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Public forced to part with hundreds of crores under guise of infra, says SC

► Continued from P1

Writing a 53-page judgment that rejected every argument of NTBCL advanced through senior advocate A M Singhvi, including the demand for recovery of an additional Rs 30 crore, Justice Surya Kant said the money recovered by NTBCL was much higher than the project cost, resulting in “unjust enrichment of NTBCL at the cost of public suffering”.

The bench, also comprising Justice Ujjal Bhuyan, said the contracts with NTBCL were loaded with terms, which were so unfair and unreasonable that “they truly baffle this court, are undoubtedly opposed to public policy and must be adjudged void”.

It said NTBCL had by March 31, 2016, recovered the project cost, maintenance cost, and a significant profit on its initial investment and, hence, there was no reason for collection of user fee/toll to continue thereafter.

Explaining the defrauding of the public, Justice Kant said, “The public has been forced to part with hundreds of crores of rupees by IL&FS and NTBCL, under the guise of providing necessary public infrastructure. This could not have been done but for

the collusion of the then officers of the two state govts and of Noida, who closed their eyes while the contractual obligations were incurred.”

Commenting harshly on the formula through which yearly project cost escalation was computed and the lease to recover user fee was extended, the bench said, “It is inconceivable that multiple layers of the govts, advised by some of the most astute financial minds, failed to foresee that this formula would impose an undue and unfair burden on the users — the public.

“The manner in which some senior bureaucrats manipulated the siphoning of project funds for their personal gains clearly make out a fit case for investigation under the Prevention of Corruption Act, 1988, although the ship might have sailed for such action at this stage.”

The bench further said, “The CAG report shockingly reveals that the directors of NTBCL, including Pradeep Puri (who it seems was a senior bureaucrat), apparently did not perform any responsibility, yet all their expenses, including high-end remuneration, were added in the total project cost.”