

Fully foreign-funded projects get 'shield' against HC scrutiny

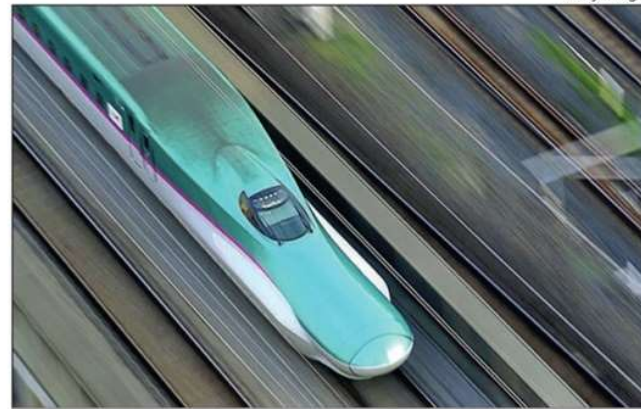
Be Careful While Taking Up Challenges To Such Projects, Says SC

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New Delhi: In a important judgment that will have a bearing on all foreign funded developmental projects, the Supreme Court on Monday disapproved the casual manner in which the Delhi high court ordered the National High Speed Rail Corporation to reconsider the bid of a Gujarat-based construction firm disqualified from participating in the Bullet Train project.

Montecarlo Ltd's bid was rejected by the Japan International Consultants Consortium, the technical body appointed for evaluation of bids by Japan International Cooperation Agency (JICA), which has granted Rs 1 lakh crore for the Mumbai-Ahmedabad Bullet Train project.

A bench of Justices M R Shah and A S Bopanna said, "The terms and conditions of the tender documents were settled by JICA as per JICA's



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The apex court disapproved of the Delhi HC order asking the NHSRC to reconsider the bid of a firm disqualified from the bullet train project

international guidelines, which are required to be followed by all bidders, including Montecarlo. Therefore, when the terms and conditions of the tender document were settled by JICA, it is ultimately for JICA/JICA to take a decision whether a bid submitted by a particular bidder is non-responsive and/or non-compliant to the technical requirements of the bid-

ding documents."

"...unless there are specific allegations of mala fides and/or favouritism, the same could not have been the subject matter of scrutiny by the HC in exercise of powers under Article 226 of the Constitution of India," Justice Shah said writing the judgment.

The bench asked all HCs to be careful in entertaining challenges to fully foreign-

funded projects and said such challenges and interference by courts often result in delay, cost escalation and sometimes scrapping of the project as unviable.

"These investments from developed nations are made on the basis of non-negotiated (sic) terms and conditions, where the sole discretion as to what would be the conditions of the investments and on what terms the contractors would be chosen to implement the project, vests with the investor foreign developed nation," the SC said.

"It is difficult for a developing country to go ahead with such a high cost project unless the developed country grants loan/subsidy and/or is ready to fund such high cost projects... any delay in execution of such mega projects, which are very important for a developing country like India, may not be in the larger public interest and in the nation's interest," the bench said.

Be careful in staying key projects, SC tells HCs

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NEW DELHI: High courts should be extremely “careful and circumspect” in staying the execution of projects of national importance, especially those funded by the foreign countries, the Supreme Court held on Monday while sounding a word of caution against judicial interference in commercial contracts.

Delivering an order relating to the implementation of the Bullet Train project between Mumbai and Ahmedabad, the SC further suggested that courts may warn the petitioners about recovery of damages from them on account of delay in execution of projects due to “frivolous litigation” initi-

ated by such litigants.

“While entertaining the writ petition or granting the stay which ultimately may delay the execution of the mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the State and/or its agencies/instrumentalities from discharging the constitutional and legal obligation towards the citizens. Therefore, high courts should be extremely careful and circumspect in exercise of its discretion while entertaining such petitions or granting stay,” said a bench of justices MR Shah and AS Bopanna.

It underlined that in a mega project funded by a foreign country, there shall not be any

interference in the tender process midway till the final decision is taken to award the contract. “The reason behind this is that any delay in such a project may increase the ultimate project cost and it may affect the future investment by the foreign country, which would never be in the larger interest of the nation.”

It highlighted that a mega project like the Bullet Train project is entered into following a detailed discussion between the heads of the states and therefore, such projects invite different considerations so far as the judicial interference is concerned between the foreign funded contracts and the ordinary public works contracts funded from the public exche-

quer.

“Any delay in execution of such a mega project, which is very important project for the developing country like India, may not be in the larger public interest and in the nation’s interest. Such an interference by the courts midway and delay in the projects like these, which is funded by the foreign countries on bilateral mutual understanding/agreement by the developed country to a developing country, may affect the future investments,” lamented the bench.

The court said this while allowing an appeal by the National High Speed Rail Corporation Ltd (NHSCL) against an order of the Delhi high court in August 2021.

अहम फैसला दूसरे देशों द्वारा वित्त पोषित परियोजनाओं में न्यायिक हस्तक्षेप देशहित में नहीं

सरकार को भी बुलेट ट्रेन प्रोजेक्ट की शर्तों से हटने की अनुमति नहीं : सुप्रीम कोर्ट

नई दिल्ली, प्रेढ़: सुप्रीम कोर्ट ने जापान द्वारा वित्त पोषित मुंबई-अहमदाबाद बुलेट ट्रेन परियोजना से जुड़े एक मामले में अहम फैसला सुनाया। कहा, किसी कंपनी और यहां तक कि भारत सरकार को भी इस परियोजना से जुड़े लोन डीड समेत समझौते के किसी नियम और शर्तों से अलग होने की अनुमति नहीं दी जा सकती है। इसके साथ ही मॉटेकार्लो लि. नामक कंपनी के पक्ष में दिए गए दिल्ली हाई कोर्ट के फैसले को भी रद्द कर दिया।

बुलेट ट्रेन से संबंधित कई कार्यों के लिए मॉटेकार्लो के टेक्निकल बिड को जापान इंटरनेशनल कोआपरेशन एजेंसी (जेआइसीए) द्वारा गठित विशेषज्ञ समिति द्वारा रद्द कर दिया गया था। सुप्रीम कोर्ट ने कहा, दूसरे देशों या एजेंसियों द्वारा वित्त पोषित परियोजनाओं में न्यायिक हस्तक्षेप न



शीर्ष अदालत ने निजी कंपनी मॉटेकार्लो लिमिटेड के पक्ष में दिए गए दिल्ली हाई कोर्ट के फैसले को भी किया रद्द

तो देशहित में है, न ही जनहित में।

जस्टिस एमआर शाह और जस्टिस एस बोपन्ना की पीठ इस सवाल पर विचार कर रही थी कि क्या इस मामले में और ऐसी विदेशी वित्त पोषित परियोजना के संबंध में बिना किसी विशिष्ट दुर्भावना या पक्षपात के आरोप में हाई कोर्ट का निविदा प्रक्रिया में हस्तक्षेप करना उचित था। पीठ ने फैसले में कहा-अपीलकर्ता-निगम व

यहां तक कि भारत गणराज्य के लिए भी ऋण समझौते या जेआइसीसी/जेआइसीए के निर्णय के नियम और शर्तों से अलग होने की छूट नहीं है। इसलिए हमारा मानना है कि बिना किसी गड़बड़ी या पक्षपात के आरोपों के जेआइसीए द्वारा सर्वसम्मति से लिए फैसले में हस्तक्षेप कर हाई कोर्ट ने गंभीर गलती की। कंपनी को उस फैसले का पालन करना चाहिए था।

पीठ के लिए फैसला लिखते हुए जस्टिस शाह ने बुलेट ट्रेन परियोजना के लिए स्थापित नेशनल हाई-स्पीड रेल कॉर्पोरेशन लिमिटेड की अपील स्वीकार करते पिछले साल के हाई कोर्ट के फैसले को रद्द कर दिया।

बता दें कि बुलेट ट्रेन परियोजना के लिए जेआइसीए की तरफ से आसान शर्तों और कम ब्याज पर एक लाख करोड़ रुपये का ऋण मिला है।