

ITEM NO.301 + 304

COURT NO.4

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

Writ Petition(s)(Civil) No(s). 13029/1985

M.C. MEHTA

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

((1) REPORT NO. 97 SUBMITTED BY EPCA (2) IA NO. 109733/2019 (APPLN. FOR DIRECTIONS ON BEHALF OF GOVT. OF NCT OF DELHI)(3) IA NO. 79444/2019 (APPLN. FOR DIRECTIONS ON BEHALF OF EAST DELHI MUNICIPAL CORPOATION)(4) IA NO. 177432/2018 (APPLN. FOR DIRECTIONS ON B/O NORTH DELHI MUNICIPAL CORPORATION)

with

Civil Appeal Nos. 4908-4909/2019

C.A. No. 4906-4907/2019

(exemption from filing c/c of the impugned Judgment)

C.A. No. 3610-3611/2019

Date : 06-09-2019 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE DEEPAK GUPTA

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parties

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Mr. Karmendra Pratap Singh, Adv.
Mr. Virendra Singh, Adv.

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

REPORT NO. 97 SUBMITTED BY EPCA

Heard the learned counsel for the parties.

With respect to Phase IV of Delhi Metro, we have considered the EPCA Report 97 dated 01.07.2019. There are three disputes raised by the Government of NCT of Delhi which are detailed in the Report and are reproduced hereunder :-

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	<i>Issue</i>	<i>GOI Position</i>	<i>GNCTD Position</i>	<i>EPCA's examination of issue</i>
1.	<i>Bearing the operational loss</i>	<i>To be borne by State Government</i>	<i>Shared 50:50 ratio between State and Union</i>	<i>As per data provided by DMRC there is no operational loss in the past 5 years. Also the DPR for Phase 4 of the project/projects the financial internal rate of return (FIRR) at 6.63 to 8.03% based on income accruals.</i>
2.	<i>Repayment of JICA loan in case of default or currency fluctuation cost on JICA loan</i>	<i>As per 2017 policy, the State Government will provide support to ensure financial sustainability during operations.</i>	<i>GOI must bear 100% of this liability</i>	<i>DMRC has provided EPCA statement showing the projected year-wise JICA loan principle and interest payment from 2019-20 to 2048-49 for the loan already received. This repayment schedule has been factored into the financial management and projected income and expenditure of DMRC. Furthermore, DMRC has never defaulted on the loan repayment and there is no reason to believe that with the additional phase, this situation will change.</i>

				<p>The loan for phase 4 has still not been secured as matter of financial approval requires resolution between Delhi and Union Government.</p> <p>EPCA is of the view that this issue, however important in terms of the principle for the Delhi Government is notional as there is no reason to believe that there will be a default in payment of the loans.</p>
3.	Sharing of land cost	To be borne by state government. 2017 policy states that Central Government will provide support to metro projects in the form of equity and subordinate debt subject to an overall limit of 20% of the cost of the project.	To be shared in 50:50 ratio as Delhi metro ownership is 50% with Central Government	According to DMRC estimates the cost implication is 3 priority corridors is Rs. 1223.60 crore.

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With respect to bearing of the operational loss, as per the stand of the Government of India, it is to be borne by the State Government i.e. Govt. of NCT of Delhi. The Govt. of NCT of Delhi has taken a stand that the operational loss, if any, incurred be

shared in 50:50 ratio between the State and the Union. The EPCA has examined the issue and has opined that as the DMRC has not suffered any operational loss for the last 5 years, it is not likely to suffer loss in future also. We find nothing objectionable that in case the Metro suffers any loss, that is to be borne by the State Government, as the Metro is the local conveyance within the State and considering the nature of the facilities, the loss, if any, should be borne by the State Government. However, the State Government has to ensure, at the same time, that its policies are such which do not cause any operational loss or otherwise due to the running of the Metro trains. Hence, we do not find any substance in the objection raised by the Government of NCT of Delhi.

With respect to the repayment of JICA loan in case of default or currency fluctuation cost on JICA loan, a policy has been framed by the Central Government considering the various Metro projects covering 6 States, excluding Rajasthan, which is bearing its own expenditure. For other six States, the policy has been framed, according to which, the State Government has to provide support to ensure financial sustainability during operations. So far, the DMRC has not made any default in repayment of loan. We do not find anything objectionable in case the Government of NCT of Delhi alone should bear the responsibility to provide the support, if any, which may become necessary to repay the soft loan provided for the project. The Government of NCT of Delhi is bound to ensure that the financial health of DMRC is maintained properly and no steps are taken so that it may run into losses.

With respect to the sharing of land cost, it is to be borne by the State Government, as per the policy of 2017 framed by the Union of India. However, in the previous Phases I to III of Metro, the Central Government as well as the Government of NCT of Delhi have borne the land cost in 50:50 ratio.

Considering the peculiar position of Delhi, being the capital of the country and also the pollution aspect, it is the responsibility of the Government of India also to make a departure from the policy to be applicable only in the case of Delhi. We direct that out of the land cost of Rs. 2447.19 crores, 50% shall be borne by the Government of NCT of Delhi and 50% by the Union of India. In view of the aforesaid, the objections raised by the Government of NCT of Delhi and EPCA Report 97 are disposed of. The parties to act accordingly forthwith and ensure that no delay is caused in the Phase IV and the requisite amount is released timely to the acquiring authority.

The Union of India as well as the Government of NCT of Delhi shall work out the modalities and release the amount within three weeks from today.

Let compliance be reported to this Court.

List after one month.

IA NO. 109733/2019 (APPLN. FOR DIRECTIONS ON BEHALF OF GOVT. OF NCT OF DELHI)

List the application for consideration on 23.09.2019.

IA NO. 79444/2019 (APPLN. FOR DIRECTIONS ON BEHALF OF EAST DELHI MUNICIPAL CORPOATION) and IA NO. 177432/2018 (APPLN. FOR DIRECTIONS

ON B/O NORTH DELHI MUNICIPAL CORPORATION)

List next week.

Civil Appeal Nos. 4908-4909/2019, C.A. No. 4906-4907/2019 and C.A.

No. 3610-3611/2019

List next week.

**(JAYANT KUMAR ARORA)
COURT MASTER**

**(JAGDISH CHANDER)
BRANCH OFFICER**