
(2011) 12 SC CK 0045

In the Supreme Court Of India

Case No : IA No's. 10, 16, 17 and 18 in Writ Petition (Civil) No. 510 of 2005

Maninderjit Singh Bitta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 50
Motor Vehicles Act, 1988 — Section 109(3)

Citation : AIR 2012 SC 348 : (2011) 3 ALLMR 911 : (2012) 2 BomCR 597 :
(2011) 13 SCALE 359 : (2012) 2 TAC 19

Hon'ble Judges : S.H. Kapadia, C.J.; Swatanter Kumar, J; A.K. Patnaik, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. This order is in continuation of the orders dated 30th August, 2011 and 13th October, 2011. The directions contained in these orders shall be mutatis mutandis applicable with the directions contained in the present order.

2. Despite the above orders of this Court, majority of the States have not fully implemented the scheme regulating issuance and fixation of High Security Registration Plates (HSRP). From the affidavits filed on behalf of the respective States, it is clear that they have not been vigilant enough to take appropriate steps for initiation and completion of the HSRP scheme and, in any case, not with required expeditiousness. On 25th November, 2011, we heard the learned Counsel appearing for different States and perused the affidavits placed on record. However, some of the States have not even been courteous enough to file affidavits of compliance and have orally prayed for extension of time. In these circumstances, it has become necessary for us to deal individually with the case of each State.

Andaman & Nicobar Islands (Union Territory)

3. As per the affidavit, Andaman & Nicobar administration has already finalized

and signed the agreement for awarding the contract to the successful bidder on 21st October, 2011 and the work was to be commenced within 30 days of signing of this contract which has not commenced as yet. They prayed for further extension of time to complete the implementation of the scheme. As prayed, we grant period upto 31st March, 2012 for the Union Territory to complete the implementation of the scheme without fail.

Andhra Pradesh

4. It is the case of the State of Andhra Pradesh that it published the notice inviting the tenders on 8th October, 2011 and the due date of the tender bids was 26th November, 2011. The State claims that it has prepared a comprehensive framework to implement the HSRP scheme and authorized Andhra Pradesh State Road Transport Corporation to roll out the end to end solution for the project. It has decided to have a competitive bidding process by segregating the tender into different sections i.e. one for manufacturing, another for embossing, hot stamping and printing of HSRP and yet another to supply the same to the Corporation for installation. Again, the process adopted by the State of Andhra Pradesh is not only in violation of the directions contained in paragraphs 39 and 40 of the judgment of this Court in the case of Association of Registration Plates Vs. Union of India (UOI) and Others, but is also contrary to the Notification dated 16th September, 2011 which was issued under Sub-section (3) of Section 109 of the Motor Vehicles Act, 1988 and called the Motor Vehicles (New High Security Registration Plates) Order, 2001. This Order does not permit the completion of the HSRP scheme in the manner sought to be adopted by the State of Andhra Pradesh. The State was to award the contract but the same has not so far been awarded. In the circumstances afore-noticed, we direct the State of Andhra Pradesh to issue fresh tender, award the contract and commence the implementation of the scheme positively by 29th February, 2012. It has assured this Court that now it would positively abide by the time schedule and do the needful.

Arunachal Pradesh

5. Arunachal Pradesh had invited tenders but all the tenderers were disqualified resulting in the State being compelled to invite fresh tenders. Re-tender process had already been started and the process was to be completed by 18th November, 2011. However, it prayed for three weeks extension to award the contract and sign the agreement with the successful bidder. It is further stated on behalf of the State that the scheme shall be fully implemented in the entire State by 31st March, 2012. By way of a final opportunity, the time, as prayed for, is granted.

Assam

6. State of Assam has also started the process but is yet to complete the formalities and sign the deed of agreement. An inspection of the factories is to be conducted by 15th November, 2011 and the tender valuation has to be

completed by 1st January, 2012. On behalf of the State, it is prayed that it be allowed time till January, 2012 to award the contract and sign the agreement with the successful tenderer. Further, it is submitted that for complete implementation of the scheme, time be extended till April, 2012. Keeping in view the fact that the State has to put in some efforts and has certain limitations, in the interest of justice, we grant, by way of final opportunity, the extension of time, as prayed for. The contract shall be awarded and agreement be signed by 31st January, 2012 and the implementation of the scheme be completed by 30th April, 2012.

Bihar

7. In the affidavit filed on behalf of the State of Bihar, it has been stated that the tenders were published on 21st September, 2011. Due date for submission of tenders was 7th October, 2011. The financial bids were opened on 4th October, 2011, but because of completion of formalities, delay has been caused. Resultantly, six weeks extension has been prayed for on behalf of the State of Bihar.

8. We may notice that the implementation by the State of Bihar is defective in law. In fact, it violates the directions of this Court contained in the case of Association of Registration Plates (*supra*) as well as the other directions contained in the orders of this Court as afore-referred.

9. Learned senior counsel, Mr. Ranjit Kumar, appearing on behalf of the State has impressed upon the Court that in order to achieve greater competitive price and not to depend on a single supplier, the State of Bihar, after following the procedure, has short-listed four bidders. The State proposes to award supply and fixation of HSRP to all these four bidders for the same part of the State. It is also his contention that paragraphs 39 and 40 of this Court in the judgment in the case Association of Registration Plates (*supra*) do not contemplate selecting one manufacturer for supply of the HSRP. We are not convinced by this submission. Paragraphs 39 and 40 of the judgment of this Court clearly lay down that selecting one manufacturer through the process of open competition does not result in creation of any monopoly. This Court had rejected such a contention and directed the maintenance of record and supervision by one manufacturer, which would be impossible if there were 'multi-manufacturers' instead of one as suppliers. The actual operation of the scheme through the premises of Regional Transport Officers (RTOs) would get complicated and confused, if multi-manufacturers are involved. Even in our order dated 13th October, 2011, we had put any such controversy at rest and directed all the States to follow the directions contained in the above-mentioned paragraphs of the said earlier judgment of this Court. We have no reason to take any different view and it will be in the interest of all concerned that the directions of this Court, as aforestated, are implemented by the State without any further delay. It shall not only be advisable but appropriate to maintain a uniform practice all over the country. For these reasons, we reject the contention raised on behalf of the State

of Bihar. The State need not issue any fresh tender but may award the contract to any of the four short-listed bidders, whosoever is more beneficial to the State and is in a position to discharge the contractual obligations as per the terms and conditions of the tender and the judgments of this Court in this regard. Let the needful be done by the State of Bihar by 31st December, 2011 and all the initial steps should be taken for implementing the scheme of HSRP by 31st March, 2012. Every possible effort should be made by the State to complete the implementation of the scheme at the earliest.

Chandigarh

10. Chandigarh administration was awaiting the approval of the Central Government, Ministry of Road Transport and Highways, which has been received on 18th November, 2011 and they have also received the permission from the Election Commissioner for going ahead with the awarding of the contract. It is submitted that by 31st March, 2012, they would award the contract, commence the implementation of the scheme for manufacture and fixation of HSRP and efforts would even be made to complete the implementation by that date. In view of the unequivocal assurance given in this behalf, Chandigarh Administration, by way of last opportunity, is granted time upto 31st March, 2012.

Chhattisgarh

11. State of Chhattisgarh has invited tenders, opened the final bids on 27th September, 2011 and it is stated by the State that it will award the contract by 31st January, 2012 and implement the scheme by 30th April, 2012. In view of the steps taken and prayer for extension of time, we grant time as prayed for.

Delhi

12. The tenders which were invited for awarding the work of manufacture and fixation of HSRP were opened on 23rd June, 2011. Financial bids were opened on 28th June, 2011 and the successful bidder has been finalized. According to the stand taken by the Delhi Government, the rate schedule has also been finalized by the Chief Secretary. However, it remains to be finally accepted by the Delhi Integrated Multimodal Transit System (DIMTS) which has been constituted by the Government as a special Purpose Vehicle for overseeing transport in Delhi. The Delhi Government still has not implemented the scheme and, in fact, has not even awarded the contract so far. It has been stated that firstly the terms and conditions of the tender were challenged by one M/s. Tonnejes Eastern by filing a writ petition before the Delhi High Court wherein the High Court had refused the prayer for interim stay. This order of the High Court dated 10th June, 2011 was challenged before the Supreme Court. The SLP against the non-grant of the interim order was dismissed by this Court on 23rd June, 2011. However, SLP filed against the order of dismissal of the writ petition before the High Court vide order dated 26th August, 2011 is pending before this Court, in which no interim order has been passed.

13. Be that as it may, to some extent, the procedure adopted by the Delhi Government is not in conformity with the judgments of this Court. From the documents now filed on record, it appears that DIMTS has reserved onto itself the power to select more than one vendor for the project. It is also stipulated in the draft agreement that the supplier of the plate shall notify the purchaser in writing of all sub-contracts awarded under the contract. We make it clear that neither Rule 50 of the Motor Vehicles Rules, 1989 (for short, the 'Rules'), Motor Vehicles (New High Security Registration Plates) Order, 2011 nor the judgments of this Court permit sub-contracts to be awarded by the contractor to whom the award for manufacture and fixation of HSRP is awarded. Furthermore, in their affidavit dated 26th November, 2011 it has been stated that the DIMTS is also taking other steps and it has divided the implementation process into two parts: - Firstly, procurement of blank HSRP conforming to Rule 50 of the Rules and personalization of plates by embossing, hot stamping of number plates, quality checking, printing of third number plate, set matching, dispatch, transportation and installation of HSRP. Secondly, it is not permissible to bifurcate the process under different heads or in parts. It is a mandatory requirement that one person should exclusively be responsible for the entire process in the interest of security. Thus, we make it clear that DIMTS, when it is getting the HSRP manufactured from the contractor, such manufacture should be firstly from a single contractor and secondly it should, without fail, be under the direct supervision and control of DIMTS. They should not let the sub-contractors or other parties to have control over the manufacturing processing and fixation of HSRP in any manner, whatsoever. They should ensure that one single person is responsible for manufacturing, affixation of seals, imprinting of numbers and affixation of HSRP on the vehicles in the NCT of Delhi. The Government has prayed for extension of time. We extend the period for implementation of the scheme till 31st December, 2011, by which date, all steps, complete in all respects, should be taken by the Delhi Government.

Gujarat

14. The State of Gujarat had issued the tender notice and considered even the persons not possessed of 'TYPE APPROVAL CERTIFICATE'. However, they have added a condition that upon awarding of the contract and before manufacturing HSRP, the TYPE APPROVAL CERTIFICATE duly signed by the competent authority should be submitted, at most within three months. Due date for submission of tender was 20th October, 2011. Five bids had been received. Technical bids had been opened. Financial bids are to be opened on 28th November, 2011 and the agreement would be signed by 15th April, 2012. We do not contribute to the method that has been adopted by the State of Gujarat for implementation of the scheme. They ought to have acted in consonance with the directions of this Court. Be that as it may, since the conditions contained in the directions of this Court have not been waived and only a period has been prescribed to submit the 'TYPE APPROVAL CERTIFICATE', we do not consider it appropriate to direct the State to hold the entire tender process afresh. But we make it clear that the

agreement should be signed and the implementation of scheme should positively commence by 30th April, 2012. We also make it clear that no further time would be granted to the State of Gujarat in this behalf.

Haryana

15. State of Haryana, in furtherance to the order dated 13th October, 2011 passed by this Court in a contempt petition has deposited Rs. 50,000/- as costs and Rs. 2,000/- as fine imposed on each of the officers. The State has not filed any affidavit and for the same, no appropriate reason is stated on its behalf. However, it is stated by the counsel for the State that it has invited the tenders and even opened the financial bids on 14th September, 2011. Only contract has to be awarded and scheme is to be implemented. For this, it is prayed that they would complete all the formalities and sign the contract by 31st December, 2011 and implement the scheme in its entirety by the end of April, 2012. We accept the prayer of the State of Haryana and, by way of last opportunity, permit them time for finalization of contract till 31st December, 2011 and for implementation of the scheme in its entirety upto 30th April, 2012.

Himachal Pradesh

16. The State of Himachal Pradesh has completed the process of awarding the contract for manufacture and fixation of the HSRP. They claimed that all new vehicles have been affixed with the HSRP as on 15th November, 2011 and, for old vehicles, they prayed for grant of further time. The prayer made on their behalf to extend the time till December, 2013 is unjust and without any rational basis. However, in the interest of justice, we grant time for the complete implementation of the scheme till 15th June, 2012.

Jammu & Kashmir

17. State of Jammu & Kashmir has already selected the successful bidder and the letter of intent is to be issued to the party. The same shall be issued within three weeks from the date of passing of this order and the entire scheme shall be implemented by 31st March, 2012 in the State of Jammu & Kashmir. Since the State has taken some steps, we find that the request for extension of time is reasonable and, by way of last opportunity, the time prayed for is granted.

Jharkhand

18. The State of Jharkhand has finalized the tenders on 21st October, 2011 but the agreement has not yet been signed and formalities in that regard remain to be completed. According to the counsel appearing for the State, it shall complete the remaining formalities at the earliest and, in fact, complete the implementation of the scheme by 30th April, 2012. By way of last opportunity, the prayer is allowed.

Kerala

19. In the affidavit filed and from the stand taken before this Court on behalf of

the State of Kerala, it is pointed out that tender notice was published but validity of the earlier tender has expired on 29th June, 2011. There is an order of status quo passed by the Supreme Court which is in force and, therefore, the State is not in a position to take appropriate steps for implementing the scheme. At the request of the State of Kerala, we grant extension of time and adjourn the matter in regard to State of Kerala to be taken up immediately after 31st December, 2011. In the meanwhile, we also grant liberty to the parties in SLP (C) No. 13630-31 of 2011 to make a mention before the concerned Bench at the earliest.

Lakshdweep (U.T.)

20. Lakshdweep had published e-tender on 27th August, 2011. But the tender had to be cancelled as only one bidder had responded to the bid. Re-tender is stated to have been published on 10th October, 2011 and due date for receipt of the bids was 9th November, 2011. They prayed for extension of time to award the tender. We make it clear that the Union Territory of Lakshdweep shall proceed with finalization of the re-tender in accordance with the judgments of this Court without any further delay and finalize the entire process by 30th January, 2012. They shall also ensure that implementation of the scheme is commenced by 30th April, 2012 without fail.

Madhya Pradesh

21. The State of Madhya Pradesh has prayed for extension of four months to award the contract and commence implementation of the scheme. The reason given for the delay is that the reply to queries raised by potential bidders was replied with delay and the last dates for the same had to be rescheduled. This reason is least convincing. However, the schedule of dates has already been declared and published and the parties have acted thereupon. Thus, it is clear that by 31st January, 2012, the contract should be awarded and immediately thereafter, the commencement of implementation of the scheme should begin. Endeavour should be made to complete the implementation at the earliest and, in any case, not later than 30th April, 2012.

Manipur

22. The State of Manipur, as per its affidavit, has completed the process. However, the agreement has not been signed and the State has not commenced implementation of the scheme as yet. At the request of the State, we grant time for commencement of the implementation of the scheme for manufacture and fixation of HSRP by 31st December, 2011. Let the affidavit of full compliance be filed thereafter.

Mizoram

23. The bid of M/s. Shimit Utsch India Ltd. is stated to have been authorized by the Council of Ministers. However, the firm has quoted higher rates than it had quoted to the State of West Bengal. The Government of Mizoram is negotiating

with the successful tenderer and the negotiations are likely to be completed within a short period. Let a final decision be taken by the concerned authorities positively by 31st December, 2011. Implementation of the scheme should commence immediately thereafter and implementation be completed, as prayed for, by 31st March, 2012, with no further extension of time.

Nagaland

24. The State of Nagaland has implemented the scheme vide its Notification dated 6th July, 2011 for all new vehicles, but for old vehicles, they have prayed for two years' further time to implement the scheme. We see no reason, once the contract has been awarded and the State has implemented the scheme for new vehicles, why the State should require such a long time for catering to the old vehicles in the State. Again, by way of last opportunity, we grant time to the State of Nagaland upto 15th June, 2012 to implement the scheme in the entire State for all vehicles and to submit affidavit of compliance.

Orissa

25. Process of inviting tenders had been completed and decision to get the documents of the bidders audited was taken on 24th October, 2011. They submit that final decision to award the contract shall positively be taken by 31st January, 2012 and scheme shall be implemented in its entirety by 30th April, 2012. The time, as prayed for, is granted with a clear direction that no extension would be granted.

Punjab

26. The State of Punjab has invited the bids, financial evaluation has been done and bids were opened on 18th October, 2011. No affidavit has been filed but it has been stated that the process of awarding of the contract shall be concluded by 15th January, 2012 and the scheme shall be implemented in the entire State by 30th April, 2012. Time, as prayed for, is granted by way of last and final opportunity.

Puducherry/Pondicherry

27. Union Territory of Pondicherry has filed an affidavit stating that letter of acceptance of tender has been issued on 16th May, 2011 but the tender had to be cancelled on 19th October, 2011 because of failure on the part of the successful tenderer to submit the security deposit as per the terms and conditions of the tender. It is also stated that the tenderer had claimed higher rates than the rates offered by him in the State of West Bengal and the Union Territory of Andaman & Nicobar Islands but certain negotiations are going on and the State may even invite fresh tenders. In either event, the State would complete the entire process of commencing the implementation of the scheme within four months. In other words, they would invite fresh tenders, finalize the same, enter into contract and commence the manufacture and fixation of HSRP on the vehicles in the Union Territory of Pondicherry. The time of four months, as

prayed for, is granted. Let the needful be done positively by 31st March, 2012.

Sikkim

28. As per the affidavit filed, the State of Sikkim has taken steps and the entire implementation of the scheme shall be completed by 31st March, 2012. The time, as prayed for, is granted with a clear direction that no further extension would be granted.

Tamil Nadu

29. Affidavit on behalf of the State of Tamil Nadu has been filed stating that last date for respective tenders was 15th November, 2011. In the meanwhile, the Model Code of Conduct for elections came into force w.e.f. 21st September, 2011 to 22nd October, 2011. Thereafter, the matter would be processed and the State would finalize awarding of the contract and commence implementation of the scheme for fixation of HSRP by the end of February 2012. In view of the definite statement on behalf of the State and by way of last opportunity, the time is granted upto 29th February, 2012.

Tripura

30. The State of Tripura has filed no affidavit. However, a stand was taken before the Court on its behalf that there was a stay for awarding the contract which has since been vacated and the tender process would be completed expeditiously. As prayed, we grant three months time to the State to award the contract as well as to commence the implementation of the scheme. Needful be done by 29th February, 2012, by way of last opportunity and no further time would be granted.

Uttar Pradesh

31. As per the affidavit filed on behalf of the State of Uttar Pradesh, the notice for inviting tenders had been published. Last date for submission of tenders was 5th July, 2011. Seven bids were received, though no contract has so far been awarded and no agreement has been signed as yet. Request had been made on behalf of the State for extension of time. We may also notice that according to the State, a writ petition had been filed in the High Court of Allahabad to quash the tender for manufacture of these registration plates. There is no interim stay granted by the High Court. We make it clear that the State of Uttar Pradesh should ensure manufacture and affixation of HSRP through a single process and person in terms of the judgment of this Court. The Evaluation Committee should meet and take a final decision. The contract should be awarded and the implementation of the scheme should commence within three months from the date of passing of this order as prayed for. By way of last opportunity, the period is extended upto 29th February, 2012.

Uttarakhand

32. As per the affidavit filed on behalf of the State of Uttarakhand, it had invited the tenders and evaluated the technical bids on 8th November, 2011. The

financial bids were to be considered on 11th November, 2011. The Government has approved the issuance of the letter of acceptance but it is not clear from the affidavit whether the awarding of the contract is actually complete or not and whether agreement has been signed or not. Let all formalities in regard to awarding of contract be completed by 31st December, 2011 and the scheme should be fully implemented by 30th April, 2012. It is made clear that no further extension would be granted for this purpose.

West Bengal

33. This State has filed an affidavit wherein it is submitted that in two RTOs of the State, there has been partial implementation of the scheme. We are unable to see any justification in the stand of the State Government for partial implementation of the scheme but, in the interest of justice and by way of last opportunity, we grant the State time upto 31st January, 2011 to implement the scheme in the rest of the State. This time is being given as prayed for by the Learned Counsel appearing for the State. We make it clear that no further extension will be granted in this regard.

34. The states of Karnataka, Maharashtra, Rajasthan and Goa and Union Territories of Daman & Diu and Dadara & Nagar Haveli have not filed affidavits in furtherance to the orders of this Court dated 13th October, 2011. We may also notice that both the Union Territories above-referred have not even issued tenders, much less taken any further steps to comply with the directions of this Court. Non-filing of affidavits itself is a matter of concern for this Court. It has caused serious difficulties for this Court in dealing with this case meaningfully and effectively. From the affidavits on record which were filed by these States and Union Territories, it appears that the litigation is pending in regard to the tender process itself in the Courts for the States of Maharashtra, Rajasthan, Goa and Karnataka and for non-filing of affidavits, these States/Union Territories have already violated the orders of the Court. It is not clear from the record as to what is the stage of these proceedings and whether any order of stay/injunction has been passed by the Courts, as a consequence of which, it is not possible for the respective State/Union Territory to pursue the matter any further and finalize the awarding of contracts in accordance with the directions of this Court. It was expected of all these States and Union Territories to file proper affidavits. We grant time upto 31st December, 2011 to take appropriate steps to get the interim orders vacated, if there are any, and then to file affidavit positively by the date aforestated.

35. The Union Territories of Daman & Diu and Dadara & Nagar Haveli should explain as to why no steps at all have been taken by them in furtherance to various orders of this Court.

36. Having heard the Learned Counsel appearing for the parties and perused the documents on record, we consider it imperative to pass certain general directions in addition to the above specific directions passed by us in regard to every State

or Union Territory, as the case may be. Thus, we also pass the following general directions:

1. Affidavits of compliance and undertakings to comply with the directions of the Court, as contained in different orders of this Court, should be filed within four weeks from 25th November, 2011. The affidavits-cum-undertakings shall be filed by the Secretary (Transport) and the Commissioner (Transport) of respective States and Union Territories. The time schedule specified in this order shall be strictly adhered to. We make it clear that no further time shall be granted by the Court for this purpose.

2. In the event of default and non-compliance of any of the directions contained in this order by any authority, this Court would be compelled to initiate proceedings against such officer/officers in accordance with the provisions of the Contempt of Courts Act, 1971, without any further notice to them.

3. This matter shall be listed before the Registrar (Judl.) of this Court on 5th January, 2012. The Registrar shall verify and submit a report to this Court as to which of the State/Union Territory and their respective officers have not complied with the directions of this Court as contained in this order. The report of the Registrar shall be submitted and the matter be placed before the Court on 20th January, 2012.

4. We are of the considered view that various matters pending before this Court, wherein challenge has been raised to the tender process commenced and/or finalized by the respective States/Union Territories for implementation of the HSRP scheme, should be listed before one and the same Court. Then alone, the effective implementation of the directions of the Court are possible. Thus, the matter should be placed before Hon'ble the Chief Justice on the administrative side for appropriate orders at the earliest.

5. On behalf of the Petitioner and some of the States, a question has been raised before us that contractors have responded to the notices for tender in consortium. This is being done primarily for the purpose of satisfying the condition of specialized experience for manufacture and affixation of HSRP. However, after award of the contract, the partner possessing expertise (Type Approval Certificate, approval etc.) in the consortium may walk out from the performance of the contract. In this circumstance, the very purpose would stand frustrated. We find merit in this submission but would refrain from issuing any direction in that behalf, at this stage. It will be for the concerned State/Union Territory to take appropriate decision with reference to the facts of a given case and in accordance with law. Prima facie, it appears to us that it would be in the interest of all concerned that all the members of the consortium including the member possessing the expertise should continue as such till performance of the contract.

6. In the interest of justice and to ensure proper implementation of the judgments and directions of this Court, as contained in its various orders, in

regard to manufacturing and affixation of the HSRP, it is imperative for this Court to direct that it will be in the fitness of things and even the judicial propriety would demand that no High Court should pass any interim orders cancelling or staying the tender process in relation to implementation of the scheme. While so directing, we grant liberty to the parties to make a mention before this Court after they have instituted their petitions, if any, before the High Court and interim orders have been declined in furtherance to the observations aforemade.

37. With the above directions and at the cost of repetition, we direct all the authorities in the State/Union Territory hierarchy to ensure that these directions should be complied without default and delay.

38. Accordingly, all IAs stand disposed of. This order shall also be treated as an order in the main petition and the main petition alone shall be listed for hearing on the next date.