IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF MAY
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.9995 of 2015

BETWEEN

M/s. Panorama Papers Private Limited.

... PETITIONER

AND

The State of Andhra Pradesh, Rep. by its Secretary, Education Department, Secretariat, Hyderabad and others.

...RESPONDENTS

Counsel for the Petitioner: MR. SHYAM S. AGRAWAL

Counsel for the Respondents: GP FOR SCHOOL EDUCATION
MR. P. VEUGOPAL
For MR. A. SUMANTH

The Court made the following:

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ORDER:

Petitioner herein is a company incorporated under the provisions of the Companies Act, 1956 and deals with the business of supply of paper to various Government organizations as well as private institutions on large scale.

2. Petitioner states that it has been supplying white art card cover paper to the Education Department of the erstwhile united State of Andhra Pradesh and after bifurcation of the State, the second respondent issued E-tender notice dated 05.03.2015 for supply of

783 metric tons of white art card cover paper of 200 GSM for the academic year 2015-2016. Petitioner states that it had submitted bid on 16.03.2015 after complying with all the requirements as per tender notification together with hard copies of the bid document and demand drafts for earnest money deposit and tender process fee. The technical bids are stated to have been opened on 16.03.2015 and thereafter, the financial bids were opened on 19.03.2015. It was found, thereafter, that the financial bid of Rs.85,837.50 ps. per metric ton quoted by the petitioner was the lowest and was declared as L1.

3. Based on that, petitioner made preparations for supply of paper in view of the urgency. It is stated that, thereafter, petitioner was required to attend the office of the Principal Secretary, Education Department on 24.03.2015 whereat the petitioner was requested to reduce the price but the petitioner expressed inability to supply the material at a reduced price. However, after discussions, the petitioner confirmed to supply the material at Rs.76,146/- per metric ton as was given for the last year, on condition of prompt payment.

Petitioner, however, has approached this Court on information that respondents 1 to 3 are intending to award the contract to a third party of their choice and appear to have released purchase order in his favour on 30.03.2015. The said third party is impleaded as respondent No.4 herein. Thus, petitioner challenges the selection of respondent No.4 on nomination basis by giving a go-bye to the tender process and ignoring the offer of the petitioner. The present writ petition is, therefore, filed questioning the action of respondents 1 to 3 in not releasing purchase order to the petitioner and consequently, to set aside the purchase order released to respondent No.4.

4. Respondent No.3 has filed a counter affidavit wherein they rely upon the contention that as per condition 14 of the bid document,
the award of contract is subject to negotiations and the third respondent is not bound to accept the lowest bid. It is further stated that the State Level Tender Committee under the Chairmanship of Secretary to Government have conducted negotiations but the rates offered by the tenderers were found to be on higher side, hence, the Committee deferred the matter. It is further stated that meanwhile the Secretary to Government, School Education Department received two other proposals i.e. one from the fourth respondent offering to supply at Rs.69,500/- per metric ton and another from M/s. Laskhmi Ganapathy Traders offering to supply at Rs.72,500/- per metric ton. Consequently, therefore, the first respondent had reviewed the entire position and issued orders annulling the bid process as per condition 9 of the tender conditions of the bid document and issued orders to place purchase order on the fourth respondent, as there is not time to go for fresh tenders. Accordingly, the fourth respondent is stated to have been given the purchase order dated 30.03.2015. The State Level Tender Committee had also ratified the decision of the Secretary to Government on 02.04.2015. So far as the tender process and the allegations of the petitioner regarding his bid etc. are concerned,
they are not contraverted and it is stated that the printing programme for the year 2015-2016 started late in both the States and as such, to complete the printing process in two months and to supply 2.82 crore text books for the students of Andhra Pradesh by the time of reopening of the school being priority, the aforesaid decision was taken. It is specifically mentioned in para 16 that as there is no time to invite fresh tenders, the purchase order was

placed on the fourth respondent though he has not participated in the tender but has come forward to supply the paper of the same quality at Rs.69,500/- per metric ton.

5. Heard Mr. Shyam S. Agrawal, learned counsel for the petitioner, learned Government Pleader for School Education and Mr. P. Venugopal, learned Advocate General for the State of Andhra Pradesh along with Mr. A. Sumanth, learned counsel, appearing for the fourth respondent.

6. Though the learned counsel for the petitioner made various submissions with reference to the tender process and his offer being the lowest, in my view, those contentions do not arise for consideration inasmuch as the tender process itself has been annulled and the said decision is not questioned by the petitioner in the present writ petition. The only issue that falls for consideration, therefore, is whether the decision of respondents 1 to 3 in awarding the contract to the respondent No.4 is sustainable in the eye of law.

7. Learned Government Pleader as well as the learned Advocate General for the State of Andhra Pradesh reiterated that the decision to place order on the fourth respondent was required to be taken in the circumstances that there was hardly any time left for ordering fresh tender process. They also justify the decision on the ground that the rate offered by the fourth respondent is substantially lower than the rate offered by the petitioner and thereby, the Government stands to gain. The said decision is also sought to be justified on the ground that there is no compromise on the quality of paper and in any case, the fourth respondent has also placed the order and commenced the supply and hence, at this distance of time, it would jeopardize the very printing and publication of books and the programme for supplying the books to the students by reopening of the schools.

8. I have deeply considered the aforesaid submissions. However, compelling may be the reasons for awarding the contract to the fourth respondent, it would not be permissible for this Court to ignore the settled principle of law that the Government largesse must be disposed of by the process of public auction and not on nomination basis. Admittedly, the fourth respondent has not responded to the tender notification and though the offer given by the fourth respondent appears lowest than the offers received by respondents 1 to 3, it cannot be ruled out that they would have got even further lowest offer had fresh tender process been resorted to. The principle of law having been settled by a long series of decisions of the Supreme Court commencing with **KASTURI LAL LAKSHMI REDDY v. STATE OF JAMMU AND KASHMIR**[1], the said principle is reiterated in **RAM AND SHYAM CO. v. STATE OF HARYANA**[2], relevant paras 12 and 13 whereof are extracted hereunder:

> "**12.** Let us put into focus the clearly demarcated approach that distinguishes the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to any one else.
> But the socialist or if that word is jarring to some,
> the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficient activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity

kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist
State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages the setting up of a welfare State. In this connection we may profitably refer to Ramana Dayaram Shetty v. The International Airport Authority of India and Ors in which Bhagwati, J. speaking for the Court observed:

> "It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by E way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant.
> The power or discretion of the Government in the matter of grant of largesse including award to jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

At another place it was observed that the Government must act in public interest, it cannot act arbitrarily or without reason and if it does so, its action would be liable to be invalidated. It was further observed that the object of holding the auction is generally to raise the highest revenue. The Government is entitled to reject the highest bid if it thought that the price offered was inadequate. But after rejecting the offer, it is obligatory upon the Government to act fairly and at any rate it cannot act arbitrarily. Following this line of thought, in Kasturi Lal Lakshmi Reddy v. State of Jammu & Kashmir (1980) 3 SCR 1338 : (AIR 1980 SC 1992) while upholding the order of the Government of Jammu & Kashmir dated April 27, 1979 allotting to the second respondent 10 to 12 lacs blazes annually for extraction of resin from the inaccessible chir forests in Poonch, Reasi and Ramban Divisions of the State for a period of 10 years on the terms and conditions set out in the order, observed as under (at p. 2000):-

> "Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. 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 so."
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> (emphasis supplied)

13. At one stage, it was observed that the Government is not free like an ordinary individual, in selecting recipient for its largesse and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well-settled that the Government need not/deal with anyone, but if it does so, it must do so fairly and without discretion and without unfair procedure. Let it be made distinctly clear that respondent No. 4 was not selected for any special purpose or to satisfy ally Directive Principles of State Policy. He surreptitiously ingratiated himself by a back-door entry giving a minor raise in the bid and in the process usurped the most undeserved benefit which was exposed to the hilt in the court. Only a blind can refuse to perceive it. Approaching the matter from this angle, can there be any doubt that the appellant whose highest bid was rejected by the Government should have no opportunity to improve upon his bid more so when his bid was rejected on the ground that it did not represent adequate market consideration for the concession to extract minor mineral. A unilateral offer, secretly made, not correlated to any reserved price made by the fourth respondent after making false statement in the letter was accepted Without giving any opportunity to the appellant either to raise the bid or to point out the falsity of the allegations made by the fourth respondent in the letter as also the inadequacy of his bid. The appellant suffered an unfair treatment by the State in discharging its administrative functions thereby violating the fundamental principle of fair play in action. When he gave the highest bid, he could not have been expected to raise his own bid in the absence of a competitor. Any expectation to the contrary betrays a woeful lack of knowledge of auction process. And then some one surreptitiously by a secret offer scored a march over him.
No opportunity was given to him either to raise the bid or to controvert and correct the erroneous statement."

9. In view of the above, the action of the respondents 1 to 3 in awarding

the contract to the fourth respondent by nomination basis cannot be approved. It may be that the fourth respondent has commenced the work as per the purchase order and has already effected supplies, however, the illegality in the manner in which the contract is awarded to the fourth respondent by nomination basis cannot be approved by this Court in the light of the legal position, referred to above and the infraction of law which, admittedly, shows arbitrariness of the decision, the same is required to be set aside and is accordingly set aside. To the extent of the work done by the fourth respondent, respondents 1 to 3 will be liable to make payment to the fourth respondent proportionately. However, the contract of this nature must be awarded only after following due process known to law.

The writ petition is, therefore, allowed to the extent of setting aside the purchase order placed in favour of the fourth respondent dated 30.03.2015 giving liberty to respondents 1 to 3 to award the contract by resorting to the process of public auction for the balance quantity other than the one supplied by the fourth respondent.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

May 1, 2015
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[1] AIR 1980 SC 1992

[2] AIR 1985 SC 1147