

Date: 2nd December, 1986.

The minutes of the Hundred & Sixth Meeting of the Executive Committee of the Bombay Metropolitan Region Development Authority, held on the 21st November, 1986 are enclosed.

*S.V. Asgaonkar*  
2.11.86  
( S.V. ASGAONKAR )  
SECRETARY  
EXECUTIVE COMMITTEE.

To:

The Chief Secretary to the Government of Maharashtra, General Administration Department, Mantralaya.	-	Chairman
The Metropolitan Commissioner, B.M.R.D.A.	-	Member
The Secretary to the Government of Maharashtra, Urban Development Department, Mantralaya.	-	Member
The Secretary to the Government of Maharashtra, Housing and Special Assistance Department, Mantralaya.	-	Member
The Municipal Commissioner Bombay Municipal Corporation.	-	Member
The Managing Director, C.I.D.C.O., Bombay.	-	Member
Shri Charles M. Correa. Correa Consultants Pvt. Ltd. 9, Mathew Road, Bombay-400 004.	-	Member
Shri Shirish B. Patel, SPA Consultants Pvt. Ltd., 41, Nagindas Master Road, Bombay-400 023.	-	Member
Dr. P.G. Patankar, Director, Central Institute of Road Transport, (Training and Research), Poona-Nasik Road, <u>Pune-411 026.</u>	-	Member

INVITEES :

- 1) The Financial Adviser, B.M.R.D.A.
- 2) The Chief, T&CP Division, B.M.R.D.A.
- 3) The Chief, T&C Division, B.M.R.D.A.
- 4) The Chief, Planning Division, B.M.R.D.A.
- 5) The Chief Engineer, Engineering Division, B.M.R.D.A.
- 6) The Senior Planner, T&CP Division, B.M.R.D.A.
- 7) The Legal Adviser, B.M.R.D.A.

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HUNDRED & SIXTH MEETING OF THE EXECUTIVE COMMITTEE

B.M.R.D.A.

DATE : 21st November, 1986 (Friday).

TIME : 11.30 A.M.

PLACE : Chief Secretary's Committee Room,  
5th Floor, Mantralaya.

MEMBERS PRESENT :

- Shri K.G. Paranjpe, - Chairman  
Chief Secretary to the  
Government of Maharashtra.
- Shri L.C. Gupta, - Member  
Metropolitan Commissioner  
&  
Managing Director, CIDCO.
- Shri S.S. Tinaikar, - Member  
Municipal Commissioner,  
Bombay Municipal Corporation.
- Shri Shirish B. Patel. - Member

INVITEES :

Shri Satish Tripathi,  
Joint Secretary, Housing and Special  
Assistance Department, Mantralaya.

The Financial Adviser, B.M.R.D.A.

Shri S.V. Asgaonkar, Secretary, Executive Committee, BMRDA.

Item No.1(a) : Confirmation of the minutes of  
the last (105th) Meeting of the  
Committee.

The minutes were confirmed.

Item No.1(b) : Action taken on the minutes of  
the last (105th) Meeting -  
together with progressive action  
on the past decisions (part 'a' only).

Referring to action taken report in respect of  
Item No.4 of the last (105th) Meeting regarding continuation  
of services of M/s. PHE Consultancy Services Pvt. Ltd.  
under Bombay Urban Development Project, the Committee  
desired to know the names of partners as also the names  
of experts who would be rendering services to the BMRDA.  
The Committee also desired to know changes in partners/  
experts, if any, as and when effected by the firm.

The action taken report was then noted by the  
Committee.

Item No.2 : ....

Item No. 2 : Shifting of Wholesale Textile Market -  
Declaration of date of operation.

The Committee considered the Item Note and passed the following Resolution :-

RESOLUTION NO.349 :

"Resolved that the Executive Committee hereby takes note and approves proposals of the Metropolitan Commissioner to issue Notification under Section 3(2) of the Bombay Metropolitan Region Specified Commodities Markets (Regulation of Location) Act, 1983, and also to carry-out a fresh demand survey from bonafide traders and to take up construction of shops-cum-godowns and other facilities for 5000 traders so as to enable shifting of wholesale textile markets in the G/N Block of Bandra-Kurla Complex by June 1990, as proposed."

Item No. 3 : Appointment to the post of  
Deputy Planner.

The Committee considered the Item Note and passed the following Resolution :-

RESOLUTION NO.350 :

"Resolved that in exercise of the powers conferred under clause (i) of sub-section (3) of Section 7 of the BMRDA Act, 1974, the Executive Committee hereby appoints Shri D. Sampath Kumar as Deputy Planner, in the grade of Rs.680-1250 plus usual allowances, as proposed."

Item No. 4 : Re-employment of Shri R.A. Kamat as  
Assistant Chief Accounts Officer  
in Planning Division.

The Committee considered the Item Note and passed the following Resolution :-

RESOLUTION NO.351 :

"Resolved that in exercise of the powers conferred under clause (i) of sub-section (3) of Section 7 of the Bombay Metropolitan Region Development Authority Act, 1974, the Executive Committee hereby accords its sanction to Shri R.A. Kamat being re-employed as Assistant Chief Accounts Officer on contract basis, for a period of one year with effect from 14.11.1986,

on a .....

on a consolidated salary of Rs.1500/- per month, on the terms and conditions mentioned in para.2 of the Item Note, as proposed."

Item No. 5 : Posts of (1) Marketing Manager,  
(2) Asstt. Marketing Manager and  
(3) Technical Assistants in BMRDA -  
Framing of Recruitment Rules in  
respect of -

The Committee considered the Item Note and passed the following Resolution :-

RESOLUTION NO. 352 :

"Resolved that in exercise of the powers conferred under clause (i) of sub-section (3) of Section 7 of the BMRDA Act, 1974, the Executive Committee hereby prescribes the Recruitment Rules mentioned in the Annexure to the Item Note, for the posts of Marketing Manager, Assistant Marketing Manager and Technical Assistants, as proposed."

Item No. 6 : Writ Petition in the High Court of  
Judicature at Bombay bearing No.2714  
of 1986 -  
Nirvana Co-operative Housing Society  
Ltd. and another  
Versus  
B.M.R.D.A. and 4 others.

The Committee considered the Item Note and noted that the thrust of the petition filed by M/s. Nirvana Co-operative Housing Society Ltd., so far as BMRDA was concerned, was against the permission granted by BMRDA for construction of ground and one upper floor structure on plot No.443A, TPS-III, Mahim with FSI 1.97. This permission was granted on an application made by one Shri J.S. Valado. Even though Regulations of the Town Planning Scheme III, Mahim allowed ground and one upper floor structure (not exceeding 26 feet in height) on the plot without any side open spaces, these Regulations were permissive in their content and character and were to be interpreted as being subject to Rule 10 of the Development Control Rules regulating FSI. The inference drawn by the Town & Country Planning Division of BMRDA that there was a conflict between provisions of Development Control Rules and provisions of Town Planning Regulations and consequently the provisions of Town Planning Scheme

prevailed.....

prevailed over the provisions of the D.C. Rules, particularly Rule 10 was not well founded. In view of this legal position, the permission granted by the Committee was ultra-vires of the powers of the Committee as the Committee was not competent to sanction FSI in excess of 1.33 permissible under the Development Control Rules.

Incidentally it came up for discussion whether the nullification of the permission granted earlier would expose the Executive Committee and in turn the Authority or its Members to civil liability. It was submitted by the Legal Adviser that having regard to statutory immunity enacted by Section 48 of the B.M.R.D.A. Act, 1974, there was a complete bar against any suit or legal proceedings being instituted against the Executive Committee and its members for damages because the earlier decision was taken in good faith although on the erroneous but honest and bonafide interpretation of the law.

The Committee, therefore, reconsidered the decision taken by it under its Resolution No. 326, dated 4th December, 1985 and in supersession of the orders passed thereunder passed the following Resolution :-

RESOLUTION NO. 353 :

"Resolved that in supersession of the orders passed under Committee's Resolution No. 326, dated 4th December, 1985 and in view of what has emerged from the discussion at the meeting, the Committee hereby declares that the permission granted to Shri J.S. Valado by letter No. A/RDM-1085/489, dated 30th December, 1985, by the Secretary, Executive Committee is ultra-vires of the Committee's powers under clause (iv) of sub-section (3) of Section 7 of the Bombay Metropolitan Region Development Authority Act, 1974, read with sub-section (3) of Section 13 of the said Act and is consequently null and void and of no effect.

"Resolved further that the Secretary, Executive Committee be authorised to inform the applicant accordingly with a copy to the Municipal Corporation of Greater Bombay.

"Resolved.....

"Resolved further that the Secretary, Executive Committee be authorised to instruct the counsel of the Authority to make a statement accordingly in the High Court.

"Resolved further that instruction issued by the Chairman to engage a counsel, on behalf of the Authority, be and is hereby ratified."

Item No. 7 : Truck Terminal at Wadala - Proposal for Licensing the Transport Companies (i.e. agents engaged in the business of collecting or forwarding and distributing goods carried by road by goods vehicles plying from him) under the Motor Vehicles Act, 1939.

In connection with this Item Shri S.K. Sagane, Transport Commissioner, Maharashtra State was present as a Special Invitee.

Metropolitan Commissioner introduced the agenda note and pointed out that with the present attitude of the Bombay Goods Transport Association (BGTA) and its members, the marketing of the TT premises has got into a vicious circle. Because the BGTA felt that they can delay their relocation to the TT indefinitely, they are not booking space in the TT and trying to make unreasonable demands on Government of Maharashtra/BMRDA to subsidise the price of the premises. Without such demand registration BMRDA is unable to build sufficient buildings due to cash flow problems, effectively making it difficult to bring about the desired early relocation for want of sufficient ready accommodation. The question of enacting special legislation has also been taking a long time. The proposal, therefore, was to enforce the existing section 66A which requires all transport companies, booking and commission agents, etc. (mainly represented by BGTA) to obtain a licence from the Transport Commissioner's department, and in granting the licence to impose a condition that the licensees will shift their offices, godowns and activity exclusively to the TT after a few years - say by 1990.

The feasibility of implementing the above proposal was then discussed. The Transport Commissioner pointed out that if licensing was to be enforced before the TT was

ready.....

ready, the licences would have to be granted at the present premises of the various companies. According to existing Rule that would imply that according to the licensing authority, the existing premises were suitable for the purposes such as storage, loading/unloading, parking of goods vehicles, etc. Therefore, once a licence under section 66-A was given it would become difficult to shift the licensees to the TT.

The Chief Secretary as well as the Municipal Commissioner felt that the difficulties indicated in licensing under section 66A of the Motor Vehicles Act pointed out by the Transport Commissioner must be carefully examined. However, this could be achieved by amending the Rules. The Transport Commissioner was, therefore, requested to examine whether rules could be modified enabling issue of "Temporary Licence" under the M.V. Act which would be valid at the present premises only for a limited period of 2/3 years.

Item No. 8 : Quick erection of flyovers in Bombay.

Shri Shirish B. Patel informed the Committee that he was connected with one of the short-listed firms. He, therefore, abstained from discussion before the Committee.

After some discussion, the Committee directed as follows :-

- (1) Acquisition of foreign technology need not be pursued at this stage;
- (2) The 4 short-listed contractors may be informed that they have been so selected for shortlisting;
- (3) Public Works Department and Bombay Municipal Corporation may be advised about these short-listed contractors and supplied information regarding their technical proposal for quick erection of flyovers.

Item No. 9 : Premises known as 'Sagardeep' at 56, Ridge Road, Malbar Hill, Bombay-400 006 - Permission sought by the Indonesian Consulate to use the said premises for residential as well as office purposes.

The Committee considered the Item Note and noted the legal position as regards grant of permission for

office.....



office use requested by the Indonesian Consulate, as brought out in BMRDA's letter, No.TCP(p-1)/S-13-Noftn/P-1, dated 20th October, 1986.

After some discussion, the Municipal Commissioner was requested to examine the matter afresh, in view of the State Government's D.O. letter No.CAP/7586/XXX, dated 7th November, 1986 as BMRDA had no jurisdiction in the matter.

Item No.10 : Backbay Beautification Scheme :  
Proposed road and promenade along the southern boundary of the Backbay Reclamation Block-III to connect Jagannathrao Bhonsale Marg to Nariman Point/Netaji Subhash Marg.

The Committee considered the Item Note and after discussion, passed the following Resolution :-

RESOLUTION NO.354 :

"Resolved that in view of the position explained in the Agenda Note the Executive Committee do hereby give approval for preparation of plans and estimates and calling of tenders for construction of road and promenade along with construction of retaining wall connecting the dead end at Netaji Subhash Marg with Wodehouse Road junction.

"Resolved further that Executive Committee hereby approves removal of the bund earlier put up in the sea.

"Resolved further that the Executive Committee hereby approves the proposal for disposal by tender of the plot earmarked for construction of eating house.

"Resolved further that the tenders for construction of road, etc. when received be placed before the Executive Committee for approval."

Item No.11 : Writ Petition No.2982 of 1986 in the High Court of Judicature (O.O.C.J.) - Shri J. Ferns and 4 other versus M/s. Gokak Patel Volkart Ltd. and 3 others - Development of plot of land at 124/126, Wodehouse Road, Colaba, Bombay-400 005.

The Committee considered the Item Note and

passed.....

passed the following Resolution :-

RESOLUTION NO.355 :

"Resolved that in exercise of the powers conferred under clause (vi) of sub-section (3) of Section 7 of the BMRDA Act, 1974, the Committee hereby decides that Authority do engage a counsel to watch the proceedings and to assist the Court in unravelling the truth and moulding the relief in respect of Writ Petition No.2982 of 1986 in the High Court of Judicature at Bombay - Shri J. Ferns and 4 others Versus M/s. Gokak Patel Volkart Ltd. and 3 others.

"Resolved further that the Metropolitan Commissioner be authorised to take all necessary steps for implementing the above decision."

Item No.12 : Condonation of two car parking spaces for Hotel President at Cuffe Parade on plot bearing City Survey No.635 of Cclaba Division; Block-V, Backbay Reclamation Scheme, Bombay.

The Committee considered the item **note and requested** the Metropolitan Commissioner to inform the State Government to take action on merit of the case.

The meeting then concluded with a vote of thanks to the Chair.

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