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OUT BY MONDAY

ITEM NO.301

COURT NO.3

SECTION PIL

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 (C) NO.13029 OF 1985

M.C.MEHTA

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

(For impleadment on behalf of State of Haryana)

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)

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. of Delhi regarding

peripheral express way for Delhi)

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

(For directions)

Date: 11/02/2005 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

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.)

For Applicant(s)/

Mr. Neeraj Kumar Jain, Adv.

Petitioner(s)

Mr. Sanjay Singh, Adv.

Ms. Kavita Wadia, Adv.

Mr. J.P. Dhanda, Adv.

Mr. D.S. Mahra, Adv.

Mr. P. Narasimhan, Adv.

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- 2 -

Mr. R.G. Padia, Sr. Adv.

Mr. Sahdev Singh, Adv.

Mr. R.K. Singh, Adv.

Mr. Kamendra Mishra, Adv.

Mr. Rajeev Kumar Dubey, Adv.

Ms. Rashmi Singh, Adv.

Mr. S.S. Pundir, Adv.

For Respondent(s)

Mr. M.C. Mehta, Adv.

Mr. G.E. Vahanvati, SG.

Mr. V.B. Joshi, Adv.

Mr. Ravi Kini, Adv.

Mr. Krishan Kumar, Adv.

Mr. Sumit Gupta, Adv.

Mr. Sanjiv Sen, Adv.

Mr. Rajan Narain, Adv.

Mr. B.V. Balaram Das,Adv.

Ms. Sheil Sethi,Adv.

Mr. Vijay Panjwani,Adv.

For MoE&F:

Mr. P.P. Malhotra,ASG.

Mr. Wasim A. Qadri,Adv.

Mr. Amitava Poddar,Adv.

Ms. Anil Katiyar,Adv.

For M/o Surface

Mr. G.E. Vahanvati,SG.

Transport:

Mr. S.W.A. Qadri,Adv.

Mr. C.V. Subba Rao,Adv.

Mr. B.K. Prasad,Adv.

For Delhi Police:

Mr. S.W.A. Qadri,Adv.

Ms. Anil Katiyar,Adv.

For Deptt. of

Mr. S.W.A. Qadri,Adv.

Transport:

Ms. Anil Katiyar,Adv.

For P.W.D.:

Mr. S.W.A. Qadri,Adv.

Ms. Anil Katiyar,Adv.

Ms. Kavita Wadia,Adv.

Mr. Kh. Nobin Singh,Adv.

Ms. Nandini Gore,Adv.

Ms. Manik Karanjawala,Adv.

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- 3 -

Mr. Shri Narain,Adv.

Mr. Sandeep Narain,Adv.

Ms. Anjali Jha,Adv.

Mr. Mukesh K. Giri,Adv.

UPON hearing counsel, the court made the following

O R D E R

In re: Construction of Western Peripheral Expressway and Eastern Peripheral Expressway:

On perusal of the Report on Action Taken by a Committee headed by the Cabinet Secretary and attended by various senior officers, including the Chief Secretaries of the States of Delhi, Haryana and Uttar Pradesh, on the last date of hearing, we had adjourned the matter so that instructions could be taken from the respective State Governments, in particular the States of Haryana and Uttar Pradesh, on the aspect of payment of viability gap amounts by them. It is heartening to note that the State of Uttar Pradesh has, without any reservation, fully accepted the recommendations made in the Report and has agreed to bear the burden of Rupees two hundred and eleven crores as its contribution towards the viability gap. The State of Delhi has also agreed to contribute its share of Rupees four hundred and twenty two crores. So far as State of Haryana is concerned, it has been stated that since the Haryana Government is already bearing the cost of land acquisition for Western Peripheral Expressway, it may not be possible for the State to take on the burden of land acquisition for Eastern Peripheral Expressway in Haryana portion. It has further been stated that the contribution of Rupees two hundred and eleven crores by the Government of Haryana, as suggested by the Cabinet Secretary, can only be decided by the next Government, being a major policy issue. Subject

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to these objections and another contained in the letter of the Executive

Engineer dated 10th February, 2005 to its advocate, which is not of much significance for the present, in principle, the Government of Haryana has accepted the suggestions made in the Report.

This Report, on acceptance, translates into reality the public-private partnership for construction of these two projects. The Cabinet Secretariat and all concerned deserve to be complimented for coming out with a Report which has now been principally accepted by every one, though at the initial stage they had reservations which, in fact, led this

Court to make an order for the Cabinet Secretary to call a meeting and discuss the issue with all concerned.

Reverting now to the reservation regarding the payment of viability gap amount by the State of Haryana, it seems that the State Government has not fully understood the Report. As per the Report, there is no question for the State of Haryana to bear the cost of land acquisition. The State of Haryana was ready to bear the entire cost of land acquisition in the Western Peripheral Expressway which was to the tune of Rupees one hundred and sixty seven crores. It's only objection was to bear the cost of land acquisition of its share in the Eastern Peripheral Expressway which is Rupees one hundred and eighty nine crores. Now, what has been directed to be contributed by the State of Haryana is Rupees two hundred and eleven crores. It does not mean that the State of Haryana will have to additionally contribute Rupees one hundred and sixty seven crores towards the cost of land acquisition in Western Peripheral Expressway, as per the recommendations of the Cabinet Secretary. Further, the project of this nature cannot be delayed on account of the decision that may

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- 5 -

have to be taken by a new Government setting up of which may take its own time. The project, admittedly, is in national interest. The difference of about Rupees forty four crores is minimal in a project of this nature, the total cost of which is about Rs.3,657 crores.

Having regard to the circumstances, we accept the Report of the Cabinet Secretary and direct the State of Haryana to contribute a sum

of Rupees two hundred and eleven crores, as suggested in the Report. While accepting the suggestion that the Governments of Haryana, Uttar Pradesh and Delhi would enter into State support agreements to the effect that there will not be any competing facility for these Expressways and the concessionaire will be given all necessary facilities to implement the project, we wish to make it clear that the acceptance of these suggestions will not be construed to mean that the Government of Delhi will not be able to improve the facilities for the traffic coming to Delhi.

In respect of Western Peripheral Expressway, the Report suggested that the cost estimates prepared by the Haryana State Industrial Development Corporation [H.S.I.D.C.] be taken into account and for Eastern Peripheral Expressway, National Highway Authority of India [N.H.A.I.] would prepare a detailed project report to arrive at a final alignment as well as the cost. Regarding final alignment, we direct the H.S.I.D.C. and N.H.A.I. to file reports within three weeks stating therein the time likely to be taken for fixing alignment so that soon thereafter the process for land acquisition and other related issues may commence. These authorities may also consider whether it is possible to reduce the time-frame of fifteen months for preparation of detailed project report as per the suggestions made in the Report of the Cabinet Secretary.

List the matter on 11th March, 2005.

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- 6 -

I.A. No.179:

In addition to the response as to the parking policy, the Government of Delhi would also file its response as to the schedule of implementation in respect of the public transport project.

[T.I. Rajput]

[V.P. Tyagi]

Court Master

Court Master