

ITEM NO.308

COURT NO.4

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**Civil Appeal No(s). 4908-4909/2019****NORTH DELHI MUNICIPAL CORPORATION****Appellant(s)****VERSUS****GNCTD****Respondent(s)****WITH****C.A. No. 4906-4907/2019 (XVII)****IA No. 58284/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)****C.A. No. 3610-3611/2019 (XVII)****Date : 15-07-2019 These appeals were called on for hearing today.****CORAM : HON'BLE MR. JUSTICE ARUN MISHRA**
HON'BLE MR. JUSTICE DEEPAK GUPTA**Counsel for the parties****Mr. Sanjiv Sen, Sr. Adv.**
Mr. Praveen Swaup, Adv.
Ms. Pooja Kalra, Adv.
Mr. Sayan Ray, Adv.
Mr. Karmendra Pratap Singh, Adv.
Mr. Soumo Palit, Adv.**Ms. Pinki Anand, ASG**
(Appearance slip not given on her behalf)**Mr. Sanjay Jain, ASG**
Mr. Yoginder Handoo, AOR
Ms. Pooja Kalra, Adv.
Mr. Prashant Bhatnagar, Adv.
Mr. Nishant Kumar, Adv.**Mr. S. Wasim A. Qadri, Sr. Adv.**
Mr. V. V. V. Pattabhiram, Adv.
Mr. Shankar Devate, Adv.
Mr. B. V. Balram Das, Adv.**Mr. Praveen Swarup, AOR**

UPON hearing the counsel the Court made the following
O R D E R

This Court passed an order on 07.05.2019 and issued notice in the civil appeal. The order is extracted hereunder :-

"It is submitted that the kind of vehicles which are required by the Corporation are not available in CNG or Petrol variants.

Delay condoned.

Issue notice.

List in July, 2019, before the Bench hearing WP(C) No. 13029/1985 (M.C.Mehta V. Union of India and Ors.)."

Ms. Pinki Anand, learned Additional Solicitor General appeared on behalf of the appellant - North Delhi Municipal Corporation (NDMC) on 07.05.2019. We condoned the delay and issued the notice. It was submitted before us that the kind of vehicles which are required by the Corporation are not available in CNG or Petrol variants. We told the learned ASG that requisite material be placed in this regard and the matter has to be heard by the Bench hearing the case "*M.C.Mehta Vs. Union of India*", being Writ Petition (C) No. 13029 of 1985 in the month of July, 2019.

After the order was passed and notice was issued returnable in the month of July, 2019, it appears that the matter was mentioned before the Vacation Bench just after a week and the matter was taken up by the Vacation Bench on 16.05.2019. There was no prayer made in the civil appeal for grant of interim stay and no separate application was filed for that purpose during vacation and also no application was filed showing any urgency to take up the matter during vacation. When prayer for interim order has not been made, there was no ground to mention the matter during the vacation in

the absence of any application being filed for interim relief or for hearing during vacation.

In all fairness and as per the practice and procedure which has been settled since long, the case was to be heard by the Special Bench hearing *M.C.Mehta case*, to which such matters have been assigned by the order of Hon'ble The Chief Justice and ought not to have been mentioned during vacation in the absence of any application being filed of an urgent nature whereas the fact remains is that no prayer was made for grant of interim relief. We fail to comprehend as to how within a week, urgency was made out to pray for interim order without any application for interim relief nor prayer was made in memo of appeal, when we have heard all the submissions just a week before and posted the matter in the month of July, 2019 before appropriate Bench. As there was no application for interim relief filed in the matter nor any prayer in the memo of appeal for grant of interim relief, as a matter of fact, the matter could not have been mentioned before the Vacation Bench. The Bench was not informed that no prayer for interim relief has been made.

As rightly suggested by Ms. Pinki Anand, learned ASG, the order dated 16.05.2019 is required to be recalled. In the aforesaid circumstances, the order dated 16.05.2019 is hereby vacated, as the Vacation Bench was not apprised with the order passed by this Court nor informed of that the prayer for grant of interim relief has not been made. As the submissions which were made by Ms. Pinki Anand on 07.05.2019 were not accepted by us, on the basis of similar submissions, without any application/prayer

for interim relief, wrong mentioning has been made, we impose the costs upon the North Delhi Municipal Corporation to the tune of Rs.1,00,000/- (Rupees One Lakh). We find that recourse to such a method ought not to have been taken by a statutory body like NDMC. All the submissions which were made during vacation were made before us and we were not inclined to grant any such relief. Mentioning should not have been made before the Vacation Bench more so when no application was filed for that purpose and the correct facts were not apprised to the other Bench and by way of misrepresentation and misleading the Bench, the order came to be passed.

Be that as it may, we feel that in future, there will not be any reoccurrence of such incidents. The Registry also ought to have been careful and ought to have pointed out that no application for interim relief has been filed. Let the matter be listed for hearing as ordered by this Court vide order dated 07.05.2019.

(JAYANT KUMAR ARORA)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER