

(2002) 02 DEL CK 0001

In the Delhi High Court

Case No : LPA No. 94 of 2002 and CMs. 215, 216 and 218 of 2002

National Highways Authority of India

APPELLANT

Vs

Backbone-Tarmat-NG-JV and Another

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Citation : (2002) 100 DLT 230

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Rajiv Nayyar and Vikas Goel, for the Appellant; Anip Sachthey, Sanjay Rajpal, for the Respondent

Judgement

A.K. Sikri, J.—The National Highways Authority of India is the appellant in this appeal. It has undertaken the project of constructing a nation wide network of major National Highways connecting various parts of the country, including four metropolitan cities, viz., Delhi, Mumbai, Kolkata and Chennai. The consolidated length of the Highways to be constructed is more than 6,000 Kms. This project is to be completed by December, 2004. The appellant states that this project is a milestone for overall development of the country, as it would lead to better inter-connectivity of different States and would lay a path of economic development. It is for this reason, it has been termed as "Golden quadrilateral".

2. For executing this project the appellant had invited Pre-Qualification applications from the prospective bidders. Many parties submitted their bids including the respondents. These bids were evaluated by the Evaluation Committee of the appellant which recommended the Pre-Qualification of 51 firms for the Packages III and IV. Sealed bids from those who qualified were received on 26.2.2001. Tender bids were opened on 1.3.2001. As per the appellant the respondent no. 2, namely, Mudajaya-IRB (JV) L1 was the lowest bidder in respect of both the Packages III and IV. At this stage the respondent No. 2 made a representation dated 21.3.2001 along with documents to the effect that their project of "North South Interurban Expressway Jawai to Alor Pangsui" should be

included in calculating the particular work experience and upon inclusion of the same its Pre-qualification limit would exceed the aggregate limits for both the packages. The Evaluation Committee in its meeting held on 19.3.2001 recommended the award of work for Package-III to Mudajaya-IRB (JV), respondent No. 2 and Package-IV to Backbone-Tarmat-NG-JV, respondent No. 1. Thereafter on representations made by both the respondents 1 and 2 the appellant herein took legal opinions and deliberated the matter further at different levels. It is not necessary, for the purpose of this appeal, to go into all these aspects. It is suffice to mention that the Board of Directors of the appellant herein decided to award the contract to respondent No. 2 of both the packages. Respondent No. 1 challenged this decision by filing Writ Petition No. 4955/2001 in this Court on 16.8.2001.

3. This writ petition came up for hearing on 21.8.2001, when the notice to show cause was issued for 18.12.2001. In application for stay, notice was issued for 24.9.2001 and parties were directed to file the reply. Interim order was passed to the following effect in the said CM:

"In the meantime, whatever action is taken by the respondent in respect of Package IV it would be subject to the outcome of this writ petition."

4. Respondent No. 1 filed LPA No. 428/2001 against the aforesaid order dated 21.8.2001 and prayed for stay of award of the contract. This LPA was disposed of by order dated 5.9.2001 which is in the following terms:

"Heard. Without going into the question whether this appeal is maintainable, we dispose of the appeal with the following observations in view of the factual position which has been brought to our notice:

Mr. Rajeev Nayyar, learned senior counsel appearing for respondent No. 1, submits that National Highway Authority of India, vide letter dated 30th August, 2001, has required Mudajaya-IRB(JV), respondent No. 2 herein, to furnish certain documents within a period of four weeks from the date of receipt of the said letter. Learned counsel for respondent No. 2 states that the requisite documents are being filed. We notice that the learned Single Judge has fixed the interim application on 24th September, 2001. In view of what has been indicated above, it will be appropriate if no final decision is taken in the matter by respondent No. 1 though the process initiated vide letter dated 30th August, 2001 may continue. We make it clear that by making the aforesaid observation regarding the desirability of not taking a final decision, it shall not be construed as if we have expressed any opinion on merits of the case. It goes without saying that further directions, if any, in the matter shall be given by the learned Single Judge on the date fixed. The appeal stands disposed of."

5. When the matter went back to the learned Single Judge, learned Single Judge passed following order dated 24.9.2001:

"Counsel for the petitioner has stated that an LPA was filed against the order of

this court dated 21.8.2001 passed in the CM No. 8534/01 and the Division Bench by order dated 5.9.2001 had directed that no final decision in the matter would be taken by respondent No. 1, Union of India though the process initiated vide letter dated 30.8.2001 may continue. He has submitted that this order was in operation till today and that an order similar to that order may be passed by this court. In view of the order passed in the LPA, it will be appropriate if no final decision is taken in the matter till 25.9.2001 by respondent No. 1, Union of India although the process initiated vide letter dated 30.8.2001 may continue".

6. It appears that no further extension of the stay order was granted on 25.9.2001. However, the application of stay was argued thereafter from time to time. The matter came up for hearing on 19.10.2001 on being mentioned by counsel for the respondent No. 1 regarding extension of the stay and the learned Single Judge extended the stay. Last para of the order reads as under:

"Nobody is present on behalf of respondent. It is clarified that the order passed by this court on 24.9.2001 will remain in operation till the arguments are heard and matter is decided by this court".

7. Aggrieved by this order the appellant filled LPA. No. 593/2001 which was disposed of by order dated 31.10.2001 by the Division Bench observing that it would be appropriate that the learned Single Judge decides the question of continuation of interim order dated 24.9.2001 after hearing counsel for the parties on the next date of hearing i.e. November 1, 2001. The Division Bench also observed that in view of the nature of controversy involved in the petition, the learned Single Judge would decide the interim application expeditiously.

8. When the matter came up before learned Single Judge on 1.11.2001, the learned Single Judge after hearing both the parties re-affirmed the order dated 19.11.2001. The operative portion of this order reads as under:

"Anyhow, a request has been made that specific order should be passed in respect of only interim application bearing CM No. 8534/01. It may be stated that arguments of counsel for the petitioner had concluded on one date and the arguments of the counsel for the two respondents had concluded only on 16.10.2001. Thereafter for arguments in reply to the arguments of the counsel for respondents the case was fixed for 1.11.2001 with consent of parties in view of long Dussehra holidays. Having regard to the order of the Division Bench dated 5.9.2001 in pursuance of which this court passed order on 24.9.2001 the stay was extended till 25.9.2001 and then up to 26.9.2001 by specific orders. The stay was to remain in operation till the arguments were concluded unless the subsequent order was passed to discontinue it. Simply because the order has not been extended by a specific order, it will not mean that the court has not extended the interim order particularly when the arguments of respondents were being heard. The order was to remain in operation till the arguments were concluded on the question of admission and on application for grant of the ad interim stay order. The clarification was given on the submission made on behalf

of the counsel for the petitioner that due notice of the matter being mentioned before the court has been served on the opposite counsel.

Anyhow, I re-affirm the order dated 19.10.2001. Since it is already 4.45 P.M., the remaining arguments on the question of admission and on CM No. 9184/01 will continue on 2.11.2001.

9. As is clear from the aforesaid order, arguments in this application for stay were also heard simultaneously which continued on 2.11.2001 and 5.11.2001 and ultimately concluded on that date when the learned Single Judge reserved the order for pronouncement of judgment.

10. It is a matter of record that the judgment has not been pronounced so far. In these circumstances the appellant has come in this appeal and has challenged order dated 24.9.2001, 19.10.2001 and 1.11.2001 as per which the direction to the appellant is that no final decision be taken in the matter.

11. It is emphasized by the learned counsel for the appellant with great vehemence that in a project of such a public importance where timely completion of the project is of utmost necessity, the grant of stay by the learned Single Judge was not proper. The learned counsel relied upon the judgment of the Apex Court in the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, with particular reference to paras 24 and 25 thereof reading as under:

"Para 24: Dealing with interim order, this Court observed in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, that an interim order should not be granted without considering the balance of convenience, the public interest involved and the financial impact of an interim order. Similarly, in Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, the Court said that while granting a stay, the court should arrive at a proper balancing of competing interests and grant a stay only when there is an overwhelming public interest in granting it, as against the public detriment which may be caused by granting a stay. Therefore, in granting an injunction or stay order against the award of a contract by the Government or a government agency, the court has to satisfy itself that the public interest in holding up the project far outweighs the public interest in carrying it out within a reasonable time. The court must also take into account the cost involved in staying the project and whether the public would stand to benefit by incurring such cost.

Para 25: Therefore, when such a stay order is obtained at the instance of a private party or even at the instance of a body litigating in public interest, any interim order which stops the project from proceeding further must provide for the reimbursement of costs to the public in case ultimately the litigation started by such an individual or body fails. The public must be compensated both for the delay in implementation of the project and the cost escalation resulting from such delay. Unless an adequate provision is made for this in the interim order, the interim order may prove counterproductive."

12. Learned counsel also submitted that the order was reserved three months ago and the learned Single Judge has not pronounced the judgment till date as a result of which stay is continuing which is affecting the entire project adversely. He referred to another judgment of the Apex Court in the case of Anil Rai v. State of Bihar reported in (2001) 5 SLT 594 wherein certain directions are given to ensure early pronouncement of judgment after the arguments are heard and judgment is reserved.

13. On the other hand learned counsel for the respondents submitted that the matter was mentioned before learned Single Judge and the learned Single Judge has informed that the judgment in the case is going to be pronounced on 18.2.2002.

14. The appellant had earlier filed the LPA challenging the order dated 19.10.2001 as per which the learned Single Judge had clarified that the order dated 24.9.2001 would remain in operation till the arguments are heard and the matter is decided. This LPA No. 593/2001 was disposed of by order dated 31.10.2001 observing that it would be appropriate that the learned Single Judge decides the question of continuation of interim order dated 24.9.2001 after hearing counsel for the parties on the next date of hearing i.e. 1.11.2001. By order dated 1.11.2001 the learned Single Judge simply reiterated earlier order dated 19.10.2001. In fact arguments were also heard which were concluded on 5.11.2001. In view of this position when the appellant had earlier challenged order dated 19.10.2001, we are of the opinion that the present appeal challenging the same order and, for that matter order dated 1.11.2001 by which earlier order dated 19.10.2001 was continued would not be maintainable. Even otherwise it would not be proper at this stage to examine the correctness of these orders when the application for stay has already been heard and the judgment reserved by the learned Single Judge thereon. Learned Single Judge has heard the matter in detail and would be pronouncing his judgment on merits. While the case is pending consideration before learned Single Judge and even the judgment is reserved, the Division Bench cannot rehear the arguments on the same stay application simultaneously. We are bound by the judicial discipline. This appeal is, Therefore, dismissed as not maintainable.

15. However, before parting we may observe that the anxiety of the appellant to have the case decided at the earliest is not without substance. There is force in the submission of learned counsel for the appellant that the project in question being of national importance, the litigation in respect thereof should be decided at the earliest possible. In fact while disposing of earlier LPA No. 593/2001 vide order dated 30.10.2001 the Division Bench had expressed this view and observed that the learned Single Judge would decide the interim application expeditiously. Within a week of that order even the arguments were concluded before the learned Single Judge who reserved the orders on 5.11.2001. May be the appellant did not approach earlier as it expected early decision after the conclusion of arguments on 5.11.2001 and is forced to take the present step as

delay in the start of this prestigious project is causing harm to it. We hope and trust that keeping in view the observations made by the Apex Court in the case of Anil Rai (Supra) and also the importance of the project, the learned Single Judge would endeavor to pronounce his judgment most expeditiously.