

V

**IN THE HIGH COURT OF SIKKIM
CIVIL EXTRA ORDINARY JURISDICTION**

W. P. (C) No. 37 OF 2016

National Hydroelectric Power Corporation Ltd.,
Presently known as N. H. P. C. Limited,
Sector – 33 Faridabad,
Haryana – 121 003.
Through,
It's authorized representative,
Shri A. K. Yadav,
Senior Manager (Commercial). ----- Petitioner.

-VERSUS-

1. State of Sikkim
Through
The Chief Secretary,
Government of Sikkim.
2. The Secretary,
Energy & Power Department
Government of Sikkim,
Kazi Road, Gangtok, East Sikkim.

3. The Principal Secretary,
Forest, Environment and Wildlife
Management Department,
Forest Secretariat,
Government of Sikkim,
Deorali, Gangtok, East Sikkim.

4. Conservator of Forest Territorial Circle,
Forest, Environment and Wildlife
Management Department,
Forest Secretariat,
Government of Sikkim,
Deorali, Gangtok, East Sikkim. ----- Respondents.

PETITIONER

ADVOCATE (S)

FOR ----- Mr. A. K. Upadhyaya, Sr. Advocate with Ms. Binita
Chhetri, Mr. Thupden G. Bhutia and Ms. Aruna
Chhetri.

RESPONDENT

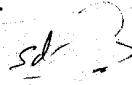
ADVOCATE (S)

FOR ----- Mr. J. B. Pradhan, Addl. Advocate General,
Mr. Karma Thinlay, Sr. Govt. Advocate, Mr. Santosh
K. Chhetri and Ms. Pollin Rai Asst. Govt. Advocate.

Case No.....

Serial No.	Date	Order (s) with Signature (s)
1	2	3
02.	18.10.16 (Agnihotri, CJ)	W.P. (C) No. 37/2016 National Hydroelectric Power Corporation Ltd. (NHPC Ltd.) vs. State of Sikkim & Ors. BEFORE MR. JUSTICE SATISH K. AGNIHOTRI, CJ. & MRS. JUSTICE MEENAKSHI MADAN RAI, J. Present: Mr. A. K. Upadhayaya, Senior Advocate with Ms. Aruna Chettri, Advocate for the Petitioner. Mr. Karma Thinlay, Senior Government Advocate with Mr. S. K. Chettri and Ms. Pollin Rai, Assistant Government Advocates for the State-Respondents. This is an application (IA No. 01/2016) seeking stay of operation of the impugned notification No. GOS/FEWMD/PR.SECY-cum-PCCF/231 dated 24.12.2015. The petitioner, a public sector undertaking, has come up with this petition, questioning the legality and validity of the said notification, whereunder and whereby the State Government, exercising its power conferred by Section 31 read with sub-section (1) of Section 83 of the Sikkim Forest, Water Courses and Road Reserve (Prevention and Protection) Act, 1988, seeks to impose tax on the industry, which consumes natural water. On 09.09.2016, having examined the contentions made by the learned counsel appearing for the parties, this Court issued notice granting three weeks' time to the State

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		Government to file reply. Today, the State Government has come up with an application i.e. IA No. 2/2016, seeking for more time to file reply. Having considered all aspects of the matter, as the State Government is unable to point out any entry wherein the State Government is competent to impose tax on natural water. We are of the considered view that the State is allowed to continue collecting tax under the impugned notification, however a separate account shall be maintained. In the event, the petitioner succeeds the petitioner may be entitled to claim the said amount. IA No. 01/2016 stands disposed of. The application (IA No. 02/2016) for adjournment is ordered. Further three weeks' time is granted to the State Government to file reply and two weeks', thereafter, to the petitioner to file rejoinder. Call on 01.12.2016.  Judge 18.10.2016  Chief Justice 18.10.2016

jk/ds
Index : Yes / No
Internet : Yes / No