

ITEM NO.301 (PH)

COURT NO.4

SECTION XIV

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

I.A. Nos. 20, 40 & 41 in CIVIL APPEAL NO. 3769 OF 1996

BUFFALO TRADERS WELFARE ASSON.

Appellant (s)

VERSUS

U O I & ORS

Respondent(s)

(for intervention and directions)

Date: 21/10/2008 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE V.S. SIRPURKAR

HON'BLE MR. JUSTICE CYRIAC JOSEPH

Dr. Raju Ramachandaran, Sr. Adv.

For Appellant(s) Mrs. Rekha Pandey, Adv.

Mrs Anil Katiyar, Adv.

For Respondent(s)

Mr. Sanjiv Sen, Adv.

For MCD

Mr. Praveen Swarup, Adv.

Mr. Vishnu B. Saharya, Adv.
for M/S Saharya & Co., Adv.

For CPCB

Mr. Vijay Panjwani, Adv.

Mr. Prashant Kumar, Adv.

Mr. Ajay Kr. Jha, Adv.
for M/S. Parekh & Co., Adv

For State of U.P. Mr. Shail Kr. Dwivedi, AAG

Ms. Savitri Pandey, adv.

Mr. Anuvrat Sharma ,Adv

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UPON hearing counsel the Court made the following
ORDER

Before us, Mr. Sanjiv Sen, learned counsel appearing for the
Municipal Corporation of Delhi has raised the following contentions :-

(i) The contractor having not completed the entire work, a sum
of Rs. 3.85 crores should be directed to be withheld.

(ii) Cost of land filling and design change being a part of the
project, no amount is payable to the contractor on that
account

(iii) As in terms of the original contract for a sum of Rs.6.5
crores, for which taxes were to be paid by the contractor,

although the quantum has increased, the tax involving Rs.65 crores should be payable by the contractor himself.

(iv) An application has been filed by the Municipal Corporation to implead the authorities of Department of Trade and Taxes so that this Court may issue a direction to the said authority to waive the amount of penalties and interests.

(v) The contractor in terms of the provision of the contract should be directed to furnish a performance security.

Mr. Prashant Kumar, learned counsel appearing for the contractor, on the other contended :

(i) that the contractor has completed the project but the Municipal Corporation of Delhi has not issued the completion certificate as yet;

(ii) The question in relation to land filling and payment of taxes were the subject matter of the Report of the Committee
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appointed by this Court vide order dated 24th July, 2008 and as such the said questions cannot be permitted to be re-opened;

(iii) the matter relating to the furnishing of performance security being directly linked with the question of running and maintenance of the plant, the same should be subject matter of separate contract.

In response thereto, Mr. Sanjiv Sen contended that for the purpose of running and maintenance of the plant and machinery, tender had been floated twice but nobody has yet offered any bid pursuant thereto.

We had requested Dr. Raju Ramachandaran, learned senior counsel, the Chairman of the Committee appointed by us in terms of our order dated 24th July, 2008 to be present in Court. He is present in Court.

In regard to contention No. 1, we request Dr. Raju Ramachandaran, Senior Advocate and Mr. P.B. Vijay, Retd. Director General, CPWD, both members of the aforesaid Committee to visit the plant, on a date to be specified, and take up the matters as regards

completion of the work with the officers of the Municipal Corporation of Delhi as also the contractor and submit an additional report to this Court. If the said Committee finds that the contractor has not completed the project, the Committee would give suitable directions in this behalf to the contractor. However, on the other hand, if it is found that the work has been completed, the Municipal Corporation of Delhi would issue a completion certificate to the contractor. In the

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event the Committee is satisfied that all the work has been completed by the contractor, the Municipal Corporation of Delhi would formally takeover the plant and machinery from it.

So far as the question of costs for land filling and payment of taxes are concerned, the same being part of the Report of the Committee dated 25th August, 2008, we are of the opinion, that the same should not be permitted to be raised.

So far as the application for impleading the Department of Trade and Taxes is concerned, we are of the opinion that the same should be rejected. Accordingly, we dismiss the application for impleadment of the Department of Trade and Taxes. It will be open to the Municipal Corporation of Delhi to initiate proceedings against the officers for whose fault, the Corporation has made itself liable to pay interest and penalty. It will, further more be open to the Municipal Corporation of Delhi to file an appropriate application before the said authority for waiver of interest and penalty, which may be considered by the competent authority on its own merits.

So far as the grant of performance security and maintenance is concerned, we are of the opinion that the parties should hold negotiations in the presence of the Members of the Committee.

For this additional work, the parties are directed to pay a sum of Rs.50,000/- each to Dr. Raju Ramachandaran, Sr. Advocate and Mr. P.B. Vijay, Retd. Director General CPWD in equal proportion.

Put up after four weeks.

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(Ajay Kr. Jain)
Court Master

(Pushap Lata Bhardwaj)
Court Master