

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

I.A. NO.182 IN WRIT PETITION (CIVIL) NO.13029 OF 1985

M.C.MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(For impleadment on behalf of State of Haryana)

[For further Directions]

With I.A. Nos.183 and 238 in I.A. No.151 in W.P. (C) No.13029 of 1985

(For Directions on behalf of State of Haryana and c/delay)

I.A. Nos.188-189 in Writ Petition (C) No.13029 of 1985

(For Directions/impleadment on behalf of Delhi Traffic Police)

I.A. No.197 in Writ Petition (C) No.13029 of 1985

(For impleadment on behalf of M.S. Yamaha Motors (India))

I.A. No.213 in Writ Petition (C) No.13029 of 1985

(For Directions and revocation of order dated 15/07/2002 filed by
Government of N.C.T. of Delhi)

In the matter of : P.W.D., Government of N.C.T. Delhi regarding
peripheral expressway for Delhi

I.A. No.243 in Writ Petition (C) No.13029 of 1985

(For Directions on behalf of State of Uttar Pradesh)

Date: 30/11/2006 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ARIJIT PASAYAT

HON'BLE MR. JUSTICE S.H. KAPADIA

Mr. Harish N. Salve, Sr.Adv. (A.C.)

Mr. U.U. Lalit, Sr.Adv. (A.C.) (N/P)

For Petitioner(s) In-person (N/P)

For Applicant(s) Mr. Raju Ramachandran, Sr.Adv.

Mr. Ajay Siwach, Adv.

Mr. T.V. George, Adv.

Mr. P. Narasimhan, Adv.

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For Delhi Police: Mr. S.W.A. Qadri, Adv.

Mr. M.P.S. Tomar, Adv.

Mr. R.C. Kathia, Adv.

Mr. D.S. Mahra, Adv.

for Ms. Anil Katiyar, Adv.

Mr. D.S. Mahra, Adv.

For State of U.P.: Dr. R.G. Padia, Sr.Adv.

Mr. Rajeev Dubey, Adv.

Mr. Kamlendra Mishra, Adv.

O R D E R

In the matter of : Western Peripheral Expressway:

We have perused the affidavit of Mr. Randhir Singh, Executive Director of the Haryana State Industrial and Infrastructure Development

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Corporation Limited [H.S.I.I.D.C.] which has been filed pursuant to the directions of this Court dated 24th November, 2006. The affidavit dated 29th November, 2006, sets out the extensions of time granted to the party for achieving the financial closure. It is pointed out that as per Clause (22) of the Concession Agreement dated 31st January, 2006, the concessionaire was required to achieve the financial closure within 180 days from the date of concession granted, i.e., up to 30th July, 2006, with further provision of extension of ninety days. The Concessionaire requested H.S.I.I.D.C. to extend the period of financial closure by another ninety days up to 30th October, 2006. Steps taken between this period have been mentioned in the affidavit. It is evident that even up to the extended period of 30th October, 2006, the financial

closure has not been achieved. The affidavit states that, with the approval of the Government of Haryana, H.S.I.I.D.C., on the request of the Concessionaire, has regularised the period of ninety days, as stated in Paragraph 3(c)(a) and has further granted extension of ninety days which means up to 30th January, 2007, on payment of damages mentioned therein. The consortium comprises of three parties, M/s. MADHUCON, APPOLLO and D.S.C. An apprehension has been expressed about the financial capacity of the party to carry out the contract in question. It is to be borne in mind that time is the essence in these matters, particularly having regard to forthcoming Commonwealth Games. A sum of Rs.573 crores has already been incurred towards the acquisition of land. By order dated 18th August, 2005, a High Level Monitoring committee comprising of the Secretary of the concerned Ministry dealing with construction of Highway as the Chairman, with

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Chief Secretaries of the States of Uttar Pradesh, Haryana and Delhi and Chairmen of National Highway Authority of India and E.P.C.A. as Members of the Committee, was

constituted. The said order stipulates that the decisions taken by the Monitoring Committee shall be acted upon by all concerned States or agencies in connection with the projects under construction. We feel that it would be appropriate that the credential, in particular the financial capacity of the party, be examined by the Monitoring Committee which can take such steps as may be necessary to satisfy itself about the financial and other capacity of the party to carry out the contract and timely complete it.

The Monitoring Committee can also examine the extension granted up to 30th January, 2007, and as to whether it will serve any purpose. The Monitoring Committee shall forthwith meet and take appropriate decisions. It can also examine whether the acquisition date for acquisition of land meant for traffic inter-changes now kept as 30th June, 2007, requires to be pre-poned and steps, if any, required in that direction.

We are told that, possibly, some litigation is going on between the three members of the consortium, above-noted. The Monitoring Committee would look into this aspect as well and its impact on the financial capacity of the party.

In the matter of Eastern Peripheral Expressway:

In respect of this Expressway, the Final Detail Project Report was to be ready by June, 2006. Probably, on that basis, the acquisition was targeted for completion by 30th September, 2006. Now, in the Status Report filed on behalf of the Monitoring Committee dated 16th November, 2006, the fresh target date for completion of acquisition has been fixed as 31st December, 2006.

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The date of publication of notification, as in Paragraph (13), instead of 20th August, 2006, has now been re-scheduled for 31st December, 2006, and the submission of the Draft D.P.R. by consultant targeted for 30th September, 2006, has now been re-scheduled for 30th November, 2006. There is no indication in the affidavit as to reason for re-scheduling the date and the reason for fixing end of November, 2006 for draft D.P.R. when Final D.P.R. was scheduled for June, 2006. The Monitoring Committee would look into these issues keeping in view the requirement of timely completion of this Expressway. Though in Paragraph (15), it is noted that N.H.A.I. has intimated the Monitoring Committee that the re-schedule

dates will not affect start and completion of the project,
the Monitoring Committee, we have no doubt, would
examine the correctness of this intimation given by
N.H.A.I. to it.

In the matter of: E.P.C.A. Report No.28 dated October,
2006:

Taken on Board.

Issue notice to the Gas Authority of India
Limited, Ministry of Petroleum, States of Maharashtra,
Gujarat, Andhra Pradesh, Uttar Pradesh, Karnataka and
Tamil Nadu with direction to file their responses, if any,
within three weeks of the receipt of the notice from the
Registry.

[T.I. Rajput]

A.R.-cum-P.S.

[V.P. Tyagi]

Assistant Registrar