

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

W. P. No. 18483 of 2008

BETWEEN:

1. Dr. C. Ramachandraiah
S/o Ragiah , aged 47 years
R/o 405, Shubham Apartments
Besides RBI Quarters, Ameerpet
Hyderabad.-16 and another

...Petitioners

And

1) Union of India rep. by its
Secretary, Ministry of Environment &
Forests, Lodhi Road, New Delhi. And others

...Respondents

**REPLY AFFIDAVIT ON BEHALF FO THE PETITIONERS TO THE COUNTER AFFIDAVITS
FILED BY RESPONDENTS 3&4**

1. I Dr. C. Ramachandraiah, S/o Ragiah aged about 47 years, 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 I am well acquainted with the facts of the case. I am authorized to file this on behalf of the second petitioner.
3. I submit that I have perused the counter affidavits filed by Respondents 2 and 4 and as such deny the averments made therein except which are explicitly admitted by us herein. The deponents to the counter affidavits may be put to strict proof of the averments made by them.
4. In reply to contents in Paras – 2 to 8 of the counter affidavit filed by R-3, and paras 4 to 10 of the counter affidavit of R-4, I respectfully submit that this is mostly technical information and the history behind Metro Rail System etc. The contents in these paragraphs need to be verified and I reserve my right to file an appropriate rejoinder regarding these contents. The whole process was not transparent and the concerned citizens did not have an occasion to monitor and give their proper inputs at relevant stage.
5. In reply to Para – 9 of counter of R-3 and para 11 counter of R-4 I submit that we had clearly stated in our affidavit at Para 8 that we are not against efficient Metro Rapid Public Transport System. In the light of the averments in the affidavit, it is unbecoming on the part of the respondents to claim that the W. P has been filed on apprehensions, presumptions and assumptions.

6. I further submit that I filed the W. P. on 26th August and the concession agreement was entered on 19th September. This has not been put on internet and we were allowed to see this on 25-10-2008. The BOT executes the works as agent of R4 and there is no need to make them a party.
7. In reply to Para – 10 of counter of R-3 and para 12 counter of R-4 I submit that the contention that we did not challenge the EIA Notification in 2006 is not proper. The concept of latches cannot be raised in this case when the statutory rule is challenged. Until we got relevant information and legal advise we could not file the case and this can not be put against us. We filed news report of Times Of India at page 68 ex-P12 of the writ papers. In this it was declared that the details can not be made public. And now we are found fault!
8. In reply to Para – 11 of counter of R-3 and para 13 counter of R-4, I submit that mention is made regarding concession agreement which is signed on 19th September, 2008. After lot of persuasions, we could have a glimpse on this agreement of 25/10/2008 under Right to Information Act when we were accompanied by a Advocate from A.P. High Court. This agreement is not put on internet in website and full text is not filed with the counter affidavit as supporting document. The citizens are trying to get appropriate information and in fact in February 2008, it was cleared that the details cannot be given. Until we have the full text of the concession agreement the contents of this paragraph can not be replied to. We are insisting that all permissions are to be taken and then only the activity be taken up on ground.
9. In reply to Para – 12 of counter of R-3 and para 14 counter of R-4 I submit that it is unfortunate that when ever citizens come to court they are branded as persons with ulterior /evil motive. The contents here in this paragraphs are herewith denied. I have a reputed career in the academic side and I was a member of the CFE committee of the A. P. Pollution Control Board, I was General Secretary for Forum for better Hyderabad. Forum for better Hyderabad intervened when 21 projects were sought to be constructed in and around Hussain Sagar Lake. The 2nd petitioner is presently General Secretary of Forum for better Hyderabad. Just because we are the citizens questioning the actions of the executives vis-à-vis, the environment, transparency and probity the responsible officers cannot brand us as persons interested in publicity. We request this Hon'ble Court to direct the respondents to stop this kind of character assassination. The actions of R-3 in reducing the prohibited zone around the lake in the city from 30 meters to 9 meters, indirectly encouraging the construction in and around two drinking water lakes of Hyderabad by not taking action against the real estate sharks and the role of the deponents are matter of record and we are not going further because we will be diverting this Hon'ble Court from the issues raised in this Writ Petition. The attitude of the deponent to the counter affidavit of R-4 should be judges by the way the he interacted with the citizens groups which are part of record. The officers must be advised to restrain themselves in the functional democracy, especially when the actins are questioned.
10. In reply to Para – 13, and 14 of counter of R-3 and para 15 and 16 of counter of R-4, I submit that we are aware that the activity under the name and style of MRTS is not found in the schedule annexure to the EIA notification. When huge construction activity in the name of real estate, shopping complexes and yards (as details mentioned in the affidavit and in concession agreement) are being taken up have fall under item No. 8 of the schedule. They need appropriate clearance from the State

Level Committee. I submit that the concession agreement states about the concession as this is infrastructure project. Clause 6.1.2(d) of the concession agreement says "The government shall make best endeavours to procure that **no local tax or charge is levied** or imposed on the use of whole or any part of the Rail System, including making benefits available under the APIDEA to this project". The word **APIDEA** denotes – A.P. Infrastructure Development Enabling Act, 2001. When the concessions are taken under the Infrastructure construction enactments this activity falls under Item 8 of the Sept 2006 notification of R1. The present project comprises rails, elevated concrete paths and huge real estate etc., Thus major part of the project falls under the construction activity for which clearance under the EIA notification is needed. The same Sreedharan mentioned in this para had word of caution for the Hyderabad Metro and the letter is filed.

11. In reply to Para – 15&16 of counter of R-3 and para 17 of counter of R-4, I submit that the fact that the Respondents have now decided to change the alignment of Line-I from Khairatabad to Assembly via Lakdikapul (pages 104 and 105 of the material paper book filed by R4) vindicates the contention of the petitioners that the Line-I was cutting through parts of Hussainsagar in violation of the judgment of this Hon'ble Court. A change in alignment at this stage (after the agreement was signed) also shows the poor quality of the studies done for this project. Regarding security threat to the Secretariat and Assembly buildings, the citizens are justified in their apprehensions. The Respondents quoted an irrelevant portion from the Hon'ble Delhi High Court judgment on the policy making domain of the government. The petitioners never questioned the policy making domain of a government. We quote the relevant portions from the judgment on the security aspects to VVIP and government buildings in Delhi and also the heritage aspects: "They have pointed out that Lutyens Delhi is regulated zone having heritage value in which no construction activity is permitted without sanction of the competent authority....That apart a large number of VVIP residences and Government offices are scattered all over in Lutyens Delhi. An elevated corridor would have not only marred the beauty of the city but may have endangered the security of the VVIPs residing in the area. The respondents have stated that even while going underground, it has been ensured that the Metro does not pass under important offices so that there is not even a remote threat to the security of those occupying the building. Similarly, the corridor between Central Secretariat to Mehrauli has been taken underground on the suggestions made by the Archaeological Survey of India and keeping in view the ancient monuments of heritage value standing around that corridor" (judgment dated 30th May 2008 (W.P.(C) 8516/2007 and W.P.(C) 8517/2007). Thus, the DMRC has given a very high importance to the security and heritage and avoided not only the elevated corridor but ensured that even the underground corridor does not pass under the important offices.
12. I further submit that the two corridors of the elevated metro rail in Bangalore are going underground for 6.76 km. near the City Railway Station, Vidhana Soudha, Majestic and City Market (Source: <http://www.bmrc.co.in/ph.html> accessed on 14 August 2008). It should be noted that the DMRC, in partnership with RITES, prepared the Detailed Project Report (DPR) for Bangalore Metro Rail. It may be noted that the Vidhana Soudha is of high heritage value for that city. We are surprised that the DMRC, which is the technical consultant to HMR project, showed least concern to the historic heritage buildings of Hyderabad and the security of the VVIPs of our state by recommending the metro route as elevated corridor at about 45 ft height near the State Secretariat and the Legislative Assembly along with

stations. The petitioners are justified in public interest to demand that the yardsticks followed in Delhi and Bangalore be followed here also and the metro rail go underground for 4-5 km in the Assembly area in Hyderabad.

13. In reply to Para – 17 of counter of R-3 and para 18 counter of R-4, I submit that it is true that the R-4 gave a copy of the EIA study to the petitioner-1 but it pertained to only two routes: Line I and II. While the two routes cover a length of about 44 km, the EIA was done only for 27 km. Further it was an inadequate and a poor quality study. For eg. we have doubts over the quality of the noise pollution measurements. At 16 places (including Charminar, Purana Haveli, Sultan Bazaar) where noise levels were measured during April-May 2003, the maximum levels have crossed 100 dB(A) (decibels) even in the early morning hours like 7-9 AM. Compare this with the peak-hour noise levels measured by the pollution control board for several months in 2007, the limits have not even reached 100 dB(A). Such is the “scientific nature” of studies done for HMRP! Because of several such doubts on the quality of information in the EIA study, the petitioner approached a reputed consultancy agency for an appraisal of the EIA report. The scientist and agency that did a “Quick Appraisal Report” on the EIA study, Dr. Sagar Dhara and Cerana Foundation, have impeccable credentials not only in India but also at the United Nations level. Dr. Sagar Dhara was a member of the three-member committee on Hussainsagar appointed by the Hon’ble Supreme Court, has been a consultant to the Ministry of Environment and Forests (MoEF), and Central Pollution Control Board, Government of India. He is part of UN teams on Environmental Protection. When we had apprehensions we had to consult the technical experts and we approached Sagar Dhara who is technical expert relied upon by the Central Pollution Control Board and this can be faulted as one with evil intent.
14. In reply to Para – 18 of counter of R-3 and para 19 counter of R-4, I submit that the noise level of the Metro Rail were procured from the presentation material by R4. In that the claim is made that the noise levels is 85db(A) and now different figures are given. The averments made by the Respondents are misleading with the intention of confusing the public. In the presentation made by R-4 at CESS on 6th July 2008 the noise level of metro rail was stated as 85dB(A) (proof attached with the original petition). Even as per the MSS as mentioned in the counter petitions, the noise levels prescribed are 60db(A) for hospital zones which above the permissible level of 50dB(A) as per the CPCB norms which itself is a violation of Article 21. Prescribing a noise range of 50-70 dB(A) for residential areas is misleading and allows the private operator a high leeway in emitting noise and is also a violation of the existing standards. This is the attitude of the respondents. The proposed measures ought to have been made public and this is what we want.
15. In reply to Para – 18 of counter of R-3 and para 19 counter of R-4, I submit that the R-4 started hosting the information selectively on the website (www.hyderabadmetrorail.in) only after signing the Concessional Agreement (CA) on 19th September 2008 and not before. It should be further noted that the CA was signed after the WP was filed by the petitioners. Thus the transparency of sharing the information is not true. The replies sent on 16th and 20th August 2008 did not reach the applicants by the time of filing our petition. The Respondents are admitted that the required information is not available in Telugu and Urdu which itself is a serious violation of the existing government orders. The citizens are not informed about any thing which is relevant. After not receiving any response, one of the applicants (B.Ramakrishna Raju) has filed an appeal. Even at the appellate stage the

information is not forthcoming and the second is appeal before the State Information Commission also. The Respondents only gave selected information through media briefings and not the vital information. Media briefings cannot be an alibi for sharing information and taking into consideration the concerns of stakeholders. We are striving for this only and this can not be found fault with. There has not been even one meeting conducted by the Respondents in the last one and half years wherein the petitioners were invited to express their opinions. It is true that several peoples representatives and media persons were taken on "guided tours" to Delhi and made to travel in Delhi metro rail and were given presentations. Alas! Most of them thought that the Hyderabad metro rail would also be underground! When the petitioners met many of these representatives to brief them about the harmful effects of this project, they were surprised to know that the entire metro rail in Hyderabad is an elevated corridor. Several legislators did not have basic documents of the studies. The R-3 is attempting to draw sympathy by claiming that "we struggled hard night and day and nurture this Project as a model project and provide all the needed information to different sections of the society" while the facts speak otherwise. As late as in February 2008, the R-4 has replied to an RTI applicant that "the copies of the DPR documents contain valuable technical data, designs and other information which have high commercial value. Further, since the BOT tender process is still on, the DPRs cannot be given". We filed news report of Times Of India at page 68 ex-P12 of the writ papers. In this it was declared that the details can not be made public.

16. In reply to Para 20 of counter affidavit of R-3 and 21 of counter affidavit of R-4, I submit that we stand by the original statements on the extensive defacement to the historic heritage precincts of Hyderabad. The Respondents are trying to convince the Hon'ble Court that they are aware of everything and that no damage is going to be done which is typical of government authorities and lack credibility. Several heritage experts and architects have been expressing serious concerns on this issue. Strict proof may be provided regarding the satisfaction of Heritage Committee members and not a newspaper item as given in their Annexure XVIII) on such a vital issue. The statement given to Heritage committee were not filed by the respondents. Further, the Respondents have passed on the burden of getting permission from the Archaeological Survey of India for "construction of any structure within the prescribed radius of the protected monuments". No answer is available to question what happens if the ASI and the Heritage Committee refuse permission at several monuments? BY that time considerable amount is spent and the Heritage given way to the Metro rail.
17. In reply to Para 21 of counter affidavit of R-3 and 22 of counter affidavit of R-4, I submit that the fact that the Respondents have signed the Agreement with the private company even before preparing the R&R plan itself vindicates the contention of the petitioners there is no R&R plan. The Respondents are trying to pressurize and intimidate the affected people that they have to give up their properties since the government has already signed the contract and will not go back. This is contrary to the spirit of the G.O. 68 dated 8th April 2005 which the Respondents are claiming to adhere to. Even a census of all the project affected people has not been conducted so far. If done, a copy of the same may be submitted to this Hon'ble Court.
18. In reply to Para 22 of counter affidavit of R-3 and 23 of counter affidavit of R-4, I submit that On the traffic management plan also, the petitioners were justified in their contentions. Not a single public consultation and debate has been held so far on an issue that affects lakhs of people everyday. The study might have been entrusted to

ESCI but why should the Agreement be signed before these vital studies are not finalized. The argument that “any delay in execution of the project would cost the BOT developer about Rs. 3.20 crore per day” and given the conditions in the CA “the BOT developer would struggle hard to complete the project as early as possible, rather than allowing any delays” tells only part of the story. It would have been a lot more responsible task had the Respondents thought of these delays before signing the contract. This argument is used to justify before the Hon’ble Court the untenable positions of the Respondents. The hurried and pro-private party actions of the Respondents cannot be allowed to subvert the law of the land.

19. In reply to Para 23 of counter affidavit of R-3 and 24 of counter affidavit of R-4, I submit that By their contentions, the Respondents want to argue that the government can adopt discriminatory norms for the same kind of project which is contrary to the principles of natural justice. The spirit of Section 4 of the Tramways Ordinance (now an Act) is informing the public about the project and seek their objections or suggestions. If this process is valid for municipalities, it should be valid for this case too. The Respondents cannot take shelter under Section 5 to deny public an opportunity to offer suggestions or raise objections. The right of the public to know the risks etc., before hand may have to be read into the Act 38 of 2008 especially in the light of the section 4. The Apex court had dealt with such issues. We learnt that the Karnataka High Court was told that the public were asked to file objections to the alignment as stated by the counsel for the Bangalore Metro Rail Corporation Ltd. (BMRCL) in the Hon’ble High Court of Karnataka (Deccan Herald, February 26, 2008, <http://www.deccanherald.com/DeccanHerald.com/Content/Feb262008/city2008022654240.asp>).
20. I further submit that the state government had declared that the Metro rail is being developed by the Municipal Corporation of Hyderabad. This was during the Jawaharlal Nehru Urban Renewal Mission (JNURM). Thus the local authority is implementing this and Section 4 etc., to inform the public comes into play.
21. In reply to Para 24 of counter affidavit of R-3 and 25 of counter affidavit of R-4, I submit that the Respondents are only talking about the “tremendous financial benefits to the Public Exchequer” which will substantially accrue from the 18th year onwards. There is a big unrevealed story inside the CA that causes enormous harm to the public. The DMRC Chief Sreedharan had written a letter in this regard and the copy of the letter is filed along with the reply sent by the Government. The first petitioner, along with a team, visited the HMR office on 25th October to peruse the documents under Section 4 of the RTI Act, 2005. A few important provisions of the Concession Agreement are given below that prove beyond doubt that this project promotes the interests of the private real estate company, Mytas, than public interest. I submit that in this writ petition the issue is whether the public be informed in advance about the project and whether stake holders will be heard and the respondents are ready to consider these or not. Hence we are not giving full fledged analysis of the CA. The respondents have chosen not to file this Agreement .
22. I submit that following are the some of the extracts. These are illustrative and not exhaustive. I may be permitted to place the other details as and when the copy of the full text is available.

AGREEMENT

Title of the Agreement:

“Concession Agreement for Hyderabad Metro Rail (MRTS) Project between the Government of Andhra Pradesh and M/s Maytas Metro Limited, Hyderabad (The “Concessionaire”), Government of Andhra Pradesh, 19 September 2008, Hyderabad.

The Concession Agreement (CA) for HMRP was signed between the Government of Andhra Pradesh and M/s Maytas Metro Limited (MML) on 19 September 2008.

The Rail System includes the rail-related infrastructure and also the **Real Estate Development (RED)**.

Available land: 212 acres at Miyapur (99 acres), Falaknuma (17 acres), Nagole (96 acres). 57 acres at 34 stations (for parking & circulation areas, and Real Estate Development (pp. 159-162).

Real Estate Development

- 6 mln sft over parking and circulation areas of 34 stations.
- 12.5 mln sft over the 3 depots (above first floor level).
- 10% of the floor area of each station.
- Plus 30% of the area at Miyapur and Nagole and 20% at Falaknuma. In addition, basement also can be used in this 30%.

Important

In the event that any of the lands earmarked for parking and circulation (and RED) is not made available to the Concessionaire, the government shall earmark alternative sites of comparable size and potential for RED.

As per the Concession Agreement (CA) for HMRP signed between the Government of Andhra Pradesh and M/s Maytas Metro Limited (MML) on 19 September 2008, the Rail System includes the rail-related infrastructure and also the Real Estate Development (RED). There are several provisions in the CA that are heavily favourable to the private real estate company. As a Condition Precedent, within 30 or 60 days of payment of Performance Security (PS), the government shall have procured the Site (i.e. all lands and buildings) and also procured approval of Railway authorities for construction of bridges/ underpasses etc. For delay, the government shall pay at the rate of 0.1 percent of the PS (i.e. Rs. 24 lakh) per day until fulfillment of conditions subject to a maximum of 20%.

The metro corridors will have to cross the railway lines at several places. Further, the Line II will have to cross the entire stretch of Secunderabad station across all the ten platforms along with a station in the front. Experience shows that getting quick permissions from the railways has not been an easy task. Already, construction of two flyovers and a bridge over the existing railway lines/stations in the city have been facing hurdles for several months now due to the queries raised by the railway ministry. The South Central Railway also has plans to develop Secunderabad station into a world class railway station. When such is the reality, why were the Respondent authorities so eager to sign the CA unless it is to indirectly favour the private real estate company by paying penalties.

The CA further says that no local tax or charge is levied or imposed on the Rail System, that includes RED, which means the GHMC will lose hundreds of crores of rupees in the form building fees, property tax, entertainment tax etc. for more than forty years on the real estate

business of the MML. The government has foregone its responsibility to improve or provide other modes of public transportation along the metro corridors by agreeing to a restriction on Competing Facility till 25th year and extend the Concession Period if competing facility is introduced. It also means that the APSRTC will not be allowed to introduce modern buses for public comfort on these routes, and it also may sound a death knell to the RTC slowly. Even if the CA has to be terminated due to Concessionaire default, the liabilities to be paid by the government appear to be profitable to the private company. This shows that, for the Respondents, safeguarding the interests of the private company have weighed more heavily than protecting the interests of the public.

23. In reply to para 25 of the counter affidavit of R-3 and para 26 of counter affidavit of R-4, I submit that we are justified in approaching this Hon'ble Court for justice. It is very clear that the Respondents have not complied with the environmental laws, have not been transparent, have not held public consultations, have entered into agreement with a private company in haste, are changing the alignment now,. The CA signed between the Respondents and the private company is not at all in public interest. The CA should be immediately hosted on their website in larger public interest. At this stage, the Respondents' plea that "everyday's delay of the Project would lead an additional expenditure to the tune of Rs. 3.20 crore" only shows how eager they are about the anticipated loss to the BOT developer. We are all for quick decisions speedy implementation of projects. The effected citizens may be heard before rushing ahead and the precautionary principle is relvant for this case.
24. Hence it prayed that this Hon'ble court may be pleased to allow the writ petition and pass such other orders as this Hon'ble court may be pleased to in the interest of justice.

Solemnly and sincerely signed his Name
on this the Twenty Ninth Day of October 2008.