

LOKPAL OF INDIA
[Plot No. 6, Institutional Area, Phase-II, Vasant Kunj]
New Delhi

Complaint Nos. : 51/2023
Date : 28th March, 2023.
Coram : **Justice Pradip Kumar Mohanty**
Hon'ble Acting Chairperson

Justice Abhilasha Kumari
Judicial Member

Shri Dinesh Kumar Jain
Member

Smt. Archana Ramasundaram
Member

Shri Mahender Singh,
Member.

Dr. Indrajeet P. Gautam
Member

ORDER

Perused the complaint.

2. This complaint is directed against sixteen persons, out of which eight are public servants. The other eight are the Chairman, Directors and Project Head of the private companies involved, including the Independent Engineer. In accordance with the mandate of the Lokpal of India, under the Lokpal and Lokayuktas Act, 2013, we would be confining our scrutiny only to the public servants.

3. In this complaint, allegations have been levelled against a Union Cabinet Minister, the Secretary, Roads, Transport and Highways, Government of India, the then Chairman, National Highways Authority of India (NHAI), General Manager, Regional Office NHAI, New Delhi, General Manager-cum-Regional officer

NHAI Headquarters, New Delhi, General Manager and Project Director, Project Implementation Unit, New Delhi, Officers/officials of the Road Transport and Highway Ministry (not individually named) and Officers/officials of NHAI (not individually named).

4. The gist of the allegations made in the complaint are to the effect that NHAI had invited bids for the six-laning of the Delhi-Agra section of National Highway-22, from KM 20.500 to 200.000 (length KM 179.5000), in the states of Haryana and Uttar Pradesh, on DBFO pattern. Reliance Infrastructure Limited (the selected bidder), took part in the bidding process. After evaluation of the bids, the bid of the selected bidder was accepted for an amount of Rs.1928.22 crore, approximately. The estimated cost fixed by the Authority was about Rs. 2157 crore, minus equity. The selected bidder constituted DA Toll Road private Limited, as the Concessionaire, to execute the project, perform its obligations and exercise the rights of the successful bidder, pursuant to the LOA for executing the Project. The Concessionaire, vide letter dated 21st May, 2010, joined the selected bidder in the request to accept it as the entity that would undertake and perform the obligations of the selected bidder. The NHAI agreed to this request and a Concession Agreement was entered into in the month of May, 2010, between the NHAI and the Concessionaire, for execution of the Project on DBFOT basis, subject to the terms and conditions in the Agreement. According to the complainant, the Concessionaire was floated with a capital of only Rs. 100000/- and nothing was produced by the selected bidder regarding its financial worth. In the view of the complainant, NHAI should have rejected the proposal of the selected bidder outright, but for reasons best known to the authority, the same was approved.

5. It is the case of the complainant that as per the Agreement the six-lane project measuring about 180 kms, consisting of flyovers, foot-over bridges, Railway Over-bridge, pedestrian/cattle underpasses, vehicular underpasses, truck and bus lay-byes, traffic posts and other services, was to be completed in 910 days. The complainant has referred to several clauses in the Agreement regulating the time-period for completion and providing for damages to be paid by the Concessionaire, in case of default. The grievance of the complainant is that, though over 12 (twelve) years have elapsed after the execution of the Agreement and commencement of the work, the project is nowhere near completion, although it was to be completed within 3 (three) years.

6. The complainant has alleged that no penal action has been taken by the NHAI and the Minister concerned against the Concessionaire, the selected bidder and Cube Highways, for not complying with the terms and conditions of the Agreement. It is alleged, that this shows that the Minister concerned and the officer/officials of the NHA were hand in glove with the successful bidder and its associates and, in the process, have gained unjust monetary benefits for themselves and caused wrongful gain to the selected bidder and the Concessionaire. According to the complainant, the Agreement was not terminated on default and neither was the bank guarantee of Rs. 107 crore, got encashed. The complainant has levelled allegations of conspiracy and collusion between the public servants and the companies involved, to bail out the selected bidder, which was unable to complete the project even after ten years of the deadline. The complainant states that due to such conspiracy and collusion, wrongful monetary gain was caused to the public servants, selected bidder, Cube Highways

and the Concessionaire, with a corresponding wrongful loss to the State Exchequer. The complainant further alleges that substituting/changing the Concessionaire at this stage was not permissible except in the event of national security or public interest; however, this was permitted by the public servants for monetary gain. The complainant has further raised a grievance that Toll Tax is being levied from much before the completion of the project, even for stretches where there are only four lanes instead of six, which amounts to looting the public. The complainant alleges that there are no amenities such as foot-over bridges and underpasses and the public servants concerned have willfully turned a blind eye to the several defaults committed by the Concessionaire which, according to him, proves that the Government functionaries and the Concessionaire are hand in glove and in active collusion with each other, with the purpose of illegally minting money. According to the complainant, all these aspects clearly point out that, the highest functionaries in the department are causing unlawful gain to themselves and unlawful loss of thousands of crores of rupees, to the State exchequer. The complainant has, therefore, sought an inquiry into this matter and prayed for action to be taken under the provisions of the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002, and the Indian Penal Code. Along with the complaint, the complainant has annexed the Concession Agreement and other documents and correspondence pertaining to the same.

7. We have perused the complaint and the documents annexed thereto and have given our thoughtful consideration to the matter in hand. After doing so, we find that the matter pertains to the year 2010. Almost thirteen years have elapsed. The bid was submitted

on 11.05.2010 and the Letter of Award to the Concessionaire by the NHAI, is dated 19.05.2010. As such, the complaint does not satisfy the requirements of limitation as laid down in section 53 of the Lokpal and Lokayuktas Act, 2013 (the Act).

8. For the above reason, we are not inclined to proceed further with the complaint. It is, however, open to the complainant to take recourse to appropriate proceedings, before the appropriate forum, if so desired.

9. Accordingly, the complaint is disposed of.



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