

TT ENERGY PRIVATE LIMITED

PETITIONER

VERSUS

PRINCIPAL CHIEF ENGINEER CUM SECRETARY,
ENERGY AND POWER DEPARTMENT,
GOVERNMENT OF SIKKIM AND ANOTHER

RESPONDENTS

CORAM : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

For Petitioner Mr. Karma Thinlay, Senior Advocate.
 Mr. T. R. Barfungpa, Advocate.
 Ms. Mani Gupta, Advocate.
 Ms. Pravin Manger, Advocate.

For Respondents Mr. AaroHi Bhalla, Additional Advocate General
(*through VC*).
Mr. Thinlay Dorjee Bhutia, Government Advocate.
Ms. Pema Bhutia, Assistant Government Advocate.

Date of Hearing : 30-10-2025
Date of Order : 30-10-2025
Date of Uploading : 31-10-2025

ORDER (ORAL)

1. I.A. No.01 of 2025 has been filed in the instant Writ Petition. The I.A. is an application seeking interim stay of Request for Proposal (RFP) dated 19-09-2025, inviting application/proposal for development of Ting Ting hydroelectric project on river, Rathong Chu on '*as is where is*' basis by Respondent No.1.

2. Learned Senior Counsel for the Petitioner submits that, the project for which the RFP was issued on 19-09-2025, was initially conceived by the Petitioner in the year 2008 and the project was to have been set up by the Petitioner. After all essential steps were taken by the Petitioner for initiating the project and the Agreement settled on 03-09-2008, the Respondent No.1 vide a letter dated 10-02-2012, addressed to the Petitioner enclosed the Notification issued by Respondent No.2 being Notification bearing No.12/HOME/2012, dated 08-02-2012, suddenly ordering closure of the project "*in public interest*" with immediate effect. After such closure, although several requests were made to the Government by the Petitioner to revive the project no heed was paid.

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The communication of 10-02-2012, it is urged, did not have a legal basis for the reason that, the contract between the Petitioner and the Respondent No.1 specified that it could be terminated only on three grounds viz.,;

"Article 5

TERMINATION AND TAKING OVER OF THE PROJECT

- 5.1.** In the event it is eventually confirmed as impossible or impractical to start the construction of the Project within six months from the date of obtaining all the clearances, for reasons exclusively attributable to the Company, the Government reserves the right to terminate the Agreement.
- 5.2.** In the event of stoppage of construction on the main Project components by the Company, for a period of more than twelve months for reasons not covered under Force Majeure and for reasons attributable to the Company and/or abandonment of the Project by the Company, the Government shall, after giving due opportunity to the Company to rectify the same, have the right to terminate this Agreement. In the event of termination of this Agreement under this clause, the Government shall have the option to take over the Project after assuming all the Debt servicing obligations of the Company, to the extent drawn for the Project, as on the date of termination. Notwithstanding any investment by the Government under this Clause, the Company shall be liable to pay all the due owed to the Government by the Company pursuant to this Agreement.
- 5.3.** After the expiry of the Agreement Period referred to in Clause 2.2, the Project including its all assets and works shall be transferred to the Government free of cost and in good operating conditions."

(i) That, the Respondent No.2 did not put forth any of the grounds in the said correspondence for terminating the contract but merely ordered the closure of the project "*in public interest*". That, in the months of March and June, 2025, the Petitioner had issued letters to the authorities of the Government for revival of the project, however no steps towards this end were taken. To the surprise of the Petitioner the RFP was again issued on 19-09-2025 with last date for submission of bid fixed on 18-11-2025, on which dates the bids will also be opened. That, in the circumstances a major part of the project having been initiated by the Petitioner, the project ought to have been revived and

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allowed to be taken over by the Petitioner, instead of issuance of a fresh RFP. Hence, the prayer for stay of the RFP.

3. Resisting the arguments advanced (*supra*), Learned Additional Advocate General contends that the Writ Petition is itself not maintainable and the stay Petition ought to be rejected outright for the reason that necessary facts have been concealed by the Petitioner. On the issuance of the Notification dated 08-02-2012, the Petitioner had invoked the Arbitration Clause to the Agreement dated 03-09-2008. Pursuant thereto the names of the Arbitrators were suggested and an Arbitrator also selected by the Petitioner. Silence on the part of the Petitioner followed and no Arbitration proceedings commenced. Thereafter, it is only now after a lapse of several years that the RFP has been issued. The Petitioner cannot lay claim to the project on ground urged by him. The Petition in such circumstances deserves to be dismissed.

4. I have heard Learned Counsel for the parties at length and perused the pleadings including the I.A. and documents relied on by the Petitioner and three documents furnished by the Respondents No.1 and 2 in the Court room. These documents are revelatory of the fact that there was an Arbitration Clause in the contract. This Clause was invoked by the Petitioner. An Arbitrator was named by them. This was in the year 2015. The Petitioner in their Writ Petition has rather nebulously averred *inter alia* that;

“y. However, the Petitioner did not pursue arbitration proceedings. As the sole reasons stated for the closure of the Project was “public interest”, the Petitioner did not pursue any litigation with the Respondents, on the basis that the Project would be revived once these issues were resolved.”

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The truth of the invocation of the Arbitration Clause, the naming of the Arbitrator and the lack of steps taken by the Petitioner thereafter has been concealed by the Petitioner from this Court. It is now no more *res integra* that to obtain a relief from the Court the Petitioner has to come with clean hands. The documents relied on by the Petitioner indicate that, communications were made by the Petitioner to the Respondents for revival of the hydroelectric project, at Rathong Chu river. The communications extend from 12-03-2012 up to 03-03-2014. Thereafter, there appears to have been silence from the side of the Petitioner. Reverting to the issue of the Arbitration Clause, Vide Annexure – P18, it is seen that the Respondent No.1 had by a letter dated 05-05-2014, sought for proposing the name of an Arbitrator as the Petitioner had requested for invoking arbitration proceedings as per Article 9 of the Agreement dated 03-09-2008. Thereafter, the Petitioner did not pursue the matter further with the Respondents, although, an Arbitrator was selected by the Respondent No.1 and communicated to the Petitioner vide letter dated 22-08-2015 and agreed to by the Petitioner vide letter dated 31-08-2015. A silence seems to then have enveloped the Petitioner and no steps were taken by them by way of communication to the Respondents neither did they question the Respondents about the fate of the arbitration proceedings or seek enforcement of the contract. It is thus clear that the Petitioner remained silent from August, 2015, and made no effort whatsoever to revive the project or seek enforcement of the terms of the Agreement dated 03-09-2008. It is admitted by Learned Senior Counsel that it was only in March, 2025 and June, 2025 that the Petitioner had again written to the concerned Departmental authorities regarding the

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project. The instant RFP was issued in 19-09-2025 for which the date for acceptance of final bids is on 18-11-2025, on which date the bids are likely to be opened. During the lapse in time, which is about ten years, the Petitioner slept over its rights and has thereby failed to indicate urgency in the matter. Having given due consideration to the facts and circumstances and submissions advanced by Counsel for both parties and taking a rather dim view of the fact that the Petitioner has failed to come to the Court with clean hands, I am not inclined to grant stay in the instant matter at this stage.

5. I.A. No.01 of 2025 stands rejected and disposed of.

Judge
30.10.2025

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