THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.Nos.21340 of 2014 and 2502 of 2015

COMMON ORDER:

The issues arising for consideration in both these Writ Petitions are connected. Therefore, they are being decided together.

2. Petitioners in both the cases are engaged in the business of purchase and sale of Red Sanders Wood.

THE BACKGROUND FACTS

3. The State Government vide a memo No.9719 dt.24.07.2008 had issued a tender notice to export the Red Sanders Wood 'C' Grade in log form, which was available with the Forest Department through global tenders. The Principal Chief Conservator of Forest gave wide publicity through leading newspapers and also in the web site of the Forest Department inviting competitive bids for sale of Red Sanders Wood.

4. In all 26 tenders were received by the State Government from different companies and individuals offering competitive rates and the sealed tenders were opened on 29.08.2008.

5. The 1st petitioner in W.P.No.21340 of 2014 had offered to purchase 116.192 MT, the 2nd petitioner therein offered to purchase 118.500 MT and the 3rd petitioner therein offered to purchase 105.500 MT of B, C and non-grade wood; likewise, the petitioner in W.P.No.2150 of 2015 offered to purchase 2022 MT. The petitioners in both the Writ Petitions were found to be the highest bidders and accordingly the State Government issued orders accepting the bids of the petitioners for different quantities at the rates quoted by them. However as regards the petitioner in W.P.No.2150 of 2015, the State government allotted 1068.3899 MT only. The Principal Chief Conservator of Forest was directed to take necessary action pursuant to the acceptance of bids by the State Government.

6. It appears that the Government of India did not agree to the request of the State Government for permission for export of Red Sanders Wood in round log form, and informed the State Government of the said fact by proceedings dt.14.07.2009.

7. So, the State Government issued G.O.Rt.No.480, dt.01.10.2009 cancelling the entire tender process pertaining to the export of Red Sanders Wood in log form and the Principal Chief Conservator of Forest was directed to call for tenders for disposal of Red Sanders

Wood in Value Added Product (VAP) form. Consequently the Government orders which had been issued accepting the petitioners' bids stood cancelled.

8. It appears that three of the bidders who were similarly placed like the petitioners, challenged the cancellation of the bids in this court by filing Writ Petitions and the State Government thought it fit to negotiate with those bidders pending those Writ Petitions to explore the possibility of allotting Red Sanders Wood in their favour to be exported in VAP form, though the Government initially thought of inviting fresh bids. These three bidders are M/s Zintan Trading Corporation, M/s Andhra Fogaku Pvt. Limited and M/s. Power Grip Resources Limited, Singapore. These three bidders were called for negotiations and were allowed to export the Red Sanders Wood in VAP form vide G.O.Rt.No.259 dt.06.06.2011 issued by the State Government.

9. Petitioners contend that the action of the State Government in inviting only the above three bidders for negotiation for export of Red Sanders Wood in VAP form in a confidential manner without calling the other bidders like the petitioners for negotiations is illegal and discriminatory and that the respondents ought to have called all the earlier bidders or at least the petitioners for negotiations for export of Red Sanders Wood in VAP form

in 2011.

10. Some other bidders who had submitted bids in the year 2008 approached this Court by filing W.P.No.33031 of 2012 and 3460 of 2013 challenging the action of the respondents in not calling them for negotiations after cancellation of earlier tender notice and merely selecting three bidders referred to bin para-8 supra for allotting Red Sanders Wood in VAP form by way of private negotiations. They contended that this is illegal and sought directions to call the petitioners therein also for negotiations or to call for fresh tenders for allotting various grades of Red Sanders Wood to lift the stocks available with the Government. They had also sought for setting aside G.O.Rt.No.259, dt.06.06.2011 and other related government orders.

11. These Writ Petitions were tagged along with Public Interest Litigation (PIL) No.124 of 2012 and were heard and disposed of by a Division Bench by a common order dt.15.03.2013. The PIL case was dismissed but the W.P.Nos.33031 of 2012 and 3460 of 2013 were disposed of holding that interest of justice would be met by directing the Government to negotiate with the petitioners to ascertain their willingness to offer the rates on par or above the rates fixed by the Government so as to dispose of the remaining quantity of Red Sanders Wood in terms

of the policy of the Government of India as well as the State Government. The petitioners in W.P.Nos.33031 of 2012 and 3460 of 2013 were directed to approach the State Government and offer their willingness to negotiate the rates with reference to the quantity which they already offered to purchase and on receipt of their request, the State Government was directed to consider their offer in terms of its policy and act accordingly.

12. This direction was given since there was sufficient quantity of Red Sanders Wood available with the State Government and since the Court felt that it was not necessary to set aside the allotment already made in favour of other 3 bidders vide G.O.Rt.No.259 dt.06.06.2011.

13. Since the petitioners in both these Writ Petitions felt that they were similarly situated as the petitioners in W.P.Nos.33031 of 2012 and 3460 of 2013, they filed W.P.Nos.32819 of 2013, 32833 of 2013 and 4504 of 2014 seeking similar direction to that given in the order dt.05.03.2013 by this Court.

14. In these Writ Petitions, the petitioners contended that they had offered much higher rates in 2008 for purchase of Red Sanders Wood than the petitioners in W.P.Nos.33031 of 2012 and 3460 of 2013 and also more

than those bidders who were favoured by the Government vide G.O.Rt.NO.259 dt.06.06.2011. They contended that they are entitled to be provided with an opportunity to negotiate with the State Government for purchase of Red Sanders Wood like the petitioners in W.P.Nos.33031 of 2012 and 3460 of 2013, since huge stocks of Red Sanders Wood were still lying with the Forest Department, apart from the quantity which was allotted by the Statement Government vide G.O.Rt.No.259 dt.06.06.2011. They also contended that the Government of India had issued a notification No.47(RE-2013)/2009-2014 dt.24.10.2013 permitting the State Government to finalize the modalities including the allocation of quantities to various entities, as applicable, for export of a quantity of 9784.1363 MT of Red Sanders Wood in log form and the stocks lying with the Forest Department were in addition to the above stocks and they stood a chance of getting some of the stock allotted to them.

15. The W.P.No.32819 of 2013 filed by the 1st petitioner in W.P.No.21340 of 2014 and W.P.No.32833 of 2014 filed by the petitioners 2 and 3 in W.P.No.21340 of 2014 were disposed of on 21.11.2013 by two separate orders in terms of the order dt.05.03.2013 in PIL No.124 of 2012 and W.P.Nos.33031 of 2012 & 3460 of 2013.

16. Likewise, W.P.No.4504 of 2014 filed by the petitioner in W.P.No.2502 of 2015 was disposed of on

18.2.2014 in terms of the order passed on 05.03.2013 in PIL No.124 of 2012 andW.P.Nos.33031 of 2012 and 3460 of 2013.

17. Therefore, by virtue of the orders obtained by the petitioner in W.No.32819 of 2013, 32833 of 2013 and 4504 of 2014, the petitioners could approach the State Government to offer their willingness to negotiate the rates with reference to the quantity which they had already offered to purchase and the State Government was obliged to consider their offers in terms of its policy and to act accordingly.

18. The petitioners in W.P.No.21340 of 2014 gave representation dt.27.11.2013 and the petitioner in W.P.No.2502 of 2015 gave representation on 22.02.2014 to the 1st respondent expressing their willingness to negotiate the rates with reference to the quantity which they had already offered to purchase.

19. The office of the 2nd respondent then issued a notice dt.12.05.2014 to the petitioners to participate in negotiations to be held in the office of the 2nd respondent on 29.05.2014. The petitioners attended the said meeting.

THE PROCEEDINGS IMPUGNED IN THE WRIT PETITIONS

20. The State Government then issued letter No.9613/Section.II/ 2013 dt.23-07-2014 to petitioners in W.P.No.21340 of 2014 and letter No.8444/Section.II/2013

dt.23-07-2014 to the petitioner in W.P.No.2502 of 2015 alleging that the petitioners had formed into a ring by quoting same rates; that the Director General of Foreign Trade (D.G.F.T.) issued notification permitting the State Government to sell and export 8584 MTs. of Red Sanders in LOG form vide notification No.47(RE-2013/2009-2014) dt.24-10-2013; that a Committee was constituted by the State Government to finalize methodology and terms and conditions for conducting sale/auction of Red Sanders Wood as permitted by D.G.F.T.; the said Committee had recommended to conduct sale on electronic platform through e-tender-cum-e-auction in a proposed global tender through M.S.T.C., a Government of India Enterprise; and therefore the State Government had decided to call global tender on electronic platform through e-tender-cum-e-auction by engaging services of M.S.T.C.and conduct sales in a transparent manner by maximizing participation of International and domestic purchasers. It was further stated therein that the request of the petitioners is not in tune with this policy of the State Government and it was not feasible to consider request of petitioners for allotment of Red Sanders wood as per the rates offered during negotiations held on 29-05-2014.

21. These letters are impugned in both the Writ petitions.

CONTENTIONS OF PETITIONERS

22. Petitioners allege that they appeared before the 2nd respondent on 29.5.2014 and offered rates at request of 2nd respondent in sealed covers for allotment of Red Sanders Wood in VAP form for Rs.5 lakhs per MT for 'C' grade and Rs.4.50 lakhs per MT for non-grade. They contend that they were also asked to quote in sealed covers their rates for Log form since the bids pertaining to the year 2008 were to sell the Red Sanders Wood in Log form.

23. Petitioners in W.P.21340 of 2014 contend that they quoted Rs.8.10 lakhs per MT for 'C' grade and Rs.7.20 lakhs per MT for Non-grade for LOG form and the petitioner in WP.No.2502 of 2015 quoted Rs.8.10 lakhs per MT for 'C' grade and Rs.10.50 lakhs per MT for 'B' grade for LOG form.

24. Learned counsel for petitioners contended that the petitioners were asked to give quotations in a sealed cover on 29-05-2014 and there were in fact no negotiations conducted by respondents in spite of the fact that this Court had specifically directed the respondents to negotiate. He contended that the respondents, instead of negotiating, followed the sealed tender procedure, which was not what was directed by this Court in its orders dt.21-11-2013 in W.P.Nos.32819 and 32833 of 2013 and also order dt.18-02-2014 in W.P.No.4504 of 2014.

25. The petitioners contended that the prices quoted by them are much higher than the rates which were quoted in the auction conducted in February, 2014 by the State of Tamil Nadu for the Red Sanders Wood of ‘C’ grade and also those fixed by the Committee constituted by the State Government in 2014 for both ‘C’ and ‘B’ grade of Red Sanders Wood.

26. The petitioners contended that this action of respondents is arbitrary, unreasonable, and unconstitutional and contrary to the directions given by this Court and that respondents had reduced the directions of this Court to a mockery by rejecting the offers made by petitioners in a capricious manner.

27. The petitioners contend that the State Government had issued G.O.Rt.No.276 dt.25-07-2014 for sale of Red Sanders through Log form through e-tender-cum-e-auction by inviting global tenders and the starting price of ‘C’ grade has been fixed at Rs.8.00 lakhs and for non-grade was fixed at Rs.7.00 lakhs, which is less than what was offered by petitioners i.e. Rs.8.10 lakhs per MT for ‘C’ grade and Rs.7.20 lakhs per MT for non-grade during the negotiations held on 29-05-2014.

28. Learned counsel for petitioners also pointed out that e-auctions sought to be conducted in 2014 and 2015 failed and respondents could not recover much from those e-auctions. They contended that respondents were

able to sell only 2523.123 MT of 'C' grade Red Sander in the e-auction in November/December, 2014 and only one lot consisting of 25.437 MT was brought in the said e-auction for Rs.40.72 lakhs per MT and the rest of the lots were bought for prices ranging between Rs.15.00 lakhs per MT onwards and the average price comes to Rs.21.00 lakhs per MT; in the second round of auction held in June, 2015, 22 lots of 'C' grade fetched an average price of Rs.20.99 lakhs per MT, and in the third phase of e-auction in October, 2015, the starting price fixed for 'C' grade was Rs.21.00 lakhs per MT. They contended that there is a steep decline in the demand for Red Sander wood in China due to the down slide of the economy in that country and also fall in preference for luxurious items by the people and the petitioner is prepared to purchase at the price of Rs.21.00 lakhs per MT. They also placed reliance on G.O.Ms.No.328 Environment, Forest, Science and Technology (Section.II) Department dt.19-11-2015 issued by 1st respondent to cancel all the bids received and go for fresh tenders for entire quantity in view of the fact that all the bids received in phase-III auction was not encouraging; to conduct sale of Red Sanders Wood for a quantity of 2868 MTS in log form through e-tender-cum-e-auction by inviting global tenders in the 4th phase; to fix the starting price at Rs.30.00 lakhs for 'A' grade, Rs.20.00 lakhs per MT for 'B' grade and Rs.12.00 lakhs per MT for ‘C’ grade.

29. They therefore contended that there is total non-application of mind by respondents and they have acted in the prejudiced manner against petitioners by ignoring the higher rates offered by petitioners and by refusing to negotiate in a reasonable manner with petitioners.

CONTENTIONS OF THE RESPONDENTS

30. In response to these contentions, respondents filed a counter affidavit dt.07-08-2014 and additional counter affidavit dt.01-12-2015 in W.P.No.21340 of 2014 and counter affidavit dt.10-03-2015 and three additional counter-affidavits dt.07-12-2015, 18-12-2015 and 05-02-2016 in W.P.No.2502 of 2015.

31. Learned Advocate General supported the action of respondents in issuing letter Nos.9613/Section.II/2013 dt.23-07-2014 to three petitioners in W.P.No.21340 of 2014 and the letter No.8444/Section.II/2013 dt.23-07-2014 to the petitioner in W.P.No.2502 of 2015.

32. He asserted that all the bidders had formed a ring and had given same rates to the respondents in the meeting held on 29-05-2014 and therefore their bids were rightly rejected by respondents. He contended that in the orders passed by this Court (in Writ Petitions filed by petitioners i.e. W.P.No.32819 of 2013, W.P.No.32833 of 2013 and W.P.No.4504 of 2014), this Court had passed

orders in terms of common order passed by this Court on 05-03-2013 in P.I.L.No.124 of 2012, W.P.Nos.33031 of 2012 and 3460 of 2013; and in that latter order, the direction to the State Government was to consider the offers in terms of its policy and act accordingly; that there has been a change in the policy of the State Government; it had issued G.O.Rt.15 dt.10-01-2014 constituting a Tender Committee to work out the modalities including finalization of the Tender Document for disposal of the Red Sanders Wood in LOG form out of the confiscated/seized stock available with the Government of Andhra Pradesh; the Committee consisted of the Special Chief Secretary to Government, Environment, Forests, Science and Technology (Form.III) Department, Principal Chief Conservator of Forests, A.P., Hyderabad, Additional Principal Chief Conservator of Forests (Production), Secretary to Government, Finance Department or his nominee, Secretary to Government, Industries and Commerce Department or his nominee, Additional Secretary to Government, Law Department and Special Secretary to Government (Environment); the Committee made certain recommendations after holding meetings on 16-01-2014 and 18-01-2014; and the said recommendations were accepted by the State Government vide G.O.Rt.No.276 dt.25-07-2014. According to him, one of the recommendations was to conduct sale of Red Sanders in LOG form through e-tender-cum-e-auction by inviting global tenders. He therefore contended that respondents cannot be found fault with for conducting sale through e-tender-cum-e-auction after rejecting the offers made by petitioners in the meeting held on 29-05-2014.

33. He referred to the additional counter-affidavit filed by the Principal Chief Conservator of Forests (H.O.F.F.), Andhra Pradesh. In that affidavit, the said official stated that all petitioners were called for negotiations and were made to set on one table on 29.5.2014; they were informed that they were called in obedience to the orders of the Court and were asked to state their bid; that they were also posed certain questions which were answered; and the same was evident from a reading of both the letters dt.23-07-2014 impugned in the Writ Petitions.

34. In the said counter-affidavit, the said Official stated that to see that there is transparency in the matter and to avoid any untoward litigation, a request was made to petitioners to give their best offer in writing by putting it in a sealed cover, to be opened in their presence only, and accordingly, the same were opened in their presence. In the said counter affidavit, it was also stated that the High Court orders to consider the offers by negotiations was honoured and merely because quotations in sealed covers were obtained from petitioners, it cannot be said that respondents had not honoured the High Court order.

REPLY ARGUMENTS OF PETITIONERS

35. This contention of the learned Advocate General was contested by the learned counsel for petitioners, who stated that there were no negotiations at all and petitioners were asked to give their quotations in sealed covers and they were asked to leave. Learned counsel for petitioners referred to paragraph Nos.6 to 8 of the letter No.9613/Section.II/2013 dt.23-07-2014 of the 1st respondent as well as letter No.8444/Section.II/2013 dt.23-07-2014 of 1st respondent, which are impugned in the respective Writ Petitions, which are identical, and contended that inviting tenders in sealed cover does not amount to negotiating, and it indicates that the respondents followed the tender process again instead of negotiating with the petitioners as directed by this Court in W.P.Nos.32819 of 2013, 32833 of 2013 and 4504 of 2014. He also contended that the additional counter affidavit filed by the Chief Conservator of Forests on 05-02-2016 cannot improve or explain the contents of the letter No.9613/Section.II/2013 dt.23-07-2014 and letter No.8444/Section.II/2013 dt.23-07-2014. He relied upon the decision in **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others**[1].

THE CONSIDERATION BY THE COURT

36. Before dealing with this point, it is better to refer to contents of the order dt.05-03-2013 in P.I.L.No.124 of 2012, W.P.No.33031 of 2012 and W.P.No.3460 of 2013 since W.P.No.32819 of 2013, W.P.No.32833 of 2013 and W.P.No.4504 of 2014 were all disposed in terms of the said order.

> *"18. So far as the other two writ petitions are concerned, the primary grievance of the petitioners is that they were excluded from negotiations when the Government negotiated with respondents 5, 6 and 7 and allotted quantities in their favour. As would be evident from the categorical averments in the counter affidavit of the first respondent extracted, as above, the entire process of disposal of the precious red sanders wood is in terms of the policy of the State and in conformity with the directions of the Government of India. We are, therefore, satisfied of the transparency of the entire process adopted by the State for disposal of red sanders, particularly, as the rates for different quantities are finalized 5% over and above the rates recommended by a duly constituted committee. Further, during the hearing, the learned Advocate General submitted and the counter affidavit also states that the quantity of about 9,000 MTs is available with the State. Thus, the grievance of the petitioners can be easily redressed by directing the Government to consider the quantity offered to be purchased by them in terms of the policy of the State and take appropriate decision in terms of the policy.*
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> *19. In the circumstances, therefore, in our opinion the interest of justice would be met by directing the Government to negotiate with the petitioners to ascertain their willingness to offer the rates on par or above the rates fixed by the Government, as above, so as to dispose of the remaining quantity of red sanders wood in terms of the policy of the Government of India as well as State of A.P. Since sufficient quantity is available with the State, it is not necessary to set aside the allotments already made by the State in favour of respondents 5, 6 and 7. The relief sought for to that extent in the writ petition is, therefore, declined.*
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> *20. Accordingly, the writ petitioners in both the writ petitions will have the liberty to approach the first*

respondent – Government within a period of two (2) weeks from today and offer their willingness to negotiate the rate with reference to the quantity they have already offered to purchase. On receipt of such request, the State Government shall consider the said offers in terms of its policy and act accordingly."

37. A reading of the above order indicates that there was 9,000 MTs of Red Sanders wood available at that point of time with the State of Andhra Pradesh and paragraph Nos.19 and 20 of the above order clearly indicate the intention of this Court was that the Government should negotiate with the petitioners to ascertain their willingness to offer the rates on par or above the rates fixed by the Government. No doubt, such disposal was directed to be made in terms of the policy of the Government of India as well as the State of Andhra Pradesh.

38. In the present case, the auction of Red Sanders was initiated through tender notice on 24-07-2008 and was cancelled on 01-10-2009 in G.O.Rt.No.480 and since the State Government had allotted red sanders by private negotiations in favour of 3 of the bidders in 2011, this Court had directed the respondents *to negotiate* with the petitioners therein a well as petitioners in these Writ Petitions.

39. According to Concise Oxford English Dictionary, South Asia Edition, Twelfth Edition, 2011, the word '*negotiate*' means "*try to reach an agreement or*

compromise by discussion with others" or "*obtain or bring about by negotiating*". Therefore the essence of a negotiation in the context of present cases is *a discussion* about the rate with the parties invited by respondents for negotiations.

40. The proceedings dt.23-07-2014 in letter No.9613/Section.II/2013 dt.23-07-2014 as well as letter No.8444/Section.II/2013 both indicate that while the petitioners were called for negotiations, they were asked to give quotations in sealed cover. There is no mention in these letters of any discussion with any of the petitioners or other participants in the meeting about the rate.

41. Therefore the statement in the additional counter-affidavit of the Principal Chief Conservator of Forests that although sealed quotations were obtained from the petitioners, they also put certain questions and that respondents had honoured the directions of this Court to make negotiations, cannot be accepted.

42. He cannot be allowed to state something new which is not mentioned in the above letters dt.23-7-2014 by filing an affidavit. This principle is well settled.

43. In **Mohinder Singh Gill** (1 supra), the Supreme Court declared that an order passed by a statutory functionary has to be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the

shape of affidavit or otherwise. The Supreme Court in that case relied upon the observations in **Commissioner of Police, Bombay Vs. Gordhandas Bhanji**[2] wherein it had held that the public orders publicly made, in exercise of the statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. The Supreme Court in that case held that public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

44. So I am of the view that the respondents have not "negotiated" with the petitioners at all as directed by this Court in its orders dt.21-11-2013 in W.P.Nos.32819 of 2013 and 32833 of 2013 and the order dt.18-02-2014 in W.P.No.4504 of 2014 since there is no mention of such negotiations in the impugned letters. This amounts to disobedience of those directions.

THE PLEA OF THE STATE ABOUT CHANGE IN POLICY

45. The learned Advocate General contended that there is a change in the policy of the State Government vide G.O.Rt.No.276 dt.25-07-2014 w.e.f. 25-07-2014 when the State

Government accepted the recommendations of the Tender Committee constituted vide G.O.Rt.No.15 dt.10-01-2014 and notified its new policy for disposal of Red Sanders in e-auction and that its decision in the impugned letters dt.23-07-2014 cannot be found fault with. This plea is equally untenable.

46. As on the date when the Writ Petition Nos.32819 of 2013 and 32833 of 2013 were disposed of on 21-11-2013 or on 18-02-2014 when W.P.No.4504 of 2014 was disposed of, such a policy was not in existence. It was also not in existence on the date when the alleged negotiations took place i.e. 29-05-2014. Any change in the policy, made subsequently on 25-07-2014 cannot be a ground to avoid implementation of the Court order since such a change in the policy occurred after the Court had passed the order.

47. In **T.R. Dhananjaya Vs. J.Vesudevan**[3] an order granting certain benefits to an employee of a Corporation on par with such benefits given to other employees was not implemented by a Corporation. The Corporation relied on a Rule, which seemed to suggest that he was not eligible to hold a particular post, to which those benefits were attached. In Contempt proceedings initiated to implement the order, the Supreme Court held that when the order was passed, the Corporation never pleaded the

ground that the petitioner was not eligible to get the benefit. It held that it was not open to the Government go behind the orders and truncate the effect of the orders passed by the Supreme Court by hovering over the rules to get round the result, to legitimize legal alibi to circumvent the order passed by the Supreme Court. It observed that the Officers concerned had deliberately made concerted efforts to disobey the orders passed by the Court to deny benefits to the petitioner.

48. In **Prithawi Nath RamVs. State of Jharkhand**[4], the Supreme Court observed that if any party concerned is aggrieved by an order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the Court that passed the order or invoke jurisdiction of the appellate Court. Rightness or wrongness of the order cannot be urged in Contempt proceedings, and right or wrong, the order has to be obeyed. It observed that flouting an order of the Court would render the party liable for contempt.

49. This principle was recently reiterated in **Bhushan Power and Steel Limited and others Vs. Rajesh Verma and others**[5]. The Supreme Court held that if an order is passed by a Court and a particular rule was not brought to the notice of the Court when it passed the order, it is not

open to respondents to refuse to implement the Court order on the said ground. It also held that the fact that contra view has been taken in another case by the Court also cannot be a ground to undo the directions given by the Court in its judgment. It held:

> *"**19.** It is thus argued that the developments narrated above and the statutory mandate embodied in Section 11(4) of the MMDR Act, 1957 have come in the way of the respondent State in implementing the final order and judgment dated 14-3-2012[1] insofar it relates to the Keora area of Sundargarh District. It is also sought to be argued that the question of entitlement of the petitioner to the recommendation of mines in the Keora area, which are almost entirely covered under notification issued under Rule 59(1) of the MC Rules, 1960 with specific reference to Sections 11(4) and 11(3) of the MMDR Act was not raised in the writ proceedings/civil appeal. During the course of the implementation of the order of this Hon'ble Court dated 14-3-2012 passed in Bhushan Power & Steel Ltd. v. State of Orissa[1] Respondent 1 is faced with the difficulties with regard to the Keora area as enumerated above. Hence, this application for appropriate directions.*
>
> ***20.** The question is as to whether such a plea can be raised to avoid implementation of the directions contained in the judgment? Our answer is in the negative, having regard to the categorical and authoritative principle of law enunciated by various judgments of this Court. From the reading of these judgments one can comfortably get a complete answer to the so-called difficulties feigned by the State Government/contemnors."*

It then referred to the decisions in **T.R. Dhananjaya (5 Supra), Prithawi Nath Ram (6 Supra) and Bhushan Power and Steel Limited and others (& supra)** and reiterated:

> ***"21.** We cannot lose sight of the fact that there is a judgment, inter partes, which has become final. Even when the civil appeal was being heard, certain other parties claiming their interest in these very lands had moved intervention applications which were dismissed. At that time*

also it was mentioned that there are 195 applicants. However, notwithstanding the same, this Court issued firm directions to the State Government to recommend the case of the petitioners for mining lease in both the areas. In view of such categorical and unambiguous directions given in the judgment which has attained finality, merely because another judgment has been delivered by this Court in Sandur Manganese case[4], cannot be a ground to undo the directions contained in the judgment dated 14-3-2012[1]. Insofar as law laid down in Sandur Manganese[4] is concerned, that may be applied and followed by the State Government in respect of other applications which are still pending. However, that cannot be pressed into service qua the petitioner whose rights have been crystallised by the judgment rendered in its favour. It cannot be reopened, that too at the stage of implementation of the said judgment."

50. From the above decisions it is clear that even if there is a new policy framed by the 1st respondent before the orders were passed in favor of petitioners in W.P.32819/2013, 32833/2013 and 4504/2014 and the same were not brought to the notice of the Court when they were decided, the respondents would not be able to rely on it to justify non-implementation of the orders passed therein. *Afortiorari*, a subsequent change of policy cannot come to the aid of respondents to justify their action in not negotiating with petitioners.

51. This change in policy was 8 months after W.P.32819/2013, 32833/2013 were decided in November,2013 and 5 months after W.P. 4504/2014 was decided in February,2014. Such change of policy cannot be retrospective and cannot negate the orders passed by

this Court in those Writ Petitions.

52. In this view of the matter, I am of the opinion that respondents cannot plead that they need not implement the orders passed by this Court on 21-11-2013 in W.P.Nos.32819 of 2013 and 32833 of 2013 and the order dt.18-02-2014 in W.P.No.4504 of 2014 on the ground that a new policy had come into existence on 25-07-2014, long afterwards, which allowed for sale, not through negotiations, but by
e-auction only.

53. If such a plea is countenanced, it would clearly amount to finding excuses to circumvent those orders passed by this Court particularly when those orders were passed on a representation made by the then Learned Government Pleader for Forests that the order dt.05-03-2013 in P.I.L. No.124 of 2012 and W.P.No.33031 of 2013 and 3460 of 2013 would equally apply to the petitioners in these Writ Petitions. Any attempt by respondents to wriggle out their duty to negotiate with petitioners pursuant to the above orders has therefore to be strongly deprecated.

OTHER PLEAS

54. Another contention raised by respondents was that there is no permission given by the Central Government for sale of Red Sanders wood in LOG form at this point of

time and the petitioners therefore cannot insist that their offers to purchase should be considered.

55. To this, learned counsel for petitioners categorically stated that the petitioners are willing to purchase the Red Sanders wood either in LOG form or in VAP form and pointed out that the Director General of Foreign Trade had issued notification permitting the 1st respondent to sell and export 8584.163 MTs Red Sanders in Log form vide notification No.47(RE-2013)/2009-2014 dt.24-10-2013, which is referred to in paragraph No.9 of the letter No.9613/ Section.II /2013 dt.23-07-2014 and as letter No.8444/Section.II/2013 dt.23-07-2014 itself.

56. Therefore this also cannot be an impediment to respondents to negotiate with petitioners more particularly when three e-auctions failed miserably and respondents were not able to realize much from those e-auctions, which is not disputed by the learned Advocate General appearing for respondents.

57. No other contention is advanced by either party.

58. In this view of the matter, both the Writ Petitions are allowed, and the respondents are directed to negotiate with petitioners and consider the offers of petitioners for purchase of the quantity of Red Sanders Wood originally offered by them as per the directions of this Court in W.P.No.32819 of 2013, W.P.No.32833 of 2013 and

W.P.No.4504 of 2014 without reference to G.O.Rt.No.276 dt.25-07-2014, within eight (08) weeks from the date of receipt of a copy of this order. Of course it would be subject to C.I.T.E.S. National Export quotas and directions which may be issued by the Director General of Foreign Trade, Government of India as of date. No costs.

59. As a sequel, miscellaneous petitions pending if any, in these Writ Petitions shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 26-02-2016
Gra/Vsv

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[1] AIR 1978 SC 851

[2] AIR 1952 SC 16

[3] (1995) 5 SCC 619

[4] (2004) 7 SCC 261

[5] (2014) 5 SCC 551