

Seli Hydro Electric Power Company Ltd. vs. Director Directorate of Energy & Anr. a/w connected matter.

LPA No.149 of 2023 a/w LPA No.97 of 2023

LPA No.149 of 2023

04.01.2025

Present: Mr. Viplav Sharma, Senior Advocate with Mr. Anirudh Sharma, Advocate, for the appellant.

Mr. Anup Rattan, Advocate General with Mr. Varun Chandel, Additional Advocate General, for the respondents.

LPA No.97 of 2023

Mr. Anup Rattan, Advocate General with Mr. Varun Chandel, Additional Advocate General, for the appellants.

Mr. Viplav Sharma, Senior Advocate with Mr. Anirudh Sharma, Advocate, for the respondent.

LPA No.149 of 2023 and LPA No.97 of 2023

As prayed for, list on 24.03.2025.

CMP No.23548 of 2024 in LPA No.97 of 2023

2. Learned Advocate General, in view of filing of subsequent application bearing CMP No.24663 of 2024 with a prayer to stay the impugned judgment dated 13.01.2023 under challenge in this appeal, seeks permission to withdraw this application.

3. Considering the material on record and submission made by learned Advocate General, application is permitted to be withdrawn and is accordingly disposed of.

CMP No.24663 of 2024 in LPA No.97 of 2023

4. This application has been filed for staying the impugned judgment by depositing sum of Rs.93,96,07,671/- by the State in the Registry with the claim that entire awarded amount alongwith up-to-date interest stands deposited in the

Registry except interest for two days, i.e. 21.11.2024 & 22.11.2024.

5. Learned counsel for the respondent has disputed the correctness and calculations of the amount deposited by the respondent-State. He has also raised objection with respect to the maintainability of this application filed under Section 151 CPC for staying the impugned judgment, as there is a specific provision for staying the order and decree appealed from, as provided under Order 41 Rule 5 CPC and, therefore, for not filing the application to stay the operation of impugned judgment under the specific provision, he has prayed for rejection of the application at the threshold.

6. Learned counsel for the respondents has further submitted that the prayer in the application has been made to stay the operation of the impugned judgment dated 13.1.2023, which is not permissible, as under Order 41 Rule 5 CPC only proceedings under a decree or order appealed from or execution of such decree can be stayed, but not the judgment and, thus, also application deserves to be dismissed.

7. The present appeal is a Letters Patent Appeal preferred under Clause 10 of Letters Patent, constituting the High Court of Judicature at Lahore dated 21st March, 1919, as extends to and applicable to High Court of Himachal Pradesh. The judgment impugned in the appeal is a judgment passed in the Civil Writ Petition by learned Single Judge, exercising jurisdiction under Article 226 of the Constitution of India, but not in a Civil

Suit, or in appeal arising out of a Civil Suit and, therefore, decree is neither required to be drawn nor has been drawn by the Registry. Prayer for staying of the operation of impugned judgment is not a prayer to stay the decree as no decree has been drawn in the present matter. Hence, there is no question of filing an application under Order 41 Rule 5 CPC for staying execution of decree.

8. Plea of respondents is that even under Order 41 Rule 5 CPC, there is a provision for staying the operation of proceedings under impugned order or decree or for staying the execution of decree, but not staying the judgment or its operation. In present application, prayer has been made for staying the operation of impugned judgment. Even if plea of the learned counsel for the respondents is accepted, then also Order 41 Rule 5 CPC does not provide provision for staying the judgment and, thus, there is no specific provision available for filing application to stay the present proceedings. Therefore, application under Section 151 CPC would be maintainable. Thus, learned counsel for the respondents has urged self-destructive plea.

9. Though principles of CPC are applied in proceedings related to exercise of constitutional powers, however in such proceedings strict compliance of provisions of CPC is not pressed. Therefore, prayer for staying operation of impugned judgment cannot be rejected for filing of application under Section 151 CPC.

10. Further, in any case, in peculiar facts and circumstances of the case, mention of wrong provision cannot be a sole basis for rejection of this application, as almost entire due amount has been deposited by the applicant/appellant-State.

11. Accordingly, rejecting the objection raised by learned counsel for the respondents, but subject to verification of the calculations and deposit of further amount, if any required to be deposited/paid, well before next date, operation of the impugned judgment dated 13.01.2023, passed in ***CWP No.533 of 2018***, titled as ***Seli Hydro Electric Power Company Limited vs. State of H.P.*** shall remain stayed during the pendency of the appeal.

12. Alteration, vacation and modification on motion.

13. Application stands disposed of.

CMP No.24664 of 2024

14. Reply to the application, as prayed, be filed within four weeks. Rejoinder thereto, within four weeks thereafter.

List for consideration along with main appeal on the next date.

(Vivek Singh Thakur)
Judge

(Sushil Kukreja)
Judge

January 04, 2025
(sd/reena)