

(2024) 11 RAJ CK 1293

In the Rajasthan High Court, Jodhpur Bench

Case No : Special Appeal Writ No. 493 Of 2024

Rajasthan Vidyut Vitran Nigam Limited

APPELLANT

Vs

Somi Conveyors Beltings Limited

RESPONDENT

Date of Decision : 19-11-2024

Acts Referred:

Citation : (2024) 11 RAJ CK 1293

Hon'ble Judges : Arun Monga, J

Bench : Division Bench

Advocate : R.S. Choudhary, Sandeep Soni

Final Decision : Disposed of

Judgement

Manindra Mohan Shrivastava, Cj

1. This appeal is directed against the interim order dated 25.06.2024 passed by the learned Vacation Judge, by which an ex-parte interim order has been passed in favour of respondent No.1 (writ petitioner) restraining appellants (official respondents in the writ petition) to issue work order to respondent No.2 herein (respondent No.5 in the writ petition) in pursuant to letter of intent dated 10.06.2024 and NIT dated 07.12.2023.

2. Learned counsel for the appellants would submit that the learned Vacation Judge passed an ex-parte interim order even without hearing the appellants and without material facts brought to its notice. The appellants applied for vacating stay by filing an application for vacation of stay on 10.07.2024 on various substantial grounds but the application remained pending despite several prayers made for expeditious disposal. Therefore, the said interim order was challenged by filing an appeal, which was disposed off on 06.08.2024 with a request to the learned Single Judge to hear the application for vacating stay at the earliest preferably within a period of one week. However, the application was not considered despite repeated prayers made. Therefore, the appellant had approached this Court by filing an application seeking restoration of the appeal

and consideration of the same on merits and vide order dated 21.09.2024, this prayer was allowed and the appeal stood restored to its original number.

3. On merits, it is submitted that the present is a case pertaining to award of work for supply of conveyor belts, which is extremely essential for transportation of coal to boiler in the thermal plants and failure in the procurement of conveyor belts in time would lead to serious complexities resulting in stoppage of thermal power production and obstruction in supply of electricity in the State. It is argued that the learned Single Judge failed to appreciate that the learned Vacation Judge ought not to have passed the ex-parte interim order without hearing the appellants.

It is next submitted that the appellants proceeded to award contract and issued letter of intent in favour of respondent No.3. He being L-1, the decision to award contract to respondent No.3 as lowest bidder was premised on fiscal prudence after taking into consideration entire aspect of the matter, particularly taking into consideration that during the period of alleged debarment, in fact, respondent No.3 was granted supply orders by the NTPC itself taking into consideration the performance of the lowest bidder/respondent No.3. Therefore, the decision making process did not suffer from any manifest arbitrariness so as to warrant interference. The scope of judicial review in tender matters is extremely limited. The learned Single Judge did not appreciate that only on technical ground made out, procurement ought not to be stayed. He further placed reliance upon various decisions including the decision of Hon'ble Supreme Court in N.G. Projects Ltd. vs. Vinod Kumar Jain & Ors. [2022(6) SCC 127]. It is submitted that Hon'ble Supreme Court has time and again reiterated that in the matters of public projects, injunction should not be lightly granted. He would submit that even after filing an application for vacating stay, his application has not been heard till date and therefore, the appellant, which is a public functionary, was left with no option but to challenge the ex-parte interim order by way of this appeal. He would submit that interim order needs to be urgently vacated as procurement of conveyor belts despite issuance of letter of intent way back in the month of June 2024 has remained stayed. Referring to documents on record, he would submit that various power projects are in dire need of conveyor belts and if it is not supplied to them in time, serious complexity may arise which would adversely affect production of electricity and would be contrary to public interest. He would further submit that the appellants are always prepared for expeditious final disposal of the writ petition. Therefore, the interim order may be vacated and any procurement may be made subject to final outcome of the writ petition.

Learned counsel appearing for respondent no. 2-Lowest bidder supported the case of the appellant and stated that respondent no. 2 has also moved an application for vacating the stay. He is also aggrieved by the ex parte interim order passed against it. He submitted that he is qualified in terms of the conditions of contract as NTPC issued purchase orders to it on 02.07.2020, 23.07.2020 and 27.07.2020, meaning thereby, that there was no ban by NTPC

from 01.04.2020 to 08.08.2020. He would further submit that after 09.08.2023, NTPC again placed purchase order on 28.11.2023 for supply of conveyor belts, therefore, it is clear that he was providing services to NTPC during financial year 01.04.2023 to 31.03.2024. He is providing satisfactory services to multiple public sector undertakings like MP Power Generating Company Ltd., Maharashtra State Power Generation Company Ltd etc. Copy of purchase order dated 13.04.2022 issued by South Eastern Corporation Ltd., purchase order dated 24.06.2023 issued by Singa Rani Company Ltd., purchase order dated 27.01.2020 issued by appellant for supply of conveyor belts were satisfactorily complied with and there was no complaint whatsoever. It cannot be said that he was not approved for supply in respect of the entire period.

Learned counsel appearing for the appellant as well as respondent no. 2 both have referred to various purchase orders and other certificates and communications on record to submit that respondent no. 2 supplied complete material against subject purchase orders from time to time and all those belts are working satisfactorily and there are no complaints against such supply orders.

4. On the other hand, learned counsel for the respondent No.1 raised objection with regard to maintainability of the appeal by submitting that once this Court passed an order requesting learned Single Judge to decide application for vacating stay, merely because the application could not be decided expeditiously and has remained pending, the earlier order passed on 06.08.2024 could not be recalled in the garb of modification application. It is submitted that the appellants instead of pressing their application for vacating stay, have time and again sought indulgence of the appellate court, which is not proper. The appellants' remedy is to press their application for vacating stay before the learned Single Judge. In support of the contention that the application for modification was not maintainable and was, therefore, liable to be dismissed as not maintainable, reliance has been placed on the decisions in the case of Jaipur Vidyut Vitran Nigam Ltd. vs. Adani Power Rajasthan Ltd. [2024 SCC Online SC 313] and Delhi Administration vs. Gurdeep Singh Urban & Ors. [(2000) 7 SCC 296]. It is also argued that the appeal against interim order is not maintainable in view of provisions contained under Rule 134 of the Rajasthan High Court Rules, 1952, as the order passed by the learned Vacation Judge is not a final order nor can be said to be a judgment. Learned counsel for the respondents also alleged connivance of the appellants with the successful bidder i.e. NRC Industries/respondent No.3 by submitting that when the case was listed on 09.10.2024, private respondent No.3 also appeared without any notice issued to him. It is also submitted that the appellants are not seriously pursuing their application for vacating stay.

On merits, it is submitted that in view of Clause-III of the terms and conditions, respondent No.2 was not eligible as it could not be declared as NTPC approved vender during any of the last three financial years and supplied the required conveyor belts to any NTPC/Government/Semi-Government/PSU/BSE or NSE

enlisted company during last seven years. It is submitted that respondent No.2 was debarred by NTPC for three years with effect from 10.08.2020 to 09.08.2023. This was taken into consideration by the learned Vacation Judge while passing the interim order. Award of tender to respondent No.3, despite it being debarred entity, clearly shows out of turn favour in his favour by the appellants, which is contrary to public interest. Therefore, this is clearly arbitrariness in award of tender to respondent No.2 only on the ground that it happens to be the lowest bidder. Reliance is placed on the decision in the cases of *Ramana Dayaram Shetty vs. International Airport Authority of India & Ors.* [(1979) 3 SCC 489], *Monarch Infgrastucture (P) Ltd. vs. Commissioner, Ulhasnagar Municipal Corporation & Ors.* [AIR 2000 SC 2272], *Michigan Rubber (India) Ltd. vs. The State of Karnataka & Ors.* [AIR 2012 SC 2915], *Central Coalfields Limited & Ors. vs. SLL- SML (Joint Venture Consortium) & Ors.* [(2016) 8 SCC 622] and *CJDARCL Logistics Ltd. vs. Rites Ltd. & Ors.* [W.P.(C.) No.1039/2021] decided by Delhi High Court. Reliance has also been placed on the judgment of the Patna High Court in the case of *Anil Kumar Shrivastava vs. Shaurya Sunil & Ors.* [SCC Online Pat 21]. It is submitted that while hearing intra-court appeal, the appellate court does not exercise supervisory jurisdiction over the orders or decisions of the Single Bench.

5. We have heard learned counsel for the parties and perused the record.

6. The respondent No.1 as well as respondent No.2 both submitted tender pursuant to tender notice dated 07.12.2023. While writ petitioner/respondent No.1 was second lowest bidder, respondent No.2 emerged as lowest bidder. The appellants proceeded to issue letter of intent in its favour on 10.06.2024. This has been put to challenge by the respondent No.1 by filing a writ petition. Learned Vacation Judge, vide order dated 25.06.2024, passed the interim order restraining the appellants from awarding work pursuant to the letter of intent. The aforesaid order was passed ex-parte without hearing the appellants or the successful bidder. The appellant RVVNL, which is an electricity supply company, filed an application for vacating ex-parte stay order way back on 10.07.2024. However, when the application was not heard despite repeated prayers made before the learned Single Judge, the appellants filed writ appeal being D.B. Special Appeal (Writ) No.493/2024. At the first instance, this Court was not inclined to decide the appeal on its own merits, however, taking into consideration that the interim order was ex-parte in nature and the appellants had already filed an application for vacating stay on 10.07.2024, which was pending, the appeal was initially disposed off vide order dated 06.08.2024 by requesting the learned Single Judge to hear the application for vacating the stay at the earliest, preferably within a period of one week. It, however, appears that for one reason or the other, application has remained pending. When the application for vacating stay was not heard and the matter remained pending with the interim order operating against the appellant RVVNL, it moved an application seeking restoration of the appeal for consideration on its own merits. On 21.09.2024, Misc. Application No.281/2024 was allowed and the appeal was

restored to its original number for consideration on its own merits. That is how the instant appeal has come up for consideration before this Court.

7. The foremost objection with regard to maintainability of the appeal is premised on the basis that the modification application was not maintainable. Present is not a case where the modification application is under consideration. The application for modification was considered and it was allowed by this Court vide its order dated 21.09.2024 and the appeal has been restored to its original number for consideration on merits. Therefore, in these proceedings, correctness and validity of the order dated 21.09.2024 cannot be allowed to assail collaterally. Therefore, objection with regard to maintainability of the appeal on this ground is rejected and it is not necessary to refer to various decisions on this aspect.

8. Another objection with regard to maintainability of the appeal rests on the ground that Rule 134 of the Rajasthan High Court Rules, 1951 does not provide for an appeal against the interim order. This argument is misconceived because the provisions contained in Rule 134 does not confine the appellate jurisdiction to judgments or final orders alone, as contended by the learned counsel for the respondent No.1. The appeal is maintainable against the judgment and order. The order, includes an interim order as well. True it is that against an interim order, the scope of interference in writ appeal is extremely limited but it cannot be said that an appeal is not at all maintainable. The contention in this regard is also rejected.

9. Since the next submission with regard to maintainability of the appeal proceeds on non-maintainability of the appeal, it is unnecessary to deal with other submission as it is not a case where the appellate court is exercising any supervisory jurisdiction against the order passed by the learned Single Judge. Present is an intra-court appeal and therefore, it is clearly maintainable. It is unfortunate that the appellant, which is a Corporation enjoined with public functions for supply and distribution of electricity which is running from pillar to post only to seek indulgence on its application for vacating stay. The learned Vacation Judge passed an ex parte interim order on 25.06.2024. Though the appellants filed an application for vacating stay on 10.07.2024, the application remained pending despite requests made so much so that the appellants had to approach this Court by filing appeal against the ex parte interim order. Initially, we were not inclined to decide the appeal on its merit because the application for vacation of stay was filed and pending consideration. We, therefore, disposed off the appeal with request to the learned Single Judge to decide the application for vacation of stay expeditiously. However, the application is not decided till date and therefore the appellants have again sought indulgence of the Court.

10. Once there is an ex-parte interim order passed, as soon as the application for vacating stay is filed, the application is required to be decided one way or the other expeditiously and it cannot be allowed to remain pending for a long time. It is relevant to note here that in the present case, the respondent/writ petitioner

has challenged award of contract in the matter of procurement of conveyor belts. Learned counsel for the appellants has rightly brought to the notice of this Court that timely procurement of conveyor belts is absolutely essential to ensure continuous supply of coal leading to production of electricity and uninterrupted supply thereof to the consumers in the State. Therefore, in such matters, ordinarily ex-parte interim order ought not to have been granted and even it was granted, the application for vacating stay was required to be considered expeditiously or the writ petition itself ought to have been decided finally. We find that the interim order passed on 10.06.2024 has remained operative which is resulting in delay in procurement of conveyor belts.

11. It appears that the main ground of challenge is award of contract to lowest bidder though he was not qualified as it suffered a debarment order in respect of the period in question. The appellants have come out with details showing as to how this aspect was dealt with in various meetings at the time of consideration of technical and financial bids and the authority took into consideration that despite such orders, the respondent No.2 continued to supply conveyor belts to NTPC. The experts have also obtained the performance reports of the respondent No.2 and after taking into consideration the entire material on record, it was decided to award contract to the lowest bidder.

12. In this writ appeal, we would not go further to scrutinize the case on its own merit as the same is pending consideration before the learned Single Judge. However, taking into consideration these aspects of the matter, we are of the view that the interim order needs to be interfered with. In the case of N.G. Projects Limited(supra), the Hon'ble Apex Court, in light of the provisions contained in Clause (h)(a) inserted in Section 41 vide Central Act 18 of 2018 observed thus:

"21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the writ court while exercising its jurisdiction under Article 226 of the Constitution of India."

Further their Lordships in the Hon'ble Supreme Court cautioned against grant of injunction in such matters. Following pertinent observations have been made:

"26. A word of caution ought to be mentioned herein that any contract of public service should not be interfered with lightly and in any case, there should not be any interim order derailing the entire process of the services meant for larger public good. The grant of interim injunction by the learned Single Bench of the High Court has helped no-one except a contractor who lost a contract bid and has only caused loss to the State with no corresponding gain to anyone."

13. We are, therefore, of the view that ex-parte interim order should not have been granted. Even if it was granted, application for vacating stay ought to be

decided as soon as it was filed. In any case, it being a case of procurement of conveyor belt, which is necessary to ensure continuity of electricity production, petition itself was required to be decided at the earliest, once interim order was granted. Continuing interim order without hearing application for vacating stay and keeping the matter pending, virtually amounts to allowing the petition. Over and above the rights of the parties, delay in procurement of conveyor belt by six months has seriously and adversely affected electricity production. However, considering that interim order has remained in force since 25.06.2024, let writ petition itself be finally decided within one month. None of the parties shall be granted any adjournment on the date fixed for hearing. This order shall be brought to the notice of the learned Single Bench within three days. The interim order dated 25.06.2024 shall continue for a further period of one month or decision in the writ petition, whichever is earlier and thereafter it shall lose its efficacy.

14. The appeal is accordingly partly allowed in the manner and to the extent stated above.