

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 1587 of 2006**

"Swajan Sulabh Samajik Sewa Sammittee" Reg. Body having its [Reg. No. C.C. State- 1255] Through Its President Mohd. Sadique Qureshi, Age 48 Yrs. S/o Late Mohd. Yusuf Qureshi, R/o:- Word No-10, Mahasamund, Distt. Mahasamund (C.G.)

---- Petitioner

Versus

1. The State of Chhattisgarh, Through, The Secretary, Department of Nagriya Prashashan Vikas Vibhag, D.K.S. Bhawan, Raipur (C.G.)
2. The Collector, Distt. Mahasamund C.G.
3. Municipal Council Mahasamund, Through The Chief Municipal Officer, Mahasamund (C.G.)
4. Municipal Council Mahasamund, Through The President, Mahasamund (C.G.)
5. Sulabh International Social Service Organisation, Patna-Bihar, Recognized agency by State of C.G. Branch having its office at Raipur, State Branch of Chhattisgarh (A Society registered under the society registration Act XXI of 1860 having its Reg. No. 73/70-71- Patna)

---- Respondents

For Petitioner	:	Shri J.A. Lohani, Advocate.
For Respondents 1 and 2	:	Shri Vinod Deshmukh, Deputy Govt. Advocate.
For Respondent 3 and 4	:	Shri Sudeep Agrawal, Advocate.

Hon'ble The Chief Justice**Order on Board****10/07/2015**

1. Heard Learned Counsel for the Petitioner and Respondents.
2. The challenge in this writ application is to an agreement executed

between Respondents No. 3 and 5 dated 8.10.2002 for construction of public toilets under pay and use scheme for a period of 30 years.

3. The primary ground of challenge is that all public largesse is to be distributed only in consonance with Article 14 of the Constitution by open advertisement. The Petitioner is equally competent to execute the works in question. He has been denied the right of consideration even by failure of the authorities to make settlement after equal opportunity of participation to all.

4. In the present case, an agreement of the year 2002 has been challenged in the year 2006. A challenge to a commercial decision has to be with utmost expeditiousness. Additionally there is no challenge to the policy decision of the authorities dated 22.5.2001 pursuant to which the contract was granted to Respondent No. 5 by private negotiations.

5. The normal procedure for distribution of government largesse undoubtedly has to be in accordance with Article 14, but, in specified circumstances it is also permissible by private negotiations.

6. Permissibility for grant of contract by private negotiations in specified circumstances has been noticed in (1987) 2 SCC 295 (Sachidanand Pandey Vs State of West Bengal) as follows:

"40. 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 an important as doing justice. Nothing should be done which gives an appearance of bias,

jobbery or nepotism."

Similar view has been expressed in (2006) 13 SCC 382 (Nagar Nigam, Meerut Vs. Al Faheem Meat Exports (P) Ltd.) as follows:

"15. We have no doubt that in rare and exceptional cases, having regard to the nature of the trade or largesse or for some other good reason, a contract may have to be granted by private negotiation...."

7. For the aforesaid reasons, there is no merit in the writ application. It is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE