

(2012) 03 AP CK 0060

In the Andhra Pradesh High Court

Case No : WPMP. No. 665 of 2012 and WVMP. No. 611 of 2012 in Writ Petition
No. 532 of 2012

Greenlands Ameerpet Madhuranagar Yusufguda Srikrishna
Nagar, Joint Action Committee and Others

APPELLANT

Vs

The Hyderabad Metro Rail Limited, A State owned Public
Enterprise of Government of A.P., Metro Rail Bhavan,
Saifabad, Hyderabad and The Government of Andhra Pradesh
and Urban Development Department, Secretariat,
Hyderabad
 The Hyderabad Metro Rail Limited, A State
owned Public Enterprise of Government of A.P., Metro Rail
Bhavan, Saifabad, Hyderabad and The Government of Andhra
Pradesh and Urban Development Department, Secretariat,
Hyderabad Vs Greenlands Ameerpet Madhuranagar
Yusufguda Srikrishna Nagar, Joint Action Committee and
Others

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Andhra Pradesh Municipal Tramways (Construction, Operation and Maintenance) Act,
2008 — Section 2, 4, 5, 6
Constitution of India, 1950 — Article 366
Metro Railways (Operation and Maintenance) Act, 2002 — Section 14, 2, 3, 4, 6
Railways Act, 1989 — Section 5
Tramways Act, 1886 — Section 3

Citation : (2012) 4 ALD 337

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Judgement

L. Narasimha Reddy

1. The 1st petitioner is the Joint Action Committee and petitioners 2 to 21 are its members. They are all residents or owners of establishments in the Krishnanagar, Yellareddyguda, and Ameerpet areas of Hyderabad. The Government of Andhra Pradesh, the 2nd respondent herein, intended to establish Metro Rail, to cater to the needs of the commuters in Hyderabad City. Studies

were undertaken for several years, to identify the routes on which, the Metro Rail can be brought about. At one stage, the Delhi Metro Rail Corporation Limited is said to have been associated with the project. Ultimately, three corridors, viz., Shilparamam to Nagole, Jubilee Bus Station to Charminar and Miyapur to Chaitanyapuri were identified. The petitioners contend that one of the corridors was to pass through Jubilee Hills Check Post, L.V. Prasad Hospital, Punjagutta and Green Lands, but on account of certain reasons, it was modified in such a way, that it passes through Krishnanagar, Yousufguda and Ameerpet. According to them, there was no justification for changing the route. It is pleaded that the route so proposed, is not only technically unviable, but also would lead to demolition of vast number of structures, residential and commercial, and that public institutions would also be effected. By referring a report of the year 2003, they submit that the expert agency, which conducted a detailed survey, took the view that it is not at all feasible to take the Metro Rail between Jubilee Hills Check Post and Green Lands, and still, the project was modified only to serve the commercial needs of the operator. By making a copious reference to the orders passed by this Court in the writ petitions filed earlier, and the observations made by certain persons, who are said to have conducted a detailed study of the issue, the petitioners challenge the action of the respondents in proposing to construct Metro Rail through the route mentioned above. The statement said to have been made by the 1st respondent at a press conference is also referred to.

2. The 1st respondent filed a detailed counter-affidavit. It is stated that the contention of the petitioners that there existed an alignment through L.V Prasad Hospital to Punjagutta and Green Lands is incorrect. It is stated that the only route that was studied and finalized for that sector is the one, through Krishnanagar, Ellareddiguda and Ameerpet. It is stated that the project is being executed in accordance with the provisions of the A.P. Municipal Tramways (Construction, Operation and Maintenance) Act, 2008 (for short "the A.P. Tramways Act").

3. The 1st respondent also alleges that the material relied upon by the petitioners is not the one prepared by any technical expert, and that every care would be taken to ensure that least possible damage or effect is caused on account of the execution of the project in the said route. Objection is raised as to the very maintainability of the writ petition.

4. Sri. D.V. Sitharam Murthy, learned Senior Counsel for the petitioners submits that the respondents did not invite any public opinion about such a gigantic project. He submits that except making the public to know, that the project is going to be effected, the details thereof are not at all made available, much less any hearing, referable to any statute was taken up. He contends that the 1st respondent exhibited offensive reaction, whenever suggestions or objections were raised by the effected persons or social groups.

5. Learned Senior Counsel submits that the nature and content of the project undertaken by the 1st respondent does not at all fit into the A.P. Tramways Act.

According to him, the Metro Rail is nothing but a category of Railways, which is exclusive in the domain of the Parliament, and is governed by the Metro Railways (Operation and Maintenance) Act, 2002 (for short the Metro Railways Act"). He contends that the power to regulate Metro Rails is exclusively conferred upon the Metro Railways administration u/s 6 of the Metro Railways Act, and that the 1st respondent is not at all authorized by such an agency. He submits that even according to the nomenclature or the details of the project, undertaken by the 1st respondent, it is a Metro Railway, and it can not at all be launched or regulated or dealt with under the Tramways Act.

6. Learned Advocate-General submits that the project of Hyderabad Metro Rail was prepared and launched strictly in accordance with the relevant provisions of law. He contends that the A.P. Tramways Act would govern the running and establishment of Metro Rails also, and that judicial notice can be taken of the fact that trams cannot be run, in the present traffic congestion on the roads, and that metro rail is nothing but an elevated tramway.

7. Learned Advocate-General submits that Section 6 of the A.P. Tramways Act empowers the Government to enter into agreement with any agency, and in such an event, the procedure prescribed under Sections 4 and 5 of that Act does not apply. It is also his case that the route in question was prepared and finalized after taking into account, the relevant factors, and that there was no draft with a different alignment, as pleaded by the petitioners. It is urged that care has been taken to avoid acquisition of private properties as far as possible, and that the persons whose properties are acquired, would be paid compensation in accordance with law. He has placed reliance upon the judgment of the Division Bench of the Karnataka High Court in W.P. Nos. 3345 of 2008 and batch dated 19-03-2010.

8. Laying of Railway Line, of any form, is a stupendous task. The complications multiply, if it is to pass through developed areas in the metropolitan cities, warranting demolition of structures. Obviously, for that reason, underground lines, tubes or tunnels are chosen. The City of Hyderabad was served with roads and railway lines, to cater to the needs of the people, for the past more than half-a-century.

9. The population has recorded phenomenal increase, and the transport facility did not keep pace.

10. The Government of Andhra Pradesh intended to bring about Metro Railway Lines in the City. Three corridors were identified. At one point of time, the work was entrusted to an agency. Eyebrows were raised, when that agency offered to establish the lines and run the trains, not only without expecting any financial aid or commitment from the Government, but also by offering to pay a sum of Rs. 30,000/- corers to the State. It did not take much time for the Government or the people to realize that the offer was dubious and the agency was interested more to knock away the substantial extent of land in the City of Hyderabad and

flourish in real estate business, than running the Metro Trains. After the said effort has fizzled out, it was assigned to another agency, viz., L & T.

11. The petitioners assert that the alignment of the elevated line between Jubilee Hills Check Post and Green Lands was changed and the re-aligned line results in demolition of the structures owned by them and would adversely affect their business activities. One of their contentions is that, in the name of establishing railway stations, the agency is going to establish shopping malls and undertake commercial activity, and that would adversely affect them.

12. In support of their plea about the feasibility of the alignment for the area, the petitioners have relied upon a book entitled "Hyderabad's Elevated Metro Rail - the Undoing of the City and its Public Transport" written by Sri C. Ramachandraiah, and published by Citizens for a Better Public Transportation in Hyderabad. Reliance is also placed upon a project report of the year 2003, which suggested that Metro Rail at, that particular sector is not a better option.

13. The Managing Director of the 1st respondent, who filed the counter-affidavit, has, in a way, exhibited his impatience and intolerance towards the book, referred to above. Further, he has taken to himself, the credit, for ensuring the assignment of the contract to an agency on an earlier occasion and referred to the applause, said to have been received by him. The counter-affidavit is silent on certain important aspects, pleaded by the petitioners, and it is evasive on certain other aspects.

14. The exercise undertaken now is only to see, whether the petitioners have made out a prima facie case. Two questions arise for consideration at this stage, viz.,

a) whether the respondents have applied the correct provisions of law, and

b) whether the procedure prescribed under the provisions of law, chosen by them; was followed.

15. Here again, a note of caution is added to the effect that the examination of the matter is for the limited purpose of these miscellaneous petitions, and not for expressing any final opinion.

16. The VII Schedule of the Constitution of India provides for classification of the subjects upon which, the Parliament, on the one hand, and the State Legislatures, on the other hand, are conferred with the exclusive power to legislate as well as the subjects on which, both the Legislatures are competent to legislate. "Railways" occur in item 22 of the Union List. In addition to that, "carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels" occur in item 30 of the same list. The subject "Municipal Tramways" is included in the List-II, upon which, the State Legislatures are competent to legislate. It occurs in Entry-13 along with roads, bridges, ferries and other means of communication, not specified in list-1; municipal tramways; roadways; inland waterways, etc.

17. It is important to note that Clause (20) of Article 366 of the Constitution of India defines "railway", as under:

railway" does not include -

- (a) a tramway wholly within a municipal area, or
- (b) any other line of communication wholly situated in one State and declared by Parliament by law not to be a railway".

18. In other words, the State Legislature is competent to legislate only in respect of tramways, which are run within the municipalities. If it is beyond municipalities, the Parliament alone is competent to legislate. The Indian Tramways Act, 1886, governs the matter.

19. The Parliament enacted the Metro Railways (Operation and Maintenance) Act, 2002. It means that the Metro Railways are treated as a subject within the domain of Parliament. The definition thereof u/s 2(i) reads;

"Metro railway" means rail-guided mass rapid transit system having dedicated right-of-way, with steel wheel or rubber-tyred wheel coaches, but excluding tramways, for carriage of passengers, and includes-

- (A) all land within the boundary marks indicating the limits of the land appurtenant to a metro railway,
- (B) all rail tracks, sidings, yards or branches worked over for the purposes of, or in connection with, a metro railway,
- (C) all stations, offices, ventilation shafts and ducts, warehouses, workshops, manufactories, fixed plants and machineries, sheds, depots and other works constructed for the purpose of, or in connection with, a metro railway.

20. The sanction of the Central Government for opening a Metro rail is essential u/s 14 thereof. A Commissioner is appointed u/s 7 to supervise the establishment and functioning of Metro Railways, and he is placed under the administrative control of Chief Commissioner of Railway Safety, appointed u/s 5 of the Railways Act, 1989. The procedure to be followed, while according permission; is prescribed under that Act. In case the State intended to establish a Metro Railway, it is required to follow the procedure prescribed under the Metro Railways Act.

21. In the counter-affidavit, the respondents stated that the project undertaken by them is governed by the provisions of the A.P. Tramways Act. The relevant portion reads:

With reference to certain other issues raised by this Hon''ble Court, it is submitted that while acquisition of affected properties is being done as per the Land Acquisition Act 1894, the Hyderabad Metro Rail project is being executed under the Andhra Pradesh Municipal Tramways (Construction, Operation & Maintenance), Act, 2008.

22. They have impliedly stated that the provisions of the Metro Railways Act are not followed.

23. The Andhra Pradesh State Legislature enacted the A.P. Tramways Act. In the whole of the enactment, the word "tramway" is used, almost in all sections. The expression "tramway system" is defined under sub-section (25) of Section 2, as under:

Sec. 2(25): "tramway system" means a guided mass rapid transit system having one, two or more rails or guide ways or a dedicated right-of-way with carriages or coaches having steel flange-wheels or rubber-tyred wheels or any other wheels or systems to operate on the rails or guide ways or dedicated right-of-way and includes monorail, sky train, sky bus and maglev, but excludes suburban and other rail lines which are governed by the Railways Act, 1989, for carriage of passengers and luggage within a municipal area and includes:-

(a) all land within the boundary marks indicating the limits of the land appurtenant to any tramway system;

(b) any part of a tramway system, or any sidling, turnout, connection, line or track belonging to a tramway system;

(c) all tramway stations, offices, ventilation shafts and ducts, warehouses, workshops, factories, fixed plants and machineries, sheds, depots, communication lines and equipments, electrical equipments, electric lines transmitting power to the tramway system from a generating station, or grid substations of the local utility agency to the tramway system, either directly or through a substation and other works or facilities constructed for the purpose of, or in connection with the tramway system including the systems for provision of communication and transportation services.

24. It is necessary to note that the definition excludes "suburban and other rail lines", which are governed by the Railways Act, 1989, and no reference is made to Metro Railways Act. Added to this, the competence of the State is only to deal with Municipal Tramways. If it is railway of any form, or a Tramway beyond a municipality, the State has no competence to enact. The fact that usage of a "road" in a tramway is inevitable, is evident from clause (2) of Section 3 of the Indian Tramways Act. It reads:

road" means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorized under this Act is, or is intended to be, laid, and includes the surface-soil and sub-soil of a road, and the footway, berms, drains and ditches of a road, and any bridge, culvert or causeway forming part of a road.

25. This being the case, the respondents have chosen to bring about and establish a Metro Railway under the A.P. Tramways Act.

26. The submission of the learned Advocate-General, that what is being laid or

constituted is a municipal tramway and that mere nomenclature cannot be a guiding factor; is difficult to be accepted. When there is a phenomenal difference between various modes of transport, such as Railway, Trams, Metro rails, and when there are different enactments, governing their establishment and management it is totally impermissible to establish a "Railway", (sic) in name, structure and purport- under A.P. Tramways Act.

27. The Karnataka High Court, in W.P. No. 3345 of 2008 and batch, has dealt with a matter, with reference to the Mysore Tramways Act on the one hand and the Railways Act, on the other hand. The attention of their Lordships was not invited to the Metro Railways Act or the Indian Tramways Act. A view was expressed to the effect that there does not exist much difference between "Tramway" and "Railway". With great respect to their Lordships, when the constitution has dealt with these subjects, separately, and has conferred power upon the Parliament, in respect of one, and upon the State Legislature, in respect of the other, it is not at all advisable to import personal opinion or to express any view suggesting that the two terms are inter-changeable. Hence, there is a serious lacunae in the very launching of the project, under the A.P. Tramways Act; though it is almost a full-fledged railway, may be with operation restricted to a particular area.

28. Now comes the second question: Assuming that the A.P. Tramways Act applies to the subject-matter, it needs to be seen as to whether the procedure prescribed there under has been followed.

29. It is not uncommon that whenever any schemes or projects are launched, by the State or Central Government, or local statutory authorities, the process of ascertaining the views of the public, in general, and those, of the effected parties, in particular, is undertaken. A perfect procedure of publication of the draft in the gazette, consideration of the objections, preparation of the final project or scheme and publication of the same is stipulated, to avoid arbitrary decisions. For instance, if a lay-out plan is prepared for a particular urban area, the A.P. Urban Areas Development Act, or the Town Planning Act, as the case may be, mandate that the proposed draft shall be published in the gazette, inviting objections and the final draft must be published after consideration of the objections. So is the case, whenever the boundaries of an existing Village or District are changed, or a Village is merged in Municipality.

30. Even in the field of Transport, the authorities under the Motor Vehicles Act and the Rules made there under are placed under obligation to notify the draft route or scheme; invite objections and then publish the final scheme. Special procedure is prescribed in case the route overlaps the one, on which a State Transport undertaking is running its vehicles.

31. Except that there may be slight changes, the objective, viz., to ascertain public opinion, is the same. Though this may appear to be a formality, it has many purposes to serve. It would ensure compliance with a form of principles of

natural justice. It is too well-known that individual notices are issued, when the interests of a specified person or persons are at jeopardy, and thereby the requirement under the principles of natural justice is honored. When the interests of quite large number of persons or society at large are involved, notifications inviting objections would serve the same purpose. Secondly, the exercise of that nature, viz., inviting objections for a proposed project would ensure maximum public participation and thereby bring about what may be termed as "executive democracy". The reaction to the notification or notice may be in the form of objections or suggestions. Either way, the decision making authority would become wiser and on account of such objections or suggestions being considered dispassionately, a meritorious and acceptable decision would emerge.

32. Obviously, in consonance with this, the A.P Legislature made provisions for inviting objections, consideration of the same, and taking a final decision (Section 4), whenever it is proposed to establish a Metro Rail Sections 3 and 4 read as under:

Sec. 3: Application for operating system:-

(2) A local authority in respect of a Municipal area within its jurisdiction or any other authority, agency or body of the State Government or a Government company may make an application for the development, construction, management, operation and maintenance of a tramway system in a municipal area.

(3) A local authority or any other authority agency or body of the State Government or a Government company, as the case may be, shall not make an application or an Order, unless the making of such application has been approved in the manner prescribed.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the State Government may on its own motion or on an application or otherwise, by an order in writing, require a local authority or any other authority, a Government company or an agency or body of the State Government to make an application for development, construction, management operation and maintenance of a tramway system in a municipal area.

Sec. 4: Procedure for making order on application:-

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

(2) A notice under sub-section (1) above shall state that any objections or suggestions which any person may desire to make with respect to the proposed

order, if submitted to the Government on or before the date to be specified in such notice, will be considered.

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

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

33. It is necessary to mention here that Section 4 of the A.P. Tramways Act is nothing but a replica of Section 6 of the Indian Tramways Act, except for few semantic changes.

34. From this, it is clear that a notice in the prescribed form must be published together with a draft of a proposed development, construction and management and operation of the "tramway system" Decision must be taken, after the objections or suggestions are considered. The submission of objections or suggestions are not restricted to any particular individual.

35. Admittedly, the 2nd respondent did not undertake any exercise u/s 4 of the A.P. Tramways Act. This omission is sought to be justified on the ground that the negotiations were held with an agency u/s 5 of that Act, and that the said provision has an overriding effect. It reads as under:

Sec. 5: Power of the State Government to enter into agreement for development, construction, management, operation and maintenance of tramway system:-

Notwithstanding anything contained in this Act,

(1) the State Government may enter into an agreement or other arrangement (whether by way of partnership, joint venture or in any other manner) in writing, with any person selected through open competitive bidding or otherwise for grant of concession to develop, construct, manage, operate and maintain a tramway system for any Municipal area on build, own, operate and transfer or any other basis and on such other terms and conditions as may be agreed upon or prescribed by the State Government;

(2) the tramway operator appointed pursuant to an agreement referred to in sub-section (1) is entitled to collect and retain fare, subject to the provisions of the agreement or services or benefits rendered by him, at such rate as the State Government may, by notification, in the official Gazette, specify subject, however, to the rules that may be made in this behalf.

36. The non-obstante clause that is contained in this section would only exempt the procedure or requirement u/s 3 and not the one, u/s 4. In the ordinary course

of the things, the Government can grant rights for operation of a tramway, only when the proposal is mooted by a local authority, or the concerned municipality, or the municipal corporation, as provided for u/s 3. Even where such a proposal is not forthcoming, the Government is conferred with the power to enter into agreement by way of partnership, joint-venture or any other manner. There is nothing to suggest that in case the Government intends to take steps u/s 5, it is relieved of the obligation to publish a notice u/s 4(1), consider the objections under sub-section (2) order modifications, if any, u/s 3, and publish the final scheme under sub Section 4, in the Gazette. It is just unthinkable that Section 4, which is the only provision that creates avenue for expression of public opinion on projects of such magnitude would become relevant, when the proposal is mooted by a statutory authority i.e. the Municipality or Municipal Corporation or when the Government itself pushes it, but not when negotiations are under taken, with a private agency. Section 4, which is enacted to protect the public interests is non-negotiable.

37. Here again, comparison can be made with the provisions of Indian Tramways Act. The Government is conferred with the power to go ahead, even if the consent, of the road-authority which is essential u/s 4 thereof is not forthcoming. Still, the process issuing public notice, consideration of objections and publication of the final order are made mandatory u/s 6.

38. Acceptance of the contention of the respondents would lead to disastrous consequences. A scheme, which involves transfer of vast extents of Government land, acquisition of large number of private properties, dislocation of the road transport system for a considerable time, conferring of the largesse of a high magnitude upon a private agency, cannot take place without reference to any public opinion.

39. The petitioners pleaded that the details of the project were kept as a closely guarded secret, and that in spite of requests, relevant plans were not furnished. In the counter-affidavit, the 1st respondent has pleaded a semblance of privilege, as regards the details of the project. The alignment plan drawings for the area in question were supplied to this Court. From a perusal of the same, it is evident that not only vast number and extents of private properties, but also important public institutions, such as Smt. Durgabhai Deshmukh Government Women's Technical Training Institute, and a Government Primary School at Krishnanagar are going to be virtually wiped out or made dysfunctional. Short span of few kilometers contains many curves. It is only the public at large, that should know them, so that they would be in a position to put forward their contentions, not only from the point of view of the loss of property, but also the safety.

40. The effort of the 1st respondent appears to be, to shield or immunize itself from any plausible objections, and unfortunately the State, in its anxiety to spread a red-carpet to a private agency, has chosen to violate and break the law, enacted by itself. It is not out of place to mention that the very purpose of

enacting the A.P. Tramways Act was, keeping in view the present "Metro Railway Project". So much of urgency was felt that an ordinance was issued and later on, it became an Act.

41. It appears that the 2nd respondent granted the rights for Metro Rail on earlier occasion in favor of an agency, in a similar clandestine manner, keeping the entire project away from public scrutiny. At least when its decision turned out to be a blunder, it ought to have been careful and followed the procedure prescribed under the relevant provisions of law. Hence, the W.P.M.P. No. 665 of 2012 is ordered as prayed for and W.V.M.P. No. 611 of 2012 is dismissed.