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Supreme Court Stays Allahabad HC Order Quashing ₹940 Crore NHAI Contract Termination Against Tata Projects

Kirit Singhania

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The Supreme Court on Monday stayed the operation of the Allahabad High Court judgment which had quashed the termination of Tata Projects Ltd.'s ₹940.68-crore contract for widening, upgrading and maintaining a 50.254 km stretch of NH-709A between Garhmukteshwar and Meerut, Uttar Pradesh.

A Bench of **Justices J.B. Pardiwala** and **K. Vinod Chandran** while staying the High Court judgment, indicated that considering the public interest involved in the highway project, the parties could once again sit together and attempt to resolve the issues arising from the termination.

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“In the peculiar facts of this case, and keeping in mind, the overall public interest, and the nature of the project, it will be in fitness of things, if the parties can once again sit together, and try to work out the issues insofar as the aforesaid is concerned, that is, the reasons assigned in the termination notice.”, the Court said.

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During the Supreme Court hearing, appearing for NHAI, **Solicitor General of India Tushar Mehta** pointed out that the High Court had, according to NHAI, completely missed another ground forming the basis of the termination.

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"There is a second ground of termination.", he said.

Mehta submitted that the High Court had not dealt with the allegation that Tata Projects had failed to maintain the existing highway while undertaking the new construction.

The Bench questioned NHAI on the practical aspect of this obligation:

"The contract was for expanding the road, widening the road, and maintaining the existing road. The second ground of termination is, they have not maintained the existing. So in what manner you expected them to maintain the road?"

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The Solicitor General responded that the contractual obligation required the existing road to be maintained in good condition.

The Bench then asked how long the contractor was expected to maintain the existing road.

The Bench further examined what was happening to the existing road while the new road was being constructed. The Solicitor General submitted that the existing road was deteriorating and that complaints had been received regarding its condition.

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He sought to explain the position with the aid of a map, pointing out the existing road and the proposed new/widened portions. He submitted that certain portions were greenfield roads requiring new construction, while the existing road was required to be maintained during the construction period.

The Bench observed, *“You are not satisfied with the work which has been undertaken. For the time being, completion of work may be set aside. It is kept aside. And saying something else.”*

The Solicitor General however, stressed that the issue was not confined merely to the pace of construction. He referred to the termination notice and submitted that non-maintenance of the existing project highway was expressly stated as a ground for termination.

Referring to the relevant contractual provision, he submitted, *“During the construction period, the contractor, in terms of Clause 10.4 of the contract agreement, is obligated to maintain at its cost the existing lane of the project highway to ensure traffic worthiness and safety and undertake necessary repair and maintenance works.”*

He explained that this was the ground on which the contract had been terminated and complained that the High Court's judgment had not dealt with it.

The Solicitor General submitted that this aspect had not been considered by the High Court. He also pointed out that, even if the termination dispute ultimately went to arbitration, further litigation and expenditure could follow. The Bench questioned,

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The Court thereafter directed that the impugned High Court judgment would remain stayed:

Background

The case concerned Tata Projects Ltd's challenge to NHAI's termination of its contract for widening and upgrading a 50.254 km stretch of NH-709A between Garhmukteshwar and Meerut, Uttar Pradesh, valued at ₹940.68 crore. NHAI had awarded the contract to Tata Projects in 2021 with the project scheduled for completion by October 10, 2023.

The dispute arose over delay in completion of the highway project. Tata Projects contended that NHAI had failed to provide the required hindrance-free land in contiguous 5-km stretches, while NHAI maintained that sufficient land had been handed over and blamed the contractor for slow progress.

NHAI ultimately terminated the contract, citing failure to complete the work and maintenance deficiencies.

Allowing Tata's writ petition, the Allahabad High Court found a serious dispute regarding the effective handover of hindrance-free land and held that the termination required interference, particularly considering the public interest in completing the highway.

It quashed the termination, forfeiture of bank guarantees and fresh tender and directed a fresh joint site inspection so that the parties could work towards completing the project within a rescheduled timeline.

Click Here To Read/Download Allahabad HC Order

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