



RAJASTHAN STATE WAREHOUSING CORPORATION

A

v.

STAR AGRIWAREHOUSING AND COLLATERAL
MANAGEMENT LIMITED & ORS.

(Civil Appeal Nos. 2651-2656 of 2020)

B

JUNE 24, 2020

[HEMANT GUPTA AND ANIRUDDHA BOSE, JJ.]

Tender – A tender was given for warehouses at 71 locations on 12.03.2020 for operation and management of warehouses under Public Private Participation (PPP) Model – Writ petitions were filed challenging the tender conditions and the same were dismissed by the Single Judge of the High Court – Thereafter, the technical bids were opened and the appellants in the connected civil appeals were found to be successful and the letter of intent was issued – In an intra- Court appeal, the High Court passed an order of status quo with a further direction that the other formalities may proceed but the contract shall not be signed without leave of the Court – Before the Supreme Court, the appellant- Rajasthan State Warehousing Corporation contended that writ petitioners are successful short-term tenderers who have offered 42% revenue to the State as against the 71% of the revenue offered by the successful bidders after competitive bidding – Therefore, the appellant will suffer huge financial loss if after the completion of the tender process, the tenderers are not permitted to manage and operate the warehouses – Held: Since the matters are pending for final determination before the High Court, the Supreme Court will refrain from making any comment upon the merits of the arguments raised by the parties – The fact remains that once the bidding process is complete, the appellant is entitled to take work from successful bidders rather than taking the work from the short-term tenderers who were granted contract in exigency of the situation – In matters of contract , the grant of interim order to restrain the successful bidders from executing the contract is not in public interest, more so, when the tender is for storage of food articles in the warehouses of the State Government undertaking – Therefore, the grant of interim order which impinges upon the grant of contract by the appellant is not

C

D

E

F

G

H

- A *in public interest that too without recording any reasons when the writ petition was dismissed by the Single Judge of the High Court – Consequently, the orders granting status quo set aside.*

Nitco Tiles Ltd. v. Gujarat Ceramic Floor Tiles Mfg. Assn. (2005) 12 SCC 545; Raunaq International Ltd.

- B *v. I.V.R. Construction Ltd. & Ors. (1999) 1 SCC 492 : [1998] 3 Suppl. SCR 421 – relied on.*

Case Law Reference

- | | | |
|---------------------------|-----------|--------|
| (2005) 12 SCC 545 | relied on | Para 8 |
| C [1998] 3 Suppl. SCR 421 | relied on | Para 9 |

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2651-2656 of 2020.

- D From the Judgment and Order dated 29.05.2020 and 10.06.2020 of the High Court of Judicature for Rajasthan, Jaipur Bench in D.B. Special Appeal (Writ) No. 362 of 2020, D.B. Special Appeal (Writ) No. 364 of 2020 and D.B. Special Appeal (Writ) No. 372 of 2020.

With

Civil Appeal Nos.2657-2662 and 2663-2664 of 2020

- E Kapil Sibal, Shyam Divan, Akhil Sibal, Gaurab Banerjee, R.K.Mathur, Sr.Advs., Harsh Sahu, Amish Tandon, Ayush Beotra, Akshay Joshi, Ms. B. Vijayalakshmi Menon, Vikas Mishra, Suhail Sehgal, Vikas Singh Jangra, K.S. Bhati, Aditya Vikram Singh, Ajay Chaudhary, Sameer Abhyankar, Dhaval Mehrotra, Advs. for the appearing parties.

- F The Judgment of the Court was delivered by

HEMANT GUPTA, J.

Leave granted.

- G 1. The present appeals are directed against the interim order passed by the High Court of Judicature for Rajasthan on 29th May, 2020 and 10th June, 2020 whereby in an intra-court appeal, the High Court passed an order of status quo with a further direction that other formalities may proceed but the contract shall not be signed without the leave of the Court.

H

2. The Rajasthan State Warehousing Corporation Ltd. is in appeal aggrieved against the said interim order. It is argued by the learned counsel for the appellant that the tender was given for warehouses at 71 locations on 12th March, 2020 for operation and management of the warehouses under Public Private Participation (PPP) Model. Certain queries were raised by the writ petitioners before the High Court (respondents herein) in respect of clause 5(5)(i) of the notice inviting bid. Such clause reads as under:

“The bidder (either directly or through its 100% owned subsidiary) should have experience in preservation, maintenance and storage of not less than 4.00 Lac MT on an average basis for last 3 Financial years (i.e.: 2016-17 to 2018-19) of MSP procured food grain, pulses, oil seeds etc. of Central/state government agencies at par with CWC/SWC/FCI/NAFED etc. in any state/union territory across India.”

3. There was pre-bid conference and thereafter certain clarifications/ amendments were issued. The Clause 5(5)(i) was retained as such. The writ petitions were filed challenging the tender conditions and the clarification issued. Such writ petitions were dismissed by the learned Single Bench of the High Court on 19th May, 2020. It was on 20th May, 2020, technical bids were opened and the appellants in Civil Appeals arising out of Special Leave Petitions (Civil) Nos. 7834-7839 of 2020 and Special Leave Petitions (Civil) Nos. 7935-7936 of 2020 were found to be successful bidders. A letter of intent was issued on 21st May, 2020. In an intra-court appeal, the High Court passed the following order:

“D.B. Civil Special Appeal (W) No. 362/2020, D.B. Civil Special Appeal (W) No. 364/2020 & D.B. Civil Special Appeal (W) No. 372/2020:

Copies of the appeals be served on the Counsel for the intervener through email. Reply affidavit, if any, be filed on or before 05.06.2020 and be exchanged by the parties.

List on 10.06.2020.

In the meantime, status-quo as on date shall be maintained till the next date. Other formalities may proceed, but the contract shall not be signed without leave of this Court.”

A 4. The High Court maintained the above interim order on 10th June, 2020. The order reads as under:

“Mr. Pankaj Gupta, learned Counsel for the appellant submits that he has complied with the order dated 29.05.2020 and filed the amended cause titles in the Registry last evening.

B Registry to verify and act accordingly.

He also submits that he has served copies thereof through E-Mail sent by the AOR.

C Learned Counsel submits that the pleadings in the matter are complete and seek urgent disposal of the matter.

Accordingly, the matters stand adjourned to 06.07.2020 for final disposal. Interim order dated 29.05.2020 shall continue till then.

In the meanwhile defect(s) as pointed out by the Registry, be removed.”

D 5. The argument of Mr. Kapil Sibal, learned Senior Advocate for appellant – Rajasthan State Warehousing Corporation, is that what should be eligibility criteria is to be determined by the Agency inviting bids as it is the best judge of its requirement and expectations from the tenderer. Such condition cannot be challenged on the ground that in the earlier
E year such was not the condition or similar condition is not the condition of tender in the other States. Mr. Kapil Sibal vehemently argued that for 38 locations, the appellant has granted short-term tender to the writ petitioners for 4 months in the month of March, 2020 and 4 months’ time are going to expire on 3rd July, 2020. The writ petitioners are the successful short-term tenderers who have offered 42% revenue to the
F State as against 71% of the revenue offered by the successful bidders after the competitive bidding. Therefore, the appellant will suffer huge financial loss if after the completion of the tender process, the tenderers are not permitted to manage and operate the warehouses.

G 6. Mr. Akhil Sibal, learned Senior Advocate for the successful bidders, referred to Rule 70(8) of the Rajasthan Transparency in Public Procurement Rules, 2013 that acceptance of an offer is complete as soon as the letter of intent is posted and/or sent by e-mail. Therefore, as far as the tenderer is concerned, the contract is complete.

H 7. On the other hand, Mr. R.K. Mathur, Mr. Gourab Banerji and Mr. Shyam Divan, learned Senior Advocates appearing for the writ

petitioners argued that the Special Leave Petitions are directed against an interim order, therefore, this Court should not interfere in the interim order, so passed. The liberty has been granted to the appellant to seek leave from the High Court for execution of the contract but instead of availing such remedy, the appellant has approached this Court under Article 136 of the Constitution of India.

8. We do not find any merit in the argument that the Special Leave Petitions are directed against an interim order, therefore, this Court should not interfere in the order passed. Though this Court does not generally interfere in an interim order passed in an appeal under Article 136 of the Constitution but when after the dismissal of the writ petition, the Division Bench has passed an order of stay without recording any reason affecting revenue of the State, this Court cannot not permit the public interest to suffer. This Court in *Nitco Tiles Ltd. v. Gujarat Ceramic Floor Tiles Mfg. Assn.*¹ held as under:-

“7. We are also aware of the well-established principle that this Court normally does not interfere either with a court’s decision not to relegate a writ petitioner to an alternative remedy or with the grant of interim relief. It is unnecessary to cite any authority in support of this as the proposition cannot admit of any controversy. However, having regard to the singular lack of any acceptable reason in the impugned order we have no hesitation in interfering with this particular exercise of discretion by the High Court and set aside the same.”

9. The question of grant of interim stay in contractual matters was examined by this Court in a judgment reported as *Raunaq International Ltd. v. I.V.R. Construction Ltd. & Ors.*². The Court held as under:

“13. Hence before entertaining a writ petition and passing any interim orders in such petitions, the court must carefully weigh conflicting public interests. Only when it comes to a conclusion that there is an overwhelming public interest in entertaining the petition, the court should intervene.

XX XX XX

¹ (2005) 12 SCC 454

² (1999) 1 SCC 492

A 18. The same considerations must weigh with the court when interim orders are passed in such petitions. The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. The interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence the petitioner asking for interim orders in appropriate cases should be asked to provide security for any increase in cost as a result of such delay or any damages suffered by the opposite party in consequence of an interim order. Otherwise public detriment may outweigh public benefit in granting such interim orders. Stay order or injunction order, if issued, must be moulded to provide for restitution.

XX XX XX

D 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.”

F 10. Since the matters are pending for final determination before the High Court, we refrain from making any comment upon the merits of the arguments raised by the parties. The fact remains that once the bidding process is complete, the appellant is entitled to take work from the successful bidders rather than taking work from the short-term tenderers who were granted contract in exigency of the situation. In the matters of contract, the grant of interim order to restrain the successful bidders from executing the contract is not in public interest, more so, when the tender is for storage of food articles in the warehouses of the State Government undertaking.

G 11. Therefore, we find that the grant of interim order which impinges upon the grant of contract by the appellant is not in public interest that too without recording any reasons when the Writ Petition was dismissed by the Learned Single Judge.

H

12. Consequently, we set aside the orders dated 29th May, 2020 A
and 10th June, 2020 granting status quo while allowing the present appeals.

13. However, the grant of contract shall be subject to the orders
which may be passed by the High Court in the intra-court appeals pending
before it.

Ankit Gyan

Appeals allowed.

