

Gujarat High Court

In The High Court Of Gujarat At ... vs Gujarat Maritime Board & on 19 March, 2015

C/SCA/4870/2015

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION NO. 4870 of 2015

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L AND T INFRASTRUCTURE DEVELOPMENT PROJECTS
LTD....Petitioner(s)
Versus
GUJARAT MARITIME BOARD & 1....Respondent(s)

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Appearance:

MR MIHIR THAKORE, SENIOR COUNSEL ASSISTED BY MR PARTH
CONTRACTOR, ADVOCATE and MR SANDIP SINGHI, SINGHI & CO,
ADVOCATE for the Petitioner(s) No. 1
GOVERNMENT PLEADER for the Respondent(s) No. 2

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE MR.
VIJAY MANOHAR SAHAI
and
HONOURABLE MR.JUSTICE R.P.DHOLARIA

Date : 19/03/2015

ORAL ORDER

(PER : HONOURABLE THE ACTING CHIEF JUSTICE MR. VIJAY MANOHAR SAHAI) We have heard Mr. Mihir Thakore, learned Senior Counsel assisted by learned advocate Mr.Parth Contractor and Mr.Sandip Singhi for Singhi & Co., learned advocate, for the petitioner.

Issue Notice to the respondent Nos. 1 and 2, returnable on 07.04.2015.

The respondent invited bids from interested parties for the development of a port at Sutrapada, Junagadh. The selected bidder was inter alia required to submit a Detailed Project Report ("DPR") and an Environment Impact Assessment Report to the respondent No.1, and was expected to complete the construction of the minimum capacity envisaged thereunder within a period of three years from the date of getting Environmental Clearance. The C/SCA/4870/2015 ORDER petitioner having bid for, and being selected by the respondent No. 1 as a successful bidder for the development of the port at Sutrapada, was issued a Letter of Intent dated 6.2.2008 ("LOI") for the development of the said port on a Build-Own-Operate-Transfer basis. Upon receipt of the Letter of Intent, the petitioner incorporated a wholly owned subsidiary being L&T Port Sutrapada Ltd. Thereafter, the petitioner commenced various studies and surveys, and submitted a preliminary report on the Environment Impact Assessment to the Ministry of Environment and Forests, Government of India. However, owing to certain local problems, unavailability of the waterfront, other land related issues and resistance from the local residents, the respondent No.1 could not acquire and allocate land to the petitioner, as required under the Letter of Intent. Consequently, the DPR and the Environmental Impact Assessment which were in an advanced stage, could not be

completed, and the development of a port at Sutrapada could not take place. On 07.05.2010, the petitioner suggested the respondents by the letter that alternative site for the development of the port be allotted at Kucchigarh, District-Jamnagar. The respondent No. 1, vide a letter dated 15.07.2010, informed the petitioner of the permission granted by the Government of Gujarat, inter alia to shift the location of the site for the development of the port, from Sutrapada to Kucchigarh. Consequently, the Letter of Intent (which was earlier extended till August, 2009) was further extended until August, 2011, to enable the petitioner to conduct appropriate studies in relation to the new location. On 16.08.2010, the petitioner under instruction from the respondent No.1, submitted an amended Performance Bank Guarantee for the Development of the Greenfield port at Kacchigarh. The petitioner appointed M/s. BMT Consultants (India) Pvt. Ltd. To review the data on critical parameters which could influence environmental C/SCA/4870/2015 ORDER clearance. The petitioner vide its letter dated 28.06.2011 and 01.07.2011 informed the respondent No. 1 that the petitioner had started various preliminary surveys, investigations, data collections and other studies at the new site to finalise the exact port location along with the port requirements. After substantial deliberation of the reports submitted by various technical experts, the petitioner was finally of the opinion that given ecological sensitivity of the area, it would be impossible for the petitioner to obtain an environmental clearance for the area, to develop a port. Consequently, the petitioner, vide a letter dated 6.09.2013, communicated to the respondent No.1 that the said location could not be developed as a port, and further informed the respondent No.1 that the petitioner would not seek any further extension of the Letter of Intent beyond August, 2013, and further requested the respondent No.1 to return the Bank Guarantee having a validity until 25.11.2013. Pursuant to the aforesaid letter, the respondent No.1 required sometime to deliberate upon the said issue, including the returning of the LOI to the petitioner, and therefore, requested that the petitioner extend the Bank Guarantee, until such time that an appropriate decision is taken by the respondent No.1. Consequently, the Bank Guarantee, which was otherwise expiring on 25.11.2013, was effectively extended until 30.09.2014 and subsequently, until 31.12.2014. Not having received any communication from the respondent No. 1, qua the intimation of impossibility of the developing a port at Kucchigarh, the petitioner reminded the respondent No.1 of its pending decision qua the letter dated 6.09.2013 issued by the petitioner. Consequently, a meeting was held between the officers of the petitioner and the respondent No.1 on 5.3.2014, and a subsequent letter dated 7.3.2014 came to be addressed by the petitioner to the respondent No.1, inter alia, reiterating the former's intention to return the LOI C/SCA/4870/2015 ORDER and requesting a return of the Bank Guarantee by the respondent No.1. The petitioner addressed another letter to the respondent No.1 on 16.09.2014. While the petitioner awaited a response from the respondent No. 1, another letter dated 16.12.2014 came to be issued by the respondent No.1, directing the petitioner to extend the Bank Guarantee from 31.12.2014 to 30.6.2015. However, the same was extended upto 31.03.2015.

Now, the petitioner has received a letter dated 10.3.2015 written by the respondent No.1 seeking to cancel the letter of intent and invoking the Bank Guarantee without assigning any reason. The respondent did not consider any letter dated 10.03.2015 that if the work could not be done, no environmental clearance can be granted as Coral Atlas was there, then how the project could be undertaken by the respondents. It appears that the respondent did not consider the fact that no work could be done as Coral was found no environmental clearance was granted to the petitioner.

Since the respondent proceeded to encash the bank guarantee, this prima facie, appears to be illegal as environmental clearance cannot be granted where Coral is found and Port cannot be permitted to be constructed as it will be a serious environmental issue. Without going into this question, the respondent No.1, in our opinion, prima facie, could not invoke the Bank Guarantee of the petitioner.

In this view of the matter, we direct the respondent No.1 not to invoke or to encash the Bank Guarantee furnished by the petitioner until further order of this Court. We further direct the petitioner to keep the Bank Guarantee alive during the pendency of this petition.

Direct service is permitted today.

C/SCA/4870/2015

ORDER

(V.M.SAHAI, ACJ.)

(R.P.DHOLARIA, J.)

Ashish Tripathi