



2024:DHC:9864



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

Date of decision: 13th DECEMBER, 2024

IN THE MATTER OF:

+ **O.M.P.(I) (COMM.) 422/2024**

INDO ENGINEERING PROJECT CORPORATIONPetitioner

Through: Mr. Gaurav Gupta, Ms. Antara
Mishra Advocates

versus

NATIONAL HIGHWAYS AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED INDIA

.....Respondent

Through: Mr. Yashpal Rangi, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

I.A. 48172/2024 (Exemption)

Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 422/2024 & I.A. 48171/2024

1. The Petitioner has approached this Court under Section 9 of the Arbitration & Conciliation Act praying for quashing of a notice inviting bid dated 09.10.2024 and the termination order dated 28.08.2024 and for other reliefs.

2. The facts in brief as stated by the Petitioner in its petition are as under:-

i. The Respondent/NHIDCL issued a notice inviting bid for undertaking the construction of High Altitude Hill Road from



Doginala to Gau from Km. 0.000 to Km. 15.320 in Upper Subansiri District of the State of Arunachal Pradesh on Engineering, Procurement and Construction (EPC) mode.

- ii. It is stated that the Petitioner submitted its bid. The Petitioner's bid was accepted and a letter of acceptance was issued to the Petitioner on 21.12.2020 and the EPC Agreement was executed between the parties, i.e., the Petitioner and Respondent on 19.02.2021.
- iii. It is stated that the project was to commence on 04.03.2021. It is stated that the Petitioner was not in a position to move its men and material to the project site as there was no facility of crossing over the bridge to the project site. It is stated that the Respondent was informed that the Details Project Report in the tender document did not analyze the approach to the project site which included the bridge for crossing over the Subansiri river.
- iv. It is stated that the non-availability of the bridge to the project site resulted in delay. It is stated that there were several other impediments because of which there was a delay in starting the project. It is stated that a Supplementary Agreement dated 16.02.2022 was executed between the parties owing to massive delay to the project and the absence of forest clearance. It is also stated that there was opposition to the project by the locals. It is stated that the land had not been properly acquired.
- v. It is stated that despite all odds, the Petitioner completed the first milestone of the project on 08.05.2023. It is stated that the forest clearance was obtained only on 25.05.2023. It is stated



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that to the shock of the Petitioner, a notice of termination was issued by the Respondent on 05.10.2023. It is stated that there was communication between the parties. However, the contract was terminated on 28.08.2024.

- vi. The Petitioner has not approached the Court challenging the said termination. It is stated that there were talks going on between the parties and some action was done by the Respondent.
- vii. It is stated that on 09.10.2024, a fresh notice had been issued by the Respondent for performing the balance work. It is stated that the Petitioner approached this Court challenging the termination order and the fresh notice inviting bid.

3. It is the contention of the learned Counsel for the Petitioner that the termination is entirely malafide and the entire fault is at the side of the Respondent for not addressing any issues causing delays.

4. It is stated that the Petitioner has already performed 20% of the contract and the remaining work could not be proceeded ahead within the stipulated time on account of the delays totally attributable to the Respondent and due to COVID-19. It is stated that both the conditions were beyond the control of the Petitioner and therefore the Petitioner could not have been held responsible for the delay and the termination notice is bad.

5. The Petitioner challenged the notice inviting bid by filing W.P.(C) No. 17004/2024 which was withdrawn by the Petitioner on 09.12.2024. The said writ petition was filed on 07.12.2024 and the same was withdrawn on 09.12.2024.



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6. The agreement entered into between the parties contains an arbitration clause. The Petitioner chose not to invoke the arbitration clause. In fact, the Petitioner chose not to approach the Court under Section 9 of the Arbitration & Conciliation Act at that point of time. The Petitioner chose to wait. The notice inviting fresh bids was issued in the month of August, 2024 and roughly after two months of issuance of notice inviting fresh bids by the Respondent, W.P.(C) No. 17004/2024 was filed by the Petitioner, when there was an alternate remedy available. The said petition was withdrawn by the Petitioner to approach this Court under Section 9 of the Arbitration & Conciliation Act.
7. Had there been a dispute, the Petitioner ought to have approached this Court by filing a petition seeking appointment of an Arbitrator. The Petitioner has not been vigilant in approaching the Court and has also filed the writ petition after a period of two months.
8. It is well settled that in case there is inordinate delay on the part of the party in approaching the Court for grant of any relief, then the courts do not come to the rescue of such persons. In this case, the project is of national importance and any stay in the notice inviting fresh bid which was issued on 09.10.2024 would rather cause irreparable loss and injury to the Respondent in proceeding ahead with the project.
9. In view of the arbitration clause as contained in the agreement entered into between the parties, the arbitrator alone can take a decision as to whether the notice of termination was proper or not. This Court is of the opinion that the balance of convenience and the irreparable loss would actually lie in not granting a stay as sought for by the Petitioner.
10. The Apex Court in State of Madhya Pradesh v. Nandlal Jaiswal,



(1986) 4 SCC 566, even though the said judgment was in the context of Article 226 of the Constitution of India, has observed as under:-

“24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. We may only mention in the passing two decisions of this Court one in Ramana Dayaram Shetty v. International Airport Authority of



*India [(1979) 3 SCC 489 : AIR 1979 SC 1628 : (1979) 3 SCR 1014] and the other in Ashok Kumar Mishra v. Collector [(1980) 1 SCC 180 : AIR 1980 SC 112 : (1980) 1 SCR 491] . We may point out that in R.D. Shetty case, even though the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the petitioner on the ground that the writ petition had been filed by the petitioner more than five months after the acceptance of the tender of the fourth respondent and during that period, the fourth respondent had incurred considerable expenditure, aggregating to about Rs 1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar. **Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.***

(emphasis supplied)

11. If and when the Petitioner chooses to approach this Court to proceed ahead for addressing its remedy by invoking arbitration, the arbitrator will decide as to whether the termination was valid or not and if it is held that the termination was not valid, the Petitioner can be compensated in monetary terms.
12. The Petitioner has not therefore made out a *prima facie* case. In the



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opinion of this Court, the delay in approaching this Court under Section 9 of the Arbitration & Conciliation Act is fatal for this Court to pass orders under Section 9 of the Arbitration & Conciliation Act in staying the termination orders which were passed in the months of August, 2024, i.e., four months ago and staying the notice inviting fresh bid, which was issued two months ago. This Court is therefore not inclined to pass any interim orders in favour of the Petitioner under Section 9 of the Arbitration & Conciliation Act.

13. It is made clear that this Court has not made any observation on the merits of the case and all the observations made by this Court are only limited to the issue as to whether this Court must exercise its jurisdiction under Section 9 of the Arbitration & Conciliation Act and pass interim orders in favour of the Petitioner before invoking arbitration.

14. The petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 13, 2024

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