HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT APPEAL No.789 of 2015

JUDGMENT: (Per the Hon'ble Sri Justice A.V.Sesha Sai)

This is an appeal, filed under Clause 15 of the Letters Patent, assailing the order dated 05.08.2015 passed by the learned Single Judge in W.P.No.2721 of 2015.

2. Heard Sri M.S.Prasad, learned Senior Counsel, representing Mr. M. Anish Sathya Kamal, learned counsel for the appellant and the learned Advocate General for the State of Telangana for the respondents
1 and 2 and Sri B.Srinivas Rao, learned counsel for the third respondent apart from perusing the material available before the Court.

3. The second respondent herein issued a tender notification bearing No.TSMDC/SAND/EXC/Kazipur/2015 dated 07.02.2015, inviting tenders from the eligible individuals/companies for excavation of sand from areas of submergence in Manair River, LMD Project and to transport the same to the nearby stockyard (specified by TSMDC) and again loading of sand in lorries at stockyard at Kazipur village, Karimnagar District, Telangana State.
In response to the said tender notification, the appellant herein and the third respondent also submitted their tenders. The appellant herein quoted Rs.117.49 per Cubic Meter of sand whereas the third respondent quoted Rs.135/- per Cubic Meter. The second respondent herein disqualified the appellant firm vide letter dated 08.03.2015 on the ground that it is neither an individual nor a company as per the conditions of the tender and allotted the work to the third respondent herein. The second respondent Mineral Development Corporation Limited vide Letter Of Intent bearing Ref.TSMDC/GM (Mining)/SAND/EXC/Kazipur/2015/159 dated 09.02.2015 accepted the offer of the third respondent for Rs.135/- per Cubic Meter.

4. Calling in question, the validity and the legal sustainability of the action of the second respondent/Mineral Development Corporation in rejecting its tender and the Letter of Intent issued by the second respondent dated 08.03.2015, the appellant filed WP.No.2721 of 2015.

5. Resisting the relief sought and denying the averments and allegations made in the affidavit filed in support of the writ petition, the respondents 2 and 3 herein filed counter affidavits.

6. The learned Judge, taking into consideration the pleadings available and the contentions urged by the respective counsel, framed the following point for consideration:

> "Whether the tender of the petitioner, which is a firm can be considered along with other tenders which were filed on behalf of the individuals/companies?'

7. A perusal of the order under challenge in the present writ appeal manifestly discloses that the learned Single Judge refused to grant the relief in favour of the writ petitioner/appellant herein principally on the ground that the writ appellant is neither an individual nor a company as stipulated under the conditions of the tender. In this context it may be apposite to refer to the said relevant qualifying requirement as stipulated in the tender notification, which reads as under:

> "The tenderer must be a individual/ a Company who has executed in the last 3 (three years) at least 1 (one) work of value not less than Rs.5.00 Crores (Rupees Five Crores) involving excavation and removal of any mineral including sand in State/Central Government Undertaking or large Public Limited Companies/ and (or) Mines of any Company."

8. It is also evident from a reading of the order under challenge that the learned Single Judge held that it is for the employer to prescribe conditions in the tender and in that process it can limit the tenders to certain categories also and the learned Single Judge further held that the Court while exercising the powers of judicial review cannot examine the rationale behind such limitation.

9. Challenging the said reasons/findings recorded by the learned Single Judge, the learned Senior Counsel appearing for the appellant contends that the reasons assigned by the learned Single Judge are erroneous, contrary to the settled principles of law and the material available on record. It is also the submission of the learned Senior Counsel that there is absolutely no justification on the part of the second respondent-Mineral Development Corporation in refusing to accept the tender of the petitioner/ appellant having entertained the tender submitted by the individuals/companies registered under the Companies Act. It is also the emphatic contention of the learned Senior Counsel that the term 'Company' as indicated in the tender notification is required to be construed as inclusive of the partnership firm also otherwise there exists no rationale absolutely in the action of the respondents. It is further submitted by the learned Senior Counsel that in view of the impugned action, the Government authorities will have to lose approximately Rs.5 crores of public money i.e., difference between the rate quoted by the writ appellant and the third respondent herein.

10. In support of his submissions, learned Senior Counsel places reliance on the Judgments of the Hon'ble Apex Court in ***RASHBIHARI PANDA ETC V.STATE OF ORISSA***[1], ***ERUSIAN EQUIPMENT & CHEMICALS LTD. VS. STATE OF WEST BENGAL AND ANR***[2] and ***MICHIGAN RUBBER (INDIA) LTD. v. THE STATE OF KARNATAKA AND ORS***[3].

11. Per contra, it is vehemently contended by the learned Advocate General appearing for the respondents 1 and 2 and Sri B.Srinivas Rao, learned counsel for the third respondent that there is absolutely no illegality nor any arbitrariness on the part of the respondent authorities in accepting the tender of the third respondent and absolutely it is not open for the writ appellant to assail the tender conditions having failed to do so in the writ petition. It is further submitted that the term 'company' as stipulated in the tender conditions should be construed as a company as defined under Section 2 (20) of the Companies Act and

the interpretation sought to be given by the learned counsel for the appellant that the same is inclusive of a firm cannot be countenanced in the facts and circumstances of the case.

12. In support of his submissions, learned counsel for the third respondent relies upon the judgments of the Hon'ble Apex Court in the case of ***V.SUBRAMANIAM v. RAJESH RAGHUVANDARA RAO*** [4], ***DIRECTORATE OF EDUCATION AND OTHERS V. EDUCOMP DATAMATICS LTD AND ORS*** [5], ***ASSOCIATION OF REGISTRATION PLATES v. UNION OF INDIA (UOI) AND ORS*** [6] and ***SIEMENS AKTIENGESELISCHAFT AND SIEMENS LIMITED v. DELHI METRO RAIL CORPORATION LIMITED AND OTHERS*** [7].

13. The information available before the Court vividly reveals that the appellant herein admittedly quoted the higher rate in its tender than the third respondent herein. It is also the case of the appellant that in view of the said difference in the quotations of the appellant and the third respondent, the second respondent will have to lose approximately a sum of Rs.5 crores and the said difference of amount is not disputed by the respondents. The reason obviously for exclusion of the tender of the writ appellant is that it is neither an individual nor a company as defined under the Companies Act. There is absolutely no controversy with regard to the reality that there is no clarity given in the tender conditions as to the meaning of the Company nor the tender conditions specifically stipulated that it is the company as defined under the Companies Act alone is entitled to participate in the tenders. It is a fact that sub-Section 20 of Section 2 of the Companies Act defines company as one incorporated under the Companies Act or under any previous company law.

14. Disputing the contention of the learned counsel for the third respondent that the company incorporated under the Companies Act alone is entitled to participate, it is emphatically contended by the

learned Senior Counsel, appearing for the appellant that as per Section 366 of the Companies Act, the term company includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law. In this context it may be appropriate to refer to the provisions of Section 366 (1) of the Companies Act 2013, which reads as infra:

> "**366. Companies capable of being registered,--**
> (*1*) For the purposes of this Part, the word "company" includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

15. The learned Senior Counsel appearing for the appellant has also brought to our notice the definitions of Company under various enactments such as Income Tax Act, Negotiable Instruments Act, Employee State Insurance Act and Minimum Wages Act etc. Under Section 2 (17) (iii) of the Income Tax Act, the term 'Company' includes any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Income Tax Act. Section 141 (2) (a) of the Negotiable Instruments Act stipulates that the 'Company' means any body corporate and includes a firm or other association of individuals. According to Section 86-A (1) (i) of Employees State Insurance Act 'Company' means any body corporate and includes a firm and other associations of individuals. As per Section 22C (2) (a) of the Minimum Wages Act 'Company' means any body corporate and includes a firm or other association of individuals.

16. Repelling the contentions of the learned Senior Counsel for the appellant, touching the interpretation sought to be given to the term 'Company' with reference to the above said legislations, it is the submission of the learned counsel for the third respondent that the meaning given for the term under various enactments cannot be pressed into service for the purpose of interpretation of the term company as stipulated under the tender notification. In the absence of any clarity in the tender notification with regard to the term company,

this Court finds absolutely no justification to accept the contentions of the learned counsel appearing for the third respondent, and on the other hand, this Court finds sufficient force in the submission of the learned Senior Counsel, appearing for the appellant.

17. Coming to the judgments cited by the learned counsel for the appellant, in the case of ***RASHBIHARI PANDA ETC*** *(supra 1),* the Hon'ble Apex Court at paragraphs 13, 17 and 18, held as under:

> "13. Article 19(1)(f) guarantees the citizens the right to acquire, hold and dispose of property, and Article 19(1)(g) guarantees the right to practise any profession, or to carry on any occupation, trade or business. The right Under Clause (f) is subject to reasonable restrictions which the State may impose on the exercise of the right in the interests of the general public or for the protection of the interests of any scheduled tribe. Clause (6) of Article 19 which was amended by the Constitution (First Amendment) Act, 1951, sets out the restrictions which may be imposed upon the right to practise a profession or to carry on any occupation, trade or business. It states :
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> > Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said Sub-clause, and, in particular, nothing in the said Sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent C the State from making any law relating to, -
> >
> > (i). . .
> >
> > (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.
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> In AkadsiPadhan's case: [1963] Supp. 2 S.C.R. 691 this Court held that by the amendments in Article 19(6) it was intended that the State monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of the general public; that the expression "law relating to" occurring in Clause (ii) means "essential and basic provisions" enacted to give effect to the monopoly i.e. provisions "integrally and essentially connected with the creation of the monopoly"; that the provisions which are incidental or subsidiary to the creation or operation of the monopoly must satisfy the test of the main clause, and that if the law infringes any other fundamental right in Clause (1) of Article 19 it must be

tested under the appropriate provision governing it. The Court accordingly held that Sections 3 and 4 of the Act were valid but declined in substance to give effect to the monopoly because the agents appointed were not agents of the Government merely for purchasing Kendu leaves but were authorized to carry on trade in leaves purchased on their own account. The operation of the State monopoly was in the view of the Court to give rise to a monopoly in favour 'of the agents which had not the protection of Article 19(6)(ii). The Court observed that the appointee must be "an agent of the Government strictly so-called" acting for and on behalf of the Government and not on his own behalf. The Court while upholding the grant of monopoly by Section 3 of the Act to the Government to carry on the business of purchasing: Kendu leaves was of the view that the law cannot be used by the State for the private benefit of agents; it must only be administered for the benefit of the general public, and any arrangement in which under the guise of a monopoly the State permitted a set of persons to make profit for themselves by carrying on business in Kendu leaves on their own behalf was invalid.

17. Validity of the schemes adopted by the Government of A Orissa for sale of Kendu leaves must be adjudged in the light of Article 19(1)(g) and Article 14. Instead of inviting tenders the Government offered to certain old contractors the option to purchase Kendu leaves for the years 1968 on terms mentioned therein. The reason suggested by the Government that these offers were made because the purchasers had carried out their obligations in the previous year to the satisfaction of the Government is not of any significance. From the affidavit filed by the State Government it appears that the price fetched at public auctions before and after January 1968 were much higher than the prices at which Kendu leaves were offered to the old contractors. The Government realised that the Scheme of offering to enter into contracts with the old licensees and to renew their terms was open to grave objection, since it sought arbitrarily to exclude many persons interested in the trade. The Government then decided to invite offers for advance purchases of Kendu leaves but restricted the invitation to those individuals who had carried out the contracts in the previous year without default and to the satisfaction of the Government. By the new scheme instead of the Government making an offer, the existing contractors were given the exclusive right to make offers to purchase Kendu leaves. But insofar as the right to make tenders for the purchase of Kendu leaves was restricted to those persons who had obtained contracts in the previous year the scheme was open to the same objection. The right to make offers being open to a limited class of persons it effectively shut out all other persons carrying on trade in Kendu leaves and also new entrants into that business. It was ex facie discriminatory, and imposed unreasonable restrictions upon the right of persons other than existing contractors

to carry on business. In our view, both the schemes evolved by the Government were violative of the fundamental right of the petitioners under Article 19(1)(g) and Article 14 because the schemes gave rise to a monopoly in the trade in Kendu leaves to certain traders, and singled out other traders for discriminatory treatment.

18. The classification based on the circumstance that certain existing contractors had carried out their obligations in the previous year regularly and to the satisfaction of the Government is not based on any real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved i.e., effective execution of the monopoly in the public interest. Exclusion of all persons interested in the trade, who were not in the previous year licensees is ex facie arbitrary : it had no direct relation to the object of preventing exploitation of pluckers and growers of Kendu leaves, nor had it any just or reasonable relation to the securing of the full benefit from the trade, to the State."

18. In the case of ***ERUSIAN EQUIPMENT & CHEMICALS LTD.*** *(supra 2),* the Hon'ble Apex Court at paragraphs 12, 14, 17 to 19, held as under:

> "12. Under Article 298 of the Constitution the Executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.
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> 14. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to earn livelihood and to

pursue any trade. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.

17. The Government is a Government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do as fairly without discrimination and without unfair procedure. Reputation is a part of person's character and personality. Blacklisting tarnishes one's reputation.

18. Exclusion of a member of the public from dealing with a State in sales transactions has the effect of preventing him from purchasing and doing a lawful trade in the goods by discriminating against him in favour of other people. The State can impose reasonable conditions regarding rejection and acceptance of bids or qualifications of bidders. Just as exclusion of the lowest tender will be arbitrary. similarly exclusion of a person who offers the highest price from participating at a public auction would also have the same aspect of arbitrariness.

19. Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein.”

19. In the case of ***MICHIGAN RUBBER (INDIA) LTD.*** *(supra 3),* the Hon'ble Apex Court at paragraphs 23 and 35, held as follows:

> "23. From the above decisions, the following principles emerge:
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> (a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;
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> (b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;
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> (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;
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> (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and
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> (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.
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> 35. As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the Appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd Respondent thought it fit that the criteria for applying for tender for procuring tyres

should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the Courts would interfere. The Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, the CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide."

20. Coming to the judgments cited by the learned counsel for the third respondent in the case of ***V.SUBRAMANIAM*** *(supra 4),* the Hon'ble Apex Court at paragraph 11, held as follows:

> "11. It may be mentioned that a partnership firm, unlike a company registered under the Indian Companies Act, is not a distinct legal entity, and is only a compendium of its partners. Even the registration of a firm does not mean that it becomes a distinct legal entity like a company. Hence the partners of a firm are co-owners of the property of the firm, unlike shareholders in a company who are not co-owners of the property of the company."

21. In the case of ***DIRECTORATE OF EDUCATION AND OTHERS*** *(supra 5),* the Hon'ble Apex Court at paragraphs 11 and 12, held as follows:

> "11. This principle was again re-stated by this Court in Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation: AIR2000SC2272 . It was held that the terms and conditions in the tender are prescribed by the government bearing in mind the nature of contract and in such matters the authority calling for the tender is the best judge to prescribe the terms and conditions of the tender. It is not for the courts to say whether the conditions prescribed in the tender under consideration were better than the one prescribed in the

> earlier tender invitations.
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> 12. It has clearly been held in these decisions that the terms of the invitation to tender are not open to judicial scrutiny the same being in the realm of contract. That the government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias, it is entitled to pragmatic adjustments which may be called for by the particular circumstances. The courts cannot strike down the terms of the tender prescribed by the government because it feels that some other terms in the tender would have been fair, wiser or logical. The courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide."

22. In the case of ***ASSOCIATION OF REGISTRATION PLATES*** *(supra 6),* the Hon'ble Apex Court at paragraph 38, held as follows:

> "38. In the matter of formulating conditions of a tender document and awarding a contract of the nature of ensuring supply of high security registration plates, greater latitude is required to be conceded to the State authorities. Unless the action of tendering Authority is found to be malicious and misuse of its statutory powers, tender conditions are unassailable. On intensive examination of tender conditions, we do not find that they violate the equality clause under Article 14 or encroach on fundamental rights of a class of intending tenderer under Article 19 of the Constitution. On the basis of the submissions made on behalf of the Union and State authorities and the justification shown for the terms of the impugned tender conditions, we do not find that the clauses requiring experience in the field of supplying registration plates in foreign countries and the quantum of business turnover are intended only to keep out of field indigenous manufacturers. It is explained that on the date of formulation of scheme in Rule 50 and issuance of guidelines thereunder by Central Government, there were not many indigenous manufacturers in India with technical and financial capability to undertake the job of supply of such high dimension, on a long term basis and in a manner to ensure safety and security which is the prime object to be achieved by the introduction of new sophisticated registration plates."

23. In the case of ***SIEMENS AKTIENGESELISCHAFT AND SIEMENS LIMITED*** *(supra 7),* the Hon'ble Apex Court at paragraph 19, held as follows:

"19. The principles governing judicial review were then formulated in the following words: (*Tata Cellular case*[8], SCC pp. 687-88, para 94)

> (*1*) The modern trend points to judicial restraint in administrative action.
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> (*2*) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
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> (*3*) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
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> (*4*) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
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> (*5*) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
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> (*6*) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

24. A through reading of the principles laid down in various pronouncements rendered by the Hon'ble Apex Court, as referred to supra, would clearly demonstrate that when the questioned action is arbitrary, discriminatory and offends Articles 14 and 19 (1) (g) of the Constitution of India, writ petition under Article 226 of the Constitution of India is undoubtedly maintainable to correct the said erroneous actions. Therefore, the contention of the learned Advocate General, appearing for the respondents 1 and 2 and the third respondent that the writ petition cannot be maintained before this Court under Article 226 of the Constitution of India when the cause touches the interpretation of

the conditions of tender, in the considered opinion of this Court, in the facts and circumstances of the case, can neither be countenanced nor it can be approved. In fact, as long back as in the year 1969 a Constitutional Bench of the Hon'ble Apex Court in the case of ***RASHBIHARI PANDA ETC*** *(supra 1)*, found fault with such an arbitrary action on the part of the respondent authorities.

25. Another significant and vital aspect which strikes at the very action on the part of the second respondent is that recognizing their mistake and error, in their subsequent tender notification bearing No.TSMDC/SAND/EXC/Kothapalli/2015, dated 18.02.2015, the second respondent specifically included the term 'firm' also against the column qualifying requirements. This Court also does not find any justification in refusing to accept the tender of the appellant having permitted the individuals to participate in the tender.

26. Another important aspect which needs to be referred to in this context is that the learned Single Judge for dismissing the writ petition placed reliance on the observations of the Hon'ble Apex Court in the case of ***MICHIGAN RUBBER (INDIA) LTD*** *(supra 3)* made at paragraph 35. The learned Single Judge however did not refer to paragraph 23 of the said judgment.

27. In fact in the present case, having regard to the facts and circumstances of the case, this Court is also of the opinion that the impugned action in accepting the tender of the third respondent would be prejudicial to the public interest also since the difference between the rate quoted by the writ appellant and the third respondent is approximately Rs.5 crores which is admittedly public money and the said aspect cannot be lost sight of by this Court. Tested on the touch stone of Article 14 of the Constitution of India, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the acceptance of tender of the third respondent by the second respondent in the facts and circumstances of the case is highly arbitrary, illegal, unreasonable and violative of Articles 14 of the Constitution of India. It

is also required to be noted in this context that the actions of the administrative authorities should be highly transparent and must not give any scope for any sort of suspicion; otherwise, there is every threat of public losing faith in the system guided by rule of law. This Court cannot remain as a silent spectator in the event of there being deviations and breach of laws by the administrative authorities. Having regard to the afflux of considerable length of time, this Court is also not inclined to direct the respondents to grant the work in favour of the writ appellant.

28. For the aforesaid reasons, the Writ Appeal is allowed, declaring the impugned action on the part of the second respondent in accepting the tender of the third respondent in exclusion of the writ petitioner as illegal and consequently respondents 1 and 2 are directed to issue fresh tender notification and complete the process within two months from today and till then the third respondent be permitted to carry on further work at the rate quoted by the writ petitioner appellant, if the third respondent so desires. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

DILIP B.BHOSALE,J

A.V.SESHA SAI,J

Date:26.02.2016
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HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT APPEAL No.789 of 2015

Dated 26-02-2016

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[1] (1969) 1 SCC 414

[2] (1975) 1 SCC 70

[3] (2012) 8 SCC 216

[4] (2009) 5 SCC 608

[5] (2004) 4 SCC 19

[6] (2005) 1 SCC 679

[7] (2014) 11 SCC 288