

ISAS Brief

No. 447 – 19 September 2016

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The Andhra Pradesh High Court Judgment on Amaravati Development - Implications

The judgement by a single Judge of the Andhra Pradesh High Court in India on 12 September 2016, staying the development process of the Amaravati Capital Region in the reconstituted State (province), is likely to be seen as a political setback to the State Chief Minister as well as a dampener for investments by Singapore companies in India and more so in Andhra Pradesh.

S Narayan¹

The High Court of Andhra Pradesh, by the order of a Single Judge on 12 September 2016, has ordered as follows:

“Now, the present position today, after final arguments were heard on 8.9.2016, is that last date of submission of the bids by the interested applicants who have to make a counter challenge/proposal is 13.9.2016 i.e. tomorrow.

“In the absence of data relating to the Revenue share/Commercial bid of the OPP, interested applicants, who under Sec. 2 (ss) of the Act to give their counter challenge, have no time for filing their counter challenge. Therefore the interested parties are prima facie handicapped.

“A final decision on the issues raised in the case can be made only at the time of disposal of the main Writ Petitions. Since it is not possible to decide the merits of the main Writ Petitions in the short time available before 13.9.2016, the Court therefore considered whether the bids

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can be allowed to be opened on 16.9.2016, in the state of affairs mentioned above, or whether prudence, justice, public interest and interests of the State would be better served by granting a stay of further proceedings pending disposal of the main Writ Petition so that the defects can be rectified early.

*“In the circumstances, it appears to me that there is no other alternative **than to grant stay** since it will not be possible to put back the clock once the bid of the OPP is opened and selection is finalized. Therefore, balance of convenience, in my opinion, lies in granting interim relief in favor of the petitioners. Otherwise irreparable injury would be caused to petitioners and to the State and public interest since by the time the main Writ Petitions are decided, not only the award of the contract to the Master developer would have happened, but the successful party might have also started execution of the project and expended monies”.*

This has implications for Singapore-Andhra Pradesh (AP) relations as well as the future of Singapore-India relations.

To recall, the Andhra Pradesh Government had approached the Singapore Government for assistance in planning and developing a new capital city (Amaravati, on the banks of the Krishna River). A consortium of Singapore companies, most of them Government-owned, had assisted in the preparation of a master plan and the detailed development plan for the city. The Government of AP had, meanwhile, entered into land-pooling arrangements with the owners of the lands in that area, where, the benefits of the development would be shared with the land-owners, in addition to monetary compensation. In the first stage, Ascendas and Sembcorp of Singapore, both Government companies, had submitted an offer of development of approximately 2000 hectares, from master plan to detailed execution, and offered a revenue sharing proposition to the Capital Region Development Authority (CRDA) set up by the Government of Andhra Pradesh for the development of Amaravati.

The CRDA, under the internationally accepted Swiss Challenge process, put out this offer for counter-challenge to anyone who may come up with a better offer, and the last date for submission of the counter-offer was 13 September 2016.

This has now been stayed, and the next hearing has been adjourned to 31 October 2016. This has several important implications.

First, the entire process of development of Amaravati has been set back. This is a setback not only for the ambitious plans of AP Chief Minister Chandrababu Naidu, now almost half-way through his five-year term, but also for land-owners and the infrastructure developers who had hoped to benefit from this massive infrastructure activity.

The Singapore side had always been wary of the contractual and legal implications of the agreements that they were entering into, fully aware that the present AP Government was due to go to the polls in 2019, while the contract execution period was to be over twenty years. The political risk of having to deal with successive governments was one that worried the Singapore companies all through the negotiations. Their apprehensions have come true. This would be a setback to other Singapore companies wanting to get involved in developing infrastructure in India, especially with the Government or government-owned companies. Perhaps this would mark a further validation of the impression that India is a difficult place to do business. This is a setback to ambitious infrastructure development plans in other states with Singapore assistance.

The judgement points out flaws in the processes, notwithstanding eloquent arguments by the Advocate General on behalf of AP. The CRDA, enjoined to take the decision in this matter, and the AP Government appointed a high-powered committee to examine the Singapore offer, and the high-powered committee recommended the proposal to the Chief Minister, who then signed off on it. The Court has held that this has bypassed the procedure of examination by the CRDA as well as the Infrastructure Development Authority, both statutory entities, which should have processed the applications in the first place. Referral to these entities subsequently, in the opinion of the Court, was a top-down-directed approach, intended to favour the Singapore Consortium.

The second point made by the Judge refers to non-disclosure of the revenue-sharing arrangements offered by the Singapore group to the challengers. The Court has held that this has vitiated the Swiss Challenge process.

Judicial processes in India take time, and now the AP Government has to approach a multi-judge bench of the High Court in appeal, or the Supreme Court, the country's apex judicial institution. In any case, any function or event in Amaravati during the visit of the Singapore's Prime Minister to India in October is now unlikely.

It is also clear that the decision-making processes in AP are weak, and that the institutional systems, including the bureaucracy, are wary of taking risks on commercial matters. This trend is visible in the national capital, Delhi, as well, and may well be the single-biggest obstacle for Prime Minister Narendra Modi to surmount in his quest for the country's greater economic growth.

On a larger canvas, international companies are still struggling with non-transparent tax laws and implementation bottlenecks in India, and a number of cases still remain unresolved. Investor-confidence in India is likely to weaken further.

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