

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Appellate Jurisdiction)

DIVISION BENCH: THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W. A. No. 4 of 2026

TT Energy Private Limited,

Represented through Ms. Sonal Somani Gupta,
Director, TT Energy Private Limited,
A-2, Vasant Vihar,
New Delhi – 110057.

Also at:

B-201, IRIS Tech Park,
2nd Floor, Tower B,
Sector-48,
Gurugram – 122018.

..... Appellant

versus

1. The Principal Chief Engineer cum Secretary,

Energy & Power Department,
Government of Sikkim,
Kazi Road,
Gangtok,
East Sikkim – 737101.

2. State of Sikkim,

Through the Chief Secretary,
Tashiding Secretariat,
Gangtok,
Sikkim – 737101.

..... Respondents

**Writ Appeal as per Rule 148 of the Sikkim High Court
(Practice and Procedure) Rules, 2011**

[against the impugned judgment & order dated 09.04.2026
passed in WP(C) No. 68 of 2025]

Appearance:

Mr. M.G. Ramachandran, Senior Advocate with Ms Mani Gupta,
Mr. Pranav Malhotra, Ms Srishti Khindaria, Mr. Udwipt Verma
(through V.C.) and Ms Parvin Manger, Advocates for the Appellant.

Mr. Aarohi Bhalla, Additional Advocate General (*through V.C.*) with Mr. Thinlay Dorjee Bhutia, Government Advocate and Mr. Sujan Sunwar, Assistant Government Advocates for the Respondents.

J U D G M E N T

Date of Hearing : 24.04.2026
Date of Judgment : 29.04.2026
Date on which uploaded: 29.04.2026

Bhaskar Raj Pradhan, J.

The present writ appeal has been preferred by the appellant assailing the judgment dated 09.04.2026 passed by the learned Single Judge of this Court in WP(C) No. 68 of 2025.

2. By the impugned judgment, the learned Single Judge after examining several judgments of the Supreme Court, without examining the merits of the case, came to the following conclusion:

10. *It is therefore no more res integra that the arbitration clause cannot be ousted merely on the ground that the Court has powers to exercise its extraordinary jurisdiction under Article 226 of the Constitution.*

11. *In light of the foregoing discussions, it needs no reiteration that an arbitration clause was inserted in the IA and an Arbitrator selected by the contending parties. Be that as it may, regardless of the IA subsisting or not (as the dispute between the parties pivots on this point), the arbitration clause, which as already discussed, if it is embedded in the contract survives for the purpose of resolution of disputes between the parties, in view of the concept of separability which is therefore applicable to the instant case.*

12. *It may be noted that no discussions on the merits of the matter have ensued.*

13. *In conclusion, the Writ Petition is not maintainable and is disposed of accordingly.”*

3. The writ petition had sought directions to quash the Request for Proposal (RFP) No. 022/Power/IPP/2025-26/03 dated 19.09.2025 issued by the respondent no.1 for development of 99 MW Ting-Ting Hydroelectric Project and to direct the respondents to implement the project as per the existing Implementation Agreement dated 03.09.2008 with the petition.

4. The learned Senior Counsel for the appellant submits that the writ petition was maintainable as the Implementation Agreement dated 03.09.2008 between the parties was still in subsistence when the above RFP was issued.

5. The learned Additional Advocate General on the other hand contends that pursuant to the closure of the 99MW Ting-Ting Hydroelectric Project vide notification dated 08.02.2012, the appellant invoked the arbitration clause of the Implementation Agreement pursuant to which an Arbitrator was appointed on 22.08.2015. However, they did not pursue the matter any further which indicated that they had abandoned the project.

6. We have heard Mr. M.G. Ramachandran, learned Senior Counsel for the appellant as well as Mr. Aarohi Bhalla, learned Additional Advocate General for the State respondents.

7. We notice that the Implementation Agreement, which according to the appellant still subsists, had an Arbitration clause. Although, both the learned Senior Counsel for the appellant as well as the learned Additional Advocate General for the State respondents sought to place various facts in the present dispute, we are of the view that these factual disputes can be effectively examined in the arbitration proceedings and it may not be correct to examine it in the present writ appeal against the impugned judgment which has not examined the merits of the case. We are of the view that the Writ Court rightly did not delve into the merits of the divergent views of the parties in the writ proceedings. What compelled the State respondents to order closure of the hydroelectric project in the year 2012 and why the appellant did not pursue the arbitration proceeding initiated by them in the year 2014 are disputed questions of facts which we cannot effectively examine in the present writ appeal.

8. When we expressed our disinclination to interfere with the impugned judgment, the learned Senior Counsel for the appellant submitted that a sole Arbitrator may be appointed with the specific direction to complete the arbitration proceeding within a definite period of time. The learned Senior Counsel also pointed out that clause 9.2 of the Implementation Agreement providing that the Arbitral Tribunal would not have the powers of issuing/granting any injunction/restrain/prohibitory order or any other interim order which is in the nature of injunction/restrain/prohibition including the order of appointment of receiver and any other order of the like nature, is against the Arbitration and Conciliation Act, 1996.

9. The learned Additional Advocate General was agreeable to resolve the dispute between the parties through arbitration and submitted that the State respondents would not insist on clause 9.2 of the Implementation Agreement.

10. We are of the view that clause 9.2 of the Implementation Agreement seeks to curtail the power of the Arbitral Tribunal granted by Section 17 of the Arbitration and Conciliation Act, 1996 which could not have

been curtailed even by agreement of parties. Therefore, we hold that clause 9.2 of the Implementation Agreement is unenforceable. We are also not inclined to direct the Arbitral Tribunal to complete the proceedings in a definite timeframe and leave it to the Arbitral Tribunal to choose its course of action as per the Arbitration and Conciliation Act, 1996.

11. The learned Senior Counsel for the appellant and the learned Additional Advocate General for the State respondents have agreed to the appointment of Mr. Justice Vineet Saran, Former Judge of the Supreme Court of India, as the Sole Arbitrator.

12. We hereby appoint Mr. Justice Vineet Saran, Former Judge of the Supreme Court of India, as the Sole Arbitrator subject to his consent, and him, giving a declaration/disclosure in terms of Section 12 read with the Sixth and Seventh Schedule of the Arbitration and Conciliation Act, 1996 within a period of fifteen days from the date of receipt of a copy of this judgment.

13. The arbitration proceedings shall take place in Sikkim as mandated by clause 9.3 of the Implementation Agreement. The fees of the learned sole Arbitrator shall be in

accordance with the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

14. The writ appeal stands disposed of accordingly.

(Bhaskar Raj Pradhan)
Judge

(A. Muhamed Mustaque)
Chief Justice

Approved for reporting : **No/Yes**
Internet: **No/Yes**

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