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Sikkim High Court takes suo moto cognizance of Current report

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By Soumik Dutta

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On 8 May, 2012, the Sikkim High Court took suo moto cognizance of the report in Current that focused on the acts of omission, commission and collusion by the government and vested corporate interests to grant the Teesta Stage III hydropower project to Teesta Urja Limited. The report outlined how the Government of Sikkim (GoS) had first distorted policy and then bent the rules to allot hydropower projects across the state to a large number of private players. Of the more than 20 projects that were allotted by the Pawan Chamling led Sikkim Democratic Front government, not even one project is complete or anywhere near completion.

The court was moved by the Joint Action Committee against Hydropower Projects under its convener Tseten Tashi Bhutia of the Sikkimese Bhutia Lepcha Apex Committee (SIBLAC) and a public interest litigation (PIL) was accepted. The hearing has been set for 20 June, 2012.

The petitioners submitted that the state Comptroller Auditor General's report for the year 2009 to 2010 had clearly pointed out the tainted procedure of how hydro power projects were given to the private players in an arbitrary manner that impoverished the state exchequer and also flouted the rules and regulations of the Government of India (GoI). Furthermore the private players or Independent Power Producers (IPP) had agreed to provide certain benefits to the government of Sikkim and its people which had not been delivered and therefore there are large public interest issues at stake.

The petitioners have urged the High Court of Sikkim, in the larger public interest, to look into the above issues as similar to the 2G Spectrum scam now being investigated by the CBI and heard by the Supreme Court.

The Joint Action Committee members informed the High Court that hydropower projects were allotted at certain sites such as Dzongu in North Sikkim and Yuksam-Tashiding in West Sikkim that not only have tremendous religious and cultural significance to the people of Sikkim but also fall with the reserve forest area and are of significant biodiversity and ecological importance.

The JAC said that the 97 MW Tashiding Hydropower Project allotted to Shiga Energy Pvt. Ltd and the 300 MW Panan Hydropower Project given to Himagiri Hydro Energy Pvt. Ltd were allotted without proper procedure and without proper verification regarding the antecedents of the private players. The JAC said the projects were causing lot of public disturbance, affecting

public right to culture and religion, causing environment pollution and ecological degradation in the area.

The Joint Action Committee against Hydropower Development in Sikkim is an umbrella organisation that comprises the following groups:

- * The All Sikkim Educated Self Employed & Unemployed Association (ASESE&UA),
- * Affected Citizens of Teesta (ACT),
- * SAVE Sikkim,
- * Concerned Lepchas of Sikkim (CLOS),
- * Denzong Chyari Tsogpa (DCT),
- * All Sikkim Monasteries' Association (ASMAN),
- * The Sikkim Bhutia-Lepcha Apex Committee (SIBLAC); and
- * The National Sikkimese Bhutia Organisation (NASBO)

The JAC has had some earlier successes in opposing three hydropower projects on the Rathong Chu River, considered sacred by the Buddhists in Sikkim. The opposition to these projects was mainly on environmental and religious grounds. In October 2011, the National Board of Wildlife scrapped the 96 MW Lethang project and on 25 January, 2012 the GoS scrapped the 99 MW Ting Ting project.

The decision to scrap the projects came a month after a high-powered committee constituted by the state government submitted its report. The panel was asked to examine if the Rathong Chu projects could be implemented. The decision on "further examination" of the Tashiding project was taken as more than Rs 100 crore had already been invested and tunneling work had started.

Earlier the Supreme Court in a hearing of two writ petitions filed by Tenzing Bhutia and Sonam Lama, appealing for an ex-parte stay order on the ongoing 97 MW Tashiding hydro power project on Rathongchu River in West Sikkim, on 8.5.12, in its order delivered has referred the matter to the High Court of Sikkim. Justice Altamas Kabir and Justice Surinder Singh Nijjar, in their order stated that both the Public Interest Litigations which raised issues under Article 32 of the Constitution, would be best addressed by the Sikkim High Court under Article 226 of the Constitution as there were several local level issues involved in the petitions.

The Apex Court has ordered the Registry for arranging the transfer of the case documents to the Sikkim High Court within a week from the day of the order, with a liberty to the petitioners to approach the Apex Court in case their issues are not adequately addressed by the Sikkim High Court.

Tseten Tashi Bhutia Convener of SIBLAC while welcoming the order of the Apex Court added that, "Any project on the Rathong Chu is not acceptable to us since it is on the waters of the most sacred river according to Neysol Buddhist texts. It is to us Buddhists what Quran or Bible is to Muslims or Christians. The water of Rathong Chu is used by the Tashiding Monastery for the annual Holy Bum Chu festival".

The SIBLAC and NASBO have been demanding the scrapping of the said project, mainly citing religious sentiments and the violation of the Places of Worship (Special Provisions) Act of 1991, extended to Sikkim in 1998. On 29 May 2012, the High Court of Sikkim in its first hearing of the writ petitions referred by the Supreme Court, has served notices to the financial institutions and

summoned them to appear on its next hearing on 20 June. The High Court has also tagged the hearing on the Suo Moto PIL (WP 41 of 2012) along with the writs pertaining to the Tashiding project.

In another instance, a Sikkimese individual Anand Lama has filed another PIL (WP 40 of 2011) against the government of Sikkim basing his pleadings on the CAG reports implicating the GoS of severe irregularities, losses, violation of norms and legal procedures in allotment and implementation of hydropower projects in the state. The High Court has in its hearing on this PIL asked the GoS to furnish detailed reports but the GoS has pleaded for time until the end of July.

So far the protests by the people of Sikkim against the errant policies and decisions of the state government have been different from what one normally finds in any other part of the country. The lack of any defined civil society in Sikkim and in the backdrop of existing greater public ignorance on matters pertaining to governance and public policy, the protests against wrong decisions of the government affecting public life are diluted and in some cases, even squashed with brutal force by the administrators. To make matters worse the ruling party, the SDF, is omnipresent in all matters of public life and governance. They have an absolute majority in the Assembly with all 32 seats with the SDF that percolates down to the Panchayat level. The political opposition has been reduced to mere paper tigers.

The genesis of protests against hydro power projects in Sikkim dates back to the mid-nineties, when the SDF government under Chief Minister Pawan Chamling had decided to bulldoze ahead with a proposed 30 MW hydropower project on the Rathong Chu River. There was tremendous pressure on the Chamling government to scrap the said project mainly on religious grounds. The said project was to come up on the most sacred River Rathongchu, the water of which is used till date for an annual Buddhist festival – Bum Chu at the Tashiding Monastery. This has been a major Buddhist tradition since the time of the erstwhile Chogyals of Sikkim from the Namgyal dynasty. The protests were led by three prominent Sikkimese citizens (the late Chokie Topden, T W Barfungpa, and Tashi Topden) and supported by Buddhist associations, monks from almost all the prominent monasteries of Sikkim and devout Buddhists from across the state.

Eventually in 1997, under scathing criticism of infringement on cultural and religious rights of Buddhist minorities, the Chamling government had decided to scrap the project.

In the years that followed the return of the SDF government in 2004, there has been strong opposition of several hydropower projects in the state from both individuals and by opposition political parties. Out of the three most significant such protests, two even went to the High Court of Sikkim for intervention. Former Chief Minister and president of the Sikkim Pradesh Congress Committee, Nar Bahadur Bhandari had filed a writ petition in the High Court of Sikkim against the violation of all norms, arbitrary allotment and losses to the state exchequer, and overall rampant corruption in almost all hydropower projects proposed in the state.

A similar petition was filed by Athup Lepcha, a former minister and president the Affected Citizens of Teesta. Athup pointed out violations of tribal land acquisition, denial of rights and benefits to tribals particularly from the primitive Lepcha community, and overall circumventing and flouting of norms in the hydropower projects proposed in North District of Sikkim.

Both petitions were summarily dismissed. The judge in both cases was PD Dinakaran, the former Chief Justice of the Sikkim High Court who had to resign on charges of corruption while he was facing impeachment proceedings.

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