

ü, ITEM NO.1 COURT NO.3 SECTION PIL

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

I.A.NO 306-310 in WP © no.13381/1984

M.C. MEHTA Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent (s)

(for directions on behalf of Durgesh Brick Kiln)

I.A.No.376 in W.P.(c) 13381/1984 MC. MEHTA VS. UOI & ORS.
WITH

I.A.NO.387 in W.P.(c) 13381/1984 MC. MEHTA VS. UOI & ORS.

I.A.NO.388 IN W.P.(c) 13381/1984 MC. MEHTA VS UOI & ORS.

(appln. for directions)

I.A.NOS.389-390 IN W.P.(c) 13381/1984 MC. MEHTA VS. UOI & ORS.

WITH

I.A.Nos. 395-397 in W.P.(c) 13381/1984 MC. MEHTA VS. UOI & ORS.

(for directions and exemption from filing O.T. and permission to file addl. documents on behalf of N.P.C.C Ltd.)

I.A. No. 371 in W.P.(c) 13381/1984 MC. MEHTA VS.UOI & ORS.

(on behalf of Pooja Brick Field)

I.A.Nos.392 & 393 in W.P. © 13381/1984 MC MEHTA VS. UOI & ORS.

(for directions/stay on behalf petrol Dealers Association)

I.A.NO.398 IN I.A.NO.392 & 393 IN WP © NO.13381/1984 MC. MEHTA VS.UOI & ORS.

IN THE MATTER OF : PETROL DEALERS ASSOCIATION, AGRA

Date: 18/09/2003 These petitions were called on for hearing today.

CORAM:

HON'BLE MR.JUSTICE M.B. SHAH

HON'BLE MR.JUSTICE B.N. AGRAWAL

For the Petitioner (s)

Mr.M.C.Mehta, In person

Mr.Krishan Mahajan, Adv. (A.C.)

Mr.Sushil Kumar Jain, Adv.

Mr.Imtiaz Ahmez, Adv.,

Ms.Naghma Imtiaz, Adv.,

Mr.V.N .Raghupathy, Adv.

Mr.Dipankar Gupta,Sr.Adv.,
Mr.Atish Dipankar,Adv.,
Mr.Santosh Kumar,Adv.,
Mr.Chandra Kanta Nayak,Adv.

Mr.Ajay Kr.Aggarwal,In person

For the Respondent (s)
for State of U.P.Mr.Rakesh Dwivedi,Sr.Adv.,
Mr.Dinesh Dwivedi,Sr.Adv.,
Mr.Kamlendra Mishra,

for CBIMr.Altaf Ahmed, ASG
Mr.A. Mariarputham,Adv.,
Mr.P. Parmeswaran,Adv.
Ms.Aruna Mathur,Adv.

For ASIMr.Rajeev Sharma,adv.,
Mr.Pawan,Adv.,
Ms.Anil Katiyar,Adv.

Mr.Hemant Sharma,Adv.,
Mrs.Anil Katiyar,Adv.

Ms.Niranjana Singh,Adv.,
Mrs.Anil Katiyar,Adv.

Mr.Ashok K.Srivastava,Adv.

Mr.Krishan Mahajan,Adv.

Mr.Vijay Panjwani,Adv.

Mr.Pradeep Misra,Adv.
Mr.Manoj K.Mishra,adv.

Dr.Sumanat Bhardwaj,adv.
Ms.Mridula Ray Bhardwaj,adv.

Mr.R.K.Jain,Sr.Adv.,

Mr.C.S. Vaidyanathan,Sr.Adv.

UPON hearing counsel the Court made the following

O R D E R

*I.A.No.376. Stand over for four months. Certain directions are issued to the CBI/Union Govt and the U.P.Govt. for proceedings further in terms of the signed order. Reports be kept in sealed covers in the Registry.

I.A.Nos.306-310 The question is which are significant monuments.

It is contended by the learned counsel for the applicant that all protected monuments cannot be considered to be significant monuments. He submits that directions which were issued by this Court were only limited for protecting Taj Mahal and other such significant monuments. Stand over for four weeks at the request of the learned Additional Solicitor General in order to enable him to obtain instructions.

WITH REGARD TO THE SUGGESTED GUIDELINES FOR ESTABLISHMENT OF BRICK KILNS.(filed in Court)Learned counsel appearing on behalf of the Central Pollution Control Board has produced on record suggestions stated in the Report carried out by the Central Building Research Institute. Learned Addl. Solicitor General to obtain necessary instructions on the said report and find out to what extent it can be implemented by making Rules or provisions in the Act. List on 29th October, 2003.

Monitoring Committee to continue for a period of one year from today.

I.A.Nos.392 & 398. Adjourned to 29th October, 2003.

(* Vijay Kumar Sharma) Kalyani (Janki Bhatia)
AR-cum-PS to Hon. Judge Court Master

Signed Reportable order in I.A.No.376 is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

INTERLOCUTORY APPLICATION NO.376 OF 2003

IN

WRIT PETITION (CIVIL) NO.13381 OF 1984

M.C. MEHTA?..Petitioner

VERSUS

UNION OF INDIA & ORS.?.Respondents

On behalf of Monitoring Committee ?..Applicant

O R D E R

On the basis of the decision rendered by this Court on 31.12.1996 in Writ Petition (C) No.13381 of 1984 titled M.C. Mehta (Taj Trapezium Matter) Vs. Union of India & Ors. {(1997) 2 SCC 353}, various I.As. were filed before this Court either for removal of the industries which are polluting the atmosphere in the vicinity of Taj Mahal or for removal of the encroachment because appropriate steps were not taken by the concerned authorities. For this purpose, this Court had appointed a Monitoring Committee to report to this Court for the action being taken by the Agra Mission Management Board and other authorities. On 25.3.2003 on behalf of the Monitoring Committee a report was submitted before this Court wherein it was prayed that respondents including the State of U.P. be directed to immediately stop the diversion of the river Yamuna and any further action on the bed of the river in proximity of the International Heritage Monuments till the Union Ministry clears such projects upon an environment impact assessment report. On the said application this Court issued notice on 27.3.2003. At that time, learned counsel for the Monitoring Committee as well as Mr. M.C. Mehta insisted that authorities are proceeding with the construction without appropriate clearance. Still, however, we thought that as the State Government and the Central Government are involved in the matter, they would proceed in accordance with law. Therefore, stay order as prayed for was not granted. Subsequently, on 8.4.2003 along with other matters this I.A. was also considered. On 9.4.2003 on the request of the learned counsel for the Union of India for studying the detailed project report and for filing necessary affidavit, matter was adjourned for three weeks. At the relevant time counsel for the Union of India did not know whether officers of the U.P. Government were proceeding with construction without clearance from the Central Government. Thereafter, on 1.5.2003, the Court perused the affidavit filed on behalf of the Union Government and recorded as under:-

"Heard the learned counsel for the parties. In the affidavit dated 29.4.2003 of Dr.(Mrs.) Sunita V. Auluck, Addl. Director, Ministry of Environment and Forests, New Delhi (tendered in Court) the area which is sought to be reclaimed is divided into four parts as under:-

Component A:- On the right bank between upstream end of Taj Mahal to upstream end of Fort (near Railway Bridge).

Component B:-On left bank between Ram Bagh and opposite Agra Fort and upstream of Rambagh.

Component C:-On the right bank upstream of Agra Fort upto the point opposite of Ram Bagh.

Component D:-On the left bank from the point opposite the upstream of Agra Fort to near Mehta Bagh and right bank down stream of Taj.

For Component A, learned counsel appearing for the State Government states that at present no work of reclamation of land is going on. For Component B, on the left bank between Ram Bagh and opposite Agra Fort, it is stated that reclamation of 25 acres of land out of 40 acres of land is over. With regard to Components C and D, no reclamation work is done. He further submits that henceforth the State Government would not carry out any further reclamation work except filling of sand. For the work done in the area of Components A and B, it would be open to

the State Government to have temporary embankment by using the stones and clay. However, this would be subject to further directions and clearance by the Central Government under Section 3 of the Environment Protection Act, 1986.

Meantime, Central Water Research Station Khadakwasla would assess the behaviour of the river and impact of reclamation of river bed on the monuments in Agra and its protection thereof. The entire cost of this study would be borne by the Central Government."

We directed the Central Water Power Research Station, Khadakwasla to assess the behaviour of the river and impact of reclamation on river bed on the monuments in Agra and its protection thereof as we were under the impression that the project was carried out as per the direction of the Central Government. Hence, we, directed the Central Government to bear the costs of the Project. From The said affidavit it was apparent that the construction work commenced without clearance and this Court was not informed about it at the relevant time.

Thereafter on 16.7.2003, this Court directed CBI inquiry in the matter, wherein it was inter alia mentioned that for some ulterior motive under the directions of some persons without getting necessary clearance from the concerned authority, work of the project had continued and that NPCC which a Government of India Undertaking has placed a board at the site stating: NPCC LTD., A GOVERNMENT OF INDIA ENTERPRISES, ENGAGED FOR DEVELOPMENT OF HERITAGE CORRIDOR FOR TTZ AREA AT AGRA UNDER THE DIRECTIVE OF HON'BLE SUPREME COURT OF INDIA. When this was pointed out to the learned counsel for the NPCC, he submitted that there was some mistake committed because the work orders were issued by the Government. At that time also we had not agreed with the said submission. It was also mentioned that it was painful to note that instead of creating something new which could be classified as a World Heritage or National Heritage, concerned persons who were in power were inclined to damage or endanger the World Heritage by their hasty/irregular/illegal activities. Therefore, CBI was directed to submit preliminary report within four weeks. For this learned Addl. Solicitor General Mr. Altaf Ahmed stated that report would be submitted at the earliest.

We here note down that the said statement made before the Court is fully complied with.

Thereafter on 25.7.2003, we directed the Committee to find out whether any damage is likely to be caused by the construction work carried out by the government agency.

In the said inquiry report the CBI after recording the statements of various persons including the persons involved stated that the conclusions drawn in the preliminary report are based on examination of documents and examination of officers/persons which could be done during short period of inquiry and that conclusions were provisional because some further inquiry was necessary. Mainly, it was pointed out that opinion of Forensic Expert was also required to be obtained as there was tampering of records and interpolations. The conclusions are summarised below:-

- 1.The techno-feasibility report, detailed project reports(DPRs), detailed drawings and cost estimates were not prepared before the physical commencement of work of Taj Heritage Corridor Project at Agra.

- 2.The techno-feasibility report and DPRs were not sent to the Government of India for necessary approvals and clearances.

- 3.The meeting of the Mission Management Board held on 12.10.2002 does not appear to have taken a decision for immediate commencement of work. It had only decided for preparation of techno-feasibility report and DPRs. only. The actual commencement of work would have logically followed preparation of techno-feasibility report and DPRs. and detailed drawings and cost estimates and their necessary approval.

- 4.On the basis of the above, a note in file of the Environment Department, U.P. was put up before the Chief Secretary, U.P. stating that the Mission Management Board had decided to get DPRs. and techno-feasibility reports prepared for which it was also decided in the meeting to release required funds. It was further recorded in the said note itself that the proceedings of the said meeting was prepared accordingly and placed in the file for approval. But the proceedings of the meeting recorded a different decision so much so that the words 'tatkala karya prarambha karne' (immediate commencement of work) had been added in the proceedings apparently with ulterior motives. Initials of the Chief Secretary, UP were also obtained on each page of the minutes of the meeting.

- 5.The file was, therefore, sent to the office of the Chief Minister, UP Ms. Maya Wati through Shri Naseemuddin Siddiqui, attached Minister, stating that the Chief Secretary, UP had approved the decision of the Mission Management Board for immediate commencement of the work, preparation of techno-feasibility report and DPRs. The said note was not routed through Shri D.S. Bagga, Chief Secretary, UP. It was proposed in the note that approval be accorded for taking act

ion as per the approval of the Chief Secretary and also for informing the Ministry of Environment and Forest, Government of India and the Hon'ble Supreme Court through quarterly reports. The said proposal for starting work in terms of the purported approval of the Chief Secretary was accorded approval by the Chief Minister which was communicated by Shri P.L. Punia, Principal secretary to the Chief Minister, UP vide his note recorded in the file. This shows that the office of the Chief Minister was apprised of the impending construction at the site as the approval of the Chief Minister was communicated as stated above.

6. No tender enquiry was floated for preparation of techno-feasibility report, detailed project report (DPR) and for awarding the work for execution.

7. No work order was issued to NPCC for executing the work specifying the material and technical specifications and quantities of different works.

8. Work was started by NPCC on the verbal instructions of Shri R.K. Sharma, Secretary, Environment, UP for which no Memorandum of Understanding or Agreement was signed between the State Government and NPCC. Only a copy of the Government Order dated 01/11/2002 sanctioning Rs. 17 crores for this project was sent to NPCC.

9. The entire work of the project was left at the mercy of NPCC and its subcontractor M/s. Ishvakoo (India) Pvt. Limited and no Government Department or authority or agency was made responsible to supervise the ongoing work, to check the material and technical specifications and to take measurement of the work executed by NPCC or its subcontractor.

10. NPCC entered in a pre-tender tie up with M/s. Ishvakoo (India) Pvt. Limited for execution of this project without exploring possibility of entering into such arrangement with other parties on competitive terms.

11. No approval of the Cabinet Committee on Economic Affairs (CCEA) was obtained before commencement of work of the project, contrary to the decisions taken jointly by the Government of India and the Government of UP which was reiterated on more than one occasions in the files of the Environment Department.

12. An amount of Rs. 17 crores was unauthorisedly released by Shri R.K. Sharma, Secretary, Environment, UP for commencement of the work and preparation of DPR and techno-feasibility report. No approval was obtained from the departmental Minister for release of the said amount. The Government Order was issued in the name of the Governor without obtaining the approval of the departmental Minister or the Chief Minister by sending a specific proposal.

13. Contrary to the provisions existing in the State Government which requires that in case of every non-recurring expenditure of Rs.5 crores and above, approval of the Expenditure Finance Committee (EFC) of the State Government is required, no such approval was either sought or obtained before sanctioning the amount of Rs.17 crores.

14. An amount of Rs.20 crores was sanctioned by Shri Naseemuddin Siddiqui, presently Minister of Environment, UP for release without approval of DPRs and techno-feasibility report and without consideration of the matter by the Expenditure Finance Committee (EFC) of the State Government and CCEA, Government of India.

15. Shri Siddiqui appears to have subsequently tampered with the file and to have made interpolations in the Government records with an objective to cover up the fact that he had sanctioned Rs.20 crores on 21.5.2002.

16. Shri Siddiqui and Dr. V.K. Gupta, the present Secretary, Environment, U.P. are reported to have pressurised Shri Rajendra Prasad, Under Secretary, Environment Department, U.P. to tamper with the file and to make interpolations in the official records so that his subsequent note in the file matched and was in line with the interpolations made in the note of the Minister.

17. Shri K.C. Mishra, Secretary, Environment and Forest, Government of India appears to have tampered with the file and made interpolations in government records in order to cover up his omissions of not approving the proposals of his Joint Secretary and Special Secretary for writing to the State Government for a report and to ask them to carry out work only after necessary approvals and clearances.

Thereafter as requested by the CBI further time was given by order dated 21.8.2003. In that order we had specifically made clear that CBI Officer to interrogate the persons involved and a

also to verify their assets because it was alleged that an amount of Rs. 17 crores was released without proper sanction.

Thereafter a report was submitted on 11.9.2003 with following further conclusions-

15. An amount of Rs. 17 crores was unauthorisedly released by Shri R.K. Sharma, Secretary, Environment, U.P. without the approval of the departmental Minister. (Ref. Para 3.1.E.4 page 64 and para 3.1.E.31, page 81)

16. Contrary to the provisions existing in the State Government which require that in case of a very non-recurring expenditure of Rs.5 crores and above, approval of the Expenditure Finance Committee (EFC) of the State Government is required, no such approval was either sought or obtained before sanctioning the amount of Rs. 17 crores (Ref. Para 3.1.E.11, page 67).

17. An amount of Rs. 20 crores was sanctioned by Shri Naseemuddin Siddiqui, the then Minister of Environment, U.P. for release without approval of DPRs and techno-feasibility reports and without clearance of the Expenditure Finance Committee (EFC) of the State Government and CCEA, Government of India (Ref. Para 3.1.E. 39, page 86).

18. Shri Siddiqui subsequently tampered with the file and made interpolations in the Government records with an objective to cover up the fact that he had sanctioned Rs.20 crores on 21/05/2003. (Ref. Para 3.1.E.40 (1 and 2) page 87).

19. Shri Siddiqui and Dr. V.K. Gupta, the present Secretary, Environment, U.P. pressurized Shri Rajendra Prasad, Under Secretary, Environment Department, U.P. who also tampered with the file and made interpolations to cover the fact that the Minister had sanctioned Rs. 20 crores. (Ref. Para 3.1.E. 37, page 86).

20. Shri K.C. Mishra, Secretary, Environment and Forest Government of India tampered with the file and made interpolations in Government records in order to cover up his omissions of not approving the proposals of his Joint Secretary and Special Secretary for writing to the State Government for a report and to ask them to carry out work only after necessary approvals and clearances. He obscured some portions of the notes dated 21/10/2002 and 08/05/2003 of Dr. Saroj, Additional Director, Ministry of Environment and Forest so as to show that he was not a part of the decision making and had not shown his consent to the proposed project. (Ref. Para 3.1.E.42 page 89).

21. Central Forensic Science Laboratory has given a report that interpolations were made in the files by Shri Naseemuddin Siddiqui, the then Minister, U.P., Shri Rajendra Prasad, Under Secretary, U.P. and Shri K.C. Misra, Secretary, Environment and Forests, Government of India (Ref. Para 3.1.G.21, pages 106-107 and 3.1.E.44 (5-6), page 90).

22. Collection of information/intelligence and discreet verification of assets acquired/held by the persons/officers involved with decision-making process in this case could not be completed. Considering the enormity of task, it is likely to take considerable time. (Ref. Para 3.1.K.1, page 112-113)."

On the basis of the said report further time was given to the CBI for verification of the assets of the persons/officers involved and the said report inter alia reveals as under-
"In addition to the above, enquiry was also made regarding the outflow of Rs. 17 crores, released by the State Government to M/s NPCC for this project, major part of which was paid by M/s NPCC to M/s Ishvakoo (India) Private Limited and M/s Consultant Architect and Planner Services Limited (CAPS).

Income Tax Returns of the following persons/officers were collected from different income tax authorities:

(i) Ms. Mayawati, former Chief Minister, Uttar Pradesh.

(ii) Shri Naseemuddin Siddiqui, the then Minister, Uttar Pradesh.

(iii) Shri K.C. Misra, the then Secretary, Ministry of Environment and Forest, Government of India, New Delhi.

(iv) Shri D.S. Bagga, the then Chief Secretary, Government of Uttar Pradesh, Lucknow.

(v) Shri P.L. Punia, the then Principal Secretary to the Chief Minister, Uttar Pradesh.

(vi) Shri R.K. Sharma, the then Principal Secretary, Environment, Government of Uttar Pradesh."

Apart from what has been stated in the reports with regard to the assets, the learned Additional Solicitor General Mr. Altaf Ahmed, submitted that further inquiry/investigation is necessary by the CBI.

Considering the aforesaid report and the serious irregularities/ illegalities committed in carrying out the so-called Taj Heritage Corridor Project, we direct:-

(a) the Central Government to hold immediate departmental enquiry against Shri K.C. Mishra, former Secretary, Environment, Union of India;

(b) the State of Uttar Pradesh to hold departmental inquiry against Shri R.K. Sharma, former Principal Environment Secretary, Shri P.L. Punia, former Principal Secretary to Chief Minister, Shri D.S. Bagga, Chief Secretary, Shri V.K. Gupta, former Secretary - Environment; and

(c) NPCC or the competent authority including the Central Government to hold inquiry against Shri S.C. Bali, Managing Director of NPCC;

(d) the State Government as well as the concerned officers of the Central Government are directed to see that departmental enquiry is completed within four months from today. The State of U.P. and Central Government would appoint respective inquiry officers for holding inquiry, within a period of seven days from today;

(e) It would be open to the State Government if called for to pass order for suspension of delinquent officers in accordance with the rules;

(f) For the officers and the persons involved in the matter, CBI is directed to lodge FIR and make further investigation in accordance with law;

(g) CBI shall take appropriate steps for holding investigation against Chief Minister Ms. Mayawati and Nasimuddin Siddiqui, former Minister for Environment, U.P. and other officers involved;

(h) Income Tax Department is also directed to cooperate in further investigation which is required to be carried out by the CBI.

(i) CBI would take into consideration all the relevant Acts i.e. IPC/Prevention of Corruption Act and the Water (Prevention and Control of Pollution) Act, 1974 etc.

(j) CBI to submit self contained note to the Chief Secretary to the Government of Uttar Pradesh as well as to the Cabinet Secretary, Union Government and to the concerned Ministry dealing with the NPCC.

Stand over for four months for report and compliance.

?????????????J.
(M.B. SHAH)

?????????????J.
(B.N. AGRAWAL)

New Delhi;
September 18, 2003.