

GAHC040008132022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : IA(C) 134/2022

1:SEW NAFRA Power Corporation Limited and Anr.
A Special Purpose Vehicle of M/s SEW Green Energy Limited (Formerly known as M/s SEW Energy Limited), A Company registered under the provisions of the Companies Act, 1956 read with the Companies Act, 2013. and having its registered office at 6-3-871. Snehalatha, Greenlands Road, Begumpet. Hyderabad 500016 and Project Office at Nafra 790001 District West Kameng, Arunachal Pradesh, represented by Sri Jayaprakash Natesan, Associate Vice President presently residing in Guwahati.

2: M/s SEW Green Energy Limited
(Formerly known as M/s SEW Energy Limited). A Company incorporated under the Companies Act
1956
read with the Companies Act
2013 and having its registered office at 6-3-871
Snehalatha
Greenlands Road
Begumpet. Hyderabad 500016
and Project Office at Nafra 790001
District West Kameng
Arunachal Pradesh
represented by Sri Jayaprakash Natesan
Associate Vice President
presently residing in Guwahati

VERSUS

1:THE STATE OF AP and 3 Ors.
Represented by the Chief Secretary to the Government of Arunachal Pradesh,
Itanagar 791111

2:The Commissioner/Secretary
(Power)

Govt. of Arunachal Pradesh
Department of Power
3rd Floor
Block 2
Arunachal Pradesh Secretariat
Itanagar 791111. Arunachal Pradesh.

3:The Chief Engineer (Monitoring)
Department of Hydro Power Development
Govt. of Arunachal Pradesh
2nd Floor
Jal Vidyut Bhawan
Itanagar 791111
Arunachal Pradesh.

4:The Chairman and Managing Director
M/s North Eastern Electric Power Corporation Limited (NEEPCO)
Brookland Compound
Lower New Colony
Shillong
793003
Meghalaya State
India

Advocate for the Petitioner : N Gogoi

Advocate for the Respondent : GA (AP)

Linked Case : IA(C) 75/2020

1:SEW Nafra Power Corporation Ltd.
A SPECIAL PURPOSE VEHICLE OF M/S SEW GREEN ENERGY LIMITED
FORMERLY KNOWN AS M/S SEW ENERGY LIMITED
A COMPANY REGISTERED UNDER THE PROVISION OF COMPANIES ACT
1956 READ WITH THE COMPANIES ACT
2013 AND HAVING ITS REGISTERED OFFICE AT 6.3.871
SNEHALATA
GREEN LANDS ROAD
BEGUMPET
HYDRABAD 16
AND PROJECT OFFICE AT NAFRA 790001

DIST. WEST KAMENG
AP. REP. BY SRI JYAYAPRAKASH NETESAN
ASSOCIATE VICE PRESIDENT.

2: M/S SEW GREEN ENERGY LIMITED
A COMPANY INCORPORATED UNDER THE COMAPANIES ACT 2013 AND
HAVING ITS REGISTERED OFFICE AT 6.3.871
SNEHALATA
GREENLANDS ROAD
BEGUMPET
HYDRABAD-16 AND PROJECT OFFICE AT NAFRA-790001
DIST. WEST KAMENG
AP. REPRESENTED BY JAYAPRAKASH NATESAN
ASSOCIATE VICE PRESIDENT.
VERSUS

1: THE STATE OF AP
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF AP
ITANAGAR.

2: THE COMMISSIONER/SECRETARY (POWER)
GOVT. OF AP
3RD FLOOR
BLOCK 2 AP SECRETARIAT
ITANAGAR
AP.

3: THE CHIEF ENGINEER (MONITORING)
DEPTT. OF HYDRO POWER DEVELOPMENT
GOVT. OF AP
2ND FLOOR
JAL VIDYUT BHAWAN
ITANAGAR
AP.

Advocate for the Petitioner : N Hawelia
Advocate for the Respondent : GA (AP)

Linked Case : WP(C) 71/2022

1: SEW NAFRA Power Corporation Limited and Anr.
A Special Purpose Vehicle of M/s SEW Green Energy Limited (Formerly known as
M/s SEW Energy Limited)
A Company registered under the provisions of the Companies Act
1956 read with the Companies Act
2013 and having its registered office at 6-3-871

Snehalatha
Greenlands Road
Begumpet
Hyderabad-500016 and Project office at Nafra-790001 District West Kameng
Arunachal Pradesh
represented by Sri Jayaprakash Natesan
Associate Vice President presently residing in Guwahati

2: M/s SEW Green Energy Limited
(Formerly known as M/s SEW Energy Limited) A Company incorporated under the
Companies Act
1956
read with the Companies Act
2013 and having its registered office at 6-3-871
Snehalatha
Greenlands Road
Begumpet. Hyderabad-500016
and Project office at Nafra 790001
District West Kamen
Arunachal Pradesh
represented by Sri Jayaprakash Natesan
Associate Vice President
presenly residing in Guwahati
VERSUS

1:THE STATE OF AP and 3 Ors.
Represented by the Chief Secretary to the Govt. of Arunachal Pradesh
Itanagar 791111

2:The Commissioner/Secretary (Power)
Govt. of Arunachal Pradesh
Department of Power
3rd Floor
Block 2
Arunachal Pradesh Secretariat
Itanagar 791111
Arunachal Pradesh.

3:The Chief Engineer (Monitoring)
Department of Hydro Power Development
Govt. of Arunachal Pradesh
2nd Floor
Jal Vidyut Bhawan
Itanagar 791111
Arunachal Pradesh

4:The Chairman and Managing Director
M/s North Eastern Electric Power Corporation Limited (NEEPCO)

Brookland Compound
Lower New Colony
Shillong
793003
Meghalaya State
India

Advocate for the Petitioner : Medha Lila Gope
Advocate for the Respondent : GA (AP)

Linked Case : IA(C) 138/2022

1:SEW New Melling Power Corporation Limited and Anr.
A Special Purpose Vehicle of M/s SEW Green Energy Limited (Formerly known as
M/s SEW Energy Limited)
A Company registered under the provisions of the Companies Act
1956 read with the Companies Act
2013 and having its registered office at 6-3-871
Snehalatha
Greenlands Road
Begumpet
Hyderabad-500016 and Project office at Nafra-790001 District West Kameng
Arunachal Pradesh
represented by Sri Jayaprakash Natesan
Associate Vice President

2: M/s SEW Green Energy Limited
(Formerly known as M/s SEW Energy Limited) A Company incorporated under the
Companies Act
1956
read with the Companies Act
2013 and having its registered office at 6-3-871
Snehalatha
Greenlands Road
Begumpet. Hyderabad-500016
and Project office at Nafra 790001
District West Kamen
Arunachal Pradesh
represented by Sri Jayaprakash Natesan
Associate Vice President
VERSUS

1:THE STATE OF AP and 3 Ors.
Represented by the Chief Secretary to the Govt. of Arunachal Pradesh
Itanagar 791111

2:The Commissioner/Secretary (Power)
Govt. of Arunachal Pradesh
Department of Power
3rd Floor
Block 2
Arunachal Pradesh Secretariat
Itanagar 791111
Arunachal Pradesh.

3:The Chief Engineering (Monitoring)
Department of Hydro Power Development
Govt. of Arunachal Pradesh
2nd Floor
Jal Vidyut Bhawan
Itanagar 791111
Arunachal Pradesh

Advocate for the Petitioner : N Hawelia
Advocate for the Respondent : GA (AP)

Linked Case : WP(C) 70/2022

1:SEW New Melling Power Corporation Limited and Anr.
A Special Purpose Vehicle of M/s SEW Green Energy Limited (Formerly known as
M/s SEW Energy Limited)
A Company registered under the provisions of the Companies Act
2013 and having its registered office at 6-3-871
Snehalata
Greenlands Road
Begumpet. Hyderabad-16 and Project Office at Jang 790104
District Tawang
Arunachal Pradesh
represented by Sri Jayaprakash Natesan
Associate Vice President presently residing in Guwahati

2: M/s SEW Green Energy Limited
(Formerly known as M/s SEW Energy Limited) A Company incorporated under the
Companies Act
1956
read with the Companies Act
2013 and having its registered office at 6-3-871
Snehalata
Greenlands Road
Begumpet. Hyderabad 500016
and Project office at Jang 790104. District Tawang

Arunachal Pradesh
represented by Sri Jayaprakash Natesan
Associate Vice President presently residing in Guwahati
VERSUS

1:THE STATE OF AP and 3 Ors.
Represented by the Chief Secretary to the Govt. of Arunachal Pradesh
Itanagar 791111

2:The Commissioner/Secretary (Power)
Govt. of Arunachal Pradesh
Department of Power
3rd Floor
Block - 2
Arunachal Pradesh Secretariat
Itanagar
Arunachal Pradesh

3:The Chief Engineer (Monitoring)
Department of Hydro Power Development
Govt. of Arunachal Pradesh
2nd Floor
Jal Vidyut Bhawan
Itanagar 791111
Arunachal Pradesh

4:The Chairman and Managing Director
M/s North Eastern Electric Power Corporation Limited (NEEPCO)
Brookland Compound
Lower New Colony
SHILLONG
793003
Meghalaya State
India

Advocate for the Petitioner : Medha Lila Gope
Advocate for the Respondent : GA (AP)

Linked Case : WP(C) 58/2020

1:SEW Nafra Power Corporation Ltd. and Anr.
a special purpose vehicle of M/S SEW Green Energy Ltd. formerly known as M/S
SEW Energy ltd. registered under the provision the companies Act
1956
represented by Sri Jayaprakash Natesan
Associate vice President

2: M/S SEW Green Energy Ltd.
formerly known as M/S SEW Energy ltd. a company incorporated under the
Companies Act
1956
represented by Sri Jayaprakash Natesan
Associate Vice President.
VERSUS

1: THE STATE OF AP AND 2 ORS.
represented by the Chief Secretary
Govt. of AP
Itanagar

2: The Commissioner
/Secretary
Power
Govt. of AP
Itanagar

3: The Chief Engineer
Department of Hydro Power Development
Govt. of AP
Itanagar

Advocate for the Petitioner : Medha Lila Gope
Advocate for the Respondent : Lissing Perme

BEFORE
HONBLE MRS. JUSTICE MARLI VANKUNG

ORDER

Date : 11-11-2022

Ms. N. Hawelia, learned counsel for the applicant alongwith Mr. D. Senapati, learned counsel for the opposite party.

This I.A. is with regards to an application proposing amendment in the Writ petition filed in WP(C) No.71(AP)/2022.

The learned counsel for the applicants submits that when the writ petition, WP(C) No.71(AP)/2022 was taken up for hearing on 03.03.2022, the applicant realize that the

communication dated 04.08.2021 which is the agreement signed between the NEEPCO and Govt. of A.P., was not challenged since the copy of the agreement dated 04.08.2021 was not in their possession at the time of filing writ petition. The learned counsel for the petitioner has now prayed that they may be allowed to annex the agreement dated 14.08.2021 in the main writ petition and incorporate the necessary amendments to the writ petition.

The learned counsel for the applicant also submits that the agreement between NEEPCO and Govt. of A.P. is necessary for determination of their claim in the writ petition, WP(C) No.71(AP)/2022. That the amended writ petition fully support the prayer and the application for interim relief in the writ petition. The learned counsel submits that the amendment is proposed are in paras 3, 4, 8 & 9 and that she may be allowed to incorporate amendment as follows ;

“PARA 3

That the present writ petition has been filed by the Petitioner Company challenging the illegal, discriminatory and arbitrary actions on the part of Respondent Authorities 1 to 3 when they transferred the entire contract that they had with the Petitioner as above to Respondent No.4, NEEPCO without any notice or approval from the Petitioner and without indemnifying the petitioner of the costs incurred for implementing the project. This is as per news reports published in the local news papers, this is as per Website of NEEPCO and this is also as per information collected by us in terms of Annexure R of this Writ petition. The petitioner was already aggrieved when the contract of the petitioner was already aggrieved when the contract of the petitioner was terminated by the respondents 1 and 2 in spite of the fact that the petitioner has been duly complying with all the statutory norms for implementation of the project.

PARA 4

2. As per information collected by the petitioner the respondent

authorities 1 to 3 have allotted the NAFRA Hydro Electric Project to North Eastern Electric Power Corporation Ltd. (NEEPCO) (Respondent No.4) by way of a Memorandum of Understanding signed on 14.08.2021 without informing the petitioners. The actions of the respondent authorities 1 to 3 in terminating the contract and allotting the project to a third party (Respondent No.4) are in violation of the provisions of the Contractual Agreement apart from being unfair, unreasonable, irrational and arbitrary. More so, when the whole decision is an abuse of power as out of 78 projects lying unimplemented, the respondents 1 and 2 have only chosen Nafra Hydro Electric Project without any policy guidelines whatsoever.

PARA 8

WHY THE PRESENT WRIT PETITION ?

The present application under article 226 of the Constitution of India is being preferred as there is no other remedy available with the applicant. The respondents 1 to 3 have already unilaterally transferred and allotted the project to NEEPCO, respondent No.4. The issue regarding termination of the project by the respondent No.2 was already pre-judged and any reply that the applicant knew that whatever reply he may file before the respondents may not yield results; not only the contract has been terminated now, but the same has been transferred and allotted on to respondent No.4 and hence for the petitioner there is no any other efficacious remedy; or so. Even before the directions of the Ministry of Power, Govt. of India, they have transferred this Project to NEEPCO in flagrant violations of due process of law, apparently by terminating the MOU dated 14.09.2007. Notwithstanding this, the applicant has filed detailed replies to the Show Cause Notice of Intention to Terminate the Contract respectively on 29.12.2017 and 22.5.2019.

PARA 9

By the preset petition the petitioner is raising pure legal questions even though on merits to the petitioner has a very strong case.

Whether the respondents 1 to 3 could have transferred and allotted the Nafra Hydro Electric Project to respondent No.4, NEEPCO (that was being implemented by the petitioner before it was terminated by the respondent authorities without following due process of law) without informing the petitioner and without asking NEEPCO or on their own to indemnify or compensate the petitioner of the costs that were incurred by the petitioner, with follow knowledge of the respondents 1 to 3”

Mr. D. Senapati, learned counsel for the respondent No.4 has strongly objected stating that by allowing the amendment and incorporating the agreement dated 14.08.2021 at this the stage shall prejudice the respondents and change the structure of WP(C) No.71(AP)/2022, wherein the applicant has prayed as to why a writ in the nature of certiorari ought not to be issued for setting aside and quashing the impugned transfer of the NAFRA Hydro Electric Project to North Eastern Electric Power Corporation Ltd. (NEEPCO) on 14.08.2021 without indemnifying /compensating the petitioner of the costs incurred and all proceedings in pursuance therewith the handing over of the project to a 3rd party. The learned counsel submits that this portion changed the nature of WP(C) No.71(AP)/2022 since this was not prayed for in the main writ petition and a prayer for issuing such a writ would adversely affect the respondent.

Having heard the submissions made by both the parties, the court finds that the fact that there was an agreement was executed between North Eastern Electric Power Corporation Ltd./ NEEPCO and Govt. of A.P on 14.08.2021 was mentioned in the writ petition WP(C) No.71(AP)/2022 thus this is not a new fact to be added by the amendment sought for. The learned counsel for the petitioner has sufficiently explained that the agreement executed

between NEEPCO and Govt. of A.P on 14.08.2021 was not challenged for the reason that the copy of the agreement was not within their possession that the relevant time. Thus, on considering the above submissions, this court finds it fit to allow the prayer made for incorporating for amending the writ petition WP(C) No.71(AP)/2022 as prayed for.

However, since no prayer for cancellation of the agreement dated 14.08.2021 was made in the writ petition WP(C) No.71(AP)/2022, thus, as agreed by both the parties, this court finds it fit to add that any such prayer for issue of writ of certiorari for cancelling the agreement dated 14.08.2021 is not to be insisted upon by the petitioner and the prayer in the WP(C) No.71(AP)/2022 will be unchanged and be limited to the compensation claimed by the petitioners.

Accordingly, the I.A. (C)134(A)/2022 stands allowed and disposed.

JUDGE

Comparing Assistant