

In the Hon'ble High Court of Andhra Pradesh at Hyderabad

Writ Petition No. 18483 of 2008

BETWEEN:

1. Dr. C. Ramachandraiah
S/o Ragiah, aged 47 years
R/o 405, Shubham Apartments
Beside RBI Quarters, Ameerpet
Hyderabad.-16
2. Mr. Omim Maneckshaw Debara
S/o Late Maneckshaw H. Debara,
Aged about 62 years,
Resident of Mani Minar, 41-913,
Tilak Road, Hyderabad.

.....Petitioners

And

- 1) Union of India rep. by its
Secretary, Ministry of Environment &
Forests, Lodhi Road, New Delhi.
- 2) Government of Andhra Pradesh
Rep. by its Principal Secretary to
Government, Environment, Forests,
Science & Technology Department,
Secretariat Buildings, Secretariat
Hyderabad.
- 3) Government of Andhra Pradesh
Rep. by its Principal Secretary
to Government, MA&UD Department
Secretariat Buildings, Secretariat
Hyderabad.
- 4) Hyderabad Metro Rail Corporation Ltd
Metro Rail Bhavan, Saifabad,
Hyderabad. Rep by its Managing Director.
- 5) Greater Hyderabad Municipal Corporation
Rep. by its Special Commissioner
Tank Bund Road, Hyderabad.

6) A.P. Pollution Control Board,
Sananth Nagar, Hyderabad ,
Rep by its Member Secretary.

.....Respondents

AFFIDAVIT ON BEHALF OF THE PETITIONERS

1. I, Dr. C. Ramachandraiah, S/o Ragiah aged about 47, R/o 405-Shubham Apartments, Besides RBI Quarters, Ameerpet, Hyderabad, do hereby solemnly affirm and state as follows:
2. I am the first petitioner herein and as such well acquainted with the facts of the case. I am authorized to file this on behalf of the second petitioner.
3. I respectfully submit that we are filing this Writ Petition challenging the constitutional validity of Para - 7 (i) III (i) (b) of statutory notification SO 1533(E) dated 14/9/2006 issued by R-1 as illegal and unconstitutional which is made use by the other respondents to deny access to basic information for the public who are stake holders and affected persons regarding elevated metro rail popularly known as Hyderabad Metro Rail Project [HRMP] to deny public participation and the action of the respondents in going ahead with the project without obtaining the prior clearances from the R-1. This project involves 71.16 km of elevated concrete flyover-like corridors, rail lines and construction of 66 stations, (most of them with shopping malls, other entertainment facilities). Thousands of square feet of built up area is coming up without any EIA clearance. We are the affected citizens apart from being activists in this regard.
4. I am an Associate Professor in a reputed social science research organization, Centre for Economic and Social Studies, based in Hyderabad. I am a researcher on urban environmental issues and has extensively written articles in research journals as well as the print media. I am also a social activist, was a founder Coordinator, Forum for a Better Hyderabad, and has taken up many issues of public concern. I was also a member of the Consent For Establishment Committee (CFE) of the A.P. Pollution Control Board (APPCB). I have also approached this Hon'ble Court in the past praying for justice. For the past more than a year, I have been campaigning for a better public transportation, usable footpaths, pedestrian crossings etc. in Hyderabad city under the banner of Citizens for a Better Public Transport in Hyderabad (hereinafter referred to as CBPTH), which is a coalition of a number of civil society organizations and public-spirited individuals. The CBPTH has also released a Citizen Declaration for Better Public Transport wherein we have argued for a comprehensive transportation policy for the city and suggested several measures. Both the Petitioners recognize the need for a mass rapid transit system for a growing and a globalizing city like Hyderabad. I have the locus standi to file this as resident of Hyderabad and also representing the cause taken up by the CBPTH .
5. I submit that the second petitioner is at present General Secretary, Forum for a Better Hyderabad, which is a reputed organization which is the voice of civic society. He retired as Manager, Projects & Engineering Services, VST Industries Ltd. He is a technical expert with qualifications of L.M.E.; PG.Dip. in Plant Eng.& Mgt.; Boilers Operations Engineer. He is Life Fellow, Indian Institute of Plant Engineers and Member, American Society of Mechanical Engineers. He is director of COPEs and executive member, IIPE.

He has taken keen interest to preserve the culture and heritage of Parsi community and is a Trustee, Parsi Zoroastrian Anjuman of Secundrabad & Hyderabad. He has been filing cases in this Hon'ble Court in public interest and he has the locus standi to file this writ petition as a citizen of Hyderabad and also General Secretary of Forum for a Better Hyderabad.

6. I respectfully submit that when there were announcements regarding Hyderabad Metro Rail Project [HMRP], we made enquiries and we were shocked to know that the 4th respondent has not carried out proper and full fledged EIA and it has not obtained any permission from the 1st respondent as required under the Notification S. O. No. 1533 [E], dated 14/09/2006. This notification makes it clear that any construction of new projects or expansion of existing projects or activities can be taken up only after obtaining prior clearances from the Central Government or State Government as specified in the notification. Building and construction projects more than 20,000 sq. meters and less than 1, 50,000 sq. meters of built up area come under the item No. 8(a) which requires prior clearances from the State Level Committee.
7. I submit that the Hyderabad Metro Rail Project comprises of elevated concrete corridor of 71.16 kms over which two parallel tracks of rails are fixed with 66 stations which will have long additional platforms with staircases, escalators, lifts etc. on either side of the corridor. The elevated track will be at the height of 35 to 50 feet. Near more than 30 stations, huge shopping complexes, malls and other commercial complexes are proposed. Apart from this three Railway yards for maintenance and storage are also proposed. A lot of construction activity will be taking place in these yards which will be spread over 250 acres of land where huge concrete structures and sheds will be constructed. Thus this falls within item 8(a) of the Annexure to the Notification dated 14-9-2006. No works including land acquisition etc can take place without the clearance as per the Notification of R-1.
8. I respectfully submit that at this juncture, I wish to bring to the notice of this Hon'ble Court that the concerned citizens like us are not against efficient modern rapid public transport system for the Hyderabad city. If appropriate care regarding the environment etc. are taken, no prudent person would reject the concept of efficient modern rapid public transport system for the Hyderabad city. However, we are worried about the action of the respondent authorities in violating the statutory rules, regulations and High Court judgments regarding water body of Hussainsagar and not caring for the environmental damage and not proposing to take any steps to mitigate the danger which include security.
9. I respectfully submit that one of the lines will be touching Secretariat and Assembly buildings. In the case of the Delhi Metro Rail Project, elevated Metro was rejected by the security experts in sensitive areas. The elevated Metro Rail near Central Secretariat and Lutyens Delhi where sensitive foreign embassies are located and VVIPs reside was rejected. The Metro had gone underground in this sector. However, in Hyderabad, the Metro Rail corridor would be at a height of 45 feet near Secretariat and Assembly buildings which will cause grave security the risk. As the Hyderabad city has become haven of ISI activity the need to reassess the security angle is very much necessary and cannot be ignored. Left-wing Maoist party extremists have acquired rocket launchers and there is need to take the metro near the Secretariat and Assembly buildings underground.

10. I submit that the other issue which have bothered all of us is that one of the routes will be cutting across parts of Hussainsagar water body. The Division Bench of this Hon'ble Court while allowing the W.P. No. 26378 of 2000 declared that any permanent structures and commercial activity are prohibited in the water body areas and also catchment area. The APPCB has to asses the effect of such activity on a water body before any proposal takes full shape. Thus, the elevated Hyderabad Metro Rail Project will be violating the judgment of this Hon'ble Court and raising security risk for the Secretariat and Assembly buildings. All these concerns are not answered by the respondent authorities as they claim that they need not share any information as per the impugned para.
11. I respectfully submit that the Hyderabad Metro Rail Project comprises of three routes but EIA was done for only two routes which is also incomplete. Line – 1 comprises of Miyapur to L. B. Nagar, Line – 2 goes from Jubilee Bus Station to Falaknuma and Line – 3 is from Nagole to Shilparamam. The EIA reports are not being made public in spite of our requests. We have come to know that EIA was done for some part of the first two routes and then partially for third route. These documents are necessary for knowing the effects upon us the citizens when the construction starts and then when the Metro Rail rolls over our heads. I submit that we requested prominent technical experts who assist the Central Pollution Control Board (CPCB) on various issues to analyze this project and give the risk factor. The Cerana Foundation which is headed by Sri Sagar Dhara a renowned technical expert and who is assisting various UN projects in this filed of environment had given us the risk analysis report with all other contents and I herewith the file the same. I submit that this discloses frightening scenario. Even if one does not agree fully with the conclusions etc., it establishes that the citizens must have right to know and participate in the EIA process. It further recommended that the HMRP "should seek an environmental clearance, CFE and CFO as an infrastructure project".
12. I submit that the Hon'ble Supreme Court has held on numerous occasions that Article 21 of the Constitution of India includes the right to a clean and pollution free environment. The proposed construction of elevated metro line by the HMR Ltd. would create serious health hazards because of increase of noise pollution due to the metro rails running through the neighborhood frequently from 5 a.m. to midnight. Further, the noise generated by the elevated metro rail would seriously hamper the peace of the silence zone areas like hospitals, educational institutions and religious places where the prescribed noise levels should not exceed 50dB(A) during day time and 45dB(A) during night time. With the help of the transport planning students of the Jawaharlal Nehru Technology University (JNTU), Hyderabad we have done a quick survey of the places falling in the silence zone along the three proposed metro corridors. It was found that there are about 320 such places on either side of the roads (Table-1). The number of such places may increase if surveyed up to 100 meters on either side of the road within which Noise Pollution (Regulation and Control) Rules, 2000 (hereafter Noise Rules) are applicable. The Noise Rules stipulate that an area comprising not less than 100 meters around hospitals, educational institutions, religious places and courts may be declared as silence area/zone for the purpose of these Rules. The elevated metro rail run within 20-30 metres in many areas that are densely and thickly populated thus seriously jeopardizing the quality of life of the people living in the vicinity.
13. The places in the Table-1 include some of the most important public hospitals and educational institutions viz., Nizam Institute of Medical Science (NIMS), Gandhi Medical College & Hospital, Osmania Medical College, Yashoda Hospital, Sathya Hospital, Institute of Mental Health, etc., The details are furnished in the annexures route wise. St

Theresa General Hospital, ESI Hospital, Guranak Care Center, Institute of Preventive Medicine, Government Maternity Hospital, Harmain Hospital, Vivek Vardhini College, Potti Sri Ramulu Telugu University, Hyderabad Public School, St. Anns High School, Niraj High School, Government's Womens Degree College, Maharshi Institute of Management, Wesely Degree College, AP Judicial Academy, Railway Degree College, Indian Institute of Chemical Technology (IICT), Center for Cellular and Molecular Biology (CCMB), National Geographical Research Institute (NGRI), Little Flower Junior & Degree College, Madapati Hanumntha Rao Girls High School, Princess Esin Girls High School etc.

Table-1
Places that fall under the Silence Zone as per the CPCB
Noise Rules along the proposed Hyderabad Metro Rail corridors

Category	Metro Rail Corridors			Total
	Line I: Miyapur - L.B. Nagar	Line II: J.B.S. - Falaknuma	Line III: Shilparamam - Nagole	
Schools	20	16	15	51
Colleges	59	14	23	96
Hospitals	69	13	36	118
Religious	23	16	15	54
Others*	--	--	1	1
Total	171	59	90	320

*Secunderabad Courts and AP Judicial Academy at West Marredpally.

Note: 1. A detailed survey may yield some variation in the number.

Source: Based on observation on either side of the three metro rail corridors on 1 June 2008 by a team comprising Dr. C. Ramachandraiah, Vishnu, Prasanth and Gayatri on behalf of the Citizens for a Better Public Transportation in Hyderabad.

The elevated metro line would run close to the compound walls of several hospitals, colleges and schools, sometimes as close as 25-35 ft. on some of the narrow roads. The elevated metro corridor would create noise pollution of 85dB(A) and the same is violative of the Article 14 and 21 of the Constitution of India, the Environment (Protection) Act, 1986 and statutory laws on Noise. It is submitted that Noise Rules direct the State Government to take measures for abatement of noise including noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these Rules.

14. I submit that I am bringing to the notice of this Hon'ble Court the major fall out of this project and citizens must know about the facts of this project and proposed steps by the concerned authorities. Thus the citizens have a stake as their right to life guaranteed under Article 21 will be affected consequently by this proposed project. The respondent authorities have refused to give any information worthwhile in this regard. The officers have been claiming that Para - 7 (i) III (i) (b) of statutory notification SO 1533(E) dated 14/9/2006 issued by R-1 gives the right to the authorities not to consult the public after perusing the report given by Serene Foundation. This provision has to be read down and set aside as and this will entitle the authorities to withholding information from the citizens. I herewith file the representation made in this regard.

15. It is our contention that the largest infrastructure project in the city's history has been pushed without sharing any information with public and without any public debate whatsoever. The HMR officials have shown least respect to the Right to Information Act, 2005. Several applications made under RTI Act by different applicants have not even been replied to. As per the Government Order NO. 420 dated , the documents should be made available to the general public in the local languages. Two requests made for information in Telugu and Urdu have not even been replied to . Leaders of five political parties in a joint meeting on 17th June 2008 demanded for making all the documents open, debate the issue in a comprehensive way by involving political parties, experts, civil society organizations etc. and keep the project in abeyance for six months before the final decisions are taken. Based on this demand, the Petitioner requested the managing director, HMR to provide the documents but did not receive even a reply till date. On 22nd June 2008, several intellectuals and civil society organizations demanded for making all the documents open for a public debate . On 6th July 2008, in a meeting organized by a civic group, Concerned Citizens, the demand for making the documents open was rejected by the managing director, HMR (TOI clip). On 29th July 2008, the CPI(M) party organized a round table meet of political parties which demanded making open all the documents before proceeding further (.press cutting from Hindu). On 1st August 2008, a delegation of political parties and civil society organisations submitted a memorandum to the Hon'ble Minister for Municipal Administration and Urban Development, Mr. Koneru Ranga Rao, demanding placement of all the documents for public scrutiny and debate During this period, even while rejecting the information to the public, the HMR officials have been taking decisions to finalise the project. By their actions, the HMR officials have not respected even minimum democratic norms of functioning. It is our contention that the Petitioner and other public at large have been denied a right to know the details of the project and are thus denied a fundamental right and thus prevented them from forming an informed opinion on the project. We would like to know which study has recommended this metro rail project as the panacea for all transport problems. It is further our contention that they have much to hide regarding justification for the HMR project in the way it is proposed. There is no way for the public to know why such and such alignment is proposed or rejected. For instance, while Lakdikapul is the busiest traffic intersection traversed by lakhs of passengers and private vehicles and is located in the heart of the city, with 22 bus routes passing through or touching it from four different directions, the proposed metro rail skips this point thus strengthening our suspicions about the nature of this project and its ability to serve public transportation. Our suspicions are further strengthened by the total exclusion of the local experts who know the city better and are available in the Department of Transport Engineering, JNTU, Hyderabad in conducting any study for the HMR project.
16. I submit that the issue of Heritage is also not looked into. Heritage buildings represent and remind the past history, culture, architecture and political systems to the present and future generations. A city should not get disconnected from its past. Hyderabad has a number of heritage buildings that takes us to the past history. The HMR project is going to permanently deface several historic heritage precincts of the city like Clock Tower, Assembly premises, Public Gardens, Mojamjahi Market, Salarjung Museum, Bella Vista (Administrative Staff College), Princess Esin Women's Educational Centre, Raja Bhagwandas Building, Façade Baitul Ghouse etc. The old and pedestrian shopping areas like Sultan Bazar and Badi Chawdi will be totally demolished to make way for metro rail. It is unfortunate that the HMR officials have not even bothered to take the opinion of the Archaeological Survey of India (ASI) whereas the Delhi Metro Rail

Corporation (DMRC) respected the suggestions of the ASI in Delhi and is constructing the metro in the underground at several places. I submit that the Heritage Conservation Committee in Hyderabad Urban Development Authority (HUDA) and ASI should look into this matter and consult the conservation architects and planners as indicated in HUDA rules.

17. I submit that there has been no Resettlement and Rehabilitation Plan (R&R Plan) and this is in violation of the G.O. 68. Thousands of buildings, both commercial and residential, are feared to get demolished to facilitate construction of metro corridors, stations and parking areas. High density shopping areas like Kachiguda, Badi Chawdi and Sultan Bazaar are likely to lose their character for ever. The Twin Cities Traders Association has represented thrice to the Hon'ble Chief Minister requesting for better compensation and alternate rehabilitation for the affected people. Thousands of people, dependent on and working in the establishments, are going to lose their sources of livelihood. And till now, the government has not even bothered to formulate an R&R package for them and is showing least interest to implement its own Order. The G.O. Ms. No. 68 dated 8th April 2005 issued by the Irrigation and CAD (Project Wing) Department has approved a R&R Policy which should be implemented by all the Departments of the GoAP. This Policy should be implemented for the metro rail project affected people also in letter and spirit.

18. I submit that when such huge project takes place in city there must be traffic management plan. We have seen how the construction of flyovers has thrown the city out of gear for years. Without traffic management plan there shall be no permission from the court for this project. All these are not included before finalizing the implementing agency. Not a single flyover has been constructed in less than two years. The 11 km-long PV Narasimha Rao Elevated Expressway on a wide road with less traffic has already taken more than two years and may take one more year. One is terrified even to imagine how the traffic would be managed during construction of 71.16 km long flyovers and 66 stations simultaneously throughout the busiest parts of the city. It is our contention that a comprehensive traffic management plan has not been prepared as yet by involving various line departments. General public would be put tremendous inconvenience and suffering for four years (officially prescribed time for completion of HMR project) but, given the track record of the government, the ordeal may go on for at least eight years. Haphazard planning and fire-fighting measures cannot substitute for a sound traffic management plan which has to be prepared by involving the concerned departments and the civil society organizations before the government proceeds with any further action on the project.

19. I submit that the public has not been informed so that their objections can be considered. The people have right to know about the routes the measures for mitigating the environmental problems etc., The R4 has been busy in finalising the implementing agency. The provisions of The Andhra Pradesh Municipal Tramways (Construction, Operation and Maintenance) Ordinance, 2008 are not being followed.

20. I submit that the preamble and the section 4 read as follows

"An Ordinance to provide for the development, construction, management, operation and maintenance of mass rapid transit system, and to regulate the working and commercial exploitation of real estate forming part of such mass rapid transit system in municipal

areas in the state of Andhra Pradesh and for matters connected therewith and incidental thereto."

Section 4

(1) On receiving an application under section 3, if the State Government is satisfied as to the propriety and necessity of proceeding thereon, publish a note in such manner and containing such information as may be prescribed, together with the draft of a proposed order authorizing the development, construction, management, operation and maintenance of the tramway system in a municipal area.

(2) A notice under sub-section (1) above shall state that any objections or suggestions which any person may desire to make with respect to the proposed order, if submitted to the Government on or before the date to be specified in such notice, will be considered.

(3) If after considering objections or suggestions, if any, which may have been made with respect to the draft order on or before the date specified in the notice published pursuant to sub-section (1), the state government is of the opinion that the order should be made, with or without addition or modification or subject or not to any restriction or condition, it may make an order accordingly.

(4) Every order authorizing the development, construction, management, operation and maintenance of a tramway system shall be published in the Andhra Pradesh Gazette and such publication shall be conclusive proof that the order has been made as required by this section.

21. I submit that the provisions of putting the public to notice have not been complied. The officers are in hurry to enter into agreement. Without deciding the issues we and other citizens bound to raise if contracts are entered into a and third party rights created there will be irreparable loss and injury.
22. I respectfully submit that we have learnt through press note that the consortium going to execute this project is identified and various terms in the proposed agreement are against public policy and it will be a grave burden upon the exchequer. I wish not to discuss much about this in this particular Writ Petition. Once agreement is entered into between State Government, Hyderabad Metro Rail Project of the proposed consortium without getting EIA clearance and also consult the public in this regard, there is bound to be delay on these issues. The issues are to be addressed and there will be need for renegotiation of various components of the project and the proposed consortium will be demanding compensation from the exchequer or it will be declared that the clock can not be turned back . To avoid all these complications, it is necessary that no further steps including entering into agreement are to be stopped.
23. I respectfully submit that in view of the above, there is no effective alternative remedy available to the petitioner other than invoking the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. I submit that we have not filed any other writ or application before this Hon'ble Court or any other Court seeking the relief sought for in this writ petition.
24. Hence it is prayed that this Hon'ble Court, in the interest of justice, be pleased to issue a writ, order or direction; more particularly, one in the nature of a Writ of mandamus declaring that the para 7(i) (III),(i)(d) of Notification SO 1533(E) issued by Respondent

No-1 on 14-9-2006 as violative of article 21 of Constitution of India or read down as not applicable to the proposed Hyderabad Metro Rail Project, and the action of the respondents in going ahead with the works, awarding the works, land procurement etc. for the proposed Hyderabad Metro Rail Project without obtaining the Environmental clearance from the Respondent No-1 as illegal and unconstitutional and consequently restrain the respondents from implementing the project in any manner or create any rights in the name of Hyderabad Metro Rail Project, till the public and interested persons are heard after being informed about all the details of the project as indicated in The Andhra Pradesh Municipal Tramways (Construction, Operation and Maintenance) Ordinance, 2008 and pass such other/order/orders as this Hon'ble Court may be pleased to in the interest of justice.

25. Pending further orders this Hon'ble Court may be pleased to restrain all the respondents from finalizing any contract or create any rights to any party in the proposed Hyderabad Metro Rail Project and pass such other order/orders as this Hon'ble Court may be pleased to in the interest of justice.

DEPONENT

Sworn and signed on this the
Twenty First Day of August 2008 Hyderabad.

BEFORE ME

ADVOCATE : HYDERABAD

VERIFICATION

I, Dr. C. Ramachandraiah, S/o Ragiah, aged about 47 , R/o 405 Shubham Apartments, Besides RBI Quarters, Ameerpet, Hyderabad being the first petitioner do hereby declare that the contents of paragraph Nos. to are true and correct to the best of my knowledge and information. The contents of paragraph Nos. to are found to be true and correct on legal advice.

Hence, verified on this Twenty First day of August 2008 at Hyderabad.