 of 2011

Decided on: 31.10.2017.

CWP No. 5138 of 2010

Shri Ranjeet Singh and othersPetitioners.

Versus

Union of India and others ... Respondents

CWP No. 6336 of 2011

Shri Dinesh Kumar and othersPetitioners.

Versus

Union of India and others ... Respondents

CWP No. 9179 of 2011

Shri Sunder Ram and othersPetitioners.

Versus

Union of India and others ... Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol, Acting Chief Justice.

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ No

CWP No. 5138 of 2010

For the petitioners : Mr. Deepak Kaushal, Advocate.

¹ Whether reporters of the local papers may be allowed to see the judgment?

For the respondents : Mr. Ashok Sharma, ASGI with
Ms. Srishti Verma, Advocate for
respondent No. 1.

Mr. Shrawan Dogra, Advocate
General with Mr. J.K. Verma,
Dy. Advocate General for
respondents No. 2 to 9.

: Mr. T.S. Chauhan, Advocate for
respondent No. 10.

: Mr. Anand Sharma, Advocate for
respondent No. 12.

CWP No. 6336 of 2011

For the petitioners : Mr. Deepak Kaushal, Advocate.

For the respondents : Mr. Ashok Sharma, ASGI with
Ms. Srishti Verma, Advocate for
respondent No. 1.

Mr. Shrawan Dogra, Advocate
General with Mr. J.K. Verma,
Dy. Advocate General for
respondents No. 2 to 7.

: Mr. T.S. Chauhan, Advocate for
respondent No. 8.

: Mr. K.D. Shreedhar, Sr. Advocate
with Ms. Shreya Chauhan,
Advocate for respondent No. 9.

CWP No. 9179 of 2011

For the petitioners : Mr. Deepak Kaushal, Advocate.

For the respondents : Mr. Ashok Sharma, ASGI with
Ms. Srishti Verma, Advocate for
respondent No. 1.

Mr. Shrawan Dogra, Advocate
General with Mr. J.K. Verma,

Dy. Advocate General for
respondents No. 2 to 7.

: Mr. K.D. Shreedhar, Sr. Advocate
with Ms. Shreya Chauhan,
Advocate for respondent No. 8.

Sanjay Karol, Judge (Oral)

CMPs No. 8346, 8472 and 8476 of 2017
in CWPs No. 5138 of 2010, CWPs No.
6336 and 9179 of 2011 .

For the reasons so assigned in the applications, we recall our order dated 12th September, 2017 and restore the petitions to their original numbers and position.

CMP No. 8798 of 2017 in CWP No. 5138
of 2010.

2. By way of this application, the applicant has prayed for substitution of name of respondent No. 12 in terms of particulars provided in para 6 of the application on the ground that during the pendency of the petition, the management of the said respondent has changed hands and Mr. Shekhar Gupta, stood appointed as the authorized signatory of the company. In view of averments made in the application, the same is allowed and respondent No. 12 is ordered to be substituted and the particulars of respondent No. 12 shall be as under:-

“M/S Himachal Baspa Power Company Limited, through its one of the authorized signatory Mr. Shekhar Gupta having registered office at Karcham Wangtoo H.E. Project, Sholtu Colony, P.O. Tapri, District Kinnaur-172104, Himachal Pradesh, India.”

The application stands disposed of accordingly.

CWPs No. 5138 of 2010, CWPs No. 6336 and 9179 of 2011.

3. Petitioners, who are residents of different villages of Teshil Nichar, District Kinnaur, have filed these petitions *inter alia* praying for several reliefs. For the purposes of reference, we reproduce the reliefs, as prayed for in CWP No. 6336 of 2011:-

“i) That the respondents SJVNL be directed to grant compensation to the petitioners for their valuable lands and houses which have been damaged and become unsafe due to unscientific activities of respondent SJVNL.

ii) That the respondent SJVNL be directed to grant rehabilitation package to the petitioners besides the actual compensation of private lands of the petitioner and also rights of the petitioners taken over by the respondent SJVNL in Govt and forest lands for the construction of the project.

iii) That the respondents may kindly be directed to grant the compensation to the petitioner for the rights of the petitioners in Govt. and Forest Land

of their villages which have been given to the respondent SJVNL by the respondent State for the construction of abovementioned project.

iv) That the respondent SJVNL may kindly be directed to grant the compensation to the petitioners for the damage caused to the house and cultivated lands of petitioners.

v) That the respondent SJVNL may kindly be directed to grant the compensation to the petitioners for the use of their lands for the construction of underground structure in and under the lands of the petitioner because the petitioners are the owner in possession of these lands.

vi) That the respondent may kindly be directed to grant the benefits to the petitioners as directed by the Hon'ble Supreme Court in judgment Samantha Vs. Union of India and other subsequent order and judgments.

vii) Any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner and against the respondents."

4. We notice that in the other petitions relief is somewhat similar.

5. Having heard learned Counsel for the parties at length, we find the petitioners to have raised issues which are seriously disputed on facts. As such, disputed questions of

fact, which cannot be conveniently adjudicated in the present petitions stand raised by the parties.

6. From the report so placed in CWP No. 6336 of 2011, prepared in the month of December 1997 by National Institute of Rock Mechanics, it cannot be said with certainty, or for that matter even remotely, that property of the present petitioners was damaged on account of construction of the Dam carried out by respondent/NJPC. According to the petitioners, their property stood damaged as a result of activities of blasting carried out by the project proponent, which fact is also not emanating from the report. Simply because name of the petitioners' village is mentioned in Table 5 of the conclusion part of Report-2, that fact itself is not conclusive of negligence attributable to the project proponent.

7. We may also observe that the construction activity took place much prior to commissioning of the project which was so done sometime in the year 2004 and the writ petitioners approached this Court only in the year 2011-12. Well it is not this factor which has weighed with us in deciding the matter, for we find the petitioners not to have placed on record any material linking the activity carried out

by the project proponent resulting into any damage caused to the property of the petitioners or anyone else in their village.

8. Mr. Deepak Kaushal, learned Counsel for the petitioners invites our attention to the questionnaire of the Consultant engaged by the World Bank, Annexure P-1 upon the following observations:-

“The bank reports that throughout the entire construction phase, NJPC was slow in implementing agreed upon actions on environment management issues. The Ministry of Forest and Environment repeatedly stopped the construction process because SJVN “seriously and continuously” violated both the Forest Conservation Act and the Environment Act.”

9. Even from the said questionnaire and more specifically the portion reproduced supra, we do not find the petitioners’ case to be strengthened any further. The questionnaire is with regard to a totally different Hydro Power Project and relates to the financing of the said project by the World Bank, to be established by the project proponent at Rampur. All that the Expert observes is that the project proponent was non-compliant of various laws pertaining to environment and forest conservation. What is the outcome of the questionnaire and what effect it had on the bank in

financing the power project is not on record. In fact, we are orally informed that the World Bank did finance the project which in fact stands successfully commissioned by the project proponent.

10. Mr. Shrawan Dogra, learned Advocate General and Mr. K.D. Shreedhar, learned Senior Counsel has taken us through the record indicating that more than ₹ 5.38-10 Crores already stand disbursed by the project proponent to various persons in and around the area where the construction activity was carried out by the project proponent. This was done as a measure of rehabilitation of such of those persons/villagers/villages, so identified by the appropriate authorities. It is not the pleaded case of the petitioners that in the exercise of such identification and disbursement of the amounts, either the officials of the State or the project proponent acted with malice. It is also not their case that such action of the State was arbitrary. We may also notice that petitioners do plead that they have been representing their case before various authorities. But then such averment is not substantiated by any material on record.

11. We are also informed by Mr. Shrawan Dogra, learned Advocate General and Mr. K.D. Shreedhar, learned Senior Counsel that learned Counsel for the petitioners has also filed petitions of similar nature which are pending consideration before the National Green Tribunal, which fact Mr. Deepak Kaushal, learned Counsel for the petitioners clarifies that they pertain to different villages.

12. Next, Mr. Deepak Kaushal, learned Counsel invites our attention to certain photographs placed on record evidencing the factum of sliding of the land in the forest. Well, whether these photographs pertain to the village in issue is also not evidently clear.

13. Be that as it may, in view of seriously disputed questions of facts, which cannot be easily and conveniently adjudicated in the present petitions, we dispose of these petitions reserving liberty to the petitioners to take recourse to such remedies, as are available to them in accordance with law, including filing appropriate representations with the appropriate authorities for consideration of their case, in accordance with law. We are hopeful that upon the petitioners choosing the course of representing their case, the same shall

be considered and decided, rather favourably and sympathetically, expeditiously, of course in accordance with law, by the authority(s) concerned.

The petitions stand disposed of, so also pending miscellaneous application(s), if any.

(Sanjay Karol)
Acting Chief Justice

(Ajay Mohan Goel)
Judge

October 31, 2017.
(narender)