

INTERIM ORDERS AND ITS EFFECT ON ECONOMY

We all know that law is a dynamic inter disciplinary subject which has its interlinkage with the other social/physical/natural sciences. It constantly adopts itself to the critically changing compulsions of the society and the same has to be kept in mind when taking a decision of public concern. The present article talks about one of the interface between law and economics and the role played by the judicial functionaries in this regard which is very much relevant today as we are living in an era of economic liberalization and globalisation.

Although law and economics traces back to the period of Jeremy Bentham, i.e. 18th century, in the last few decades, interplay between law and economics has gained momentum throughout the world. Indian judiciary has resorted to economic analysis of law on ad hoc basis. Time has come to consider the inter-discipline between law and economics as a profound movement on sustainable basis. These are the additional relevant considerations which have weighed in our mind in adopting a particular course of action. India today is on the path of economic growth and trying to develop its economy for last number of decades to change its status of being a developing economy and comes in one of developed economies of the world. Many economic policies are made and executed by our government to increase the GDP of our country. Being the third pillar of the Government, the judiciary also has to function in this direction and it has with its various decisions particularly relating to the Interim stays of the industrial/mining/factories sites has directly impacted the economy of our country at large.

Intervention by the court may ultimately result in delay in the execution of the project. The obvious consequence of such delay is price escalation. If any re-tendering is prescribed, cost of the project can escalate substantially. What is more important is that ultimately the public would have to pay a much higher price in the form of delay in the commissioning of the project and the consequent delay in the contemplated public service becoming available to the public. If it is a power project which is thus delayed, the public may lose substantially because of shortage in electricity supply and the consequent obstruction in industrial development. If the project is for the construction of a road or an irrigation canal, the delay in transportation facility becoming available or the delay in water supply for agriculture being available, can be a substantial setback to the country's economic development. Where the decision has been taken bona fide and a choice has been exercised on legitimate considerations and not arbitrarily, there is no reason why the court should entertain a petition Under Article 226. The same considerations must weigh with the court when interim orders are passed in such petitions. The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. The interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence the Petitioner asking for interim orders in appropriate cases should be asked to provide security for any increase in cost as a result of such delay or any damages suffered by the opposite party in consequence of an interim order. Otherwise public detriment may outweigh public benefit in granting such interim orders. Stay order or injunction order, if issued, must be moulded to provide for restitution. When courts face these issues arising under various laws as there is growing role of economics in contract, labour, tax, corporate and other laws, they have to be receptive to economic arguments and evidences as there decisions have huge economic effect on the country. Just like its a duty on the part of the court to apply statutory provisions, it is also a bouden duty to keep in mind the economic impact/effect of its decision.

In *Raunaq International Limited v. I.V.R. Construction Ltd. and Ors.* MANU/SC/0770/1998 : (1999) 1 SCC 492, this Court cautioned the High Courts not to easily grant interim stay while dealing with the writ petitions where challenge is to award of tender by the Government in favour of a party, highlighting the fact that even commercial transactions of State or public body may involve element of public law or public interest and grant of such interim stay may delay the approach, and in turn escalate the cost thereof, which may not be in public interest. Relevant paragraphs from the said judgment read as under:

"When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene

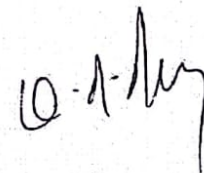
Under Article 226 in disputes between two rival tenderers."

Also, Supreme Court observed in *CCE v. Dunlop India Ltd.* [MANU/SC/0169/1984 : (1985) 1 SCC 260] (SCR 190 at p. 196) that an interim order should not be granted without considering the balance of convenience, the public interest involved and the financial impact of an interim order. Similarly, in *Ramniklal N. Bhutta v. State of Maharashtra* [MANU/SC/0279/1997 : (1997) 1 SCC 134] the Court said that while granting a stay, the court should arrive at a proper balancing of competing interests and grant a stay only when there is an overwhelming public interest in granting it, as against the public detriment which may be caused by granting a stay. Therefore, in granting an injunction or stay order against the award of a contract by the Government or a government agency, the court has to satisfy itself that the public interest in holding up the project far outweighs the public interest in carrying it out within a reasonable time. The court must also take into account the cost involved in staying the project and whether the public would stand to benefit by incurring such cost.

In June, 2017 referring these two cases the Supreme Court has observed in *Shiva Shakthi Sugar Ltd Vs Shri Renuka Sugar Mills Ltd* (MANU/SC/0647/2017) that "Where two views are possible or wherever there is a discretion given to the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation"

A bench comprising Justice AK Sikri and Justice AM Sapre observed that the court needs to avoid that particular outcome which has a potential to create an adverse affect on employment, growth of infrastructure or economy or the revenue of the state and it is very important to have an economic analysis of the decision. "On the application of law and while interpreting a particular provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind," the court said while disposing of an appeal preferred by Shivashakti Sugar Mills against a Karnataka High Court judgment. The moot question involved in this appeal was whether the establishment of the sugar mill by Shivashakti Sugar Mills and its activity to crush sugarcane since 2011 may be permitted to continue. The bench, on the facts of the case, observed that no purpose is going to be served in getting the unit closed and rather the public purpose demands that the factory remains in operation and continue to function. "These factors, particularly, bank loans, employment, generation and production at the factory serve useful public purpose and such economic considerations cannot be overlooked, in the context where there is hardly any statutory violation," the court said while allowing the appeal.

This historic judgement has introduced a new principle/consideration that these interim stays by our courts closing the units/mining sites/factories is not going to serve the public purpose and economy which on the contrary demands that these factories the public purpose remain in operation and continue to function. The courts should before passing the interim stays take into equitable consideration certain economic factors as well such as the expenditure went for establishment of the factory (including expenditure on land and building), amount of loan raised, operational cost, geeration of employment on regular as well as indirect basis, setting up of electricity generation plants etc. These are some of the economic factors which cannot be overlooked and it serves useful public purpose. Thus, there should be a balance needs to be made before complete closure of the factories and mining sites. Even in those cases where economic interest competes with the rights of other persons, need is to strike a balance between the two competing interests and have a balanced approach. That is the aspect which has been duly taken care of in the instant case, as would be discernible from the concluding paragraph of this judgment. We hope in the coming years, the courts all over the country before passing any interim stays refer this Supreme Court at once to do the public justice and welfare of the economy.



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