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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on : September 09, 2015

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Judgment Pronounced on : November 03, 2015

+ W.P.(C) 6185/2015

R.K. DHIMAN

..... Petitioner

Through: Mr.Anil Kumar, Mr.Rajesh Khari,  
Mr.Ravinder Bhati, Mr.Manish Jain,  
Advs. along with petitioner in person.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Sanjeev Narula, CGSC with Mr.Ajay  
Kalra, Adv. for R-1/UOI.  
Mr.Sudhir Nandrajog, Sr.Adv. with  
Mr.T.S.Sidhu, Ms.Meenakshi Sood,  
Mr.Mukesh Kumar, Advs. for R-2/NHAI.  
Mr.Akhil Sibal, Adv. with Mr.Hasan  
Murtaza, Mr.Jatin Mongia, Ms.Malavika  
Prasad, Advs. for R-3.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.**

**W.P.(C) 6185/2015**

1. The present public interest litigation is filed by the petitioner seeking a direction to respondents No.1 and 2 to terminate the license of the Concessionaire i.e. respondent No.3 to collect toll fee on the toll

plazas till completion of Six Laning Project on the National Highway No.2 (hereinafter referred to as NH-2) from Delhi to Agra and to further direct respondent No.3 to stop further collection of tolls. Other connected reliefs are also sought.

2. It is averred in the petition that respondent No.1/Union of India had entrusted respondent No. 2/National Highway Authority of India the task of development, maintenance and management of NH-2 from Delhi to Agra. Respondent No.2 invited proposals from bidders for construction, operation and maintenance of the said NH-2 on DBFOT basis. Thereafter, respondent No.2 issued a Letter of Award dated 19.05.2010 in favour of M/s Reliance Infrastructure Limited. Respondent No.3 was incorporated as a Special Purpose Vehicle by the said Reliance Infrastructure Limited for carrying out the obligations under the contract. On 16.07.2010 respondents No.2 and 3 entered into a Concession Agreement for a period of 26 years including the construction period of 910 days.

3. It is averred that respondent No.3 without completing the 6-lanes of NH-2 has started collection of toll tax w.e.f. 16.10.2012 from the users of the said NH-2 with the permission of respondents No.1 and 2. It is further averred that the action of respondents No.1 and 2 in permitting respondent No.3 to levy toll tax without completing 6-lanes is illegal and unlawful. It is further averred that the road is bumpy and even the 4-lanes are not being properly maintained. Hence, it is averred that respondent No. 3 has no authority to collect toll from the users of NH-2.

4. On 01.07.2015 when the matter came up for hearing, we had

directed respondent No.2 to file a status report with regard to the project of 6-laning on the Delhi-Agra Section of NH-2.

5. Respondent No.2 had filed a status report dated 11.08.2015. As per the status report, the project involves widening of the existing 4-lane project highway to the standards of partially access controlled 6-lane project highway including pavement and structures. The said Project has been awarded on Design, Build, Finance, Operation and Transfer (DBFOT) basis wherein all the activities are performed by the Concessionaire who is a Special Purpose Vehicle for this project. The construction of the 6-lanes highway involves the construction of the following structures:

- “16 flyovers
- 14 underpass
- 10 pedestrian underpass
- 203 culverts
- 08 Railway over Bridge
- 02 overpass
- 204.160 Km. Service Roads”

6. The Concessionaire is also obliged, during the construction period, to ensure maintenance of the 4-lane road and to ensure that the traffic is diverted where necessary to the slip/service road by making diversions so that the 4-lane road is available to the traffic all the time.

7. It is also urged that as per the Concession Agreement, an Independent Engineer is to be appointed who is responsible to perform its duties and functions substantially and to oversee the status, progress,

quality and safety of construction. Respondent No.2 has appointed M/s URS Scott Wilson India Pvt. Ltd. in joint venture with Rodic Consultants Pvt. Ltd. as an Independent Engineer for the aforesaid project.

8. It is further urged that as per the scheme of things envisaged for execution of the project, the Concessionaire is entitled to levy and collect fee under the National Highways Fee (Determination of Rates and Collection) Rules, 2008 after achieving the Commercial Operation Date which happens to be the Appointed Date also, which is in the present case is declared as 16.10.2012.

9. It is further pointed out that the Concessionaire was required to complete the construction within a period of 912 days i.e. by 15.04.2015. It is urged that for the seamless construction of the highway, necessary assistance is required from the State Governments (U.P. and Haryana) and various government agencies for carrying out the tasks like land acquisition, tree cutting, utility shifting, encroachment removal, etc. Owing to these difficulties, the construction of the highway has been prolonged. The Concessionaire hence filed an application seeking extension of time for completion of the project. After consideration of the said application, the Independent Engineer had recommended extension of time till 11.01.2017. The details of the construction which has already been carried out are stated in the status report. It is pointed out that respondent No.3 has achieved 32% of physical progress of the project and 44.8% in terms of financial progress upto July, 2015.

10. We have heard the learned counsel for the parties and gone through

the record.

11. Learned counsel for the petitioner has stressed that as the highway has not been fully constructed, despite lapse of the appropriate period, there is no justification for permitting respondent No.3 to collect toll.

12. Learned senior counsel appearing for respondent No.2 has taken us through the status report and has stressed that the Independent Engineer has itself recommended extension of time to respondent No.3 for completing of the construction. Apart from converting the present highway from 4-lane to 6-lane, respondent No.3 is also obliged to maintain the existing 4-lane highway. Various grounds for the delay which have been stated in the status report have again been stressed upon.

13. In our opinion, no orders are required to be passed in the present petition. The Concession Agreement, as pointed out by the learned senior counsel for respondent No.2, envisages collection of toll from a particular date. The toll is being levied as per the agreement and the applicable rules. The petitioner has not been able to show anything to the contrary.

14. On the issue of non-completion of construction work on time, it has been pointed out in the status report that the Independent Engineer has itself recommended extension of time in the facts and circumstances of the case, namely, the delays having occurred on account of various factors like assistance from the State governments, issues of land acquisition, tree cutting permission, etc.

15. Reference may be had to the judgement of the Supreme Court in

the case of *BALCO Employees Union (Regd.) vs. Union of India and Others AIR 2002 SC 350* wherein it was held as under:-

96. Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the government. Here it is not so and in the sphere of economic policy or reform the Court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with its Constitutional or statutory duties. None of these contingencies arise in this present case.

97. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself.

16. The petitioner has not been able to show any breach of constitutional or statutory provisions by the respondent. There are also no other grounds shown for interference by this Court. There is no merit in the petition and the same is dismissed.

**CM No. 11239/2015 (stay)**

In view of the dismissal of the writ petition, the present application also stands dismissed.

**(JAYANT NATH)  
JUDGE**

**CHIEF JUSTICE**

**NOVEMBER 03, 2015  
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