

ITEM NO.301

COURT NO.1

SECTION PIL(W)

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

I.A. NO(s).465 in I.A. No(s).363-364 in I.A. No.344  
in  
Writ Petition(s) (Civil) No(s). 13029/1985

M.C.MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(With Directions and office report)

Date : 15/07/2016 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MRS. JUSTICE R. BANUMATHI

Mr. Harish N.Salve, Sr.Adv. (A.C.) (N.P.)  
Ms. Aparajita Singh, Adv. (A.C.)  
Mr. Sidhartha Chowdhury, Adv. (A.C.)  
Mr. A.D. N. Rao, Adv. (A.C.)

For Petitioner(s) Petitioner-in-person

For Applicant (s) Mr. Tushar Mehta, ASG  
Ms. Noopur Singhal, Adv.  
Ms. Monika Gosain, Adv.

For Respondent(s) Mr. Basava Prahu Patil, Sr.Adv.  
(M/s. KMP Ms. Manali Singhal, Adv.  
Expressways Ltd.) Mr. Santosh Sachin, Adv.  
Mr. Mr. Abhijat P. Medh, Adv.

(NHAI) Mr. T.S. Sidhu, Adv.  
Mr. Sumit Gupta, Adv.  
Mr. Mukesh Kmar, Adv.  
Mr. Simranjeet Singh, Adv.  
Mr. Karan Grovar, Adv.  
For M/s. M.V. Kini & Associates

(CPCB) Mr. Vijay Panjwani, Adv.

Mr. S. Wasim A. Qadri, Adv.  
Mr. Sadmani Ali, Adv.  
Mr. D. S. Mahra, Adv.

Ms. Meenakshi Grover, Adv.

Mr. G.S. Makkar, Adv.  
Mr. S.N. Terdal, Adv.

Mr. Raunak Dhillon, Adv.  
Mr. Sumit Attri, Adv.  
Mr. George Varghese, Adv.  
Mr. Cyril Amarchand Mangaldas, Adv.

Mr. D.N. Goburdhan, Adv.

Mr. Ravindra Bana, Adv.

Mr. Abhishek Chaudhary, Adv.

M/s. Khaitan & Co.

Mr. Shri Narain, Adv.

Mr. Garvesh Kabra, Adv.  
Mr. Shanthnu Krishna, Adv.  
Mr. Samir Ali Khan, Adv.

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

Heard.

By our Order dated 13<sup>th</sup> May, 2016 we had while disposing of I.A. Nos.363-364, I.A.No.425 in I.A. NO.364 in I.A. Nos.344, 355, 362 in Writ Petition (C) No.13029 of 1985 inter alia directed Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC) to appoint a committee of engineers/experts to undertake measurement of the work done by the out-going concessionaire-M/s. K.M.P. Expressways Ltd. of Kundli-Manesar (0.00 km.-83.320 kms.) and Manesar-Palwal (83.320 kms.-135.650 kms.). The report of the measurements so prepared was then directed to be filed before the arbitrators within four weeks from the date of the order passed by us. The outgoing-concessionaire, the lender banks and new concessionaire were at the same time directed to associate themselves with the measurement of the work done, with a further direction that the HSIIDC shall do the needful expeditiously to avoid any delay in the commencement of the work on what is called Manesar-Palwal section of the expressway by ESSEL-the new concessionaire.

The present application now filed by HSIIDC prays for extension of time for recording of the measurement of the work, aforementioned, and also for modification of our direction regarding deposits to be made in the escrow account. Appearing for the applicant-HSIIDC, Mr Tushar Mehta, learned Additional Solicitor General, argued that the direction regarding deposit of 80% of the total toll collection in the escrow account in terms of the order, needs to be modified so as to allow at least 50% of the amount to be utilised by HSIIDC instead of 20% as earlier directed by this Court. We see no reason nor any basis for the proposed modification suggested by the applicant. We have, it is evident from a reading of the order passed earlier, clearly stipulated deposit of 80% of the toll collection to be made in the escrow account and the balance 20% to be available to HSIIDC for maintenance etc. The application filed by the applicant does not disclose the reasons why that direction should be modified or vacated. The prayer for modification of the order, to the extent the same directs deposit of 80% of the toll collection in the escrow account is, therefore, rejected.

Mr. Mehta next submitted that the recording of the measurement, of the work already done by the out-going concessionaire, had to be completed within a period of four weeks from the date of the order passed by this Court. He submitted that although the recording of the measurement work has already commenced on 4<sup>th</sup> June, 2016, there was some intervening delay on account of the dilatory tactics employed by the out-going concessionaire in associating itself with the measurement process. He drew our attention to communications dated 18<sup>th</sup> May, 2016, 19<sup>th</sup> May, 2016, 31<sup>st</sup> May, 2016, 4<sup>th</sup> June, 2016, 17<sup>th</sup> June, 2016 and 24<sup>th</sup> June 2016 addressed by the applicant-HSIIDC to out-going concessionaire in this regard to demonstrate that the out-going concessionaire was trying to find fault with the procedure adopted by the applicant for appointing a committee or engaging the services of an expert

for recording the measurement only with a view to creating hurdles in the measurement of the process. He submits that the measurement process although already started, is not yet completed and may require another two months' time to be completed. He seeks extension of time for completing the measurement work in terms of the orders of this Court.

On behalf of the respondent-M/s. K.M.P. Expressways Ltd., Mr. Basava Prabhu Patil, learned senior counsel, argued that the measurement process started on 4<sup>th</sup> June, 2016 on which date his clients were for unavoidable reasons unable to associate themselves with the process. On subsequent dates of measurement work his clients have taken active part and that they shall have no difficulty in associating with the process till it is completed. Mr. Patil submitted that the process of measurement will be suitably reflected in the minutes and representatives of the out-going concessionaire shall continue to extend all cooperation for an early and satisfactory completion of the measurement work.

In the circumstances and having regard to the submissions made at Bar, we are inclined to extend time for recording of the measurement by two months from today. We however make it clear that the measurement work shall not be delayed or slowed down only because anyone of the stake-holders including the out-going concessionaire adopts any dilatory or non-cooperative attitude in this regard. We need to remind all concerned that the completion of measurement is critical because it is only after the remainder of the expressway being constructed is completed that the same can be used as a critical requirement for bypassing heavy traffic which currently passes through Delhi. The in-coming concessionaire and all those concerned with the completion of the project shall therefore take steps to ensure that there is no further delay in the resumption of the work and in the completion thereof.

We make it clear that the reports with regard to the measurement shall be submitted before the arbitrator as already

directed who shall make such use of them as is legally permissible in the process of adjudication of the rival claims of the parties to the arbitration proceedings.

I.A.No.465 in I.A. NO.363-364 in I.A. NO.344 in W.P. (C)No.13029 of 1985 is to the extent indicated above allowed and disposed of.

(MAHABIR SINGH)  
COURT MASTER

(VEENA KHERA)  
COURT MASTER