

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP Nos. 7612 & 7613 of 2022
Decided on: 26th November, 2025

1. CWP No. 7612 of 2022

M/s Goodwill Energy Enterprises Limited

....Petitioner

Versus

State of H.P. and another

...Respondents

2. CWP No. 7613 of 2022

M/s Goodwill Energy Enterprises Limited

....Petitioner

Versus

State of H.P. and another

...Respondents

Coram

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

Whether approved for reporting?¹

For the petitioner(s):

Mr. Prithu Garg, Mr. Vaibhav Singh Chauhan and Ms. Shradha Karol, Advocates, in both the petitions.

For the respondents:

Mr. Anup Rattan, Advocate General and Mr. Pranay Pratap Singh, Additional Advocate General, in both the petitions.

G.S. Sandhawalia, Chief Justice (Oral)

The challenge in both these petitions was initially raised to the notice inviting proposal dated 08.10.2022 (Annexure P-7) for

¹ Whether reporters of Local Papers may be allowed to see the judgment?

the project at Dhanchu of 18 MW and at Manalsu of 21.9 MW and prayer was also made quashing of forfeiture of processing fee amounting to ₹9,00,000/- and ₹10,95,000/-, respectively, and for the refund of the same and of ₹1,00,000/- as bid document fee.

2. It is not disputed that during the pendency of the proceedings letter dated 27.06.2024 (Annexure P-9) was issued, due to which the writ petitions were amended, vide order dated 25.03.2025, keeping in view the fact that order/letter was issued after filing the writ petitions.

3. In sum and substance, the case of the petitioner(s) is that in pursuance of the notice inviting proposal on 10/11.05.2022, for 27 projects across various areas in the State of Himachal Pradesh, they had given their necessary bid which was on Built, Own, Operate and Transfer (BOOT) basis. The financial bid having been opened and the petitioner(s) being the successful bidder were entitled for the allotment but their allotment had been kept in abeyance. They were thus aggrieved by the issuance of the fresh notice inviting proposals (Annexure P-7) dated 08.10.2022. Their request for refund of the processing fee was rejected vide order dated 14.10.2022 on the ground that it is non-refundable. Vide communication dated 27.06.2024 it was brought to their notice that

the plea of the State is that on the meeting held on 28.09.2022 the council of ministers had decided that in four projects, the bids be invited again which included the two projects in question, i.e. Manalsu (21.9 MW) and Dhanchu (18 MW). Resultantly, the notice inviting proposals had been issued.

4. Vide communication dated 27.06.2024 (Annexure P-9), apparently there was a review of the said decision dated 28.09.2022 and a letter was issued to the petitioners, whereby they were asked to provide free power @ 12% for first 12 years, @ 18% for next 18 years and @ 30% for balance 10 years of agreement period and petitioners were asked to come for a meeting. The contents of the letter issued by the Chief Engineer (Energy), Directorate of Energy, GoHP, read as under :-

“Subject:- Review of the decision taken by the Council of Minister in its meeting held on 28.09.2022 as item No. 64 regarding allotment of 6 Hydro Electric Projects.

Sir,

On the subject cited matter, I am directed to intimate that the matter regarding review of the CMM decision dated 28.09.2022 regarding allotment of 6 projects was placed before the Council of Minister in its meeting held on 18.06.2024, wherein it has been decided that the bidders may be asked to agree to provide free power @ 12% for first 12 years, @ 18% for next 18 years and @ 30% for balance 10 years of agreement period as was the practice in past. Further, in case bidders refuse to accept the above offer, the bidding process be terminated and Letter of Intent (LOIs) issued in respect of Chhatru HEP and Khauli-II HEP be cancelled and the amount of

Upfront premium deposited against these Projects be refunded back without any interest and liability of the State Government.

In view of above, it is intimated that a meeting for accepting the above offer is scheduled to be held on 05.07.2024 at 11:00 AM in the Directorate of Energy. You are, therefore, requested to make it convenient to attend the aforesaid meeting on scheduled date, time and venue, please.”

5. On 17.09.2025, it was brought to our notice that for inviting proposals for implementation of various Hydro Projects on BOOT basis, the free power was to be only given for 12% uniform for 40 years of Deliverable Energy of the Project. In pursuance of the said notice we had passed the order on 17.09.2025 which reads as under :-

“Counsel for the petitioners has placed on record notice inviting the proposals for implementation of various Hydro Projects in Private Sector on Build, Own, Operate and Transfer [BOOT] basis. Clause-v has been referred to regarding Free Power Royalty that the Project Developer is to provide free power to the First Party in lieu of surrender of potential site @ 12% uniform for 40 years of Deliverable Energy of the Project.

Apparently, vide communication dated 27th June, 2024 [Annexure P-9], the petitioners have been asked to provide free power @12% for first 12 years; @ 18% for next 18 years; and @30% for balance 10 years.

It is thus submitted that separate parameters now cannot be there for the petitioners, on the basis of which confirmation of the petitioners’ bid, as such, was held back.

Faced with the above situation, counsel for the State prays for time to seek instructions as to whether the petitioners are liable to be considered afresh for their bids already given, keeping in view the prevalent royalty fixed by the State. Let needful be done before next date of hearing.

Counsel for the State however has also pointed out that reliance was placed in the interim order dated 16.07.2024 upon CWP No.7667 of 2023. It is brought to our notice that in Civil Appeal No.12883 of 2024, titled The State of Himachal Pradesh & Anr. Versus JSW Hydro Energy Limited & Ors., decided by the Apex Court on 16.07.2025, the said judgment has now been set aside and therefore, the said ground would no longer be available to the petitioners. 6.

List these matters on 30.10.2025.”

6. We had been informed that on 30.10.2025 due to the matter being a policy, decision has to be taken at the Government level and therefore time had been sought. Today there are no specific instructions with the learned Advocate General and it is only being argued that the petitioners are free to approach the State again for fresh consideration.

7. We have also been informed that notification dated 25.09.2025 has also been issued which would go on to show that there has been amendment in notification dated 30.09.2024, whereby, it has been decided that 12% (free power) + 1% (LADF) from the date of synchronization of first unit is to be provided which is a deviation from what had been asked from the petitioners vide the impugned communication dated 27.06.2024 (Annexure P-9) which is subject matter of the challenge and noticed by us in our order dtd 17.09.2024.

8. Apparently the State has now gone back on its earlier

condition for asking 12% free power on the basis of which the first notice inviting tender had been issued.

9. In such circumstances we are of the considered opinion that this condition is applicable to the projects having capacity up to 25MW, as per its notification dated 30.09.2024, which is to be allotted in the future and that there is no hurdle for the State to continue considering the petitioner(s) case in terms of the earlier notice inviting tender, as the only reason for it to have withheld the process was on account of the fact that there was change in the thought process mid-stream and therefore there is no plausible reason for the State not to continue with the tender process and take it to its logical end. It is the settled principle that an applicant applies keeping in view the financial position and viability at a particular point of time and only on account of the State having a dilly dallying stand, it cannot be to the detriment of the applicant. Moreso, the policy now continues to be the same. We do not see any plausible reason as to why the notice inviting tender cannot be taken to its logical end.

10. The law is clear on this aspect that in the tender cases the judicial review can be there if there is arbitrariness and unreasonableness. Therefore, in our considered opinion it is one of

those cases where this Court has to step into, to protect the interest of the petitioner(s) and also of the State in public interest, as only on account of the dilly dallying stand of the State, the project has not been taken to its logical end. There is no hurdle now as such, on account of the fact that the State itself has amended its earlier notification dated 30.09.2024. It is also to be noticed that though the amendment was on 30.09.2024, the State had vide impugned communication dated 27.06.2024 asked the petitioner(s) to provide free power in three different slabs at different rates, prior to even the issuance of the notification and without any authority of law at that point of time.

11. The judgments on the issue of tenders though lay down guidelines for judicial review but on the ground of arbitrary and irrational decisions as such of the Executive, the Court has been given certain leverage on account of the fact that they require higher degree of fairness in action especially when public interest is affected. Reliance can be placed on the judgments of ***Sterling Computers Limited versus M/s M&N Publications Limited and others***, (1993) 1 SCC 445; ***Raunaq International Ltd. vs. I.V.R. Construction Ltd. and others***, (1999) 1 SCC 492; ***Tata Cellular vs. Union of India***, (1994) 6 SCC 651; ***Air India Ltd. vs. Cochin***

International Airport Ltd. and others*, (2000) 2 SCC 617; *Association of Registration Plates vs. Union of India and others*, (2005) 1 SCC 679; *Jagdish Mandal vs. State of Orissa and others*, (2007) 14 SCC 517; and *Michigan Rubber (India) Limited vs. State of Karnataka and others*, (2012) 8 SCC 216.** The relevant para from the judgment of ***Jagdish Mandal (supra) reads as under :

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary

grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone,

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”:

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

12. In ***Michigan Rubber*** (supra) it was thus held that if the decision of the Authorities as such is arbitrary and irrational and the responsible authority has not acted reasonably, the Court could exercise power of judicial review. The relevant para of the said judgment reads as under:

“24. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”; and

(ii) Whether the public interest is affected.

If the answers to the above questions are in negative, then there should be no interference under Article 226.

13. Thus, from the reading of the above, it would be clear that in the present case, tenders had been called for way back in the year 2002 and it is not disputed that at that time, the petitioners had qualified, both on the technical and financial bid. It is only on account of the fact that the State had changed its mind as such, the

tender process was not finalized on account of the decision of the Council of Ministers. The said decision was then reviewed by the Council of Ministers itself on 28.09.2022 on the basis of the notification which had yet to come into force dated 30.9.2024. Thereafter, vide fresh notification dated 25.09.2025, status quo ante has been restored regarding the projects below 25 MW and the relevant offer was then made on 27.06.2024. Thus, it is apparent that the action of the State cannot be termed as reasonable in any manner and had to be brought within the ambit of arbitrariness especially, when once the petitioners themselves were put to notice of the said differential rates to be paid though fresh tenders were being called for at different rates. The fairness as such which could be given to the petitioners long way back in 2002 is apparently missing on the part of the State.

14. A period of more than three years have gone by when Notice Inviting Tenders had been issued. In such process, the subject project has also been delayed and public interest has also been affected. In such circumstances, we are of the considered opinion that in the peculiar facts and circumstances, the benefit as such has to be given to the petitioners.

15. It is also to be noticed that we had put it to the State also as such that keeping in view the fresh notice inviting proposal for various hydro projects on BOOT basis, on only 12% uniform slab for 40 years why the petitioners' case could not be considered to which the State again has not opted to do. Therefore, apparently, keeping in view the fact that the same notification now again is applicable, action of the State is patently arbitrary and unreasonable.

16. In such circumstances, we are of the considered opinion that the writ petition is liable to be allowed. Even otherwise keeping in view the fresh notification dated 25.09.2025, the letter dated 27.06.2024 (Annexure P-9) has lost its efficacy. The relief of refund of the processing fee would also thus be rendered infructuous if the tender process is to be taken to its logical end. In such circumstances we direct the State to proceed ahead with the initial tender notice for which the petitioner(s) have applied and their case has to be duly considered after evaluating the financial and technical bids which had already been done and take the tender process to its logical end by awarding the same to the petitioners within a period of four weeks' from today.

17. Accordingly, the relief of quashing the notice inviting

fresh tenders dated 08.10.2022 (Annexure P-7) qua the two projects in Manalsu and Dhancho is allowed.

18. Resultantly, the present writ petitions are allowed. Pending applications, if any, also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

26th November, 2025
(Anurag)

(Jiya Lal Bhardwaj)
Judge