

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024
(arising out of SLP(Civil) No. 8584 of 2023)

NATIONAL HIGHWAY AND INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED **APPELLANT(S)**

VERSUS

M/S CHABOU AND CO. & ORS. **RESPONDENTS**

O R D E R

Leave granted.

Despite being afforded the opportunity, the respondents have not filed a counter affidavit/reply. Their right to file the same stands closed.

By an order dated 01.05.2023, we had stayed the operation of the impugned judgment dated 31.03.2023. It was also directed that the appellant - National Highway and Infrastructure Development Corporation Limited¹ will be entitled to open the Notice Inviting Tender (NIT), and if respondent no.1 - M/s Chabou and Co. apply, their bid would be considered as per the eligibility requirements and in accordance with law.

It is stated on behalf of the appellant - NHIDCL that the tenders were opened and have been awarded to a third party. The new contractor has commenced work on the highway, which is progressing

¹ "NHIDCL", for short.

smoothly, and as per the schedule. It is stated that according to the terms of the tender and the agreement executed, the road work is to be completed on or before the end of September 2025.

We hope and trust that the appellant - NHIDCL will ensure that the said deadline for completion is met and adhered.

We are of the view that the impugned judgment/order passed by the High Court is unsustainable in law. The Court, while exercising jurisdiction under Article 226 of the Constitution of India in a public interest litigation, should not have directed that the work on the highway, including the work of maintenance and repairs, must be undertaken by a particular contractor.

While we do not doubt that the Court can, and was right in expressing concern for the delay in completion and execution of the works, nevertheless, the Court could not have issued directions on who should be assigned the task of execution. The directions are well beyond the power of judicial review as they impinge upon the role, the duty and the task assigned to the appellant - NHIDCL. The Courts can and do issue directions in public interest but would hesitate in donning or taking over the role of the appellant - NHIDCL in deciding who should execute the work. It is for the appellant - NHIDCL to take such decisions, and to ensure that the work is executed in accordance with the terms and conditions of the tender/agreement. In case of violation or breach of the terms and conditions of the agreement, the appellant - NHIDCL can proceed in accordance with law, which includes the power to terminate the agreement, claim damages etc.

The terms and requirements for eligibility prescribed by the authorities depend on the nature of the contract and the scope of the work undertaken. The contracts are in the nature of a commercial transaction, and thus require the authority to primarily focus on commercial considerations in arriving at a decision. The authority calling for the tender, is therefore the best judge to prescribe the conditions of the tender.²

The scope of judicial review of such decisions is extremely narrow. In *Tata Cellular v. Union of India*³, this Court laid down principles that emphasised on judicial restraint. It was highlighted that courts lack the expertise to correct administrative decisions and the intervention of the Courts should be limited to ensuring that the decision-making process is free from arbitrariness, bias, or mala fides. However, the Court cannot scrutinize whether the decision itself is sound or the most appropriate.⁴ In *Air India Ltd. v. Cochin International Airport Ltd.*⁵ this Court held that:

"7. ... Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."

² *Directorate of Education v. Educomp Datamatics Ltd.*, (2004) 4 SCC 19

³ (1994) 6 SCC 651

⁴ *Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517

⁵ (2000) 2 SCC 617

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Given the background of the case, we direct the appellant - NHIDCL to file an affidavit before the High Court, nominating a nodal officer who will be overseeing the execution of the work. The nodal officer will ensure and be responsible for completion of the work within time and in accordance with the agreement.

In case there is any delay in construction beyond September 2025, the appellant - NHIDCL will move an application before the High Court for extension of time. The application will state and give reasons for the delay. The High Court may thereupon pass appropriate order/directions.

Recording the aforesaid, the impugned judgment is set aside and the appeal is allowed.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(DIPANKAR DATTA)

NEW DELHI;
APRIL 15, 2024.

ITEM NO.43

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No. 8584/2023

(Arising out of impugned final judgment and order dated 31-03-2023 in PIL(SUO MOTO) No. 2/2019 passed by the High Court of Gauhati at Kohima)

NATIONAL HIGHWAY AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED

Petitioner(s)

VERSUS

M/S CHABOU AND CO. & ORS.

Respondent(s)

(IA No. 150606/2023 - APPROPRIATE ORDERS/DIRECTIONS and IA No. 85256/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 15-04-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Petitioner(s)

Ms. Geeta Luthra, Sr. Adv.
Mr. Avneesh Garg, Adv.
Mr. Muddam Thirupathi Reddy, AOR
Ms. Srika Selvam, Adv.
Ms. Pragati Srivastava, Adv.
Mr. Anuj Singh, Adv.

For Respondent(s)

Mr. Aditya Giri, Adv.
Ms. Farhat Jahan Rehmani, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(DEEPAK GUGLANI)
AR-cum-PS

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(signed order is placed on the file)