



**ಕರ್ನಾಟಕ ವಿಧಾನ ಪರಿಷತ್ತು**  
**150ನೇ ಅಧಿವೇಶನ**

ಚುಕ್ಕೆ ಗುರುತಿನ ಪ್ರಶ್ನೆ ಸಂಖ್ಯೆ : 21 (99)  
 ಮಾನ್ಯ ಸದಸ್ಯರ ಹೆಸರು : ಶ್ರೀ ಡಾ: ವೈ.ಎ ನಾರಾಯಣಸ್ವಾಮಿ (ಶಿಕ್ಷಕರ ಕ್ಷೇತ್ರ)  
 ಉತ್ತರಿಸುವ ದಿನಾಂಕ : 05.07.2023  
 ಉತ್ತರಿಸುವ ಸಚಿವರು : ಲೋಕೋಪಯೋಗಿ ಸಚಿವರು

ಕ್ರ. ಸಂ.	ಪ್ರಶ್ನೆ	ಉತ್ತರ										
ಅ)	ಬೆಂಗಳೂರು ಮತ್ತು ಮೈಸೂರು ನಗರದ ಮಧ್ಯೆ ನಿರ್ವಹಿಸಲು ಉದ್ದೇಶಿಸಿರುವ ಬಿ.ಎಂ.ಐ.ಸಿ ಯೋಜನೆಗಳಾವುವು: (ನೈಸ್ ರಸ್ತೆ ಯೋಜನೆಯ ವಿವರ ನೀಡುವುದು)	ಬೆಂಗಳೂರು-ಮೈಸೂರು ಇನ್‌ಫ್ರಾಸ್ಟ್ರಕ್ಚರ್ ಕಾರಿಡಾರ್ ಯೋಜನೆಯ ವಿವರಗಳ ಪ್ರತಿಯನ್ನು ಅನುಬಂಧ-1 ರಲ್ಲಿ ಲಗತ್ತಿಸಿದೆ.										
ಆ)	ಈ ಯೋಜನೆಗಾಗಿ ಸ್ವಾಧೀನ ಪಡಿಸಿಕೊಂಡಿರುವ ಒಟ್ಟು ಜಮೀನಿನ ವಿಸ್ತೀರ್ಣ ಎಷ್ಟು (ವಿವರಗಳನ್ನು ನೀಡುವುದು)	ಬೆಂಗಳೂರು-ಮೈಸೂರು ಇನ್‌ಫ್ರಾಸ್ಟ್ರಕ್ಚರ್ ಕಾರಿಡಾರ್ ಯೋಜನೆಯ ಅನುಷ್ಠಾನದ ಉದ್ದೇಶಕ್ಕಾಗಿ ಬೆಂಗಳೂರು, ರಾಮನಗರ, ಮಂಡ್ಯ ಮತ್ತು ಮೈಸೂರು ಜಿಲ್ಲೆಗಳಲ್ಲಿ ಒಟ್ಟು 29,267 ಎಕರೆ 23 ಗುಂಟೆ ಜಮೀನಿಗೆ ಕೆಎಎಡಿಬಿ ಕಾಯ್ದೆ ಕಲಂ 3(1) ರಂತೆ ಅಧಿಸೂಚನೆ ಹೊರಡಿಸಿದ್ದು, ಈ ವ್ಯಕ್ತಿ 18,218 ಎಕರೆ 8.50 ಗುಂಟೆ ಜಮೀನಿಗೆ ಕಲಂ 28(1) ರಂತೆ ಪ್ರಾಥಮಿಕ ಅಧಿಸೂಚನೆಯನ್ನು ಹೊರಡಿಸಲಾಗಿರುತ್ತದೆ ಹಾಗೂ 4,810 ಎಕರೆ 4.52 ಗುಂಟೆ ಜಮೀನಿಗೆ ಕಲಂ 28(4) ರಂತೆ ಅಂತಿಮ ಅಧಿಸೂಚನೆಯನ್ನು ಹೊರಡಿಸಲಾಗಿದೆ.										
ಇ)	ಪ್ರಸ್ತುತ ಇದುವರೆವಿಗೂ ಈ ಯೋಜನೆಗಳ ಕಾಮಗಾರಿಗಳ ಪ್ರಗತಿ ಯಾವ ಹಂತದಲ್ಲಿದೆ (ಮಾಹಿತಿಯನ್ನು ನೀಡುವುದು)	<p>ನೈಸ್ ಸಂಸ್ಥೆಯವರು ನಿರ್ಮಿಸುತ್ತಿರುವ ಬೆಂಗಳೂರು-ಮೈಸೂರು ಕಾರಿಡಾರ್ ಯೋಜನೆಯ ಪ್ರಗತಿ ವಿವರಗಳು ಈ ಕೆಳಕಂಡಂತಿದೆ.</p> <table border="1"> <thead> <tr> <th>ಕ್ರ. ಸಂ.</th> <th>ರಸ್ತೆಯ ವಿವರ</th> <th>ಫೇಮ್ ವರ್ಕ್ ಒಪ್ಪಂದದಂತೆ ರಸ್ತೆಯ ಒಟ್ಟು ಉದ್ದ ಕಿ.ಮೀ.ಗಳಲ್ಲಿ</th> <th>ನಿರ್ಮಾಣ ಮಾಡಲಾಗಿರುವ ರಸ್ತೆಯ ಒಟ್ಟು ಉದ್ದ ಕಿ.ಮೀ.ಗಳಲ್ಲಿ</th> <th>ಷರಾ</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>ಬೆಂಗಳೂರಿನಿಂದ ಮೈಸೂರಿನವರೆಗೆ ವೇಗದ ರಸ್ತೆ</td> <td>III</td> <td>3.50</td> <td>ಭಾಗಶಃ ನಿರ್ಮಾಣ ಮಾಡಲಾಗಿರುತ್ತದೆ.</td> </tr> </tbody> </table>	ಕ್ರ. ಸಂ.	ರಸ್ತೆಯ ವಿವರ	ಫೇಮ್ ವರ್ಕ್ ಒಪ್ಪಂದದಂತೆ ರಸ್ತೆಯ ಒಟ್ಟು ಉದ್ದ ಕಿ.ಮೀ.ಗಳಲ್ಲಿ	ನಿರ್ಮಾಣ ಮಾಡಲಾಗಿರುವ ರಸ್ತೆಯ ಒಟ್ಟು ಉದ್ದ ಕಿ.ಮೀ.ಗಳಲ್ಲಿ	ಷರಾ	1.	ಬೆಂಗಳೂರಿನಿಂದ ಮೈಸೂರಿನವರೆಗೆ ವೇಗದ ರಸ್ತೆ	III	3.50	ಭಾಗಶಃ ನಿರ್ಮಾಣ ಮಾಡಲಾಗಿರುತ್ತದೆ.
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1.	ಬೆಂಗಳೂರಿನಿಂದ ಮೈಸೂರಿನವರೆಗೆ ವೇಗದ ರಸ್ತೆ	III	3.50	ಭಾಗಶಃ ನಿರ್ಮಾಣ ಮಾಡಲಾಗಿರುತ್ತದೆ.								

ಗುಸುಬಂದ-2

IN THE HIGH COURT OF KARNATAKA AT BANGALORE.

DATED THIS THE 21ST DAY OF SEPTEMBER 1998.

PRESENT

THE HON'BLE MR. JUSTICE ASHOK BHAN  
AND  
THE HON'BLE MR. JUSTICE S.R. VENKATESHA MURTHY.

WRIT PETITION NO. 29221 OF 1997.

BETWEEN

Sri. H.T. Somashekar Reddy,  
S/o B.V. Thimmarayappa,  
aged 64 years, Chief Engineer  
(Retd.), No. 810, HAL II Stage,  
Indiranagar,  
Bangalore-8.

..Petitioner

(By Sri. M.F. Eswarappa, for  
Sri. Ko. Channabaseppa, Advocate)

And

1. The Government of Karnataka,  
by its Secretary, Public Works  
Department, M.S. Building,  
Bangalore-1

2. Nandi Infrastructure Corridor  
Enterprises Ltd.,  
No. 1, Midford House,  
Midford Gardens,  
M.G. Road, Bangalore-1

..Respondents

(R-1 by Sri. D'Sa, Government Advocate, R-2 by  
Sri. R.N. Narasimha Murthy, Sr. Advocate, for M/s  
King & Partridge, Advocates)

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This petition is filed under Articles  
226 and 227 of the Constitution praying to  
quash agreement Annexure-'A' dated 3-4-1997.

This petition coming on for  
pronouncement of order this day, ASHOK BHAN  
J., made the following:

ORDER

ORDER

Petitioner who is a retired Chief Engineer, has filed this petition as public interest litigation challenging the validity of agreement dated 3-4-1997, annexure-'A' entered into between the Government of Karnataka and Nandi Infrastructure Corridor Enterprises Ltd., arrayed as respondents 1 and 2 (for short, respondents 1 and 2 respectively). The agreement has been executed by the Secretary Public Works Department as an authorised officer of respondent No.1 under Article 229(1) of the Constitution of India, for and on behalf of Governor of Karnataka. By this agreement the second respondent is authorised to construct and provide Infrastructure Corridor Project between Bangalore and Mysore ('the Project', for short), consisting of residential, industrial plants, water treatment and other infrastructure developments as set out in the 4th para of the preamble in the said agreement. According to the petitioner the agreement entered between respondents 1 and 2 is detrimental to the people of the area and against the Constitution of India and laws in

*Amalendu*

force in the country. Illegality of the agreement being of such magnitude that if it is not challenged by the citizens of the State it would result in disastrous consequences affecting Agriculture, Horticulture, Environment and Pollution of the State. The population of the State is likely to be affected generally with the implementation of the Project. The persons to be affected is so large in number that they cannot individually approach this Court for relief. Therefore the petition be entertained as public interest litigation.

2. To appreciate the contentions raised between the parties and for its proper adjudication, it is necessary to refer to the factual matrix of the dispute as stated in the petition and derived from the official record produced before us in extenso. The same is:

Bangalore and Mysore are two very important towns of the State of Karnataka and are connected by existing Bangalore-Mysore High-way SH-17 which was built over 100 years ago. With the passage of time and

*Shri. M. V. ...*

modernisation of technology, the movements on the roads has increased and heavy and fast moving traffic has come instead of the slow moving traffic at that time. These two cities have been exposed to shock of industrialisation, heavy development and over population. In order to meet the ends of the industry, transportation, the State of Karnataka invited tenders for designing, constructing, maintaining and operating of an Express Highway between Bangalore and Mysore on 28th September 1988. In response to the said advertisement only one bid was received with certain stringent conditions which were not acceptable to the Government. The said conditions were:

- a) They proposed to form a new Company to take up the Project if awarded this work.
- b) They requested Government backing for guarantees, etc.
- c) They wanted freedom of fixing the toll rates, consistent with the market conditions and freedom to revise the same from year to year according to the rise in cost of living index. They specified the lease period of approximately 60 years.

*Success*

d) They requested 15 months time for verifying the Project Report before signing the formal contract.

e) The effect of cost push on account of quantity variation due to inadequacies in the present design and estimates would have to be settled before actual construction.

f) In case of difficulty encountered by them for acquiring land, the Government should step in and acquire the land and handover the possession to them at the value provided in the project estimate. Construction work will be started once the entire land is in their possession.

g) In the event of variation in traffic forecast as contained in the Project Report resulting in adverse effect on profitability, they should be given an opportunity to negotiate with the Government before signing the final contract.

h) In addition to other points like safeguards, maintenance of law and order, preservation of the basic features of the Project, the bidders demanded protection of the source of revenue by ensuring that there will be no competing road development by the State and other agencies, affecting the revenue of the Project. The State Highway No.17 and 86 should not be improved from its present State, other than routine surface maintenance.

State Government on scrutiny of these conditions was of the opinion that the conditions imposed were unreasonable and not in the best interest of the State. The bid

*Answer*

was not accepted. A survey was got conducted by Asian Development Bank and as per the report submitted by the Bank, the population of Bangalore City by the year 2011 would be in the region of 8.2 million and suggested the need for improvement of this corridor. It was also suggested that the State Government should bear 20% of the Project cost along with the cost of Land Acquisition. The copy of the report has been attached as annexure R-4 to the written statement of Respondent No.1. As the State Government was not possessed of sufficient means, it started making efforts to take up the scheme on Build-Own-Operate-Transfer (for short, 'B.O.O.T') concept by any consortium, to take up the development of the project from their own resources and get back their expenditure through collection of Tolls.

3. During early 1995 in order to establish sister State relationship with the State of Massachusetts, U.S.A and State of Karnataka, a MOU dated 20th February, 1995 was entered between these two States. In the said MOU it was agreed by the Government of

*Annexure*

Karnataka to extend support for development of Bangalore-Mysore Expressway provided commercial viability competitiveness and feasibility of the project was established to the satisfaction of the State Government. Second respondent submitted a project report for the consideration of the first respondent

4. For review of the Project Report submitted by respondent No.2 and also to give necessary advice, recommendation etc., High Level Committee was formed under the Chairmanship of the Minister for Public Works on 5-6-1995. In this High Level Committee, the Principal Secretary, Commerce and Industries Department, Principal Secretary Housing and Urban Development Secretary, Public Works Department, Chief Engineer C & S (South Zone, Bangalore) were the members. The Chairman and Managing Director Karnataka State Industrial Investment Development Corporation were official members and the Chairman, Technical Advisory Committee (Irrigation) was non-official member. This Committee met often to review the progress made and for giving necessary advice and clarification. Second

*Signature*



Respondent presented its 'Bangalore - Mysore Infrastructure Corridor Project' on 26th August 1995. The High level Committee after conducting meetings and obtaining all clarifications desired, submitted its report to the Government on 12-10-1995. The report of the high Level Committee and the Project report submitted by the 2nd Respondent was examined on 6th November 1995 by the Cabinet Sub-Committee which recommended this report to be brought before the Cabinet. After due consideration and certain modifications the report was accepted. The number of townships was reduced from 7 to 5. The townships was introduced to make the project economically viable. There was no financial investment/commitment of whatsoever on respondent No.1. On the proposal being accepted, the second respondent submitted a draft during February 1997, after taking into consideration various suggestions of the Core Committee to negotiate with the 2nd respondent. The Cabinet Sub-Committee suggested various modifications to the Framework Agreement which were duly incorporated. Ultimately respondent No.1

*Amr Kumar*

approved the Framework Agreement on 17th March 1997 and the same was signed on 3rd April 1997.

5. The agreement annexure 'A' consists of 22 Articles and 6 schedules. Article 1 consists of definition and interpretation of the words occurring in the agreement. Article 2 lays down conditions precedent. Article 3 lays down the obligations placed on the Government of Karnataka. Article 4 envisages the constitution of Empowered Committee as defined in paragraph 4.1. This Empowered Committee is the mechanism by which Government of Karnataka will coordinate for the purpose of its obligations under the agreement.

6. Petitioner has challenged the agreement annexure 'A' stating that in order to enable the second respondent to execute the project the first respondent shall make available 20,193 acres of land as set out in Schedule 1 at page 74 of the agreement. Out of 20,193 acres of land 6,956 acres belong to the Government and the remaining 13,302 acres belong to the private parties to be acquired

*Amalendu*

by the state and handed over to the second respondent. According to the petitioner, the purpose of the project is not so much the construction of 111 k.m Express Highway but to facilitate the construction of commercial complexes as detailed in schedule 4 including the construction of Golf courts, Movie theatres, amusement parks, temples and religious activities and any other business area which may emerge from time to time. The real purpose, according to the petitioner is to develop the real estate and not to construct the 111 k.m. Express Highway to connect Bangalore with Mysore which is only incidental in nature. In the agreement it is stated that the Project shall be built, operated and transferred after the concession period of 30 years as defined in para 3.3.1 which is extendable by mutual agreement for a further period of 99 years at a nominal rental of Re.1/- per annum.

7. According to the petitioner agreement consists of illegal terms and conditions binding the Government of Karnataka. It has taken up on its obligation not only to acquire

*Surinder*

the land for the purpose of road or township etc., but taken upon itself the obligation to supply water, power and facilities for water treatment etc. For instance the petitioner has cited conditions contained in Article 3.3.3 and 3.2.1. All these provisions in article 3 in essence is to bind the Legislature to enact Laws promulgate orders/rules/notifications and to make amendment to the existing laws. Virtually the legislature and the Government of Karnataka have been bound hand and foot to sub-serve the commercial interest of the 2nd respondent, by sub-verting the constitutional provision regarding the power of the Legislature to enact laws laid down in Article 196 to 201. Not only that the State Government has bound itself to do certain acts and pass certain laws contrary to constitution but also undertaken to forestall and defeat the provisions of Section 2(2) of the National Highways Act of 1956 or any other similar laws of India. No State Government in the Union of India, can undertake to prevent the extension of any federal law in any part of the Country. Suffice it to say that the rights granted to

*Amr...*

the 2nd respondent under Article 3 are absolutely unconstitutional, illegal and detrimental to the State. Article 5 lays down the provisions for acquisition of land from private owners by exercising powers under the Land Acquisition Act and also the obligations to hand over Government Revenue Lands. Article 6 lays down the right of the 2nd respondent to the operation of the Toll road. According to the petitioner second respondent has been empowered to detain any person who violates any rules and regulations that the Company may promulgate in the matter of operation of the Toll Road. This term of the agreement results in handing over the State into the hands of the 2nd respondent company. The rule of law is subverted to subserve the interest of a Private company. Article 7 lays down the provisions for the construction of townships. Petitioner submits that this is the most damaging provision detrimental to the owners of the land who are going to be affected by acquisition of the land. Though the agreement is styled as Infrastructure Corridor Project purporting to facilitate the construction of Express Highway, the real

*Sumit*

object is to facilitate the respondent to develop the land by building the five townships and provide the facilities and services set out in Schedule 4. From his experience as an engineer, petitioner has stated that 4 tracks with a width of 100 mts requires about 25 acres per kilometer. The total extent of land required for 111 kms between Bangalore and Mysore would be 2,775 acres, but astonishingly 6,999 acres of land is earmarked to the Toll Road. The rest of the land is earmarked for 5 townships with all other facilities set out in Schedule 4. the real purpose of this project is to facilitate the 2nd respondent company to acquire land through the State agency at the prevailing market value of the land and make it over to the company to develop it as townships and make huge profits running into thousands of crores of rupees. Construction of township is not an obligatory function of the state and it could never be for public purposes within the meaning of the Land Acquisition Act.

*Amrinder*

8. As per the petitioner that as a corollary of making available the land for construction of townships, the State has under Article 8 of the agreement bound itself to provide facilities for construction of power plants. In addition to this facility the State has bound itself to supply 2 TMC of water from the townships from the Cauvery river. It is submitted that as it is, water supply system to the city of Bangalore was so precarious and difficult that the people are starved of water. The supply of water to the proposed townships will be one of the greatest problems and difficulties not only to the Government but also to the growing population of Bangalore and its suburbs. State is embroiled in legal battle with Tamil Nadu in the utilisation of Cauvery Water and any commitment on the part of the 1st respondent to supply water from the Cauvery river will not only diminish and deplete the water supply to the existing population for drinking, irrigation and industrial purpose but also invite legal action from the lower riparian State. No prudent Government would hazard such a risk under the present circumstances

*Srinivas*

when the Cauvery water disputes Tribunal is seized of the matter and the concerned State are bitterly fighting the battle.

9. Besides this obligation to provide water facilities to townships the 1st respondent has also taken obligation to take over the rights in the treated sewage water. The B.W.S & S.B has already taken up a Special Project to treat and re-cycle the sewage waste-water and to augment the water supply to the non-drinking purposes which is utilised for industrial, agriculture and horticulture purposes to save the drinking water. Though B.W.S & S.B has already undertaken the work of treatment and recycling the water, that very water is now sought to be given away to the 2nd respondent company to the extent of 7 TMC per annum. The magnitude of the loss to the State Exchequer by this agreement is startling, detrimental to the population both in Bangalore city and in the proposed Corridor areas.

*Amal*



10. Apart from this the State Government to its detriment and responsibilities of the State has agreed to give tax holidays in respect of the State and local taxes, duties including registration fee levies and conversion fine are granted to the 2nd respondent. The project if implemented will have far reaching disastrous impact upon the environment not only in the Corridor area covered by the Project but in the 4 districts of Mysore, Mandya, Bangalore Urban and rural. Setting up of townships and industrial area will invariably result in the violation of laws governing the environment and pollution which will result in violation of the provision of Air and Water (Prohibition and control of pollution) Acts of 1971 and 1974, the Wild Life Prevention Act, the Indian Forest Act and Forest Conservation Act etc. Within the Project area falls a large track of forest land, irrigated agricultural land and fertile dry land. Atleast 13000 acres of private land will have to be acquired and converted for non-agricultural purposes. The loss of agricultural land results in rendering agriculture labour unemployed. The forest

*Success*

land is being converted without taking necessary permission from the Central Government.

11. Article 18 lays down the mechanism of resolution of disputes by way of Arbitration to be held at London and governed by the New York Convention Rules of 1966. The Government of Karnataka has bound itself that the arbitration shall not be governed by the Indian Laws and that the disputes shall not be treated as a domestic arbitration. According to the petitioner it is unthinkable as to how the 1st respondent can enter into an agreement with a Foreign Company opting out of the laws of the country and the State. The agreement contains the confidentiality clause (Article 22.5) which prohibits the contracting parties from disclosure or use of confidential information for its purpose in any manner. This has the effect of nullifying the laws of this country in the matter of breach of contract by the 2nd respondent.

*Disputed*

12. On the day the petition was to be taken up for final argument an application under Order 6 Rule 17 r/w section 151 C.P.C was filed seeking to amend the writ petition and add by way of amendment certain new grounds. The new grounds sought to be added are that 2nd respondent was registered on 17th January 1996 long after a feasibility report was submitted to the 1st respondent which clearly shows that the second respondent was formed only for this work. According to the petitioner the antecedents of one of the major associates of respondent No.2 i.e., the collaborators are bad and they do not have either the financial or the technical capability to execute the work. That the action on the part of the 1st respondent in entering into the impugned contract with the 2nd respondent is tainted with malafides and the same is for extraneous consideration causing loss to the State Exchequer and therefore calls for an enquiry in the matter and for prosecution of those involved in it for the offence of breach of trust and other

*Amended*

offences. Prayer has been made that the matter be got enquired by Central Bureau of Investigation.

13. After tracing out the details from the beginning upto the signing of the framework agreement annexure-'A', respondent No.1 in its statement of objections has denied the allegations made in the petition. It has been averred that the petition has not been filed in public interest but to serve some personal interest with ulterior motive. Referring to the experience of the petitioner as an engineer, it has been stated that he is not qualified to assess and evaluate the proposed concept of the project in view of the modern technic.

14. Coming to the imperative need of the construction of highway it is stated the existing Bangalore-Mysore Highway (S.H.17) is an inadequately designed meandering road laid over 100 years ago depending on the needs which existed then. The Cities of Bangalore and Mysore having been exposed to the shock of heavy development and over population, are

*Success*

practically bursting at the seams. Two cities have also undergone heavy industrialisation and development of commerce which has necessitated the plying of heavy vehicular traffic to take care of the needs of industry, commerce and personal transportation. The average traffic volume on this road has increased from 3500 passenger Car Units during 1971-72 to 35,000 Passenger Car Units during 1996-97 every day. The project if implemented would help in reducing air, water and noise pollution in and around Bangalore city. The traffic congestion in Bangalore City would be reduced to a considerable extent especially the movement of trucks. The proposed project ensures construction of truck terminals to enable truck supply various materials to Bangalore City to unload the same without having to enter the City which is being done presently.. The proposed project envisages the construction of the outer peripheral ring road, link road and the elevated road which will reduce the stress on the roads in Bangalore city thereby reducing the accidents and ensuring faster movement of traffic.

*Success*

15. Allegation that the agreement entered is opposed to the Constitution and the laws in force or that it is detrimental to the people of the area who are likely to be directly affected by the proposed project, has been denied. Allegation that it would result in disastrous consequences affecting agriculture, horticulture, environment and pollution control etc., is denied being baseless and vague. There is no wild life, forest on the alignment. The project provides for relief and rehabilitation package separately for the people affected in the area where Expressway and the townships are proposed. The project does not affect the citizens of Bangalore city as alleged. It is submitted respondent No.2 will augment independent sources of water supply electricity and other essential amenities at its cost. The project will help in decongesting the city by developing townships which will be self contained. The Expressway also contemplates high speed roads to connect North and South of Bangalore by the formation of peripheral Road to ease out the considerable heavy traffic and congestion which otherwise plies through the city. As a

*Amr*

mega project like the Expressway involves considerable extent of land, answering respondent has agreed to provide the minimum extent of land required for the project partly out of the land owned by the State and by acquiring the balance. Second respondent will not only construct the proposed Expressway but also link roads, peripheral road, interchanges, Service Roads, toll plazas and Maintenance area etc., in addition to the townships. The townships can be developed by respondent No.2 only after express way is completed. Under clause 3.5.1 the Concession Period is 30 years initially and however extendable on mutual consent which the replying respondent may or may not extend since it is not obliged to extend the said period.

16. Allegation that the replying respondent has connected with malafide intention to permit respondent No.2 to build the townships as a developer in the garb of construction of highway, has been denied. The townships have been planned to absorb the inevitable development of industry and

*Done*

commerce and human settlements, which at the moment are going on in an unregulated way. These would only tranship and relieve the population pressure in the Cities of Bangalore and Mysore and intervening townships without necessarily attracting permanent population from outside in a major way. Development of townships is inevitable and are a necessary corollary to urbanisation, the planning of township is a part and parcel of Express Highway project, so that the development of the whole area would be appropriately guided and balanced. To construe the concept of townships as an attempt at the commercialisation of the Express Highway project reflects the gross miscomprehension of the scheme in the petitioners mind. Allegation that only 2775 acres are needed for the Express Highway is denied. Keeping in view the land developments and future developments of the peripheral Ring Road, Link road and elevated road which will be completely grade separated with the interchanges, service and maintenance areas, for 111 k.ms of Express way, 41 k.ms of

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Pheripheral road and 9.8 k.ms of Link road, the land required for the construction of Highway itself would be 6999 acres.

17. It has been emphatically denied that supply of water to the township will fall within the allocation for drinking water, claimed by the State Government before the Cauvery Water Dispute Tribunal, in the dispute with Tamilnadu and Kerala. Aliegetion that it would diminish the supply of water to Bangalore is also denied. Apart from this it has been submitted that population growth in between the two cities of Bangalore and Mysore in any way need water. No constitutional government can shirk its responsibility of providing adequate water for drinking and other purpose to its citizens. It is asserted that it is idle and short sighted to contend that water should not be supplied for drinking or industrial purpose when the population and industries are bound to expand. Supply of untreated sewage water by B.W.S.S.B to respondent No.2 would not in any way affect or result in loss of supply of the sewage water for agriculture and industrial purpose. It is

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submitted that the sewage water now discharged into the Brishabavathy valley is 200 MLD, and other effluents discharged is 150 MLD. In addition, a discharge of 85 MLD is expected to be added after the commissioning of the 4th Stage of Cauvery Water supply Scheme. The present efforts at treatment of sewage water by BWSSB touches only an insignificant portion of this huge discharge and even there, not much head way has been made. In order to utilise this huge amount of sewage water which is going waste and which cannot in any way be treated has been agreed to be supplied by BWSSB to respondent No.2. It contemplates the establishment of a treatment plant by Respondent No.2 at its own expense and no question of huge loss to the state Exchequer is involved, as the secondary treated water is purchased by the 2nd respondent on the price fixed by the Board from time to time. The question of causing loss in any way does not arise. Allegation that first respondent has conferred special favours on respondent No.2 in terms of tax exemption and other benefits has been denied.

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18. The latest policy as published by the Government of Karnataka provides for a concession to be given to all Mega projects involving high capital. It is the policy of the State Government to give maximum benefits to those who invest in the State's infrastructure. Replying respondent is not spending a single paise and in turn it has got more profits on the developments carried out in the waste land. The exemption of taxes, tax holidays etc., are decided in order to promote infrastructure projects in the State. It is the policy of the Government to encourage private participation in the construction of infrastructure projects. Government of India has also proposed to maintain National Highways Act to include land for housing and other developmental activities which are integral part of the Highways project and to treat such acquisition of land as required for "public purpose".

19. Clause contained in the agreement relating to the resolving of dispute through international institutions in a 3rd party neutral country has been defended by saying

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that all the agreements with International investors where the funding is through the international institutions have the standard clause of resolution of disputes in a 3rd Party neutral Country. By this agreement the Foreign institutions get a comfort level for the investment made. Petitioners averment that the confidentiality Clause prohibiting the contracting parties from disclosure or use of any information has the potential like a Bofors Agreement is baseless and untenable. No middlemen or agent is involved in this contract except the Government of Karnataka and respondent No.2. It has been asserted that it is highly improper to compare this agreement with that of the Bofors Agreement. The confidentiality clause regarding information inserted in the agreement is just to safeguard the propriety information of Respondent Nos.1 and 2 from falling into other hand who may try to misuse for their unlawful gains.

20. It has been repeatedly asserted that the replying respondent has not contravened the laws of the land and the projects will be

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processed and finalised according to the existing laws. Respondent No.2 would be required to get necessary clearance from the concerned authorities under the various Acts before taking up the project. That the replying respondent is not bound itself and as well as the legislature to make laws or to issue notifications or to prevent the implementation of such legislation. Allegations that the police powers have been transferred to second respondent have also been denied. Allegation that power to create Green belt and to make provisions regarding the town and country planning having been transferred to respondent No.2 have also been denied.

21. Respondent No.2 in its statement of objections has generally taken the same line of defence as respondent No.1. It has denied the allegations made by the petitioner. It has been asserted that there would be no violation of the Air and Water (Prohibition and Control of pollution) Acts, the Wild Life Protection Act and the Forest Conservation Act and other related legislation relating to

*See case*

protection of environment. Although this respondent had submitted the proposal to the State Government for construction of express way and seven self-contained townships, the High Level Committee who examined the proposal after examining the same reduced it to five townships. The allegation that there was no application of mind before clearing the project by respondent No.1 has been denied. Allegation that the project would cause huge loss to the state is without providing factual basis for such allegations. There are no forest area coming in the way and the land proposed to be used is by and large kharab or dry land. There are various environmental studies and an Environment Impact Assessment required to be carried out prior to the execution of the project for the construction of a highway. All such studies are in the process of being carried out and the reports prepared. It would be premature at this stage to allege any environmental damage unless the studies are conducted and results are ascertained. In any case, the project is subject to the operation of the environmental laws prevailing in the State. The replying

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respondent is required to conduct all the studies and obtain necessary clearance before the execution of the project.

22. Coming to the details of the project it has been stated that the impugned agreement involves the construction of a 'State of the Art' 4 lane expressway connecting Bangalore city and Mysore and 5 townships to accommodate a population of about one lakh each, along the Expressway. The Expressway has been designed in such a manner that it can be extended to a 6 lane Expressway in the future. The project also envisages the construction of a Southern Outer Peripheral road of approximately 41 kilometres connecting the National Highway 4 and National Highway 7, a 9 kilometre long Link Road, connecting the Bangalore City-Mysore expressway to State Highway 17 and an Elevated Link Road connecting the above Link Road to downtown Bangalore City. The entire cost of the project, including the cost of acquisition of land is to be, met by this Respondent. The Expressway is to be operated by this Respondent for an initial period of thirty years subject to further extensions if

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agreed by respondent No.2 and thereafter to be transferred to respondent No.1. Responding Respondent is required to ensure that at the end of the initial period of thirty years, on handing over the same to the State Government the Expressway has a further minimum life of thirty years. The land made available to this Respondent for the construction of the townships has to be utilised in the proportion of 45% for commercial exploitation, 25% for open spaces and 25% for common facilities to be transferred to respondent No.1 and 5% to be developed for the purposes of Municipal Offices etc., to be transferred to respondent No.1. In all 194 k.ms of road is proposed to be constructed at an approximate cost of Rs.8 Crores for each kilometre. According to this respondent the project if implemented will go a long way for the development in and around Bangalore City. With regard to water pollution it is submitted that the Vrishabhavathy River is the present dumping ground for all the sewage water from Bangalore city. The river is polluted to such an extent that there is a stink all along the way. Once the project is completed this Respondent will

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require about 85 million litres of sewage per day which will be purchased from the Bangalore City Water supply and Sewerage Board at the existing rates. The sewage is proposed to be used for all Secondary purposes along the Expressway and in the townships after treating the same. The replying respondent has agreed to set up its own water treatment plants to treat the secondary sewage to be supplied by the BWS&S. The sewage is proposed to be used for secondary and tertiary users like gardening, horticulture, arboriculture, flushing etc., thereby reducing the intake of potable water for these purposes to a considerable extent.

23. The replying respondent approached the Indian Space Research Organisation for assistance to determine the alignment of the Expressway and the location of the townships. Using Satellite imagery, and aerial photographs taken by the National Remote Sensing Agency the replying Respondent has been able to identify land involving no Forest Area at all and minimal wet and garden land, thus requiring only kharab or dry land, largely.

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The above survey has enabled this Respondent to identify lands mostly belonging to the State Government and having lesser population to reduce the displacement of the existing population to the minimum. Effort has been made to avoid all natural creeks and underground water sources to avoid any environmental damage. Table showing the details of classification of land required to the project is as follows:

*Land	Road (acres)	Township (acres)	Total (acres)	Percent- age.
Khareb	1740	5818	7558	37
Dry	2936	6881	10817	54
Wet	1153	479	1662	8
Garden	140	16	156	1
Total	6999	13194	20193	100*

24. Need to develop the townships has been justified by stating that the Karnataka Urban Infrastructure Development Project prepared by the Asian Development Bank indicates that the population of Bangalore City by 2011 will be in the region of 8.2 million. The existing infrastructure and the proposed plans if implemented will cater to the requirements of about 7 million people

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only, leaving a gap of about 1.2 million which will lead to a severe stress on the existing infrastructure, which would affect the environment. The Project, on completion will provide alternate accommodation for about 0.5 million people, which reduced the above gap to about 0.7 million.

25. That a careful perusal of the terms of the Agreement will demonstrate that the State Government, by entering into the impugned agreement, has not bound the Legislature into enacting any laws. That the legislative powers to enact laws is subject only to restrictions contained in the constitution and no State Government can bound the legislature into enacting laws which are contrary to the provisions of the Constitution of India. Averment that under the Land Acquisition Act, 1894 land cannot be acquired for the benefit a Company has been denied. It has been submitted that the allegation made by the petitioner is speculative because there are various legislations providing for acquisition of land and the same could be acquired under any of the legislations which

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in the opinion of the State Government is appropriate. It is stated that the project by its very nature requires considerable extent of land and that is why the respondent has agreed to provide the land to the extent available with it and acquire the balance and make available the same to the replying respondent. There are mutual obligations on both the parties under the impugned agreement and respondent- No.1 is only facilitating the acquisition of land for which the replying respondent has to pay at the existing market rates.

26. The claim regarding obligation of the parties in respect of water and power supply to the project are self-explanatory. Respondent No.2 has only agreed to make its best efforts to prevent the Central Government from declaring the Project road as a National Highway under the National Highways Act. That is vital to the execution of the Project in as much as the replying respondent has to invest substantial amounts in the construction of the Expressway. If the same is converted into a National Highway and taken out of control of

*Annexure*

the replying respondent then it will suffer irreparable financial loss. 'Best Efforts' has been defined in clause 22.15 of the Agreement which clearly indicates that the State Government is only required to pursue all legal measures and it is further clear that there is no guarantee that the results will be achieved. Clause 3.2.1 makes it clear that the provisions of the impugned agreement did not bind the legislature. It is always open to the legislature to make such laws as it deems fit. It has been denied that the Legislature and Government of Karnataka are bound hand and foot to subserve the interests of the respondent. Neither the State Government nor the replying respondent can subvert the provisions of articles 196 to 201 of the Constitution of India. All action taken by the State Government are subject to all provisions of the Constitution. Allegation that the replying respondent has been empowered to exercise police powers in the Expressway has been denied. As per clause 6.2.8 of the impugned agreement the replying respondent is required to hand over persons to the local police in case of any mischief. It

*Answer*

has been denied that rule of law the bedrock of the Constitution has been subverted to serve the interests of this respondent or that the state is handed over to this Respondent. It has also been denied that the writ of the replying respondent will run on the toll road. As per clause 6.2 of the impugned agreement, the operation of the toll road and the Toll Authority is subject to the limitations contained in the Central Motor Vehicles Act or any other applicable laws. It has been denied that the Toll Authority will replace the State and that the entire users of the road and the neighbouring villages will be governed by the Toll Authority and the charter promulgated by the said Authority. It has been submitted that the Toll Authority's control over the toll road is subject to the provisions of all applicable laws.

27. It has been denied that the replying respondent would make profits running into thousands of crores of rupees at the expense of the Government by developing townships and it is detrimental to the owners of the land whose land is sought to be acquired. It has

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been stated that 6999 acres of land will be required for the Road ways and 13194 acres of land for development of five townships. Authorisation to this respondent to generate, transmit and distribute power is subject to clearance from the Central Electrical Authorities (Guidelines), availability of fuel as of prevailing tariffs according to CEA Guidelines and obtaining all Environmental Clearances and other approvals as per applicable laws. No special concessions are being offered to the replying respondent. Concessions which are being offered to other industries would be offered to the answering respondent as well. No special favour is being shown. The project if completed would be for the benefit of the public in general and for its overall development. The agreement has not been entered in a clandestine manner but in open and with complete transparency.

28. In reply to the additional grounds taken in I.A.I, it has been asserted that the replying respondent is technically and financially sound. It has taken up many

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projects of national and international approaches and completed them successfully. That no cause is made out for holding a Central Bureau of Investigation enquiry, as the project has been entered with complete transparency in keeping with the Government Policy to invest money in the infrastructure of the state from private sources on the principle of BOOT basis.

29. From the narration of the above facts we find that the Bangalore-Mysore Infrastructure Corridor project, envisages, in addition to the construction of an express way between Bangalore and Mysore, other connected developmental activities, such as:

(i) Development of area between Bangalore-Mysore.

(ii) Divergence of traffic from Mysore-Chennai; Chennai-Bombay.

(iii) Construction of elevated road from sirsi Circle upto 9.4 k.ms.

(iv) Construction of 2 truck terminals.

(v) Development of five identified local areas into townships with all infrastructure for habitation and economic activities.

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(vi) Utilisation of sewage water being put to no productive use by BWSSB.

(vii) Development of tourism to augment the State's revenues.

30. Scope of enquiry in the present petition broadly speaking is confined to the following questions:

(a) Whether the Government has acted arbitrarily in entering into the agreement with Respondent No.2?

(b) Whether agreement is illegal as being opposed to public policy?

(c) Whether the agreement contravenes any Constitutional provisions or other existing enactments?

(d) Whether the agreement is vitiated by mala fides?

(e) Whether the rights of any individual or groups of individuals is being illegally affected by the execution of the agreement?

(f) Scope and extent of judicial review in matters of State Policy.

In addition to the above six broad points certain other submissions were also made during the course of arguments to which reference would be made at the appropriate stage and dealt with.

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31. Important aspect which needs to be examined at the outset is as to what is the scope of judicial review in contractual transactions of the Government. According to the Counsel for the respondent the judicial review in the matter of contracts entered into with State or its instrumentality with private contractor is limited to prevent arbitrariness or favouritism. Courts can only examine the decision making process and not the merits of the decision specially in the case of policy matters. Scope and extent of judicial review into the administrative actions of the State or its instrumentality in entering into contracts was examined by the Supreme Court in G.B. MAHAJAN VS. JALGAON MUNICIPAL COUNCIL [1991(3) SCC 91] and it was held that the scope of judicial review in such matters is limited to examine whether the contract entered is within the limits of the authority assigned to it and the bona fide of the transaction only. In that case as in the present case the contract was to be executed by the developer on self-finance basis subject to handing over administrative building of the complex to the municipality free of cost and

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allotting some shops at a fixed rate/free of cost to certain specified persons while having right to dispose of the remaining accommodation at its own discretion and to retain the premium received by way of reimbursement of its financial outlays plus profits. The contract was challenged in public interest on the ground of legal permissibility, economic soundness and the propriety of the policy as in the present case. Turning down the contention of the petitioners, and on consideration of the case law including the judgments cited in the present case as RAMANA DAYARAM SHETTY VS. INTERNATIONAL AIRPORT AUTHORITY OF INDIA, and KASTURI LAL LAKSHMI REDDY VS. STATE OF JAMMU & KASHMIR, it was held:

"On a consideration of the matter, it appears to us that the argument that a project envisaging a self-financing scheme, by reason alone of the particular policy behind it, is beyond the powers of the local authority is somewhat too broadly stated to be acceptable. A project, otherwise legal, does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. The

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criticism of the project being 'unconventional' does not add to or advance the legal contention any further. The question is not whether it is unconventional by the standard of the extent practices, but whether there was something in the law rendering it impermissible. There is, no doubt, a degree of public accountability in all governmental enterprises. But, the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management methods, prevention of time and cost overruns in projects, balancing of costs against time scales, quality control, cost-benefit ratios etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediencies. These are essentially matters of economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority."

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32. Making a distinction between the scope of the test of reasonableness in administrative law as distinguished from the constitutional standard of reasonableness of the restriction and the fundamental rights of which the court of judicial review is the arbiter, it was held:

"Reasonableness' as the test of validity is not the courts own standard of reasonableness as it might conceive it in a given situation. A thing is not unreasonable in the legal sense merely because the Court thinks it is unwise. Different contexts in which the operation of 'reasonableness' as test of validity operates must be kept distinguished. Some phrases which pass from one branch of law to another carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the words 'reasonable', 'reasonableness' etc. The 'reasonableness' in administrative law must distinguish between proper use and improper abuse of power. The administrative law test of 'reasonableness' as the touchstone of validity of the impugned resolutions is different from the test of the 'reasonable man' familiar to the law of torts, whom English law figuratively identifies as the 'man on the Clapham omnibus'. In the latter case the standard of the 'reasonable man', to the extent such a 'reasonable man' is court's creation, is in a manner of saying, a mere transferred epithet. Yet another area of reasonableness which must be distinguished is the constitutional standards of

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'reasonableness' of the restrictions on the fundamental rights of which the court of judicial review is the arbiter."

33. While considering reasonableness in administrative action by way of judicial review a Court cannot set itself as an appellate Court in judgement of the reasonableness of the decision instead of the correctness of the decision making process. It was observed:

"While it is true that principles of judicial review apply to the exercise by a government body of its contractual powers, the inherent limitations on the scope of the inquiry are themselves a part of those principles. For instance, in a matter even as between the parties, there must be shown a public law element to the contractual decision before judicial review is invoked. In the present case the material placed before the court falls far short of what the law requires to justify interference."

34. In TATA CELLULAR VS. UNION OF INDIA [(1994) 6 SCC 651] after discussing the relevant case law and the principles and the scope of the power of judicial review in the

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matters of contractual obligations of the State and its instrumentality, it was observed in paragraph 77 of the judgement as follows:

"The duty of the Court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law.
3. Committed a breach of the rules of natural justice.
4. reached a decision which no reasonable tribunal would have reached or.
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

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The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R.V. SECRETARY OF STATE FOR THE HOME DEPARTMENT, EX BRIND, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, 'consider whether something has gone wrong of a nature and degree which required its intervention'.

35. In M.P.OIL EXTRACTION VS. STATE 73.  
In M.P.OIL EXTRACTION VS. STATE OF M.P.  
[(1997) 7 SCC 592], it was held:

'After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court

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cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e., legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."

36. Applying the test laid down by the Supreme Court to the present case it would be seen that the Project of the magnitude involved in this petition, the degree of financial out lays and management expertise well beyond the resources of the Government, keeping in view the constraint of the

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finances, the increasing revenue and other financial commitments, Government came to the conclusion that it was well nigh impossible to set apart inputs required for this project. Simultaneously realising the immediate need of development of Infrastructure of Bangalore-Mysore Expressway a policy decision was taken to get the work executed on BOOT concept. Allegation that the Project Scheme was tailored to suit respondent No.2 or that the Project was not put to global tenders on fixing compatible parameters, cannot be accepted. As observed earlier an offer was made through Governor of Massachusetts, USA, for the construction of the Project on BOOT concept of which a Project Report was submitted which was examined by High Level Committee which after examining the same submitted to the Cabinet sub-committee consisting of Chief Minister and other Senior Cabinet Ministers. After examining the same it was approved by the Cabinet. Matter was raised on the floor of the house by Sri.H.K.Patil, leader of the opposition in the Legislative Council where it was debated thoroughly and the objections raised by

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H.K.Patil were not accepted. In the matters of State Policy the Courts do not sit over the matter of policy. Such matters are in the domain of the Executive power of the State and unless such power is shown to have been exercised in an irrational manner beyond its authority or in a mala fide manner, the Courts will not interfere in the same. Government could either execute the Project itself but keeping in view its financial constraints it evolved a policy to get the Project executed on BOOT concept which has not been shown either irrational or mala fide or impermissible exercise of authority in taking a Policy decision. The power to judicial review being supervisory can be exercised to rein in any unbridled executive functioning. Under the guise of preventing the abuse of power the Court itself should not be accused of guilt of usurping the said power which vests in the executive. If the public policy is for public good and welfare and in public interest then the Courts would not interfere in such matters. Court has to ascertain whether the policy of the Government was a means to fritter away the public property for

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personal gains. If this element is missing then the Court would not interfere in the matter of public policy.

37. Learned counsel for the petitioner contended that the agreement entered between the first respondent and the second respondent is vitiated by arbitrariness, violative of Article 14 of the Constitution of India in as much as the same is entered into without calling for global tenders and that the value of the contract runs into several hundred crores of rupees and the same is done by clandestine negotiations by certain persons with first respondent even before the registration of the second respondent which was done on 17th January 1996. For this he placed reliance upon the observations made by the Supreme Court E.P.ROYAPPA VS. STATE OF TAMIL NADU (AIR 1974 SC 555), RAMANA DAYARAM SHETTY VS. THE INTERNATIONAL AIRPORT AUTHORITY OF INDIA AND OTHERS (AIR 1979 SC 1628), SRI SACHIDANAND PANDEY VS. STATE OF WEST BENGAL AND OTHERS (AIR 1987 SC 1109). In Royappa's case supra, Supreme Court added a

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new dimension to Article 14 of the Constitution. Bhagwati J., in his concurring judgement held that:

"Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14.  
....."

It was also held that Article 14 and 16 strike at arbitrariness in state action and ensure fairness and equality of treatment to all and that these Articles require that such action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality.

38. In Raman Dayaram Shetty's case supra, Bhagwati J., again speaking for the Court observed that activities of the State had a public element, and if it enters into a contract it must do so fairly and without discrimination and without unfair procedure. When the Government deals with the public whether by way of giving jobs or entering into contracts or issuing quotas or licences or

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granting other forms of largess, the government cannot act arbitrarily at its sweet will but must act in conformity with standard or norm without being arbitrary, irrational or irrelevant. If the Government departs from such standard or norm in any particular case or cases it would be liable to be struck down, unless it is shown that the departure was not arbitrary, but was based on some valid principles which was not 'irrational', unreasonable or discriminatory.

39. There was no secrecy involved in the execution of the agreement. The memorandum of understanding and the statement of objections filed by respondent No.1 makes it clear that discussions were held officially with the Governor of Massachusetts, USA by the then Chief Minister of the Karnataka. Details of the discussions, the setting up of a High Level Committee and the receipt of the Project Report in August 1995, the decision of the Cabinet, and the acknowledgement by the Government of Karnataka on 9.9.96 on the company's rights on behalf of the Consortium, are all matters of public record. It is not

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essential for the Government always to call for tenders before entering into contract and in the given situation it can give contract without calling or floating the tenders depending on the facts and circumstances. The Contract would not be vitiated only because the same was entered into without calling for the tenders so long the Government acts with bonafide intention with the interest of the State and its citizens. In the present case the contract agreement Annexure 'A' is a different type of contract where a project is undertaken on EOOT basis and no money is paid by the Government to the Contractor. In M/S KASTURI LAL LAKSHMI REDDY VS. THE STATE OF JAMMU & KASHMIR AND ANOTHER (AIR 1980 SC 1992) it was held that it was not necessary to call for the tenders always before entering into a contract. Shagawati J., while again reiterating what he stated earlier in Ramana Dayaram Shetty's case supra, held that the State is not bound to advertise and invite tenders where the State is allocating resources such as water, power, raw-material

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etc., for the purpose of encouraging setting up of industries within the State. It was observed:

"The Government therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do. Such considerations may be that some directive Principle is sought to be advanced and implemented or that the contract or the property is given not with a view to earning revenue but for the purpose of carrying out a welfare scheme for the benefit of a particular group or section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the court would have to decide whether the action of the Government is reasonable and in public interest. But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This

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burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down Governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the Governmental action.'

Regarding the particular facts of the case, it was observed:

'The argument of the petitioners was that at the auctions held in December, 1978, January 1979 and April 1979, the price of resin realised was as much as Rs.484/-, Rs.520/- and Rs.700/- per quintal respectively and when the market price was so high, it was improper and contrary to public interest on the part of the State to sell resin to the second respondents at the rate of Rs.330/- per quintal under the impugned Order. This argument, plausible though it may seem is fallacious because it does not take into account the policy of the State not to allow export of resin outside its territories but to allot it only for use in factories set up within the State. It is obvious that, in view of this policy, no resin would be auctioned by the State and there would be no question of sale of resin in the open market and in this situation, it would be totally irrelevant to import the concept of market price with reference to which

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the adequacy of the price charged by the State to the second respondents could be judged. If the State were simply selling resin, there can be no doubt that the State must endeavour to obtain the highest price subject, of course, to any other overriding considerations of public interest and in that event its action in giving resin to a private individual at a lesser price would be arbitrary and contrary to public interest. But, where State has, as a matter of policy, stopped selling resin to outsiders and decided to allot it only to industries set up within the State for the purpose of encouraging industrialisation, there can be no scope for complaint that the State is giving resin at a lesser price than that which could be obtained in the open market. The yardstick of price in the open market would be wholly inapt, because in view of the State Policy, there would be no question of any resin being sold in the open market. The object of the State in such a case is not to earn revenue from sale of resin, but to promote the setting up of industries within the State.'

And again,

'If the State were giving tapping contract simpliciter there can be no doubt that the State would have to auction or invite tenders for securing the highest price, subject, of course, to any other relevant overriding considerations of public weal or interest, but in a case like this where the State is allocating resources such as water, power, raw materials etc. for the purpose of encouraging setting up of industries within the State, we do not think the State is bound to advertise and tell the people that it wants a particular industry to be set up within the State and invite

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those interested to come up with proposals for the purpose. The State may choose to do so, if it thinks fit and in a given situation, it may even turn to be advantageous for the State to do so, but if any private party comes before the state and offers to set up an industry the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry."

40. In BRIJ BHUSHAN AND ANOTHER VS. STATE OF JAMMU & KASHMIR AND OTHERS [1986(2) SCC 354]. Supreme Court again reiterated its view expressed in K/s Kasturi Lal Lakshmi Reddy's case supra in which the order of State of Jammu & Kashmir sanctioning supply of crude oil to the respondents was challenged on the ground that the order had been passed without advertisement or inviting tenders, while rejecting the contention it was observed:

Then, it was contended on behalf of the petitioners that the State Government had acted arbitrarily in selecting respondents nos.2,3 and 4 for setting up factories within the State for manufacture of rosin and turpentine derivatives without affording any opportunity to the petitioners and others for obtaining such contract and this action of the State Government was not based on any rational or relevant principles

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and was, therefore violative of Art.14 of the Constitution. We must reject this ground also without the slightest hesitation. Respondents nos.2,3 and 4 themselves took the initiative and made offers for setting up factories for manufacture of rosin and turpentine derivatives provided they were assured definite supply of oleo resin every year and ultimately, as a result of negotiations which took place between them and the State Government, they were given licence for setting up their factories and assured supply of oleo resin was guaranteed to them for the purpose of feeding their factories. There was nothing to prevent the petitioners and others from making similar offers in time. But, in any event, even if the petitioners and others had made offers, it was for the State Government to decide whether their offers should be accepted or not. It is true that no advertisements were issued by the State Government inviting tenders for setting up factories for manufacture of rosin and turpentine derivatives or stating that assured supply of oleo resin would be guaranteed to any party who is prepared to put up a factory for manufacture of rosin and turpentine derivatives within the State. But, that cannot have any invalidating effect on the decision of the State Government to allow respondents nos.2,3 and 4 to set up factories and to guarantee assured supply of oleo resin to them for feeding their factories. We may point out that a similar argument was advanced on behalf of petitioners in *Kasturi Lal Lakshmi Reddy v. State of Jammu & Kashmir*, (AIR 1980 SC 1992) (supra) where a tapping contract was given to respondent No.2 in that case and what we said in our judgment in that case applies with equal force to the situation in the present case:

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"...but it must be remembered that it was not a tapping contract simpliciter which was being given by the State. The tapping contract was being given by way of allocation of raw material for feeding the factory to be set up by the 2nd respondents. The predominant purpose of the transaction was to ensure setting up of a factory by the 2nd respondents as part of the process of industrialisation of the State and since the 2nd respondents wanted assurance of a definite supply of resin as a condition of putting up the factory, the State awarded the tapping contract to the 2nd respondents for that purpose. If the State were giving tapping contract simpliciter there can be no doubt that the State would have to auction or invite tenders for securing the highest price, subject, of course, to any other relevant overriding considerations of public weal or interest, but in a case like this where the State is allocating resources such as water, power, raw materials etc. for the purpose of encouraging setting up of industries within the State, we do not think the State is bound to advertise and tell the people that it wants a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. The State may choose to do so if it thinks fit and in a given situation it may even turn out to be advantageous for the State to do so, but if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry. The State is not obliged to tell such party; "Please wait, I

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will first advertise, see whether any other offers are forthcoming and then after considering all offers, decide whether I should let you set up the industry". It would be most unrealistic to insist on such a procedure, particularly in an area like Jammu and Kashmir which on account of historical, political and other reasons, is not yet industrially developed and where entrepreneurs have to be offered attractive terms in order to persuade them to set up an industry. The State must be free in such a case to negotiate with a private entrepreneur with a view to inducing him to set up an industry within the State and if the State enters into a contract with such entrepreneurs for providing resources and other facilities for setting up an industry the contract cannot be assailed as invalid so long as the State had acted bona fide, reasonably and in public interest."

Here in the present case there is nothing at all to show that the State acted mala fide or out of improper or corrupt motive or in order to promote the private interest of someone at the cost of the State. We are clearly of the view that the three impugned orders do not suffer from any infirmity and they cannot be assailed as invalid."

41. In Sri Sachindanand Pandey's case supra, Supreme Court again while reiterating the view expressed in M/s Kasturi Lal Lakshmi Reddy's case supra, upheld the transfer of land to Taj Group of Hotels on lease for construction of Five Star Hotel on the basis

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of discussions and negotiations without issuing advertisement or inviting tenders. It was held:

"On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism."

42. In all these cases it has been held that it is not a 'must' for the State Government to issue an advertisement or invite tenders while providing resources or other facilities for setting up an industry or other infrastructures. It is not an invariable rule; in a given case if the public interest so requires a contract can be entered into

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without floating the tenders. The contract would not be available as invalid so long as the State has acted bonafide, reasonable and in public interest. In the present case Government entered into an agreement with respondent No.2 who had come forward with a proposal to construct Bangalore-Mysore Infrastructure Corridor Project without inviting tenders. Can the agreement be held to be arbitrary only because the Government failed to invite tenders to float global tenders? Was the agreement entered in a clandestine manner without making it public to the other competing claimants?

43. The agreement has to be examined on the touch stone of the principles laid down by the Supreme Court in the aforesaid judgments. The proposal was first mooted in the year 1938 to provide an Expressway between Bangalore and Mysore. The Project Report was prepared on the concept of executing work through private entrepreneurs to meet their expenditure, maintenance etc., by collection of tolls. Though tenders were called for in tender forms, only one entrepreneur offered a proposal.

*Shri. S. S. S.*



There were considerable conditions and they also desired that the cost of Land acquisition should be borne by the Government and other approach road should not be improved by the Government. As this was not possible, the proposal was kept in obedience for some time. When the proposal of Development of Bangalore city as mega city was taken, it was proposed to take some of the towns around Bangalore as a counter magnets to Bangalore city in this scheme, provision of an expressway between Bangalore-Mysore was also considered. An investigation was again taken up by the Asian Development Bank. It was suggested that the State Government has to bear about 20% of the expenditure of the project and the land was to be acquired at the expense of the State. The state did not have sufficient funds to do so and therefore was considering the possibility of a getting the Expressway constructed on the basis of BOOT concept. In the year 1995 Governor of Massachusetts State during his visit to India had discussions with Chief Minister of Karnataka on 20th February, 1995. A Memorandum of Understanding was entered with consortium of M/s Vanasse Hangen Brustlin Inc.

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and S.A.B. Engineering and Construction Inc., USA and M/s Kalyani Group Limited., in the presence of Governor of Massachusetts and Chief Minister of Karnataka. Under this MOU the consortium was to conduct a preliminary investigation economic survey, etc., for the Expressway between Mysore and Bangalore and submit preliminary Project Report to the Government and if this project is economically feasible, then the Government to take further action. The project report was submitted. A High Level Committee was constituted consisting of High Officials of the Government to consider the Project Report. The Project Report submitted was examined by the High Level Committee. After examining the same and being satisfied regarding the economic and technical feasibility of the Project made recommendations to the Chief Minister for consideration. Chief Minister along with his Ministerial Colleagues considered the same and recommended that this Report be brought before the Cabinet. Under the Scheme Project was to be constructed completely by the entrepreneurs with their own resources and keeping with them for thirty years to get their return of the

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expenditure profit etc., through collection of tolls. No state finances were involved. Respondent No.2 came forward to set up the project for construction of an Expressway land it was not necessary for the State Government to invite tenders or global tenders for constructing the Expressway. As was observed by the supreme Court in BRIJ BHUSHAN VS. STATE OF JAMMU & KASHMIR, supra that the State was not obliged under those circumstances to say:

" Please wait, I will first advertise, see whether any other offers are forth coming and then after considering all offers, decide whether I should let you set up the industry".

It would have been unrealistic to insist on such a procedure. No competitors or any other person has come forward to take up such a project. There is nothing at all to show that the State had acted malafide out of improper or corrupt motive to protect the interest of another person at the cost of State. It acted to achieve public purpose of rapid economic growth of the area in particular and the State in general. The contract was not entered to

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dispose of or fritter away the assets or for augmenting the revenue as is alleged to have been done.

44. There is no favouritism or arbitrariness involved as from the beginning the policy was one of entrustment to a private organisation on the basis of BOT concept. Having regard to the nature and magnitude of the project and the response to the earlier tenders called for in the year 1988 by way of conditional offer, it was open to the Government to explore alternative possibilities, for implementing its policy decisions. It is not necessary that in every work entrusted to private agency by the State, tender should be called for execution of the work and global tenders should have been called for by the Government before entering into an agreement with the second respondent. Having regard to the nature of work involved and other relevant factors including the financing of the entire project by the agency itself, the Government was justified in

*Shri. M. S. Rao*

entering into an agreement with respondent No.2 for executing the project instead of calling for the global tenders.

45. For these reasons, the agreement annexure 'A' cannot be held to be invalid only because State did not invite global tenders.

46. The submission that the contract was entered in a clandestine manner also cannot be accepted because the memorandum of understanding dated 20th February 1995 makes it clear that the discussions were held with the Governor of Massachusetts, USA, by the then Chief Minister of Karnataka, the details of discussion, setting up of High Level committee by the Government, receipt of Project report in August 1995, the decision of the Cabinet and the acknowledgement of the Government of Karnataka on 9.9.95, of company's rights on behalf of the consortium, are all matter of public record. High Level Committee constituted to examine the proposal consisted of very senior officers of the State. After examining the proposal High Level Committee submitted it to the Chief

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Minister who then put it before the Sub-Committee of the Cabinet consisting of Minister of Finance, Revenue, Home, Public Works, Major & Medium Industries and Major Irrigation and the High Level Committee Members and other concerned officers. After approval by the Sub-Committee, the matter was placed before the Cabinet and only thereafter the proposal was accepted. In paragraph 16 of the petition it has been averred that Sri.H.K.Patil, leader of the Opposition in the Legislative Council raised this issue in the State Assembly and pointed out the illegalities and disastrous consequences arising from the agreement and drew the attention of the Government and general public in the State in the country. Respondents in their statement of objections have admitted that this point was raised on the floor of the house and the respondent made detailed presentation on this subject in the house. Opportunity was given to the persons objecting for a detailed presentation and for clarification of the doubts and other information in the conference hall of Vidhana Soudha on 14-10-97. During the presentation

*Amal Kumar*

most of the members were present and actively participated in the debate. The leader of the Opposition in the Council was also present during the presentation. Every minute detail was explained including the scientific method adopted by the respondent for identification of the land for the Project. Once the point was raised in the legislature and discussed at length and if the same did not find favour with the legislature, then the courts would be slow in terming it arbitrary unless it is opposed to public policy or the laws of the land. As the matter was discussed at various levels of the Government including the cabinet and the legislature, it cannot be held that the agreement entered in to by the Government of Karnataka was entered in an arbitrary manner, in secrecy or in any way in a clandestine manner.

47. The next submission of the counsel for the petitioner is that Government Karnataka though ostensible purported to form an express Highway has in reality allowed the 2nd respondent to develop the townships as a developer by conferring a huge largess by way

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of giving 20,000 acres of land and loss by way of losing the conversion fee for allowing the agricultural land to be used for non-agricultural purposes is to the extent of Rs.400 crores apart from the other tax concessions and privileges allowed to it. According to him the power has been exercised in a colourable manner as it sought to unduly benefit the second respondent. Under the Karnataka Land Revenue Act, a sum of Rs.20,000/- has to be paid as fee for using the agricultural land for non-agricultural purpose. Multiplying the figure of 20,000 with 20,000 acres of land, the amount comes to Rs.400 crores. According to petitioner, the land required for the construction of four lane Highway is only 2775 acres, whereas the remaining land would be utilised for the purpose of development of the towns thereby permitting respondent No.2 to develop townships as a developer and earn huge profits.

48. Government of Karnataka realising the ever increasing organisation problems and in order to see orderly development of Bangalore

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as a major residential city, in order to promote an integrated infrastructure corridor, situated between Bangalore and Mysore consisted of residential, industrial and commercial facilities such as among other things, self sustaining townships, express ways, utilities and amenities, including power plants, industrial plants, water treatment plants and other infrastructural developments, entered into the contract. Government was satisfied that the interests of the State of Karnataka would be best served if the infrastructure corridor is industrially and commercially developed as contemplated by the Infrastructure Corridor Project Technical Report, as such development would promote industrial, commercial and economic growth in the Karnataka state Generally and in Bangalore in particular. It will create new job opportunities to the residents in and around the Infrastructure Corridor, promote, tourism, decongest traffic in Bangalore and Mysore and ensure smooth and safer traffic between Bangalore and Mysore and provide a world-class Expressway between them.



49. Attributing motive ( not personal) to the Government that it had acted with mala fide intention in permitting R-2 to develop townships which are not required along the Toll Road is not justified. Experience has shown that all sorts of activities industrial, commercial, cultural and other such and similar activities tend to concentrate in one city which ultimately ends up in choking the system, resulting in shortages of essential elements required for good living like clean environment, water, electricity, clean air, roads, efficient transport system, open space and host of similar other things reducing the city to a big slum. Experiment of developing self-sufficient small cities with sufficient water, electricity, good environment along with the Toll road as a Corridor Project, catering to the needs of the people living there as supporting cities to the big cities shall be a boon; helping the people living in big cities to lead a much better life. It would relieve congestion in the big cities. People living in the newly developed small

*John Clark*

towns in the Corridor Project would be getting the benefits of big city life without its dis-advantages.

50. On factual aspects it may be clarified that in all 20,193 acres of land is required for the Toll Project, out of which the types of land to be acquired is: Kharab-7558 acres, dry-10,817, wet-1662 acres, garden-156 acres, totalling to 20,193. Conversion would be payable only regarding wet and the garden land and not the remaining land. Moreover when once the land is acquired for public purpose under any enactment then the question of payment of conversion charges does not arise. The Project of this magnitude could not have been executed by purchase of land by a private person. As of necessity land has to be acquired for the execution of such a project. Whenever the land is acquired compulsorily for a public purpose, then the person for the whose benefit the land is acquired is not required to pay the conversion charges. Respondent No.2 has not been singled out for this. No un due favouritism has been

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shown to it. It is being treated at par with other similarly situated persons or organisations for whose benefit the state acquires the land. Construction of Expressway between Bangalore-Mysore is a public purpose, it cannot be held that it was incumbent upon the Government to charge conversion fees for converting the user of the land from agricultural to a non-agricultural purpose.

51. Under the Project respondent No.2 has to construct a 162 k.ms of road requiring 6999 acres, details of which are as follows:

- |   |                       |
|---|-----------------------|
| 1. Expressway - 111 k.ms<br>including interchanges toll<br>plazas etc., | 4529 acres;           |
| 2. Peripheral road 41 k.ms  | 2193 acres;           |
| 3. Link road 9.8 k.ms   | 278 acres,            |
|   | Totalling 6999 acres. |

52. Express way proposed to be constructed by second respondent consisted of Peripheral road, Link road and elevated road which will be completely grade separated with the interchanges, service and maintenance areas which require considerable extent of

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land. Initially the road was a four lane road with capacity to be converted into a six lane road in future as a part of planning in advance for any further expansion in future. So out of 20,193 acres, land required for the Expressway would be 6999 acres leaving 13,000 acres for development of townships. Government of Karnataka in its written statement has said that it has agreed to provide minimum extent of land for the project partly out of the land owned by the Government and by acquiring the balance. Permission has been given to develop the five township instead of 7, proposed by respondent No.2 to make the Project viable. It would help in reducing air, water and noise pollution in and around City by reducing the traffic congestion and developing the townships of this Highway so that cities of Bangalore and Mysore could be relieved of over population and in any case check the inflow of the shifting population to Bangalore and Mysore.

53. Argument contending that the agreement is vitiated by legal mala fides or by colourable exercise of power are

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misconceived. The existence of legal malafides or colourable exercise of power implies that power has been exercised for a purpose other than that for which such power is conferred, meaning thereby that what was not permissible to do or within the power are sought to be achieved in the guise of doing something which is permissible and within the power of authority. In the case on hand it cannot be said that the Government has no power to create or make any new township within the State in addition to its power to create new roads etc. Since the power to build townships is within the power of the Government, there is no colourable exercise of power as alleged. No allegations of malafide exercise of power by any person or persons in entering into an agreement with the second respondent is alleged in the writ petition. It is settled proposition of law that if a statutory authority exercises its power for a purpose not authorised by law, the action of the statutory authority is ultra vires and without jurisdiction. In R.S. JOSHI VS. AJIT MILLS LTD., [(1977) 4 SCC 98], it was observed by their Lordships of the Supreme Court that a

*Shri. M. S. ...*

thing is colourable which in appearance only and not in reality what it purports to be. If an authority is competent to pass a particular law then the motive which impels to pass the law are really irrelevant. In para 16, it was observed:

'Before scanning the decision to discover the principle laid down therein, we may dispose of the contention which has appealed to the High Court based on 'colourable device'. Certainly, this is a malignant expression and when flung with fatal effect at a representative instrumentality like the legislature, deserves serious reflection. If, forgetting comity, the Legislative wing charges the Judicative wing with 'colourable' judgments, it will be intolerably subversive of the rule of law. Therefore, we too must restrain ourselves from making this charge except in absolutely plain cases and pause to understand the import of the doctrine of colourable exercise of public power, especially legislative power. In this branch of law, 'colourable' is not 'tainted with bad faith or evil motive', it is not pejorative or crooked. Conceptually, 'colourability' is bound up with incompetency, 'Colour', according to Black's Legal Dictionary, is an appearance, semblance or simulacrum, as distinguished from that which is real....a deceptive appearance....a lack of reality'. A thing is colourable which is, in appearance only and not in reality, what it purports to be. In Indian terms, it is maya. In the jurisprudence of power, colourable exercise of or

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fraud on legislative power or, more frightfully, fraud on the Constitution, are expressions which merely mean that the legislature is incompetent to enact a particular law although the label of competency is stuck on it, and then it is colourable legislation. It is very important to notice that if the legislature is competent to pass the particular law, the motives which impel it to pass the law are really irrelevant. To put it more relevantly to the case on hand, if a legislation, apparently enacted under one Entry in the List, falls in plain truth and fact, within the content, not of that Entry but of one assigned to another legislature, it can be struck down as colourable even if the motive were most commendable. In other words, the letter of the law notwithstanding, what is the pith and substance of the Act? Does it fall within any entry assigned to that legislature in pith and substance, or as covered by the ancillary powers implied in that Entry? Can the legislation be read down reasonably to bring it within the legislature's constitutional powers? If these questions can be answered affirmatively, the law is valid. Malice or motive is beside the point, and it is not permissible to suggest parliamentary incompetence on the score of mala fides."

Again in D.C.WADWA VS. STATE OF BIHAR (AIR 1987 SC 579), it was held :

"When the constitutional provision stipulates that an Ordinance promulgated by the Governor to meet an emergent situation shall cease to be in operation at the expiration of

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six weeks from the reassembly of the Legislature and the Government if it wishes the provisions of the Ordinance to be continued in force beyond the period of six weeks has to go before the Legislature which is the constitutional authority entrusted with the law making function, it would most certainly be a colourable exercise of power for the Government to ignore the Legislature and to repromulgate the Ordinance and thus to continue to regulate the life and liberty of the citizens through Ordinance made by the Executive. Such a strategem would be repugnant to the constitutional scheme, as it would enable the Executive to transgress its constitutional limitation in the matter of law making in an emergent situation and to covertly and indirectly arrogate to itself the law making function of the Legislature."

54. That a legislation is colourable when the legislature transfers its legislative power in a covert or indirect manner. The Government had the power to develop new township within the state in addition to its power to construct new roads etc. Since the power to build townships is within the power of the Government there could be no malafide or colourable exercise of power as alleged.

55. The subject matter of the project falls under Entry 20 List III- which reads as Social and economic planning; Entry 13 List

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II- communication and Entry 59 List II- Tolls.  
Power to enter into contracts by the State for any purpose is conferred under Article 299 of the Constitution in addition to the power Exercisable under article 162.

56. Article 298 provides that the Executive power of the State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose: provided such trade or business or such purpose is not one with respect to which parliament may make laws, being subject to the legislation by the Parliament. The subject matter of the Project falls under Entry II and III and so far as List III is concerned there is no conflict in the laws made by the Parliament and the State Legislature. Article 162 provides that subject to the provisions of the Constitution the executive power of a State shall extend to the matters with respect which the Legislature of the State has power to make laws, provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the

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executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

57. The Government has entered into an agreement Annexure-'A' in exercise of its executive power to implement the policy Decision to maintain Social and economic development of the region. It is neither contrary to the legislative powers of the State nor beyond it. Respondent No.2 is required to comply with all Statutory Rules and Regulations in the execution of the work. Respondent No.2 is bound by the laws of the State. Wherever amendment was required to be made in the laws within the competence of the State, it has agreed to make amendments within the legislative competence of the State for the smooth execution of the project. Submission of the counsel for the petitioner that executive has agreed to do certain acts for which there is no legislative sanction, cannot be accepted. Government has entered into contract relating to the items which fell

*Annexure*

within the legislative competence of the State Legislature and the executive power of the State extends to the legislative competence of the State Legislature. There is no need for every executive action to be backed up by the legislative sanctions. Every executive sanction is always subject to the legislative provision and Constitutional limitation. In RAM JAWAYA VS. STATE OF PUNJAB (AIR 1955 SC 549) a Constitution Bench of the Supreme Court held that the functions of a modern State like the police State of old are not confined to mere collection of taxes or maintenance of laws and protection of the realm from external or internal enemies. A modern State is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community. Language of Article 162 clearly indicates that the power of the State executive extends to the matter upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. Every State action need not be backed by legislative sanction so long it does not go against the provision of the

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Constitution or any enacted law. In this case the State legislature has agreed to amend the laws where ~~never~~ necessary or enact such legislation which is within the legislative competence of the State Legislature in order to facilitate due execution of the Project. Submission of the counsel for the petitioner that the Government has attempted to bind the legislation to pass certain enactments or amendments is misconceived. The contract only stipulates that the Government would make its 'best efforts' to get the necessary laws enacted or amendments carried out to achieve the purposes of the project. No clause of the agreement has been pointed out which purports to be opposed to any provisions of any of the existing laws or which cannot be provided for by an amendment to the existing law.

58. Agreement is neither illegal nor opposed to the public policy. Argument on behalf of the petitioner that the Government has bound itself to pass certain enactments or effect amendment in the existing Acts which are opposed to public policy are mis-conceived. The contract only stipulates

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that the Government would make its 'best efforts' to get the necessary laws enacted or amendments carried out to achieve the purposes of the Project. The contract does not promise to do anything that is unlawful. The power of the legislature to enact laws within the sphere allotted to it under the different lists of the Seventh Schedule being plenary in nature, the clauses in the agreement cannot be construed to have the effect of binding the legislature which can reject the proposal of the executive to enact any law as agreed to by the government. The Legislature in its wisdom, can even nullify an agreement already entered into. 'Best efforts' as defined in the agreement in clause 22.15 reads as under:

"'Best Efforts' means a commitment to pursue all legal avenues and conscientiously and diligently in order to accomplish the desired results. It is not a guarantee that the results will be reached but assures a procedure calculated to overcome known and foreseeable obstacles in a timely manner by exercising due diligence and good faith in an effort to accomplish the desired results".

59. In various clauses of agreement where the State has given an undertaking regarding the enactment of laws or amendment of any

*Amendment*

existing laws within the competence of the State Legislature or to persuade the Central Government to do or not to do a particular act, it has undertaken only to make its 'best efforts'. As per the definition reproduced above 'best efforts' does not mean any commitment to get the work done, but only to make conscientious and diligent effort to get the desired results. It is not a guarantee that the results will be reached but assures a procedure calculated to overcome the known or foreseeable obstacles in a timely manner. The government in its good-faith has agreed to make its 'best efforts' to accomplish the desired result, but is not bound itself to achieve a particular object failing which to suffer any consequences.

60. Arguments of the counsel for the petitioner that the project would create environmental pollution is again not sustainable because as per clause 2.1.1 read with Schedule II to the agreement makes it clear that Company has to receive the required permissions, approval, sanctions and/or

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licences under the following Acts and Rules of Government of India and Government of Karnataka:

1. Environment (Protection) Act, 1986 - Section 3(1) and Section 3(2)(v).

2. Environment (Protection) Rules, 1986 - Rule 5(3)(a).

3. Water (Prevention and control of Pollution) Act, 1974 - Section 25.

4. Air (Prevention and control of Pollution) Act, 1981 - Section 21.

5. Clearance and confirmation from GOK that the Land does not contain reserve under the Forest (Conservation) Act, 1980 - Section 44 and Section 28.

6. exemption under section 20 of the Urban Land (Ceiling and Regulation) Act for holding land in the site falling within the Urban Agglomerations.

7. Declaration by Government of Karnataka under the appropriate Act and formation of Greenbelt.

8. Karnataka Stamp Act, 1957 - Section 9 in respect of stamp duty payable amounts secured any by mortgage deeds executed in connection with Infrastructure Corridor Project.

9. Electricity (Supply) Act, 1948.

10. Consent of the Telegraph authority under section 4 of the Indian Telegraph 1985 and Part V of the Indian Telegraph Rules for the provision of telecommunication facilities.

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61. It shows that as per agreement it is incumbent upon respondent No.2 to obtain the required permission or sanction of licence under the enactment relating to environmental protection failing which they cannot carry on with the Project. In view of clause 2.1.1 read with schedule-2, the apprehension of the petitioner that the Project would affect the environment of the area is not sustainable. Apart from this it is clear from the statement of objections filed by the respondents out of 20,193 acres allocated for the entire project 7558 acres is kharab and 10817 is the dry land. The wet land and the garden land is approximately 1800 acres. There is no forest land which is proposed to be utilised for the execution of the project. Contention that it will affect the Flora and Fauna and the wild life in the Forest of the State of Karnataka is also not sustainable.

62. Contention of the counsel for the petitioner is that the Government by giving an undertaking to respondent No.2 to enact and amend the existing laws has bound the legislature by the agreement and therefore the

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same is unconstitutional has already been dealt with in detail and found to be without substance. Reference was made to the covenants in clause 3.2, 3.3, 3.4 and 3.5 relating to the acquisition of land, enactment of Toll Authority Act, supply and transmission of power and the creation of township. In all these clauses the Government has agreed to make necessary laws where ever necessary and to amend the existing laws or to persuade the Government of India to the extent possible not to declare the Toll road constructed by respondent No.2 to be a National Highway. The word used in all these clauses to make 'best efforts'. 'Best efforts' has been defined in clause 22.15 of the agreement and reproduced. As per 'best efforts' it has bound itself unequivocally. It has only agreed to make its sincere efforts to show good faith to persuade the Central Government not to declare the Toll Road as a National Highway. In equity it is necessary to do so. The Toll Road would be built by respondent No.2 out of its own funds and clause in agreement 'A' regarding recovery of its costs by owning and operating for 30 years would be defeated if it is declared a

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National Highway because then it would fall under the jurisdiction of Central Government. There is no illegality or unconstitutionality about this clause in the agreement.

63. Counsel for the petitioner then contended that authority given to respondent No.2 to collect taxes in the nature of Toll from the users of the road is opposed to public policy; the collection of taxes being the sole prerogative of the State. A contract of the present nature giving authority to the agency interested in the construction of Expressway to collect Tolls is not opposed to Public Policy. Even the National Highways Act has been amended by Act No.26/95. Section 8-A has been inserted which reads:

**8-A Power of Central Government to enter into agreements for development and maintenance of national high ways:- (1)** Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development maintenance of the whole or any part of a national high way.

(2) Notwithstanding anything contained in Section 7 the person referred to in sub-section (1) is entitled to collect and retain fees

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at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in sub-section(1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 on the national highway forming subject matter of such agreement for proper management thereof.

64. This also shows that the collection of Toll from the user of the road is not in the nature of a tax but for the use of the road which would be built by respondent No.2 as per the agreement under BOT concept which has been accepted as a matter of policy by the State Government to persuade the private operator to invest in the basic infrastructure of the State. State has accepted this policy to persuade the private agencies to participate in the developmental activities because of various reasons including that it is not possessed of sufficient finance for rapid economic development for investment in

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certain sectors like Power, roads, telecommunications etc. Conferment of powers contemplated under Articles 6.2.6 and 6.2.8 enabling the Toll Authority to effectively exercise its powers to collect the tolls is incidental to the exercise of its powers and functions under the Toll authorities Act. It cannot be termed as empowering the company to levy taxes.

65. Contention of the counsel for the petitioner that the Municipal Corporation/Committees or the panchayats have been debarred/have been deprived to levy taxes on the Toll road or in the townships etc., is again not acceptable. Under our constitutional scheme local Government and authorities derive the power to levy taxes etc., only under grant of such a power to levy by the appropriate legislature. These bodies do not possess the power to levy taxes etc., independently of legislative sanction. This position has now been made explicit under Article 243-H and 243-X of the Constitution of India. The legislature, in given cases, has the power to exempt the levy of taxes etc., by

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a local Government or Authority and clause 3.3.4 providing that the Toll Road will be subject to only the jurisdiction of the laws of the State of Karnataka and not any local Government, cannot be held to be illegal, unconstitutional or opposed to public policy.

66. The provisions in the agreement at clause 3.5 relating to the development of township has to be read along with clause 7 of the agreement and in particular with the provisions of 7.5 relating to warranties by the company. By Article 3.5, Government of Karnataka unconditionally and irrevocably grants to the Company a right and concession to develop the townships in any manner the company believes to be proper for the development of the township. Such development of the townships shall be subject to the relevant rules and regulations under the Town Planning Act and such other Act as may be applicable and the approvals set forth in Article 7 of the Agreement. Article 7.2 provides that the Government of Karnataka and the Company have agreed that respondent No.2 shall have the right to operate the Townships.

*Annexure*

The Company and the Government of Karnataka shall enter into an agreement negotiated in good faith by each for the operation and maintenance and in accordance with applicable laws. Notwithstanding what is stated above, respondent No.2 has agreed that on the first anniversary of the Township Completion Day the Company shall transfer the assets relating to the Townships set forth in 5th Schedule and the right of way over the Land that may be required with respect to such assets, but not including any ownership interest in any part of the Land and shall assign the administration of such Townships to Government of Karnataka or its instrumentality on payment of Re.1/- and thereafter the Government shall assume all obligations relating thereto and to the administration of the Townships. Under Article 7.5 the Company has given a warrantee to the Government of Karnataka that Company shall industrially and Commercially develop the Townships so as to promote the industry, trade, commerce and tourism in such Townships as intended by the Infrastructure Corridor Project. The developments in the townships shall be when completed, comply in all

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material respect with all applicable Laws of India. The Townships shall be developed using proven up-to-date practices which are consistent with applicable laws of India. A conjoint reading of Articles 3.5, 7.2 and 7.5 shows that the Government of Karnataka has not acted in any way to the detriment of the State or its people. Respondent No.2 has been made liable to comply with all applicable laws of India and the Company has been bound to transfer to the Government the assets relating to the Townships given in Schedule 5 and the right of way over the land that may be required with respect to such assets. Thereafter the administration of the Townships shall vest in the Government of Karnataka. The assets which are owned by the Company of course have to be retained by the Company because the same have been developed by them on payment of the market value of the land and for other infrastructural development of that particular Township.

67. Karnataka Industrial Areas Development Act has been amended by Karnataka Act 11 of 1992. Under this amendment, the

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industrial areas would include a township also. Industrial Areas Development board which has the power under Section 13(2)(e) of the said Act to develop industrial areas, can under Section 14(h) of the Act enter into contracts for the purposes of carrying its function of developing an industrial area. Under section 17 of the Act, the Board is bound to follow and act upon the directions to be issued by the State Government.

68. For setting up of new industries from time to time in certain areas, the Government of India as well as the State Government have been granting certain concessions or holiday from payment of taxes under the various enactments. Power of the State to classify certain categories for granting exemption and concession from levy of taxes is too well recognised to require any comment. Concessions if any, have been given to respondent No.2 for making huge investments in the infrastructure of the State for economic and rapid development of the State and cannot

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be termed to be arbitrary or conferment of special benefits on respondent No.2 for any mala fide or extraneous considerations.

69. Counsel for the petitioner then contended that Government has given Police powers to respondent No.2 as found in Article 6 of the agreement. Article 6 relates to the operation of the Tolls which provides that respondent No.2 shall operate the Toll Road for its own account and, subject to applicable Laws of India and the Toll Authority Charter and shall be entitled to retain all profits and income derived thereof. Article 6.2 provides that Company shall establish a subsidiary to operate the Toll Road during the concession period in accordance with the Toll Authority Charter. It has been made subject to the limitations contained in Toll Authority Act and the Central Motor Vehicles Act and any other law applicable in India. It provides that the Toll Authority established by respondent No.2 shall set and collect tolls from vehicles using the Toll roads. It has the authority to specify the type of vehicles that will be allowed to use the Toll Road and

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to take precautions regarding order, safety, security and the prevention and abatement of nuisances along the Toll Road. Apart from this it also provides that it shall have the power to remove a vehicle of any person who uses the road without paying the Toll tax and require that person to reimburse the Company for any expenses incurred in removing the vehicle to or to detain the same. Under Article 6.2.8, respondent No.2 has been given the authority to detain, hold and exercise other security functions on the Toll Road, provided that any person detained and held is handed over to Government of Karnataka or local police. According to the counsel Article 6.2.6 and 6.2.8 gives police powers to respondent No.2 which it could not do. Maintenance of law and order being the sole responsibility of the Government such a power could not be transferred to respondent No.2. The argument is misconceived. The Project is built on BOOT concept. The Toll Road to be built by respondent No.2 is not a public property belonging to the Government. If any person has to use the road then it has to pay the Toll for using the road. If any person

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enters on the road without payment of toll then the same will amount to trespass and respondent No.2 has been authorised to remove the vehicle of such a person and detain, hold and exercise other security functions and recover from the person the amount of toll money and expenses for removal of the vehicle and in addition to detain the person and hand him over to the State Government or the local police to be tried in accordance with law. It does not amount to handing over the police powers to respondent No.2 as was sought to be contended by the counsel for the petitioner. The Toll road is built by respondent No.2 with his own money and respondent No.2 is entitled to charge money which is to be fixed with the approval of the Government from the user of the road and if any body forcibly enters upon the toll road without payment of toll money then the company has been authorised to recover from the defaulting person and remove his vehicle from the toll road and charge itself or to reimburse the same for the expenses incurred by it. Persons detained temporarily for trespassing the road have to be handed over to the Government or local

*Shri. Govind*

police to be tried in accordance with law. Contention raised by the counsel for the petitioner being devoid of merit is rejected.

70. Allegation that separate agreement entered by respondent No.2 with the B.W.S & S.B would diminish the supply of water to Bangalore City has been denied. Supply of untreated sewage water by B.W.S & S.B to respondent No.2 would not in any way affect or result in loss of supply of the sewage water for agriculture and industrial purpose. As on to-day sewage water being discharged into the Vrishabhavathy valley is 200 MLD, and other affluents discharged is 150 MLD. 85 MLD is expected to be added after the commissioning of the 4th Stage of Cauvery Water supply Scheme. In order to utilise the huge amount of sewage water which is going waste and which cannot in any way be treated, has been agreed to be supplied by B.W.S & S.B to respondent No.2. It contemplates the establishment of a treatment plant by Respondent No.2 at its own expense. Question of causing loss to the State Exchequer does not arise as the secondary treated water is to be purchased by

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respondent No.2 on the prices fixed by the Board from time to time. The question of causing loss in any way does not arise.

71. Counsel for the petitioner raised an argument by referring to Articles 18.3.2.1 and 18.3.2.2 wherein it is provided that in case of dispute between parties which cannot be settled in good-faith in the first instance by mutual discussion or by an Expert then the same has to be referred for International Arbitration in accordance with the provisions of the UNCITRAL Rules at a place outside India i.e., in London, England or in mutually agreed place, is an attempt to opt out of the laws as applicable in India, thereby violating the Sovereign powers of the state, resulting in taking away the jurisdiction of the Indian Judiciary. It has been argued that the same is not in public interest and would cause huge loss to the State exchequer. Again we do not find any substance in this submission.

72. Parliament of India has enacted Arbitration and Conciliation Act, 1996. This Act has been enacted to consolidate and enact

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the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto. The statement of objects and reasons as given in the Arbitration and Conciliation Bill, 1995, read as follows:

"The law on arbitration in India is at present substantially contained in three enactments, namely, the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. It is widely felt that the 1940 Act, which contains the general law of arbitration, has become outdated. The Law Commission of India, several representative bodies of trade and industry and experts in the field of arbitration have proposed amendments to this Act to make it more responsive to contemporary requirements. It is also recognised that our economic reforms may not become fully effective if the law dealing with settlement of both domestic and international commercial disputes remains out of tune with such reforms. Like arbitration, conciliation is also getting increasing worldwide recognition as an instrument for settlement of disputes. There is, however, no general law on the subject in India.

2. The United Nations Commission on International Trade Law (UNCITRAL) adopted in 1985 the Model Law on International Commercial

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Arbitration. The General assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice. The UNCITRAL also adopted in 1980 a set of Conciliation Rules. The General Assembly of the United Nations has recommended the use of these Rules in cases where the disputes arise in the context of international commercial relations and the parties seek amicable settlement of their disputes by recourse to conciliation. An important feature of the said UNCITRAL Model Law and Rules is that they have harmonised concepts on arbitration and conciliation of different legal systems of the world and thus contain provisions which are designed for universal application.

3. Though the said UNCITRAL Model Law and Rules are intended to deal with international commercial arbitration and conciliation, they could, with appropriate modifications serve as a model for legislation on domestic arbitration and conciliation. The present Bill seeks to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, taking into account the said UNCITRAL Model Law and Rules.

4. The main objectives of the Bill are as under:-

(i) to comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation;

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(ii) to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration;

(iii) to provide that the arbitral tribunal gives reasons for its arbitral award;

(iv) to ensure that the arbitral tribunal remains within the limits of its jurisdiction;

(v) to minimise the supervisory role of courts in the arbitral process;

(vi) to permit an arbitral tribunal to use mediation, conciliation or other proceedings during the arbitral proceedings to encourage settlement of dispute;

(vii) to provide that every final arbitral award is enforced in the same manner as if it were a decree of the Court;

(viii) to provide that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal; and

(ix) to provide that, for purposes of enforcement of foreign awards, every arbitral award made in a country to which one of the two International Conventions relating to foreign arbitral awards to which India is a party applies, will be treated as a foreign award.

5. The Bill seeks to achieve the above objects."

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73. It states that the Act of 1940 which contained the General law of Arbitration has become out-dated. The law relating to Arbitration has been amended by bringing a new Arbitration Act while repealing the earlier one in response to the contemporary requirements which includes both domestic arbitration as well as international commercial disputes or enforcement of foreign arbitrary award. Parties can opt for international awards. Under Section 11 a person of any nationality can become an arbitrator. Under this Act parties can agree to a foreign award relating to international and commercial transactions and these awards have been made executable and parties can opt to abide by the UNICITRAL for enforcement of foreign arbitral award and to define the law relating to conciliation, taking into account the said UNICITRAL model law and Rules. Arbitration agreements are outside the purview of Section 28 of the Indian Contract Act. The choice of any arbitrator of any nationality, the place of arbitration and the procedure to be agreed upon for such arbitration cannot be said to be opposed to any public policy or

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legal provisions as the choice in respect of all the above matters is provided for under the Arbitration and Conciliation Act, 1996. The agreement stipulates that the award passed is a foreign award within the meaning of the laws in India. The award thus qualifies to be enforceable under Part II, Chapter I of the Arbitration and Conciliation Act, 1996.

74. It has not been shown that the right of any individual or group of individuals has been illegally affected by the execution of the agreement. It has not been shown that how the agreement results in illegally depriving of any rights of any individual or groups of individuals. The agreement could only be challenged on the ground that it is mala fide or arbitrary or opposed to public policy of the laws of the land which the petitioner has failed to show.

75. As we do not find ourselves in agreement with the contentions raised by the petitioners, question of holding a C.B.I enquiry for any act of omission or commission of respondent No.2 does not arise.

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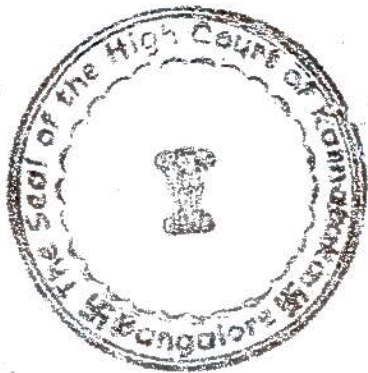
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76. For the reasons stated above, we do not find any merit in this petition and dismiss the same with no order as to costs.

54/-  
Judge

55/-  
Judge

sbb/-



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3<sup>rd</sup> DAY OF MAY 2005

P R E S E N T

THE HON'BLE MR. N.K.SODHI, CHIEF JUSTICE

A N D

THE HON'BLE MR.JUSTICE B.PADMARAJ

WRIT PETITION NOS.45334/2004(GM-RES-FIL)  
45386/2004(PIL-LA-KIADB) & 48981/2004(GM-RES-FIL)

IN W.P.NO.45334/2004

Between:

All India Manufacturers Organisation,  
A Company registered under the  
Companies Act, 1956, having its registered office at  
Jeevan Sahakar, Sir Firoz Shah Mehta Road,  
Mumbai, and its Karnataka State Branch at  
S-401, Manipal Centre, Dickenson Road,  
Bangalore - 560 042.

Represented herein by its National Secretary  
And Senior Vice Chairman (KSE),  
Sri G.Ramenand.

...Petitioner

(By Shri Mukul Rohtgi, Senior Counsel for Shri D.L.N.Rao,  
Advocate)

And:

1; State of Karnataka,  
represented by its  
Chief Secretary, Vidhana Soudha,  
Ambedkar Veedhi, Bangalore-560 001.

2; The Principal Secretary to Government,  
Public Works Department, Government of Karnataka,  
MS Buildings, Bangalore - 560 001.

- 3) Karnataka Industrial Areas Development Board,  
A Corporation established under the  
Karnataka Industrial Areas Development Act, 1966  
Having its office at 14/3, Rashthrothana Parishat  
Buildings, II Floor, Nrupathunga Road,  
Bangalore-560 001, represented by its  
Chief Executive Officer and Executive Member.
- 4) Bangalore Mysore Infrastructure Corridor Area  
Planning Authority, a Planning Authority  
Constituted under Section 4-C of the Karnataka  
Town & Country Planning Authority Act, 1961,  
Having its office at MS Buildings,  
Dr.B.R.Ambedkar Veedhi, Bangalore - 560 001.  
Represented by its Chairman.
- 5) M/s. Nandi Infrastructure Corridor Enterprise Ltd.,  
a Company Registered under the Companies Act 1956,  
and having its Registered Office at  
No.1, Midford House, Midford Gardens,  
Off: M.G.Road, Bangalore - 560 001,  
Represented by its Managing Director.
- 6) Shri J.C.Madhuswamy,  
S/o of S.Chandrashekhariah, MLA,  
Chikkanayakanahalli,  
Chikkanayakanahalli, Tumkur District.

...Respondents

(By Advocate General along with Sri M.N.Seshadri, Govt.  
Advocate for R1 & R2; Sri. G.S. Visweswara, Senior  
Advocate for Sri B.R.Srinivasa Gowda, Advocate for R3; Sri  
D.Dave, Senior Counsel for M/s King & Partridge for R5;  
Sri P.G.C.Chengappa & P.Anu Chengappa for R5; and Sri  
G.L.Sanghi Senior Counsel for Sri Vivek S.Reddy, Advocate  
for R6)

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In W.P.No.45386/2004

Between:

- 1) Sri J.C.Madhuswamy,  
S/o of S.Chandrashkariah,  
MLA, Chikkanayakanahalli,  
Chikkanayakanahalli, Tumkur District.
- 2) Sri Srirama Reddy,  
S/o O.B.Reddy, Aged 50 years,  
MLA, Bagepalli, Bagepalli, Kolar District.
- 3) S.Munegowda,  
S/o Sonappa, Aged 53 years,  
Hanumiahah layout, No.20, 1<sup>st</sup> cross,  
Sanjay Nagar, Bangalore. ...Petitioners

(By Sri G.L.Sanghi, Senior counsel for Sri. K.N.Subba Reddy  
and Vivek Reddy, Advocates for petitioners)

A n d:

- 1) The State of Karnataka, represented  
by its Chief Secretary,  
Vidhana Soudha, Bangalore-560 001.
- 2) The State of Karnataka,  
represented by its Principal Secretary,  
Department of Commerce & Industries,  
M.S.Building, Bangalore - 560 001.
- 3) The Union of India,  
represented by its Secretary to  
Ministry of Environment and Forests,  
Paryavaran Bhavan, CGO Complex,  
Lodhi Road, New Delhi - 03.
- 4) The State of Karnataka,  
Represented by its Secretary,  
Department of Public Works Department,  
Vidhana Soudha, Bangalore - 560 001.

- 5) The State of Karnataka represented by its Secretary,  
Department of Revenue,  
M.S. Building, Bangalore - 560 001.
- 6) Public Works Department (PWD) represented by its  
Chief Engineer, Bangalore South, BMICP Project,  
Nrupathunga Road, Bangalore-560 001.
- 7) Karnataka Industrial Areas Development Board,  
Represented by its Chief Executive Officer,  
Nrupathunga Road, Rasthrothana Building,  
Bangalore - 560 001.
- 8) Bangalore Mysore Infrastructure Corridor  
Area Planning Authority (BMICAPA),  
Represented by its Member Secretary,  
MS Building, Town Planning BMICPA Project,  
Ambedkar Road, Bangalore - 560 001.
- 9) Special Deputy Commissioner,  
Land Acquisition, KIADB (BMICP),  
Office located at NICE, Midford house,  
Midford gardens, M.G.Road, Bangalore - 560 001.
- 10) Bangalore Development Authority,  
Represented by its Commissioner,  
Kumara Park, Bangalore - 560 020.
- 11) Lake Development Authority,  
represented by its Chief Executive Officer,  
12<sup>th</sup> floor, N.S.C.P.B.Y. Building,  
M.G.Road, Bangalore - 01.
- 12) Nandi Infrastructure Corridor Enterprises (NICE),  
Represented by its Director, Ashok Kheny,  
Midford house, Midford Gardens,  
Off. M.G.Road, Bangalore -01.
- 13) Shri Ashok Kheny,  
Father's name not known to petitioners,  
Managing Director, NICE Co,  
Midford house, Midford gardens,  
Off M.G.Road, Bangalore - 01.



- 16) Sri Shiv Kumar Kheny,  
Director, NICE/NECEL  
Midford house, Midford gardens,  
Off M.G.Road, Bangalore - 560 001.
- 17) Sri R.V.Deshpande,  
former Minister for Industries,  
Government of Karnataka,  
7 House compound,  
Near High Ground Police Station,  
Bangalore.
- 18) Sri B.S.Patil,  
Father's name not known to petitioners,  
Former Chief Secretary, Government of Karnataka,  
No.149, 10<sup>th</sup> Mair Road, R.M.V. Extension,  
Bangalore - 560 080.
- 19) Sri D.K.ShivKumar,  
former Minister of Urban Development,  
Government of Karnataka,  
MLA, Sathnur, Sathnur,  
Mandya District.
- 20) Subhir Hari Singh, IAS,  
father's name not known to petitioners,  
Former Secretary, C & I Secretary,  
Presently Principal Secretary to  
Department of Housing,  
M.S.Building, Bangalore.
- 21) Major Ramesh, father's name not known to petitioners,  
former Secretary, Public Works Department,  
Presently working in NICE Company,  
Midford House, Midford Gardens,  
Off M.G.Road, Bangalore - 01.
- 22) N.Vishwanathan, father's name not known to petitioners,  
Former Development Commissioner &  
Additional Chief Secretary,  
No.135, 1<sup>st</sup> Cross, 5<sup>th</sup> A Block, 60 ft. Road,  
Koramangala, Bangalore - 95.

- 23) Shivshankar K.C.,  
former Deputy Secretary to C & I,  
presently working as Joint Director,  
Balika Makkala Kalyana Mandali,  
MS Building, 3<sup>rd</sup> Floor, Bangalore - 560 001.
- 24) Shankarlinga Gowda, IAS  
Former CEO, KIADB,  
Presently Secretary, Information Technology,  
Vasanth Nagar, Beside Jasma Bhavan,  
Bangalore - 560 052.
- 25) Siddiah, IAS,  
father's name not known to petitioners,  
former CEO, KIADB,  
presently working as Secretary to CM,  
Vidhana Soudha, Dr. Ambedkar Veedhi,  
Bangalore - 560 001.
- 26) Sri K.V. Kangwad, IAS  
father's name not known to petitioners,  
former CEO, KIADB,  
presently working as  
Director, Employment and Training,  
Subbiaha Circle, Bangalore - 560 001.
- 27) K.N. Krishnamurthy,  
father's name not known to petitioners,  
Additional Secretary,  
Department of C & I,  
MS Building, Bangalore.
- 28) Annes Siraj, KAS  
father's name not known to petitioners,  
former Special Deputy Commissioner BMICP,  
Presently CEO, Mandya District Zilla Panchayat,  
Mandya Town, Mandya.
- 29) Sri Basavaraj,  
Project Co-ordinator, BMICP,  
PWD Department, MS Building, 5<sup>th</sup> stage,  
Ground Floor, No.001, Bangalore - 01.

- 30) Sri Aswath, IAS,  
Former Deputy Commissioner,  
Bangalore Urban District,  
Presently working as Managing Director,  
Mysore Soaps & Detergents,  
Yeshwanthpur, Behind Metro,  
Bangalore.
- 31) SAB Engineering,  
by its Managing Director,  
Midford house, Midford gardens,  
Off M.G.Road, Bangalore - 01.
- 32) Vanhasee Hangen Brustlin Ltd.,  
Represented by its Managing Director,  
Having its Office at Massachussets, USA,  
C/o Midford house, midford gardens,  
Off M.G.Road, Bangalore - 01.
- 33) Kalyani Group,  
Represented by its  
Managing Director/Vice Chairman,  
Sri Baba Kalyani, R/at Kundva,  
Pune - 411 036.
- 34) The Central Bureau of Investigation (CBI);  
by its Director, New Delhi.  
Branch at Ganganagar,  
Bellary Road, Bangalore.
- 35) The Empowerment Committee for BMICP,  
represented by its Chairman (Chief Secretary)  
Vidhana Soudha, Bangalore - 560 001.

...Respondents

( By Sri D.Dave, Senior Counsel for M/s King & Partridge for R12, R13, R16 & R33; Sri H.S.Sachidanand, Adv., for R11; Sri V.S.Ugrappa, Adv. for R17; Ashok Haranahalli, Adv. for R34; Advocate General along with Sri M.N.Seshadri, GA for R1, 2, 4-6, 17-20, 22-30 & 35; Sri G.S.Visweswara Senior Advocate for Sri E.R.Sreenivasa Gowda, Adv., for R7 & R9, Sri R.Dinesh Rao, Adv. for R8; Sri Basavaprabhu S.Patil, Adv. for R18; Sri N.Devadass, Asst. Solicitor General for R3;

Sri K.Krishna, Adv., for R10; Sri R.N.Narasimhamurthy, Senior counsel for M/s. Manjuladevi Associates for R21; P.G.C.Chengappa and P-Anu-Chengappa, Advocates for R12, R13, R16 & R33)

In W.P. No.48981/2004

Between:-

- 1) Sri Dakshinamurthy, S/o Siddalingappa,  
Aged 59 years, Residing at No.6, Eshanya Badavane,  
N.R.Mohalla, Mysore-07.
- 2) Smt. Modamani, W/o N.Basavaraju,  
Aged 48 years; Residing at No.6,  
'Prabanitha', Gangothri, 1<sup>st</sup> stage, Mysore.

...Petitioners

(By Sri T.R. Subbanna Senior Advocate for Sri M.M.Swamy, Advocate)

A n d:-

- 1) State of Karnataka, represented by its  
Chief Secretary, Vidhana Soudha,  
Ambedkar Veedhi, Bangalore-560 001.
- 2) The Principal Secretary to Government,  
Public Works Department, Government of Karnataka,  
MS Buildings, Bangalore -560 001.
- 3) Karnataka Industrial Areas Development Board,  
A Corporation established under the  
Karnataka Industrial Areas Development Act, 1966  
Having its office at 14/3, Rashtrathana Parishat  
Buildings, II Floor, Nrupathunga Road,  
Bangalore-560 001, represented by its Secretary.

4) M/s. Nandi Infrastructure Corridor Enterprise Ltd.,  
a Company Registered under the Companies Act, 1956,  
and having its Registered Office at No. 1, Midford  
House, Midford Gardens, Off. M.G. Road, Bangalore -  
560 001, Represented by its Managing Director.

... Respondents

(By Advocate General along with Sri M.N. Seshadri, Govt.  
Advocate for R1 & R2;

Sri Srinivasa Gowda, for R3;

Sri D. Dave, Senior counsel for M/s. King & Partridge,  
Advs. and Sri P.G.C. Chengappa, Advocate for R4)

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W.P.No.45334/2004 is filed under Article 226 of the  
Constitution of India with a prayer to direct the State, its  
Instrumentalities and its agencies to forthwith execute the  
Bangalore Mysore infrastructure corridor project in its entirety  
as held by this Hon'ble Court in W.P.no.29221/1997 and etc.,

W.P.No.45386/2004 is filed under Articles 226 & 227 of the  
Constitution of India with a prayer to direct the Central Bureau  
of Investigation to conduct an enquiry into i) the manner in  
which excess lands beyond the sanctioned corridor project had  
been acquired; ii) the manner in which the KIADB entered into  
an agreement with NICE on 16.10.1998 to acquire land beyond  
the areas sanctioned by the Government and that too on the  
identity - request - and blindly acquire principle over these  
unsanctioned areas and etc.,

W.P.No.48981/2004 is filed under Articles 226 & 227 of the  
Constitution of India with a prayer to direct the respondents to  
implement the Bangalore-Mysore Infrastructure Corridor Project  
within the time limit prescribed and in accordance with the  
agreement between the first and the fourth respondent without  
any delay.

These writ petitions having been heard and reserved for  
orders, on this day the CHIEF JUSTICE pronounced the  
following:

ORDER

N.K.SODHI CJ

These are three writ petitions nos. 45334, 45386 and 48981 of 2004 filed under Article 226 of the Constitution by way of public interest litigation. Writ petition no.45334 has been filed by the All India Manufacturers Organisation a company registered under the Companies Act, 1956 whereas writ petition no.48981 has been filed by the Mayor and former Mayor of Mysore City Corporation and the primary prayer made in these writ petitions is for the issue of a writ of mandamus directing the State of Karnataka, its instrumentalities and its agencies to forthwith execute the Bangalore Mysore Infrastructure Corridor Project (for short the Project) in its entirety as upheld by this Court in **H.T.Somazhekar Reddy vs. Government of Karnataka and another (Writ petition no.29221 of 1997 decided on 21.9.1998)**. Writ petition no.45386 has been filed by Sarvshri J.C.Madhuswamy and Srirama Reddy both of whom are elected members of the Karnataka Legislative Assembly and the third petitioner herein claims to be a social worker. Their primary grievance is that land in excess

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of what was required for the execution of the Project has been acquired by the State Government thereby depriving the agriculturists of their lands and that it allowed itself to be misrepresented in allotting the Project which was originally sanctioned in favour of a Consortium of American companies to a new company registered as Nandi Infrastructure Corridor Project Ltd. (hereinafter called Nandi). They allege that a big fraud was played on the State Government in getting the Project allotted to Nandi and the primary prayer made in the writ petition is for a mandamus directing the Central Bureau of Investigation to conduct an enquiry into the manner in which the excess lands came to be acquired and also into the fraud/misrepresentation that was played on the State Government in allotting the Project to Nandi. Some incidental prayers have also been made in the writ petition. They want this Court to declare all acquisitions made beyond the peripheral roads around Bangalore which, according to them, are not required for the Project as illegal. Challenge has also been made to the mortgage deed in respect of the Government lands in favour of I.C.I.C.I. Bank which advanced some loans to Nandi. All the prayers made in this petition and in the other two

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petitions shall be dealt with in the later part of our judgment. We are disposing of the three writ petitions together because common questions of law and fact arise in them and also for the reason that writ petition no.45386 is a counter to the other two writ petitions.

2. In pursuance to the notice issued by this Court the respondents in the writ petitions have filed their response. In writ petitions nos.45334 and 48981 in which the prayer is for the implementation of the Project the contesting respondents are the State of Karnataka and Sri J.C.Madhuswamy who is petitioner no.1 in W.P.no.45386. Sri J.C.Madhuswamy filed an application under Order 1 Rule 10 of the Code of Civil Procedure and got himself impleaded as a respondent in W.P.no.45334. He has opposed the writ petitions but has not filed a separate written statement presumably because his writ petition (W.P.no.45386) is itself a counter to the other two writ petitions. In W.P.no.45386 filed by J.C. Madhuswamy and others the State Government is supporting the writ petitioners and has filed its written statement supported by an affidavit filed by the Under Secretary to Government,

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Commerce and Industries Department. The contesting respondents in this writ petition are Nandi which is impleaded as respondent no.12 and Major Ramesh who is impleaded as respondent no.21 and they have emphatically denied all the allegations made in the writ petition including those pertaining to fraud, misrepresentation and acquisition of excess land for the Project.

3. Before we deal with the allegations and the prayers made in the three writ petitions, it is necessary to refer to the background in which the Project came to be allotted to Nandi and also to the previous litigation relating thereto.

4. Bangalore is the State capital and Mysore is an important tourist centre and also a fast developing city both in commerce and industry. The distance between these two cities is about 130 kms. and the traffic intensity is very high. Since the traffic between these two cities is very dense, smooth movement of traffic is a big problem and accidents are on the increase. A proposal was mooted as far back in the year 1988 to provide an expressway between the two cities. A project report was prepared for getting the work executed through a private entrepreneur who would spend

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his own money and recover the same in regard to the expenditure, maintenance, profits, etc. by collection of tolls. Tenders were also invited and in response to this advertisement only one tender was received with some stringent conditions. The bidder demanded that, amongst others, the cost of land acquisition should be borne by the Government and that the bidder be protected by ensuring that there would be no competing road development by the State and its agencies affecting the revenue of the Project. The condition imposed was that the State Highways nos. 17 and 86 should not be improved from their state in which they then existed other than the routine surface maintenance. As this was not possible the proposal was kept in abeyance. A proposal was then mooted to develop Bangalore as a Mega city and it was proposed to improve some of the towns around Bangalore as a counter magnet to Bangalore city. Under this scheme expressway between Bangalore and Mysore was also considered. An investigation was taken up by the Asian Development Bank and as per the report submitted by it there was need to improve the corridor between Bangalore and Mysore because the population of Bangalore city was likely to be more than eight

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million by the year 2011. The report also suggested that the State Government should bear 20% of the cost of this Project along with the cost of land acquisition. It appears that the State Government was not possessed of sufficient means and, therefore, it wanted the Project to be taken up by some private agency on B.O.O.T. ("Build-Own-Operate-&-Transfer") basis. In other words, the Government wanted the Project to be taken up by some Consortium from its own resources and get back the expenditure and profits through the collection of tolls.

5. In February 1995 the Governor of Massachusetts State (U.S.A.) visited India and came to Bangalore to have discussions with the then Chief Minister. The outcome of the discussions was that a Memorandum of Understanding (MOU) was signed on 20.2.1995 between the State Government and the Consortium of M/s. Vanasse Hangen Brustlin Inc., S.A.B. Engineering and Construction Inc. U.S.A. and Kalyani Group of Companies (hereinafter referred to as VHB, SAB and Kalyani respectively). The Governor of the State of Massachusetts and Sri H.D.Deve Gowda, the then Chief Minister were present at the time of the signing of

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the MOU and they also appended their signatures thereto. During the course of the discussions the Consortium had shown interest in taking up the Project and it appears to have convinced the State Government about its expertise and proven capability in taking up projects of such magnitude. The Consortium agreed to take up a detailed commercial viability and feasibility study of the Project and submit its report for the consideration of the State Government. The State Government on its part agreed to extend support to the proposal if the same was commercially viable and its competitiveness and feasibility were established to the satisfaction of the Government.

6. In pursuance to the MOU the State Government set up a High Level Committee (HLC) under the Chairmanship of the then Minister for Public Works Department. The other members of this Committee were the Principal Secretary Commerce and Industries Department; Principal Secretary Housing and Urban Development; Secretary Public Works Department; Chief Engineer (C&B), Bangalore and the Chairman-cum-Managing Director, Karnataka State Industrial Investment Development Corporation. Shri

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K.C.Reddy, Chairman, Technical Advisory Committee, Irrigation to whom reference shall be made in the later part of the judgment was the non official member. This Committee was meeting quite often to review the progress made and necessary advice and clarifications were being given. The Consortium presented on 26.8.1995 its report regarding the Project. HLC considered this report and submitted its report to the Chief Minister. The Project report and the report of the HLC were considered by the Cabinet sub-committee which recommended that the matter be placed before the Cabinet. The report of the HLC and the Project report were accepted by the Cabinet subject to the modification that instead of seven townships as proposed, only five townships were to be developed. A Government Order dated 20.11.1995 was issued in this regard. The relevant part of this order which has a bearing on the submissions made by some of the parties including the State of Karnataka reads as under:

**"ORDER NO.FWD 32 SCR 95, BANGALORE  
DATED 20<sup>TH</sup> NOVEMBER 1995.2**

1.0 The above proposal was examined in detail in Government.

*H.K. Saha*

2.0 As explained in the preamble, the Bangalore-Mysore Infrastructure Corridor Project Report submitted by the consortium of M/s. Vanasse Hangen Brustlin Inc. and S.A.B. Engineering and Construction Inc. U.S.A. and M/s.Kalyani Group Ltd., is accepted by Government with the modification as detailed below:

i) Instead of seven townships proposed in the Project report, five townships are to be developed, viz., Corporate centre (township no.1) and Commercial centre (township no.2) near Bidadi a Farming and Market centre (township no.4), Industrial centre (township no.5) near Ramanagar and Eco-Tourism centre (township no.7) near Srirangapatna. The development of these townships should be done along with the construction of Express Highway.

ii) Public Works Department should enter into Memorandum of Agreement for executing this project with the Consortium of M/s.Vanasse Hangen Brustlin Inc. and S.A.B. Engineering and Construction Inc. U.S.A. and M/s.Kalyani Group Ltd. duly consulting the Law Department and in the light of the recommendations contained in the High Level Committee's Report (Annexure).

iii) As implementation of the project by private entrepreneur and getting back their expenditure, maintenance and profits through toll systems is first of its kind in Karnataka, there may be necessity of modification or amendments to the existing rules and regulations in force. As such, if necessary, the concerned administrative departments will examine these and take necessary action and also extend necessary co-operation for implementation of the project.

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3.0 This order is issued by considering the opinion of the Finance Department in U.O. Note no.FD/ACS and PS/P-238/dated 7.11.1995.

By Order and in the Name of the  
Governor of Karnataka

Sd/  
(B.P.Nithyananda)  
Secretary to Government,  
Public Works Department."

7. The preamble to the aforesaid Government Order states that the Project work will be constructed completely by the Consortium with their own resources and that they would keep the Project for 30 years to get their return of the expenditure, profit, etc., through collection of tolls. The land acquisition expenditure was also to be borne by the Consortium. To make the Project economically viable the Consortium had proposed seven townships which were reduced to five by the Cabinet at the time of granting approval. It is clear from the Government Order that the Public Works Department was to enter into a memorandum of agreement with the Consortium of VHB, SAB and Kalyani. The three members of the Consortium entered into a Consent And Acknowledgement Agreement dated 9.9.1996 specially assigning their respective rights in regard to the Project under

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the G.O. dated 20.11.1995 and the MOU in favour of Nandi which had been registered on 16.1.1996 as a company under the Companies Act, 1956 as a Corporate vehicle for the development and implementation of the Project. This agreement was forwarded to the Government of Karnataka on 21.12.1996 for necessary action. A detailed reference to this agreement will be made in the later part of the judgment. In pursuance to the Government Order dated 20.11.1995 and in view of the assignment made by the members of the Consortium of their rights in favour of Nandi, the latter submitted in February 1997 a draft of the Framework Agreement to be executed between it and the State Government. The draft was considered by the core Committee which had been set up to negotiate the terms with Nandi and the same was referred to the Cabinet sub-committee which suggested various modifications to the Framework Agreement and those were duly incorporated. Ultimately, the Cabinet (State of Karnataka) approved the Framework Agreement on 17.3.1997 and the same was signed on 3.4.1997. This agreement will hereinafter be referred to as FWA. In terms of clause 4.1.1 of the FWA, the State Government set up an Empowered Committee headed by the Chief Secretary of the

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State to over-see the Project execution and implementation. This Committee included a few technical experts as well and it held as many as ten meetings from time to time and it last met on 24.7.2004. This Committee was the mechanism by which the Government of Karnataka was to co-ordinate for the purpose of carrying out its obligations under the FWA. In order to enable Nandi to execute the Project, the State Government was to make available 20,193 acres of land as set out in Schedule I to the FWA out of which 6,956 acres was Government land and the remaining 13,237 acres was private land which the State Government was to acquire. In addition to the land, the State Government had also undertaken under the FWA to amend its laws, rules and regulations so that the Project could be properly executed and in fact the provisions of the Karnataka Industrial Areas Development Act, 1966 (for short the Act) were amended by Act no.11 of 1997 so as to bring the Project within the provisions of the said Act so that land could be acquired for the purpose. The Government of Karnataka had also undertaken that it shall use its best efforts to cause its instrumentalities to promulgate, facilitate, initiate, advocate and/or amend to the full extent possible any and all enactments, acts, and legislations necessary or

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desirable to enable it or any of its Instrumentalities to obtain, procure and transfer the land to Nandi for the purposes of the Project. In pursuance to this obligation the Karnataka Industrial Areas Development Board (for short the Board) set up under the Act entered into an agreement with Nandi on 14.10.1998 for acquisition of private land. Thereafter notifications were issued on 30.10.1998, 31.10.1998, 19.12.1998, 3.6.1999, 3.7.1999 and 21.7.1999 acquiring large chunks of land for the Project.

8. FWA came to be challenged in writ petition no.29221 of 1997 (PIL) filed in this Court in November 1997 by one H.T.Somasekhar Reddy by way of public interest litigation impleading the State of Karnataka and Nandi as the two respondents. The agreement was challenged on all conceivable grounds and the writ petition was strenuously opposed both by the State Government and also by Nandi. The State Government successfully pleaded that the agreement was valid and that the same was in public interest. It was also pleaded on its behalf that 20,193 acres of land required for the Project was the minimum requirement and that no excess land was being acquired.

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The questions which arose for consideration of the Division Bench as formulated by it were as under:

(a) Whether the Government has acted arbitrarily in entering into the agreement with respondent no.2?

(b) Whether agreement is illegal as being opposed to public policy?

(c) Whether the agreement contravenes any constitutional provisions or other existing enactments?

(d) Whether the agreement is vitiated by malafides?

(e) Whether the rights of any individual or groups of individuals is being illegally affected by the execution of the agreement?

(f) Scope and extent of judicial review in matters of State Policy.

One of the grounds on which the FWA was challenged was that the land that was being acquired was far in excess than what was required for the Project. This plea was opposed by the State Government in its written statement in the following words :

**"RE-PARA 5:**

**It is submitted that a mega project like the Expressway involves considerable extent of land. Therefore, this respondent has agreed to provide the minimum extent of land required for the project partly out of the land**

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**owned by the State and by acquiring the balance.** It is further submitted that the 2<sup>nd</sup> respondent will not only construct the proposed Expressway but also link roads. Peripheral road, Interchanges, Service roads, toll plazas and Maintenance area etc., in addition to the Townships. It is pertinent to mention that the respondent can develop the townships only after Expressway is completed. Under Clause 3.5.1 the Concession period is 30 years initially and however extendable on mutual consent. This respondent may or may not extend the Concession Period since it is not obliged to extend the said period. The other allegations, contrary to the above facts, are denied.

(Emphasis supplied)

Yet another plea was raised before the Division Bench challenging the arbitration clause contained in Clause 18.3 where under the parties had agreed that all the disputes if not settled would be referred to arbitration in accordance with the provisions of UNCITRAL Rules for international arbitration and that the laws of India relating to arbitral proceedings shall not apply. It was further agreed that the place of arbitration shall be London (England) or any other place mutually agreeable to the parties. While defending this clause the State Government in its written statement pleaded as under:

**\*RE-PARA 13:**

**Respondent no.1 submits that all the agreements with International investors**

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where the funding is through the international institutions have the standard clause of resolution of disputes in a 3<sup>rd</sup> party neutral Country. By this arrangement the Foreign institutions get a comfort level for the investment made. The Petitioners averment that the confidentiality Clause prohibiting the contracting parties from disclosure or use of any information has the potential to become like a Bofors Agreement is baseless and untenable. No middlemen or agent is involved in this contract except the Government of Karnataka and the Respondent no.2. It is highly improper to compare this agreement with that of the Bofors Agreement. This confidentiality information is inserted just safeguard the propriety information of the Respondent nos.1 and 2, from falling into other hand who may try to misuse for their unlawful gains."

The validity of the agreement was also challenged and while refuting the allegations made by the petitioner therein the State Government pleaded as under :

"RE-PARA 1:

(a) .....These allegations of the Petitioner are denied by this Respondent in toto. It is submitted that this Respondent permitted the 2<sup>nd</sup> Respondent to execute the project only after examining the relevant facts and circumstances. This Respondent submits that persons authorised are competent to sign the Government orders and contracts on behalf of the Governor of Karnataka.

(b).....

(c) .....The said project is not detrimental to the interest of citizens of Bangalore but will

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help in decongesting the city by developing townships which will be self contained. The expressway also contemplates high speed roads to connect North and South of Bangalore by the formation of peripheral road to ease out the considerable heavy traffic and congestion, which otherwise would ply through the city".

(Emphasis supplied)

9. All the issues that arose in the writ petition were elaborately considered by the learned Judges constituting the Division Bench and they were all answered in favour of the State Government and Nandi and the writ petition was dismissed on 21.9.1998. Some of the findings recorded by the Division Bench which have a bearing on the decision of the present cases need to be referred to:

**Ashok Bhan, J.,** (as His Lordship then was) speaking for the Bench observed as under in paragraph 27 :

"27. ....No special favour is being shown. The project if completed would be for the benefit of the public in general and for its overall development. The agreement has not been entered in a clandestine manner but in open and with complete transparency".

The same view has been expressed more elaborately in paragraphs 48 and 49 of the judgment which are not being reproduced only to avoid making this order bulky.

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In paragraph 39, the learned Judges observed as under:

**"39. There was no secrecy involved in the execution of the agreement. ....discussions were held officially with the Governor of Massachusetts, USA by the then Chief Minister of the Karnataka. Details of the discussions, the setting up a High Level Committee and the receipt of the Project Report in August 1996, the decision of the Cabinet, and the acknowledgement by the Government of Karnataka on 9.9.1996 on the company's rights on behalf of the Consortium, are all matters of public record."**

Again in paragraph 44, the learned Judges observed as under:

**"44. There is no favouritism or arbitrariness involved as from the beginning the policy was one of entrustment to a private organisation on the basis of BOOT concept. .... Having regard to the nature of work involved and other relevant factors including the financing of the entire project by the agency itself, the Government was justified in entering into an agreement with respondent no.2 for executing the Project instead of calling for the global tenders"**

Again in paragraph 46 of the judgment the learned Judges concluded as under:

**"46. ....After examining the proposal High Level Committee submitted it to the Chief Minister who then put it before the sub-committee of the Cabinet consisting of Minister of Finance, Revenue, Home, Public Works, Major & Medium Industries and Major irrigation and**

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the High Level Committee Members and other concerned officers. After approval by the sub-committee, the matter was placed before the Cabinet and only thereafter the proposal was accepted. ....Every minute detail was explained including the scientific method adopted by the respondent for identification of the land for the Project. .... As the matter was discussed at various levels of the Government including the Cabinet and the Legislature, it cannot be held that the agreement entered in to by the Government of Karnataka was entered in an arbitrary manner, in secrecy or in any way in a clandestine manner".

In paragraph 50 and 52 the learned Judges again said as under:

" 50. On actual aspects it may be clarified that in all 20,193 acres of land is required for the Toll Project, out of which the types of land to be acquired is: Kharab-7558 acres, dry-10,817, wet-1662 acres, garden-156 acres, totalling to 20,193".

52. ....Government of Karnataka in its written statement has said that it has agreed to provide minimum extent of land for the project partly out of the land owned by the Government and by acquiring the balance. Permission has been given to develop the five townships instead of 7, proposed by respondent no.2 to make the project viable."

Repelling the argument that the arbitration clause as agreed to between the State of Karnataka and Nandi was

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contrary to law and against public policy, the learned Judges held as under:

"73. ....Arbitration agreements are outside the purview of Section 28 of the Indian Contract Act. The choice of any arbitrator of any nationality, the place of arbitration and the procedure to be agreed upon for such arbitration cannot be said to be opposed to any public policy or legal provisions as the choice in respect of all the above matters is provided for under the Arbitration and Conciliation Act, 1996. The agreement stipulates that the award passed is a foreign award within the meaning of the laws in India. The award thus qualifies to be enforceable under Part II, Chapter I of the Arbitration and Conciliation Act, 1996".

10. It is common ground between the parties that special leave petition filed against the aforesaid judgment of the Division Bench in Somashekhar Reddy's case (supra) was dismissed in limine by their Lordships of the Supreme Court on 26.3.1999. It is thus clear that the findings recorded by the Division Bench of this Court have become final and conclusive

11. As already observed earlier, the State Government and its Instrumentalities were obliged under the FWA to make 'Best Efforts' to procure land for the Project which was to be handed over to Nandi. It is common case of the parties

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that the Board initiated steps for acquiring private land and acquired the same after entering into agreement with Nandi. A large number of writ petitions came to be filed by the land owners in this Court challenging the said acquisitions on various grounds including the one that the acquisition was not for a public purpose and that it was meant only to benefit Nandi for its real estate business. The writ petitions were partly allowed by a learned single Judge who took the view that 60% of the acquisition of land by the State in so far as it related to the formation of roads, etc., was valid whereas the remaining 40% which was meant for the development of townships, conventional centre, etc. was invalid and to that extent the acquisition was quashed. The land owners, the State Government, the Board and also Nandi felt aggrieved by the order of the learned single Judge and filed writ appeals. The State Government filed its appeals up to August 2004 wherein it challenged the order of the learned single Judge quashing 40% of the acquisition. The Board also took a similar stand when it filed its appeals challenging the order of the learned single Judge. The State Government and the Board while challenging the order had supported the case of Nandi in all its aspects. When the

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bunch of writ appeals came up for hearing before us in January this year the State Government and the Board withdrew their appeals because by then the State Government had changed its stand and had constituted the Expert Committee to which reference shall be made in the later part of the judgment. Even though they were respondents in the appeal filed by Nandi and another party, they did not contest their claim as the learned counsel representing them did not address any arguments. Those appeals were disposed of by us by a detailed order dated 28.2.2005. The appeals filed by Nandi and Indian Machine Tool Manufacturers Association (IMTMA) were allowed whereas those filed by the land owners were dismissed and the order of the learned single Judge set aside and the entire acquisition was upheld. We examined the validity of the notifications acquiring the land for the Project and came to the conclusion that the acquisition was for a public purpose and therefore the notifications were valid. We also referred in detail to the findings recorded by the Division Bench in Somashekhar Reddy's case (supra) and observed that the entire acquisition was for a public purpose as held by the

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Division Bench in the public interest litigation and that those issues could not be re-agitated.

12. While the aforesaid writ appeals were still pending in this Court the present writ petitions came to be filed.

13. We may now refer to the contentions raised by the learned senior counsel in these cases. While reiterating the averments made in writ petition no.45334 Mr.Mukul Rohatgi, learned senior counsel strenuously urged that the Project is one which was conceived in public interest with a view to decongest the city of Bangalore and promote industrial, commercial and economic growth in the State and that the recent events indicate that the Project is likely to be shelved due to political and extraneous considerations and therefore it is necessary for this Court in public interest to issue a mandamus to the State Government and all its Instrumentalities to execute forthwith the Project as it was originally conceived. He referred to the earlier judgment of this Court in Somashekhar Reddy's case (supra) and pointed out the various findings recorded by this Court holding the Project to be in public interest and also upholding the validity of the FWA executed between the State of Karnataka

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and Nandi. He urged that the Project was one of great importance which would benefit the general public and the same should not be allowed to be shelved. He referred to the note of the PWD Minister addressed to the Principal Secretary PWD in which it was pointed out that Sri H.D. Deve Gowda, former Prime Minister had made a serious allegation some time back that the Project was being constructed by Nandi for the purpose of running real estate business instead of providing infrastructural facilities. The Minister constituted a Review Committee which was later termed as an Expert Committee to look into the allegations of excess land having been acquired for the purpose of the Project. This Committee submitted a preliminary report in which it found that excess land had been acquired for the Project but it did not identify the same. Referring to these proceedings Sri Rohatgi contended that the Government does not intend to continue with the Project and has adopted this as a novel method to scuttle the same. He further contended that the State Government which defended the Project till recently including the land acquired for the same, is of late trying to change its stand which is not at all in the interest of the general public. Elaborating his submission he referred to

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the pleadings of the State Government in Somashekhar Reddy's case (supra) to contend that the State Government had now taken a somersault. He was emphatic in his submission that the petitioner wanted the Project to be executed expeditiously and it was not their concern as to whether the same is executed by Nandi or any other agency. He relied upon the judgments of the Apex Court in State of Himachal Pradesh and another vs. Umed Ram Sharma and others (1986 (2) SCC 68); Chandra Bansi Singh & others vs. State of Bihar and others (1984(4) SCC 316); State of Haryana vs. State of Punjab and another (2002(2) SCC 507) in support of his submissions. He also referred to the judgment in Rohitas Industries Ltd. vs. S.D. Agarwal & another (AIR 1969 SC 707) to contend that there was no material before the PWD Minister to initiate action and to form an Expert Committee superceding the Empowered Committee which had been constituted in terms of the FWA executed between the State Government and Nandi. The learned senior counsel appearing for the petitioner in writ petition no. 48981 of 2004 merely supported the contentions urged by Sri Mukul Rohatgi and contended that the Project

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being in public interest as found by this Court in the earlier case should be allowed to go on as originally conceived.

14. Sri G.L.Sanghi, learned senior counsel appearing for the petitioners in writ petition no.45386 filed by J.C. Madhuswamy and others and opposing the other two writ petitions reiterated the averments made in the writ petition and emphatically contended that the FWA executed between the State of Karnataka and Nandi was a result of fraud and misrepresentation played by the latter in grabbing the Project and that the State Government had acquired land far in excess of what was required for the execution and implementation of the Project depriving the land owners of their valuable land around the city of Bangalore. He also strenuously urged that the arbitration clause contained in the FWA which takes the parties to London for the settlement of their disputes was contrary to law. He argued that if the excess land is taken away from Nandi for the implementation of the Project and the arbitration clause is deleted from the FWA then the said agreement was valid and that Nandi could implement the Project. The argument, indeed, is that the arbitration clause

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and the clause pertaining to the allotment of land referred to in Schedule I to the FWA were severable which according to the learned senior counsel were the result of fraud practised by Nandi and if these were taken away the FWA could be implemented and the Project executed. In addition to these submissions the learned senior counsel referred to the allegations made against Major C.R. Ramesh one of the respondents in the writ petition who was at the relevant time Secretary, PWD in the Government of Karnataka. Since these allegations were made in the additional rejoinder filed by the petitioners a copy of which had not been supplied to the counsel for the respondents, the learned senior counsel very fairly gave up the contention and did not press it further. Sale of land to IMTMA was also challenged. He also objected to the mortgage of Government land by Nandi to raise loans from financial institutions including ICICI Bank. He also argued that the alignment of roads as fixed by Nandi would destroy the Gotegere Lake in as much as it would prevent the inflow of water into the lake as a result of which it may dry up and adversely affect the ecology of the area. His contention is that the alignment is contrary to the order passed by a Division Bench of this Court in writ petition

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no.17283/1999 decided on 16.6.1999 wherein a direction had been issued to lay the ring road around the Gotegere Lake in a manner by providing an overpass without disturbing free flow of water to the tank. It was also contended that the green belts in the area have been used for the Project which is not permissible under the law. Realizing that such areas could be acquired by the Bangalore Development Authority as held in various decisions of this Court, the learned senior counsel did not press this plea either. The Advocate on record Mr.Vivek Reddy continued with the arguments on 10.3.2005 from where the senior counsel had left and referred to some paras of the writ petition where allegations of mala fides had been levelled against some of the respondents. While concluding the arguments on behalf of the petitioners Sri Reddy specifically stated that the petitioners were not challenging the validity of the FWA as the same had already been upheld by this Court in Somashekhar Reddy's case (supra) and the challenge was confined to the subsequent acts of the State Government and Nandi in implementing the Project by acquiring excess land.

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15. The learned Advocate General virtually supported the petitioners and contended that Nandi had played a fraud on the State Government and had misrepresented at the time of the allotment of the Project. He was hesitant to openly support the writ petitioners though the written statement filed on behalf of the State Government had supported the stand taken by them. We specifically put it to the learned Advocate General as to what was the stand of the State Government and as to what it proposed to do in future. Since the learned Advocate General could not give us a categorical reply either way, we directed by our order dated 10.3.2005 the Chief Secretary of the State to file a detailed affidavit bringing out the stand of the State Government.

The relevant part of that order reads as under:

"In view of the stand now taken by the State Government in its statement of objections, we repeatedly asked the learned Advocate General as to when did the State Government come to know that it had been a victim of fraud and misrepresentation and that having learnt about this fact, what action does it propose to take. He informs us that the State Government learnt about the fraud and misrepresentation only in January this year. As regards the action which the State Government proposes to take, he is unable to give us any positive answer. It appears that the State Government is not very sure of what it proposes to do in the matter. Be that as it may, the stand now taken in the

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statement of objections is diametrically opposite to what the State Government had pleaded before this Court successfully in the earlier PIL. The statement of objections is supported by an affidavit filed by an Under Secretary in the Department of Industries and Commerce. The stand taken in the statement of objections does not appear to be correct. We, therefore, direct the Chief Secretary through whom the State of Karnataka has been impleaded as respondent no.1 in the writ petition, to file a detailed affidavit as a response of the State Government to the writ petition clearly bringing out the stand of the State Government and what it proposes to do in the matter. Let this affidavit be filed on or before 31<sup>st</sup> March 2005 with an advance copy to the counsel opposite".

In pursuance to the aforesaid order, the Chief Secretary filed his affidavit dated 31.3.2005 with an advance copy to the other counsel. While admitting that there was a change of stand by the State Government, the Chief Secretary sought to justify its new stand by stating as under:

**"7. The State Government has since noticed certain facts and circumstances that reveal fraud and misrepresentation. ...."**

Again in paragraph 12 of his affidavit, the Chief Secretary states :

**"Certain subsequent events have taken place and certain materials have come to the knowledge of the Government, which compelled the Government of Karnataka to change its stand and that in public interest".**

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In paragraph 13 it is stated :

".....that earlier there was a Public Interest Litigation in W.P.no.29221/97 which was decided on 21.9.1998. In that Public Interest Litigation, the Frame Work Agreement has been held to be valid. But at that stage, certain facts were not noticed and properly interpreted.  
....."

In paragraph 22 of his affidavit the Chief Secretary spells out the reason for the change of stand and stated as under:

"22. ....

The Government was under the impression that for the purpose of corridor project, a Consortium of three parties had established a separate Limited Company by name M/s. Nandi Infrastructure Corridor Enterprises Limited at Bangalore. But it now transpires that the said representation that M/s. NICEL was established by the Consortium of three companies, is not true and the GOK is not a party to the so called Assignment Deed".

Then again in paragraph 24 the Chief Secretary pleaded as under:

"24. ....By misrepresentation of facts, the Government of Karnataka was made to pass an order. The representation that the Consortium of three companies has established M/s. NICEL is factually not true. Misrepresentation starts here. The Government of Karnataka noticed this fact when it investigated the allegations in the

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34. It is submitted that the document dated 9.9.1996 which has been produced by the GOK before this Hon'ble Court completely vindicates that Government of Karnataka is not a party to the alleged Assignment Agreement".

33. Government of Karnataka is not a party to the so called Agreement dated September 1996. Government of Karnataka has not signed that document. That is why M/s. MICEL has not produced that document anywhere.

32. There is a reference to an Acknowledgment Agreement dated 9.9.1996. As could be seen therefrom, the said document styled as Consent and Acknowledgment Agreement dated 9.9.1996 has not been produced by M/s. MICEL in any of its pleadings either in the appeal before this Hon'ble Court or in the counter to the writ petitions before the learned single judge.

Paragraphs 32 and 33 and a part of paragraph 34 of the affidavit filed by the Chief Secretary would have some bearing on the issues sought to be raised before us and therefore these three paragraphs are reproduced here under for facility of reference:

Public Interest Litigation, a copy of which had been served by the Petitioners in this Writ Petition on the Counsel representing the Government of Karnataka."

In paragraph 39 the Chief Secretary informs the Court that it was because of misrepresentation that the Government was made to enter into an agreement with Nandi which plea is reiterated in paragraph 40. In addition to the aforesaid pleas of fraud and misrepresentation the Chief Secretary has also taken the plea that excess land than what was required for the Project had been acquired by the Government and that the same ought to be retrieved. In this regard he has justified the Constitution of a Review Committee headed by Sri K.C.Reddy who was also a member of the HLC and is presently Advisor to the Minister for FWD who constituted this Committee. The report submitted by K.C.Reddy Committee has been accepted by the Cabinet on 26.10.2004 and it renamed the K.C.Reddy Committee as Expert Committee. The decision of the Cabinet has been reproduced in paragraph 8 of the affidavit filed by the Chief Secretary which reads as under:

"After detailed discussions, Cabinet reaffirmed the support of Government to the Project. However, in view of criticism regarding acquisition of more lands than necessary for the project, the Cabinet decided to constitute an Expert Committee with the same members as suggested in the Cabinet Note.

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All lands, whether the Government or acquired, will hereafter be handed over to the Project Company only on the recommendations of the Expert Committee to the effect that such lands are genuinely required for the project having regard to all relevant factors including road alignment. In respect of lands already handed over to the Project Company, if there is any dispute as regards their necessity for the Project, the same shall be referred to this Expert Committee for its recommendation.

The constitution of the Committee shall however not result in any delay in implementation of the project and the matters referred to it may be disposed off on day to day basis. The Committee may co-opt members if necessary. It may also invite and hear the views of the Project Company whenever necessary. The recommendations of the Committee will be valid even if some members were not present for a meeting.

The Committee shall submit periodical reports about its decisions for consideration/information of the Cabinet. First such report shall be submitted within a month. Apart from deciding on need for specific land for the project, the Committee may make any other recommendations concerning the project as it may consider necessary. Such recommendations shall be considered by the Cabinet".

16. At this stage it may also be relevant to refer to the written statement filed by Sri M. Shivalinga Swamy, Under Secretary in the Department of Commerce and Industries.

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The relevant parts of the written statement are re-produced here under to highlight the stand of the State Government.

**"23..... In this situation, legal opinion said to have been obtained is highly questionable. What legal opinion was obtained is not available. It is therefore respectfully submitted that the parties to the Memorandum of Understanding of 1995 are not at all parties to the so called agreement and Nandi has no authority to act for the consortium.**

**28. The Government of Karnataka is intrigued to find that it is defined as consenting party to the so called Consent and Acknowledgement Agreement.**

**30. Further, the consent of the Government of Karnataka is not at all noticeable in this so called agreement.**

**31. It is therefore, respectfully submitted that so called Consent and Acknowledgment Agreement has not been accepted by the Government of Karnataka. A copy of the same is produced herewith and marked as Annexure R-4.**

**32. It is submitted that the entire exercise is fraud on the State of Karnataka and renders the so called Assignment void and void ab initio. NICE Ltd., is not entitled to claim any status in law and no locus standi to sustain any claim against the State. This matter came into light only while finalizing this statement during the weekend".**

17. Mr.Dushyant Dave, learned senior counsel appearing for Nandi in these writ petitions forcefully refuted

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the allegations made by the petitioners in writ petition no. 45386 of 2004. In the written statement and the additional affidavits filed on behalf of Nandi the allegations of fraud and misrepresentation as made by the petitioners and supported by the State Government have been emphatically denied. He sought to demonstrate from the materials on the record that the plea of fraud and misrepresentation as now taken by the writ petitioners and the State Government was an after thought and a ruse to scuttle the Project only when there was a change in the Government by the end of May 2004. He strenuously urged that the change in the stand taken by the State Government was for political and extraneous reasons and that the pleas taken in the writ petition and also by the State Government in the affidavit filed by the Chief Secretary were not open to them in view of the findings recorded by the Division Bench of this Court in Somashekhar Reddy's case (supra) and that those were barred by principles of res judicata and estoppel. He further contended that the plea that excess land had been acquired by the State Government was not open to it in view of the earlier stand taken by it in Somashekhar Reddy's case (supra) which had been accepted by the Division Bench. He

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urged that the writ petition filed by Sri J.C. Madhuswamy and two others had been sponsored and filed at the instance of the State Government and that the latter had selectively furnished important Government documents to the writ petitioners to enable them to file the writ petition taking the plea of fraud and misrepresentation and that the writ petition deserves to be dismissed on this ground itself. He also argued that the plea of fraud and misrepresentation was false to the knowledge of the State Government and that the affidavit filed by the Chief Secretary was incorrect if not false and that his affidavit and that of the Under Secretary were clear examples of 'suppressio veri and suggestio falsi'. He referred to the judgment of the Supreme Court in *Lipton India Limited vs. State of Karnataka* (1996(10) SCC 710) to contend that action u/s. 340 of the Code of Criminal Procedure be taken against the Chief Secretary and the Under Secretary who have knowingly withheld important facts and documents from this Court and filed incorrect affidavits. The learned senior counsel took us through the various portions of the Division Bench judgment of this Court in *Someshkhar Reddy's case* (supra) to contend that all the pleas now sought to be raised stand covered against

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the State Government and that the petitioners cannot be allowed to re-agitate those issues.

18. Having heard the learned senior counsel for the parties and the learned Advocate General and after going through their pleadings and other materials on the record, the two primary questions that arise for consideration in these three writ petitions are:

1) Whether the FWA entered into between the Government of Karnataka and Nandi was a result of any fraud or misrepresentation as alleged by J.C. Madhuswamy and others and the State Government?

2) Whether any excess land than what is required for the Project had been acquired by the State Government and whether it is open to it to raise such a plea?

As already noticed earlier, some other incidental issues had also been raised by Mr.G.L.Sanghi, learned senior counsel which we will deal with after disposing of the aforesaid two issues.

19. Let us first deal with the plea of fraud and misrepresentation. The stand of the State Government in

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this regard is contained in the affidavit filed by the Chief Secretary and the written statement filed on its behalf by the Under Secretary, the relevant portions of which have already been referred to herein above. Petitioners in writ petition no.45386 have alleged fraud pleading that the order of the Government dated 20.11.1995 authorised entering into an agreement with the Consortium comprising of VHB, SAB and Kalyani and thereafter by its order dated 27.3.1997 the same was modified and a direction was issued that agreement be entered into with Nandi. According to the petitioners, when the FWA was executed on 3.4.1997 with Nandi, the Government was given to understand that Nandi was an agglomeration of the three members constituting the Consortium and that the Government would be benefited by the expertise of each one of them but this was not so. It is further alleged that Nandi was constituted under the Directorship of Shri Shivkumar Kheny who is the brother of Shri Ashok Kheny the Managing Director of SAB who is said to be the behind the scene operator of the Project. The petitioners further questioned the financial capacity and technical know how of Mr.Ashok Kheney and Nandi and alleged that the Consortium had represented to the State

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Government that it has the expertise and proven capability in taking up construction of transportation, infrastructure and also about their capability of having the required managerial, financial and technical capacity to take up the Project which Nandi does not possess and therefore the Government was defrauded. They have reiterated the plea of fraud in their rejoinder filed to the affidavit of the Chief Secretary in the following words:

"The primary allegation of the petitioner was the misrepresentation of NICE that it was a unified Consortium and that the Government had either been misrepresented or had forced itself to believe that NICE was a unified Consortium. Fraud committed by NICE is so apparent and evident in this instance".

In substance, the nature of the fraud as pleaded by the petitioners and supported by the State Government is that at the time of entering into FWA the State Government was made to believe that Nandi was an agglomeration of the three groups constituting the Consortium which was not so. The State Government while supporting the plea of the writ petitioners also urged emphatically that it was not a party to the Consent and Acknowledgment Agreement and therefore Nandi through misrepresentation managed to get the FWA executed. According to the State Government, it wanted to

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enter into an agreement with the Consortium and not with Nandi. Great emphasis was laid by the learned Advocate General on the Consent and Acknowledgement Agreement pointing out that no one had signed it on behalf of the State Government and therefore it never gave its consent to the assignment of rights by the members of the Consortium in favour of Nandi. We shall now proceed to examine the validity of these assertions on the basis of the materials that have been placed by the parties before us including the Government files.

20. MOU was signed on 20.2.1995 between the State Government and the Consortium of VHB, SAB and Kalyani wherein the Consortium had agreed to take up a detailed commercial viability and feasibility study of the Project and it submitted its report to the Chief Minister. HLC set up in pursuance to the MOU examined this report and thereafter it submitted its report to the State Government. Both the reports were considered by the Cabinet sub-committee which recommended that the matter be placed before the Cabinet. The Project report was accepted by the Cabinet with a modification that instead of seven townships only five were

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to be developed. After deliberations had taken place at the highest level the State Government came out with an order dated 20.11.1995 requiring the Public Works Department to enter into a memorandum of agreement with the Consortium of the three companies namely VHB, SAB and Kalyani. It appears that the three members of the Consortium agreed that a new company be established according to the laws in India for the purpose of implementing the Project. Accordingly Nandi was registered as a company in Bangalore on 16.1.1996 as the Corporate vehicle for development of the Infrastructure Corridor. Thereafter on 9.9.1996 the three members of the Consortium unconditionally and irrevocably transferred and assigned jointly and severally to Nandi all their rights, interest and title granted to them individually or collectively with respect to the Project by the Government of Karnataka under the Government Order dated 20.11.1995 and the MOU. A Consent and Acknowledgement Agreement came to be signed by the three members of the Consortium on the one hand and Nandi on the other in which the Governor of Karnataka on behalf of the Government of Karnataka was shown as the consenting party. This agreement is on the Government file which we have perused.

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A copy of this agreement was forwarded to the State Government along with a forwarding letter dated 21.12.1996 addressed by Bharat Forge Limited which is admittedly a company owned by Kalyani group. The relevant part of this letter reads as under:

".....As the Government is aware, a Framework Agreement is being negotiated and finalised for implementation of this Project. The 3 Consortium members have decided to implement this Project through a Company in the name and style of Handi Infrastructure Corridor Enterprises Limited, a Company registered and existing under the Laws of India. All the rights and obligations of the Consortium are being assigned in favour of this Company.

Kindly refer enclosed a copy of the Consent and Acknowledgement Agreement wherein the Consortium members have assigned their rights to M/s. Handi Infrastructure Corridor Enterprises Limited. We seek Government of Karnataka's consent for the same so that the Framework Agreement can be signed by M/s. Handi Infrastructure Corridor Enterprises Limited.

Please advise us your approval so that the Original Agreement can be given to you for your consent."

On receipt of this letter, the Secretary PWD made a note thereon on the same day which reads thus:

"Consult Law Deptt.  
reply this letter.

Sd/"

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The letter was marked to the Deputy Secretary (C&B). This letter is at page 355 of File no.PWD/155/CRM 96. There is then a copy of the letter dated 22.1.1997 addressed by the Deputy Secretary, Public Works Department (C&B) to the Secretary to Government, Law & Parliamentary Affairs, Vidhana Soudha which is found at page 356 of the file and it reads as under:

**"Framework agreement for the above project is under finalisation by the cabinet sub-committee. In the meanwhile consortium members have assigned their rights to M/s.Nandi Infrastructure Corridor Enterprises Ltd., (NICE) and has sought the State Government consent. A copy of the draft consent and acknowledgement agreement is enclosed to the note for perusal and opinion of the Law Department.**

Sd/-  
Deputy Secretary to Govt.,  
Public Works Department (C&B)

Secretary to Government,  
Law & Parliamentary Affairs,  
Vidhana Soudha."

The Law Department then sends a reply to the Deputy Secretary, Public Works Department on 3/ 4 March, 1997 which is found at page 365 of the file and that reply reads as under:

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"The P.W.Dept. is informed that as the Government of Karnataka is finalising an agreement directly with the Nandi Infrastructure Corridor Enterprises Limited, it is felt that the consent of the Government to the proposed acknowledgement agreement may not be necessary.

(Approved by L.S)

Sd/-

Under Secretary to Government  
Law Department (Opinion B)

Thereafter Bharat Forge Limited, by its letter dated 17.3.1997 sent the original of the Consent and Acknowledgement Agreement to the State Government seeking its consent for the same. The relevant part of this letter which appears at page 22 on the Government file no.PWD 155 DRM 96 volume II reads as under:

"Kindly find enclosed the original of the Consent and Acknowledgement Agreement (Three original photocopies & one on the Stamp Paper) wherein the Consortium members have assigned their rights to M/s.Nandi Infrastructure Corridor Enterprises Limited. We seek Government of Karnataka's consent for the same so that the Framework Agreement can be signed by M/s.Nandi Infrastructure Corridor Enterprises Limited. We request yourself to initial at the bottom on each page of the Assignment Agreement and the signature on the last page."

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21. The Law Department had given its advice that it was not necessary for the State Government to give its consent to the Consent and Acknowledgment Agreement because it was finalising an agreement directly with Nandi and therefore the said agreement had not been signed by any one on behalf of the Governor of Karnataka.

22. A reading of the aforesaid correspondence would leave no room for doubt that the Government had been specifically made aware of the Consent and Acknowledgement Agreement and the same was sent to it for its signatures acknowledging consent but it did not sign the same because of the advice tendered to it by its Law Department. It was strenuously urged by the learned Advocate General and also by Mr.G.L.Sanghi that since the Government is not a signatory to the Consent and Acknowledgement Agreement, therefore it is not bound by the same and that it had been defrauded when the FWA came to be signed with Nandi because the Government was under the impression that it was signing the agreement with the three members of the Consortium through Nandi. This plea cannot be accepted in the light of the letter dated 21.12.1996 and the

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opinion sought from the Law Department. It is true that the State Government is not a signatory to the Consent and Acknowledgement Agreement but that is because it had been advised by its Law Department that it was not necessary to sign the same and not because of any misrepresentation either on the part of Nandi or on the part of the Consortium. One fact is, however, clear that the said agreement was brought to the notice of the State Government informing it that the three members of the Consortium had assigned their rights in favour of Nandi. It cannot, therefore, be said that the State Government did not know as to what was the status of Nandi. Nandi is obviously an assignee of the Consortium and it was Nandi which submitted a draft of the FWA to the State Government which was considered by the core Committee set up to negotiate the terms with Nandi. The said Committee referred the draft agreement to the Cabinet sub-committee which suggested various modifications to the FWA which were incorporated and finally the FWA as approved by the Cabinet on 17.3.1997 came to be signed on 3.4.1997. It is clear from the Cabinet note which was put up in the meeting of the Cabinet held on 17.3.1997 that the Government of Karnataka was fully aware of the fact that the

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Consortium had formed a company by the name of Nandi with headquarters at Bangalore exclusively for the implementation of the Project. When the matter was discussed and considered in minute detail at different levels right up to the Cabinet, we fail to understand at what stage was any misrepresentation made to the Government and where is the fraud. The plea of fraud and misrepresentation is only an after thought which has obviously been raised by the State Government through the petitioners in writ petition no.45386 of 2004 who are its mouth piece. The learned senior counsel appearing for Nandi was not wrong when he contended that this plea was only a ruse and subterfuge to get over the findings recorded by the Division Bench in Somashekhar Reddy's case (surpa). It is unfortunate that the Chief Secretary in his affidavit has supported the false plea raised by the petitioners that the State Government had been defrauded and that Nandi had misrepresented facts at the time of signing the FWA. It is equally unfortunate that the Chief Secretary in his affidavit has suppressed from this court the letter dated 21.12.1996 and the correspondence exchanged between the Public Works Department and the Law Department referred to herein above. If he had adverted

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to these documents, he could not have taken the plea that the Government was taken unawares when Nandi was given the contract. These documents clearly belie the submissions so emphatically made by the learned Advocate General on behalf of the Government of Karnataka and by Sri G.L.Sanghi, learned senior counsel on behalf of the petitioners that there was no approval of the State Government for the FWA executed between Nandi and the Government following the assignment of the rights by the Consortium members. As already observed the State Government was aware at the highest level about the assignment and had applied its mind before executing the FWA. The affidavit filed by the Chief Secretary is conspicuously silent in regard to the aforesaid documents and we have no hesitation to hold that he has suppressed material facts and documents from this court in his anxiety to contend that FWA was a result of fraud and misrepresentation. So has Shri M.Shivalinga Swamy in his written statement. Their conduct in this regard is highly reprehensible and needs to be deprecated. The Apex Court in Lipton's case (supra) while cautioning us that we should be very vigilant in accepting as correct a statement even though

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made on oath on behalf of the State of Karnataka observed as under:

"8. We must caution the High Court of Karnataka, having regard to what we have stated above, that it should be very vigilant in accepting as correct a statement, even though it be made on oath, on behalf of the State Government. It is unfortunate that we should have to say this of a State Government, but the record before us leaves us no option.

9. The learned counsel for the State Government now submits that we should not make this general observation in respect of affidavits filed on behalf of the State Government. As we have already stated, we have done so because the Chief Secretary of the State of Karnataka does not seem particularly troubled by the fact that a statement was made on oath on behalf of the State Government before the High Court, which was not correct. He does not even think that the said officer was grossly negligent in making the statement that the said Government Order was not gazetted only on the basis of going through the Gazettes for the succeeding three months. We must assume that other officers of the State Government will be encouraged to make statements before the courts on oath upon as little or no enquiry, expecting from the Chief Secretary the same unconcern".

The strong observations made by their Lordships as extracted above do not seem to have had any effect on the officers of the State Government including its Chief Secretary. We will have to take some harsher measures to make them realize that it is of utmost importance that statements on oath in the High Court should be made with due care and caution and all necessary facts as they appear on the record

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must be truthfully placed before the Court without suppressing or withholding any fact or document. This is all the more important because in petitions filed under Article 226 of the Constitution this court normally accepts the statements made by the official respondents as proof of facts without recording evidence because we presume that such statements are made after consulting the record.

23. Events subsequent to the execution of the EWA which appear on the record further go to show that at no stage was any fraud played on the Government nor was any misrepresentation made by Nandi which facts are known to the Government and yet for reasons best known to it, it had chosen to take up the plea that FWA was the result of a fraud and misrepresentation. FWA was executed on 3.4.1997 and the same was implemented by the parties for no less than seven years at least. Several obligations under the FWA were carried out by the State Government and its Instrumentalities and also by Nandi as referred to in the list of events which is Annexure R-12 III to the affidavit filed on behalf of Nandi on 6.4.2005 in response to the affidavit filed by the Chief Secretary. It may be mentioned that this list of events has not

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been disputed either by the State Government or by the petitioners. As already noticed large chunks of land has been acquired and notifications under the Act had been issued and even compensation paid to some of the land owners. All this expenditure has been incurred by Nandi. Had there been any fraud or misrepresentation then surely at some stage or the other the matter would have been raked up. The fact that there was no fraud practised on the State Government and that there was no misrepresentation made by Nandi or any one else on its behalf is further clear from the answers given by the PWD Minister on the floor of the Legislative Council. Even though the Under Secretary filed the written statement on behalf of the State Government on 24.1.2005 and the Chief Secretary filed his affidavit on 31.3.2005 the PWD Minister answered the questions on the floor of the House on 28.3.2005, which are reproduced hereunder:

Question A: To provide the details of the agreements entered into between the Government and the Company since inception relating to Bangalore Mysore infrastructure Corridor Project, along with the dates.

Answer A: On 20.02.1995, Government signed a Memorandum of Understanding with the Kalyani Group of Companies of Indian Origin and VHB and SAB Companies of American

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origin. And on 03.04.1997 Government signed the Frame Work Agreement with NICE Limited.

**Question B :** What is the Government stand about the said Project? And what are the reasons for that?

**Answer B:** As per the agreement entered by the Government regarding the said Project, Government is providing all necessary support for its speedy implementation. The implementation of the Project will enable to have faster connectivity between Bangalore and Mysore and also for the industrial and Economical development.

**Question D :** What are the impediments since 1995? What are the final decisions of the Courts in this regard?

**Answer D :** Even though Government signed the Memorandum of Understanding with the Company for the implementation of the Project in 1995, we have been waiting till now for various approvals from Central Government, State Government and Government instrumentalities. After obtaining the approvals, NICEL, which has undertaken the responsibility of implementation of the Project, has started the work on 5.2.2004 for the Phase I of the Project. The High Court of Karnataka and Supreme Court have already upheld the Frame Work Agreement entered by Government with Group Companies in various Public interest Litigations and Writ Petitions".

The answers given to the various questions clearly indicate that even on 28.3.2005 the Minister does not refer to any fraud or misrepresentation on the part of

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Nandi - rather the specific stand taken is, which was also reiterated in the affidavit of the Chief Secretary, that the State Government is interested in the project and reaffirms its support to it. It is quite intriguing that on the one hand the State Government alleges that Nandi had misrepresented the facts to it in order to grab the project and that it has defrauded the State and on the other hand the Government is keen to continue with the project and wants the same to be implemented through Nandi. Normally if the Government had been satisfied that Nandi had played a fraud on it, the first thing it should have done was to throw Nandi out and cancel the project in its favour and it could have brought in another entrepreneur. Even otherwise the plea of fraud and misrepresentation cannot be allowed to be raised at this stage when the FWA has already been upheld by this Court in Somashekhar Reddy's case and to which reference has also been made by us in the writ appeals pertaining to the acquisition proceedings referred to earlier.

24. Before concluding on the aspect of fraud and misrepresentation, we need to examine the role played by the three members of the Consortium in the implementation of

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the project and the status of Nandi visa-a-vis those members. It has become necessary to examine this aspect because the primary allegation made by the writ petitioners is that Nandi was a unified Consortium and the Government was made to believe so when in fact the three members of the Consortium had nothing to do with Nandi. As already noticed, the Consortium consists of three members viz., VHB, SAB and Kalyani. At the time when the MOU was executed, the Kalyani group represented that it had the professional expertise, the financial resources and the vision to advance and complete the project. VHB represented that it will be the Lead Engineer and shall be responsible for all plannings, engineering construction and management. SAB represented that it will assist in providing engineering designs of Utilities, Infrastructure and Communication Systems as well as Construction Management. This aspect is clear from the summary of the Project technical report which was submitted to the State Government by the Consortium. This has been produced as Annexure-R12-VI by Nandi which has not been disputed by the State Government. This apart, the members of the Consortium seem to have divided the responsibilities between themselves. Kalyani group and SAB

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have together undertaken the execution of the Project through Nandi whereas VHB and Kalyani group have undertaken the responsibility of providing construction activities including observation of construction of field activities. They together have formed a company known as India International Infrastructure Engineers Limited (IIE) which was incorporated in Bangalore on 19.1.1996. Mr. Richard E Hangen of VHB who signed the MOU on its behalf is a Director of IIE since 12.5.1997. It is, thus, clear that VHB and Kalyani group own and control IIE. The MOU was also signed by Mr. Ashok Kheney as President of SAB and it is not in dispute that he is also the Managing Director of Nandi. Annexure-R12-ZV produced by Nandi which has not been disputed clearly shows that SAB and Kalyani group are the two major group of shareholders constituting Nandi. It is again clear that the Project is being executed by the Consortium consisting of its three members viz., VHB, SAB and Kalyani who have together formed two companies Nandi and IIE for the purpose. The Consent and Acknowledgement Agreement dated 9.9.1996 to which reference has already been made stipulates that the members of the Consortium shall at all times maintain directly or indirectly a collective

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beneficial equity interest in Nandi to the extent of 15 per cent which according to Nandi is being maintained. The assertions made by Nandi in this regard have not been refuted. In view of these facts which have been brought on the record, the apprehensions expressed by the petitioners and the State Government that the members of the Consortium after executing the MOU had runaway from the Project leaving Nandi to execute the same is without any basis and misconceived. We are therefore satisfied that the members of the Consortium are continuing to retain their interest in the project as is envisaged in the Consent and Acknowledgment Agreement though they have assigned their rights in favour of Nandi. Our finding is further fortified from the letter dated March 10, 1997 addressed by Nandi to the State Government wherein the latter was informed as under:-

**" Kindly recall our discussions regarding the composition of Nandi Infrastructure Corridor Enterprises Ltd. We wish to inform that this Company comprising of the Kalyani group, VHB International Ltd. and SAB International Ltd. are partners in the development and implementation of the Bangalore - Mysore Infrastructure Corridor Project. It may also be noted that these three Companies have a joint equity interest in the Nandi Infrastructure Corridor**

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**Enterprises Ltd. (the Company). A copy of the consent agreement is herewith enclosed for your perusal and information. "**

This letter which appears at page 5 of the Government file no. PWD 155 CRM 96 Volume II makes it clear that even prior to March 10, 1997 some discussions regarding the composition of Nandi had taken place and Nandi had informed the State Government that all the three members of the Consortium have a joint equity interest in it and this was done before the draft FWA was approved by the Cabinet on 17.3.1997. The Chief Secretary in his affidavit has suppressed this letter as well and wants the court to believe that the State Government did not know as to what was the constitution of Nandi and that it was defrauded when it entered into the agreement with it. Nothing could be farther from truth.

25. At this stage, we may also take note of another objection raised on behalf of the petitioners and the State Government. They strenuously urged that the State Government intended to execute the agreement with the Consortium and not with Nandi and that the members of the Consortium could not have assigned their rights in favour of

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Nandi. This argument is being noticed only to be rejected. As already observed, Consortium comprises of three groups viz., VHB, SAB and Kalyani. Kalyani is a group of companies owned by the Kalyani family and the other two members are companies registered in USA. Consortium as such was not a legal entity and it could act only through some person or body corporate and therefore the members of the Consortium decided to incorporate Nandi as a corporate vehicle for the implementation of the project. Having known all these facts, the State Government after examining the FWA critically at all levels entered into the agreement with Nandi for the implementation of the Project and therefore it does not lie in its mouth to contend that it was a victim of fraud and misrepresentation. The State Government without demur or protest executed FWA with Nandi and performed its obligations thereunder. It is therefore estopped on the doctrine of acquiescence and waiver from challenging the validity of FWA.

26. We are therefore clearly of the view that the change of stand by the State Government was not because of any fraud or misrepresentation as the Chief Secretary in his

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affidavit wants us to believe. The stand of the State Government was however changed when the new Minister for Public Works Department sent a note on 6.7.2004 to the Principal Secretary, PWD. In that note he pointed out that Sri H.D. Deve Gowda, a former Prime Minister had some time back made serious allegations that the Project to be constructed by Nandi had been allowed to be converted into a real estate business instead of providing infrastructural facilities. Therefore in order to know the facts and figures in respect of the various decisions taken for the implementation of the Project he directed that the particulars along with the supporting documents in regard to the various aspects of the Project may be placed before him within two weeks. In the meanwhile, he directed the withdrawal of instructions to the Board for issuing final notifications for acquiring 2,317 acres of land for the Project. Directions in this regard had also been issued to the Project Co-ordinator. It is from this stage that the process of stalling the Project had been initiated and the learned senior counsel Sri Rohatgi appearing for the petitioners in one of the writ petitions was right in contending that all this happened soon after the change of the Government in the end of May 2004 and that the Project

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was likely to be shelved because of political/extraneous considerations. As is clear from the note, the PWD Minister had only received a complaint about the real estate business being carried on by Nandi because of the alleged excess acquisition of land for the Project and it was nowhere stated that there was any fraud or misrepresentation as is now sought to be alleged before us. It appears that in pursuance to the aforesaid note the files were put up to the PWD Minister and K.C.Reddy Committee was constituted to go into the allegations of excess land acquired by the Government for the implementation of the Project. That Committee submitted a report which has been accepted by the Government after deliberations by the Cabinet. The State Cabinet in its meeting held on 26.10.2004 re-affirmed its support to the Project but it had its reservations regarding acquisition of more lands than necessary for the Project and therefore it decided to constitute an Expert Committee. It may be mentioned that the Review Committee set up earlier by the PWD Minister was renamed as the Expert Committee and was also headed by Sri K.C.Reddy, Advisor to the PWD Minister. This Expert Committee has been assigned the task to find out whether the lands acquired or to be acquired are

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genuinely required for the Project or not having regard to all the relevant factors including road alignments. If there were to be any dispute in regard to the necessity of the land already handed over to Nandi the same shall also be referred to this Expert Committee for its recommendations. In other words, the Cabinet has constituted this Expert Committee virtually in supersession of the Empowered Committee envisaged by clause 4.1.1 of the FWA. Even till this stage there is no whisper about any fraud or misrepresentation having been practised on the State Government. The Expert Committee has been authorised to submit its periodical reports to the State Government from time to time and surprisingly one of the recommendations made by it in its interim report dated December 2004 is that the Board should identify the excess land village wise and survey number wise, though it is of the view that land in excess of what is required for the Project has been acquired. By constituting this Committee the State Government has ensured that the Project gets stalled. It is interesting to note that Sri K.C.Reddy who is the Chairman of the Expert Committee was also a Member of the HLC which had approved the Project and was associated with it till the

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signing of the FWA which provides for 20,193 acres of land to be made available. Sri K.C.Reddy did not record his dissent in these proceedings and at no stage did he ever point out that the land that was sought to be provided for the Project was in excess of what was required but now as the Chairman of the Expert Committee he has, without identifying the excess lands which he has left for the Board to identify, opined that excess land has been acquired for the Project. We cannot appreciate such a conduct.

27. In view of the aforesaid discussion we are clearly of the view that the plea of fraud and misrepresentation as now sought to be raised is not only an afterthought but also false to the knowledge of the State Government. It is unfortunate that the petitioners and the State Government have chosen to raise this bogie to defeat the public project subserving public interest.

28. We shall now take up the other issue which was also strenuously urged before us. It was forcefully argued by Mr.G.L.Senghi learned senior counsel for the petitioners and also by the learned Advocate General on behalf of the State that land far in excess than what was required for the

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project had been acquired by the State Government at the instance of Nandi for its real estate business. In support of this contention they made reference to the preliminary and final reports submitted by the K.C.Reddy Committee which later came to be termed as Expert Committee. This Committee, as already observed, had been appointed by Government Order dated 4.11.2004 as a Review Committee by the PWD Minister on receipt of a complaint from Shri H.D.Devogowda, a former Prime Minister of the country to look into the question whether any excess land had been acquired for the project. By a subsequent Government Order dated 17.12.2004, the Review Committee was modified as Expert Committee and it has submitted its preliminary and final report to the State Government. The argument, indeed, is that since excess land had been acquired, the Government is justified in reducing the extent of land which was originally agreed to be handed over to Nandi for the implementation of the Project in terms of Schedule I to the FWA. Shri Dave, the learned senior counsel appearing for Nandi emphatically refuted the contention advanced on behalf of the State Government and urged that any attempt to reduce the land as originally agreed would adversely affect

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the viability of the entire Project. He referred to the stand taken by the State Government in the written statement filed on its behalf in Somashekar Reddy's case (supra) the relevant part of which has already been reproduced in the earlier part of this judgment and contended that it is not open to the State Government to plead that any excess land had been acquired because its earlier stand was that the minimum possible land had been provided for the implementation of the project. He also referred to the findings recorded by the Division Bench of this Court in Somashekar Reddy's case (supra) and argued that the said findings were binding and final so far as the State Government was concerned and they would operate as res judicata. He further contended that the petitioners are no other than the mouthpiece of the State Government and they too should be held bound by those findings. He went to the extent of contending that this court cannot reopen that issue which has become final and conclusive insofar as this Court is concerned.

29. Having heard the learned senior counsel for the parties and the learned Advocate General we find

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considerable force in the submissions made by Shri Dave. It is common case of the parties that the validity of FWA had earlier been challenged in Somashekar Reddy's case (supra) on all conceivable grounds including the one that land in excess of what is required for the project had been acquired by the State Government. It is also not in dispute that the State Government successfully defended that writ petition by taking a plea that the minimum possible land had been acquired for the project. The relevant part of the written statement filed by the State Government in Somashekar Reddy's case (supra) has already been reproduced herein above and also the findings recorded by this court in that case on this issue. In view of the earlier stand taken by the State Government and the findings recorded by the Division Bench we are clearly of the view that neither the State Government nor the petitioners could be allowed to agitate that issue again. The writ petitioners and the State Government have pleaded that excess land had been acquired on account of fraud and misrepresentation practised by Nandi. The plea of fraud and misrepresentation has already been negated by us and we have found that the same is not only misconceived but is also false to the

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knowledge of the State Government. When there was no fraud or misrepresentation and parties had agreed that 20,193 acres of land as set out in Schedule I to the FWA was the minimum land required for the Project, the State Government cannot be allowed to urge that any excess land has been provided for the implementation of the Project. The State Government cannot be allowed to raise this plea and is estopped by its own conduct and by its own written statement filed in Somashekar Reddy's case (supra). The findings recorded by the Division Bench in that case would also operate as res judicata so far as the State is concerned. Moreover, the Project was given to Nandi in April 1997 and since then a lot of ground work has been undertaken by it as admitted by the State Government in its grounds of appeal filed in this court challenging the order of the learned single Judge in acquisition proceedings which appeals were later withdrawn. Nandi claims that it has invested more than Rs.300 crores in the Project so far. Since the Project has been implemented by Nandi for the last more than seven years, we do not think that the State Government can be permitted to change its stand and contend that the land allotted for the Project is in excess of what is required. We

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have already found that the writ petitioners have been sponsored by the State Government to put up its changed stand through this public interest litigation which, to say the least, is misconceived. The petitioners who are only projecting the cause of the State Government too cannot be allowed to agitate the issue that any excess land was provided for the implementation of the Project. They as representatives of the people or ordinary citizens of the State could, at the most, be interested in the implementation of the Project but whether any excess land had been taken for the Project or not could not be their concern. The court cannot allow its process to be abused by politicians and others to delay the implementation of a public project which is in larger public interest nor can the court allow anyone to gain a political objective. These legislators who have not been successful in achieving their objective on the floor of the Assembly have now chosen this forum to achieve their political objective which cannot be allowed. Nandi may not be wrong in asserting that J.C. Madhuswamy and two others have filed the writ petition with an oblique motive. It is alleged that despite the fact that the land around Bangalore which has been acquired for the Project and vests in the

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State Government has been allowed to be sold by the original land owners in favour of some influential persons and that the State authorities have registered the sale deeds. A few instances have been given by Nandi as it is asserted that the writ petition has been filed only to protect the interests of such influential persons. If that be so, the petitions of such busy bodies deserve to be thrown out at the threshold and in appropriate cases with exemplary costs. The plea that excess land had been acquired by the State Government is also being raised by the petitioners at the behest of the State Government with an oblique motive and they deserve to be non suited. Once it is held that FWA is valid and proper, the extent of land required for the Project forms part thereof in terms of Schedule I and findings in this regard having become final and conclusive, it is not open to the State Government nor to J.C. Madhusway and others and not even to this court to reopen those issues once over again. In the result, we answer, the second part of question no.2 as posed in paragraph 15 of the judgment in the negative holding that it is not open to the State Government and not even to J.C. Madhuswamy and others to contend that excess land had been acquired for the Project. In this view of the matter,

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we refrain from answering the first part of second question as that would mean deciding the contractual disputes between the parties which is not the scope of the present proceedings.

30. Having dealt with the two primary issues that were canvassed before us, we shall now examine the ancillary contentions raised on behalf of J.C. Madhuswamy and others in their writ petition. We shall deal with the allegations made against Major C.R. Ramesh who is respondent no. 21 in the writ petition. He was at the relevant time Secretary, PWD when the FWA came to be executed. He admits having signed the same on behalf of the State of Karnataka. Some allegations have been made against him by the petitioners in their additional rejoinder a copy of which had not been supplied to his counsel. It had not even been supplied to the counsel for Nandi and therefore neither of them had an opportunity to refute those allegations. When this was pointed out to Shri G.L. Sanghi learned counsel for the petitioners he fairly conceded that he would not press the allegations and left the issue at that. The allegations are deemed to have been dropped. The Chief Secretary has,

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however, in his affidavit made some allegations against this respondent. He has stated that it was respondent no.21 who filed an affidavit in support of the written statement filed in Somashekar Reddy's case (supra) and that after his retirement he has become an employee of Nandi. He has further alleged in his affidavit that respondent no.21 never referred the matter to the Cabinet and went on signing any number of documents in favour of Nandi as Secretary to the Government, PWD on behalf of the Governor of Karnataka. Respondent no.21 has filed his affidavits refuting the allegations made by the Chief Secretary. It is true that respondent no.21 had filed the written statement on behalf of the State Government in Somashekar Reddy's case (supra) but it is not the case of the Chief Secretary that respondent no.21 had made any incorrect averments in the written statement. He signed the written statement because the State of Karnataka in that case had been impleaded through Secretary to Government, PWD. He was the Secretary PWD and therefore in that capacity he signed the written statement. We do not think that anything hinges on this. As regards respondent no.21 having become an employee of Nandi after his retirement, the same has been emphatically

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refuted by this respondent. It is stated that he is an Engineer by profession and after his retirement he started his private consultancy and became a consultant to guide a few organisations including Nandi. He has placed on record a document showing that at the time of his retirement from service in the year 1999 his services were recognised as outstanding as he was sanctioned five premature increments at the time of superannuation. He was elected President in the year 1998 of the premier body Indian Road Congress because he was an outstanding engineer. The Chief Secretary, in our view, has been rather uncharitable towards him and the allegations made by him have been effectively refuted in paragraphs 9 to 11 of the additional affidavit filed by this respondent. It is true that this respondent had been signing as Secretary to Government, PWD on various documents but that was because of the authorisation made in his favour by the Government Order dated 27.3.1997 a copy of which is on the record. It clearly indicates that the Cabinet while approving FWA on 17.3.1997 had authorised the Secretary PWD to sign the FWA on behalf of the State Government. There is no material on the record to show that this respondent ever compromised his powers or authorities

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or ever acted contrary to the interest of the State. The Chief Secretary very conveniently forgets that in the written statement filed in Somashekar Reddy's case (supra), the stand taken by the State Government was that all Government orders and contracts had been signed by persons authorised by it. It appears that the State Government has tried to make him a scapegoat in order to project its false plea of fraud and misrepresentation as discussed herein above. We can only describe it as unfortunate as there is no merit in any of the allegations made against him.

31. The other objection raised on behalf of the petitioners is that 38 acres of land had been unauthorisedly sold by Nandi to IMTMA and that the said sale be declared illegal. This contention need not hold us for long. This issue was raised even in writ appeal nos.3326-27 of 2004 filed by IMTMA in the acquisition proceedings and we upheld the sale by our order dated 28.2.2005. We held that the Government by its order dated 18.9.2003 had directed Nandi to execute the sale deed in favour of IMTMA and Nandi executed the same on 13.11.2003. There is, thus, no

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illegality in the sale of land in favour of IMTMA because the same had been sanctioned by the State Government itself.

32. This brings us to the next objection raised by Shri G.L.Sanghi learned senior counsel for the petitioners. It is alleged by the petitioners that Nandi had illegally mortgaged government lands with various financial institutions including I.C.I.C.I Bank and had raised a loan of more than Rs.150/- crores to meet the acquisition expenses. This, according to the petitioners, was illegal and indicative of the fact that Nandi was not possessed of sufficient finances to carry out the Project. The argument of the learned senior counsel is being noticed only to be rejected. There is a provision in FWA entitling Nandi to mortgage and pledge its rights thereunder to raise loans from the financial institutions and this was done with the consent of the State Government and its Instrumentalities. Even the Board in its resolution dated 3.2.2003 had noticed the fact that I.C.I.C.I Bank Limited was financing Nandi for the acquisition. Since the FWA provides for the same there is nothing illegal about it. In any case, this fact does not go to show that Nandi was not possessed of sufficient finances to implement the Project.

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It is well-known that such Projects are always financed by raising loans from financial institutions and that is precisely what Nandi did. As already observed, the Kalyani group was backing Nandi in this Project.

33. Another grievance projected by the petitioners is that Nandi in order to favour some politicians had changed the original alignment of roads thereby destroying the Gotegere lake which would adversely affect the ecology of the area. The learned senior counsel referred to the Division Bench order of this Court in Suresh Heblkar and others Vs. State of Karnataka and another, writ petition no.17823 of 1999 decided on 16.6.1999 to contend that the alignment now made by Nandi would violate the said order. There is no merit in this contention. We have gone through the order passed by this court in Suresh Heblkar's case (supra) and find that a direction had been issued to the respondent therein not to lay any road bisecting the Gotegere tank disturbing the inflow of water into the lake. The court further directed that in case any road was constructed there should be an overpass without disturbing free flow of water to the tank. No material has been placed on the record to show that

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the alignment as made by Nandi for the execution of the Project will bisect the lake or will in any way affect the inflow of water to the lake. The mere ipse dixit of the petitioners cannot be accepted particularly when the same has been denied by Nandi. We may, however, observe that Nandi while making alignment of roads through that area will keep in view the directions issued by this court in Suresh Heblikar's case (supra).

34. As already noticed, the petitioners have also alleged in the writ petition that areas reserved as green belts could not be utilised by Nandi for the implementation of the Project and, that, according to the petitioners, is illegal. This plea was dropped by the learned senior counsel realising that there were several judgments of this court which took the view that such areas could be acquired for development.

35. It was then urged that the arbitration clause contained in the FWA requiring the parties to settle their disputes by reference to arbitration in accordance with the provisions of UNCITRAL rules for international arbitration and that the laws of India relating to arbitral proceedings shall not apply is illegal. It was also contended that the

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arbitration clause which requires that the place of arbitration shall be London or any other place mutually agreeable to the parties is also illegal because no part of the cause of action arises in England. This contention need not detain us. This plea had been raised before the Division Bench in Somashekar Reddy's case (supra) and the same was rejected and the arbitration clause was held to be valid. The relevant part of the findings recorded by the Division Bench have already been reproduced in the earlier part of this judgment. Since this issue had earlier been raised and decided the same cannot be allowed to be reargued. Moreover, we are in agreement with the view expressed in Somashekar Reddy's case (supra) that the arbitration clause is valid and we also feel bound by the findings recorded therein. We therefore reject this contention without any hesitation.

36. Sri.C.L.Sanghi, learned Senior Counsel while concluding his arguments on 09.03.2005 made a request that some incidental issues pertaining to mala fides which were also to be pressed may be allowed to be argued by the advocate on record on the following day as he was to return to Delhi. The

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prayer was granted and we heard Sri.Vivek Reddy on 10.03.2005. He took us through some paragraphs of the writ petition in which allegations of mala fides have been levelled against some of the respondents. Those allegations have been stoutly denied by the respondents in their written statements. Having gone through the allegations, we find that they are ill-founded and without any basis. There is no material on the record to substantiate any of those allegations. It is therefore, not necessary for us to discuss these allegations in any further detail because it is easy to make such allegations and difficult to substantiate the same.

37. Lastly, we are of the view that the writ petition filed by J.C.Madhswamy and others deserves to be dismissed on the ground of delay as well. Admittedly, FWA had been executed between the State Government and Nandi on 3.4.1997 and the same has been implemented by the parties for more than seven years. The present petition came to be filed in the end of the year 2004 by which time both the parties have carried out their respective obligations under the agreement and large chunks of land have been acquired for the Project which acquisition has been upheld by this Court.

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In these circumstances, we find that the delay is unreasonable for which no explanation much less satisfactory has been furnished. To say that the petitioners have now learnt about the fraud played by Nandi is not much of an explanation and it does not impress us nor would it explain the inordinate delay. This apart, the petitioners have also attached with the writ petition copies of some confidential documents from the official records. They have not furnished any explanation as to how they came into possession of those documents because the petitioners in the normal course should have no access to them. The only explanation which Shri G.L.Sanghi learned senior counsel could offer at the time of arguments was that two of the petitioners are legislators and could, therefore, have access to the documents. We are not impressed with this explanation. Government records are not available to the legislators and this is one of the reasons which weighed with us in holding that J.C.Madhuswamy and others have filed the writ petition at the behest of the State Government. It is obvious that the documents were selectively supplied to the petitioners to enable them to project the cause of the State Government. We wonder why did it become necessary for the State Government to put up the petitioners to sponsor its

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cause. Could it not itself have taken action in the matter and cancelled the contract and thrown Nandi out when it is now pleading that it had been defrauded by Nandi which had made some misrepresentations. Obviously, this course was not adopted because the State Government knew that there was no fraud nor any misrepresentation and it would not have been correct to cancel the contract. Perhaps, it wants a declaration from this Court that excess land had been acquired for the project which appears to be the main concern of the State Government and the theory of fraud and misrepresentation has been introduced only to get over the findings of this Court in Somashekar Reddy's case (supra) which have become final and conclusive. It is settled law that a party to the earlier proceedings can avoid the previous judgment only if it is able to show that there was a fraud or collusion in obtaining the judgment in terms of Section 44 of the Evidence Act. The onus of proving collusion or fraud in the previous proceedings is on the party who alleges it. In the instant case, the State Government and the petitioners are alleging fraud and misrepresentation and they have both miserably failed to establish the plea. For these reasons as well, the writ petition deserves to be dismissed with costs.

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38. We may mention that the learned Senior Counsel appearing on either side had cited some decisions of the Apex Court which we have carefully gone through and find that there is no quarrel with the propositions of law laid down therein. We have kept in view those principles while dealing with the facts of this case and in view of the findings recorded by us hereinabove, it is not necessary to deal with those decisions separately.

39. Before concluding, we may mention that all the pleas raised by the petitioners in writ petitions nos. 45334 & 48981 are supporting the cause of Nandi and the learned senior counsel Mr. G. L. Sanghi and the learned Advocate General were not wrong in contending that these had been filed at the behest of Nandi. That may be so, but at the same time we find that the prayers made therein though, support the cause of Nandi, subserve the interest of the public at large. As already noticed, they are making a prayer for a direction to the State Government and its Instrumentalities to forthwith execute the Project in its totality as originally conceived and upheld by this court in Somashelar Reddy's case (supra). Learned counsel for all the parties including the State Government and

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J.C.Madhuswamy and others have with one voice pleaded before us that the Project is in public interest and it should be implemented. The Chief Secretary in his affidavit dated 31.3.2005 has stated that the Government throughout had been acting in public interest and was interested and is even now interested in the Project being completed at an early date. He has further stated in paragraph 48 of his affidavit that the Government wants Nandi to execute the Project though with reduced land. Even the Cabinet in its meeting held on 26.10.2004 reaffirmed the support of the Government to the Project. In this background we are of the view that even though the two aforementioned writ petitions may in a way advance the cause of Nandi but since they subserve public interest the prayers made therein need to be granted. If the Project is to be implemented, the Expert Committee now set up by the Government must go. Consequently, the Government Orders dated 4.11.2004 and 17.12.2004 constituting a Review Committee and Expert Committee to go into the question of excess land and all the reports submitted by them and all subsequent actions taken incidental thereto deserve to be quashed. We are quashing the appointment of these committees as they were set up only with a view to

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scuttle the Project without formally cancelling it. It is really surprising that the State Government on the one hand wants to honour the Framework Agreement and at the same time reduce land which was originally provided for the implementation of the Project. This is a novel and sure way adopted to destroy the Project which is to subserve public interest.

40. It also needs to be mentioned that not being satisfied with the written statement filed on behalf of the State Government, we directed the Chief Secretary to file a detailed affidavit to let the court know about its stand. As already observed, a detailed affidavit dated 31.3.2005 was filed by him. After he had filed his affidavit, Nandi filed a rejoinder to it on 6.4.2005 and in order to controvert the plea of fraud and misrepresentation as pleaded by the Chief Secretary, it placed on record two letters showing that the State Government was aware of the fact that the rights of the Consortium members had been assigned to Nandi and that a plea to the contrary was false to the knowledge of the State Government. That prompted us to direct the learned Advocate General to produce government files which he did and on a perusal of the same we find that the Chief Secretary and the



State Government had withheld some material documents and facts from this court. Withholding the documents to which reference has already been made in the earlier part of the judgment, the Chief Secretary filed his affidavit contending that the FWA is the result of fraud and misrepresentation which plea we have found to be false. For the same reason, the written statement earlier filed on behalf of the State Government and supported by the affidavit of Shri M.Shivalinga Swamy, Under Secretary, Department of Industries and Commerce is also false and they have both deliberately withheld material documents and facts from this court and made statements which were not correct and tried to mislead the court. For this reason we are of the view that they need to be prosecuted under Section 340 of the Code of Criminal Procedure.

41. No other point was raised.

42. In the result, the writ petitions are disposed of as under:-

- (1) Writ petition no:45386 of 2004 filed by J.C.Madhuswamy and others is dismissed with costs which are assessed at Rs.50,000/- which the

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petitioners shall pay to the Karnataka State Legal Services Authority within four weeks from the date of receipt of a copy of this order failing which the Member-Secretary of the said Authority will take steps in accordance with law to execute this order.

(2) Writ petitions nos.45334 and 49981 of 2004 are allowed directing the State of Karnataka and all its instrumentalities including the Board to forthwith execute the Project as conceived originally and upheld by this court in Somashekar Reddy's case (supra) and implement FWA in letter and spirit. Consequently, Government Orders dated 4.11.2004 and 17.12.2004 constituting the Review Committee and Expert Committee are quashed. The reports submitted by these committees in pursuance to these orders and all subsequent actions taken incidental thereto are also quashed. Nandi is also directed to implement the Project as expeditiously as possible. Parties will bear their own costs in these two cases.

(3) We further direct that Shri K.K.Misra, Chief Secretary to the Government of Karnataka and Shri M.Shivalingaswamy, Under Secretary, Department of Industries and Commerce be prosecuted as envisaged by Section 340 of the Code of Criminal Procedure for knowingly withholding important facts and documents from

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the court and making false statements in their affidavits filed in this court. Accordingly, Registrar (Judicial) of this Court is directed to file a complaint against them in the court of competent jurisdiction.

A copy of this judgment be sent to the Member Secretary, Karnataka State Legal Services Authority, Bangalore for necessary action.

Sd/-  
Chief Justice

Sd/-  
Judge

Snb/Kms