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(1994) 04 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Appeal No''s. 343 and 388 of 1994

Indian Barytes and Chemicals Ltd. APPELLANT

Vs

A.P. Mineral Development Corporation Ltd. and Ashapura Minechem Ltd. RESPONDENT

Date of Decision : 29-04-1994

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 — Section 74
Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

Citation : (1994) 2 ALT 132

Hon'ble Judges : Syed Shah Mohammed Quadri, J;B.S. Raikote, J

Bench : Division Bench

Advocate : N. Harisesha Reddy, in W.A. No. 343/94 and A.G. and A. Sudershan Reddy, S.C. in W.A. No. 388/94, for the Appellant; N. Harisesha Reddy, for R-2 in W.A. No. 388/94, General and A. Sudershan Reddy, S.C. for Respondent No. 1 in W.A. No. 343/94 and B.V. Subbaiah, in W.A. No. 343/94 and R-1 in W.A. No. 388/94, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—These two writ appeals arise out of the judgment of our learned brother Mr. T.N.C. Rangarajan, J. dated March 23, 1994 in W.P.No. 15441 of 1993. The second respondent in the Writ Petition is the appellant in W.A.No.343/94 and the first respondent is the appellant in W.A.No.388/94. As they arise out of the same facts, they are heard together and are being disposed of by this common judgment. Hereinafter the parses will be referred to as they are arrayed in the Writ Petition.

2. The first respondent is a State owned Corporation. It is engaged in the activity of extracting and selling the minerals including Barytes Ore which is a major mineral and is included in Schedule-I to the Mines and Minerals (Regulation and Development) Act, 1951 (for short ''the Act'')- The first respondent issued notification bearing tender No. M-S-II/92 -93 inviting tenders which was

published in the daily newspaper on August 17, 1993, for sale of 3,00,000 of Barytes Ore per annum loose on ex-Mangampet Barytes mine basis for a period of two years for export. The tenders were to be submitted before 2.00 p.m. on September 8,1993; they were to be opened on 8-9-1993 at 3-00 p.m. In response to the said tender notice, five persons including the petitioner and the second respondent submitted their tenders. The petitioner tendered Rs . 368/- per metric tonne and the 2nd respondent tendered Rs. 378-99 per metric tonne. The first respondent decided to hold negotiations with the tenderers. All the five tenderers were invited for negotiations at the office of the first respondent on 6-10-1993 at 10.00 a.m. They were asked to submit their highest revised offer. The tenderers or their representatives gave their revised offer in closed covers. The Board of Directors of the first respondent (for short the ''Board'') considered the revised offers submitted by them. The offer given by the second respondent was the highest. So the Board resolved to award the contract to the second respondent. It is stated at the end of the day M/s. Trimax Agencies sent its improved offer of Rs. 450/- per M.T. but the first respondent did not consider the same. It appears that the said tenderer filed a Writ Petition challenging the action of the first respondent in not awarding the contract to it but later it withdrew the same; In the Writ Petition out of which these appeals arise, accepting the tender of the second respondent is questioned by an unsuccessful, tenderer as being subversive of public interest, illegal and arbitrary.

3. The learned single judge who dealt with the Writ Petition considered the effect of Clause 6 of the tender notice and observed:

"that the reservation of the right to negotiate in Clause 6 of the tender form itself is burdened with such an infirmity, and unless negotiation is spelt- out in such a way as to gain the confidence of those who participate in the tender, it is not possible to state that it was fair and above board, because, private negotiation is anathema to a public contract."

The learned judge also took into consideration the fact that at the end of the day one of the tenderers had offered Rs. 450/- per metric tonne but that offer was rejected by the first respondent and concluded that it could get a higher amount for the mineral. On this view of the matter the learned judge set aside the contract entered into by the first respondent with the second respondent for the sale of Barytes Ore and directed the first respondent to invite tenders once again in sealed covers with the minimum bid of Rs. 460/- per metric tonne given by the petitioner.

4. The contention of the learned Advocate -General who appeared for the first respondent, is that the first respondent is only interested to support the procedure adopted by it in finalising tenders and to safeguard the interest of the first respondent in the even of the court directing that fresh tenders be called for. He has argued that the first respondent called for tenders for sale of Barytes Ore, which is one of the accepted modes of disposingof the public property and negotiated with the tenderers which is an established practice for enhancing the

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offer which is itself in public interest. He made a distinction in a case where public property is disposed of by private negotiations and a case where tenders are invited for disposing of the public property and negotiations are resorted to for improving the offer given in the tenders and urged that such negotiations were not bad. In any event, submitted the learned Advocate -General, the offer given by the petitioner at Rs. 460/- per metric tonne is not bona fide; the petitioner gave tender to take only one lakh metric tonne per year, therefore it lacked the capacity to fulfil the commitment by taking the contract for purchase of six lakhs metric tonnes at the rate of three lakh metric tonnes per year and that earlier for non-fulfilment of the contract, the deposit money of the petitioner was forfeited by the respondent. For this reason he prayed the Court to require the peitioner to give bank guarantee for 1/3 rd of the total amount involved in lifting of six lakh metric tonnes.

5. Mr. M.V. Ramana Reddy, learned senior counsel appearing for the second respondent, supported the action of the first respondent in awarding the contract in favour of his client on the ground that there was no arbitrariness in the methodology adopted by the first respondent. He submits that in inviting the tenders as well as in conducting the negotiations the action of the first respondent was fair and reasonable and every tenderer was given equal opportunity to make revised offer and that there was no scope for reaching the conclusion that the procedure was arbitrary and that the factual basis of the learned judge was only based on suspicion and surmises; as the petitioner could not succeed in obtaining the contract he had come forward by disguising his interest as public interest.

6. Mr. Soli Sorabjee, the learned Senior Counsel appearing for the petitioner, advanced the case of the petitioner on the proposition that in dealing with public property public interest is paramount and that sale of public property by negotiations is the least favoured method and submitted that equal opportunity of open participation was not given to all the tenderers so the possibility of favourtism could not be ruled out, therefore, the procedure adopted was vitiated. The learned counsel elaborated his submissions stating that in public interest the Supreme Court entertained the offer made for the first time in the Supreme Court and even conducted action to ensure better price for public property. He submitted that in view of the offer given by the petitioner at the rate Rs. 460/- per metric tonne, which would result in increase of price by 2.28 crares, fresh tenders were rightly directed to be called for and that the petitioner undertook to give bank guarantee for making up any loss which the first respondent might suffer due to the highest bid falling short of Rs. 460/- in the event of calling for fresh tenders.

7. On the above contentions the germane questions that arise for consideration are:

(1) was the procedure adopted by the first respondent in finalising the tenders in question and awarding the contract the second respondent, arbitrary, unfair and

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illegal as such vitiated? and

(2) whether this court can take into consideration the offer of the petitioner at the rate of Rs. 460/- per metric tonne given in Court, on the facts and in the circumstances of the case, in deciding whether the first respondent failed to secure the highest available bid and thus defeated the public interest by awarding the contract to the second respondent and if so, what appropriate orders need be passed in exercise of jurisdiction under Article 226 of the Constitution?

8. Now we shall take up the first question. It has already been noticed above that for sale of 6 lakh M.T. Barytes Ore, the first respondent called for tenders by issuing notification in local news papers inviting eligible persons to send their offers by sealed tenders. In the counter-affidavit is stated that for sale of Barytes Ore public auction is not a suitable method and that in case of sale of minerals by the first respondent sale by public auction has never been resorted to and that always the mode of sale by calling for tenders has been adopted. This is not controverted by the petitioner in reply. So we proceed on the basis that sale of Barytes Ore by inviting tender is suitable and appropriate mode and in fact there is no criticism by the petitioner for adopting this method. In response to the tender notice, five tenderers came forward with their respective offers. The Board of Directors of the first respondent- corporation appointed a sub-committee for evaluating the tenders. On the report of the committee the tenderers were invited for negotiations at the office of the first respondent on 6-10-993. The Board of Directors of the first respondent asked the tenderers to give their best enhanced offer and accordingly they gave their revised offers in closed covers. The Board of Directors examined the same and having found that the offer given by the second respondent was the highest, resolved to award the contract to the second respondent.

9. As the challenge is in regard to inviting for negotiations and the procedure adopted for negotiation, we shall examine this aspect.

10. Para 6 of ''the instructions to the tenderers'' (Annexure-II) and para 10 of ''the general terms and conditions'' (Annexure III) are relied upon by the learned Advocate-General as the source of power for entering into negotiations with the tenderers,. Paragraph 6 of Annexure-II is in the following terms:-

"6. The Corporation reserves the right to accept/reject any bid and to annul the bidding price and reject all the bids at any time prior to award of contract without thereby incurring any liability to the affected bidders or any obligation to inform the affected bidders ali the grounds for the Corporation''s action. The bid evaluation criteria as adopted by the Corporation deemed fit is final and binding on the bidders. Further the Corporation reserves the right to negotiate with the eligible tenderers regarding price, terms and conditions and the decision of the Corporation after such negotiations and award of the contract shall be final."

A plain reading of the above extract makes it clear that the first respondent, inter

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alia, reserved the right to negotiate with the eligible tenderers regarding price and terms and conditions and indicated that decision of the Corporation after such negotiations and award of the contract shall be final.

11. Para 10.1 of Annexure-III to the Tender Notice called ''general terms and conditions'' is as follows:-

"10.1 The bidder is expected to quote the best prevailing price in the market. The Corporation reserves the right to negotiate with the highest few or all the eligible tenderers if the price received in the bid is not reasonable or below expectations of the Corporation. The methodology of the negotiations as decided by the Corporation as appropirate will be final and binding on the eligible bidders."

From a perusal of the the para extracted above, two things are evident: (1) The first respondent has reserved the right to negotiate with the highest few or all the eligible tenderers if the price received in the bid is not reasonable or below expectations of the Corporation; (2) The methodology of the negotiations as decided by the corporation as appropriate will be final and binding on the eligible bidders.

12. From the mere fact that the first respondent has reserved itself the right to negotiate and to adopt the methodology of negotiations, it does not get an absolute discretion in the matter. The negotiations as well as the methodology for negotiations has to satisfy the test of reasonableness and fairness. The first respondent being an instrumentality of the State like any other public authority, dealing with the public property, has to satisfy that it has taken all possible steps to safeguard the public interest involved in securing the highest price for the disposal of the property, in this case the Barytes Ore.

13. At this stage it would be appropriate to refer to the cases cited at the bar.

14. In Ram and Shyam Company Vs. State of Haryana and Others, , the State of Haryana granted lease for mining mineral, vested in it, by adopting the method of public auction. When the auction was first held in December, 1980 the appellant therein gave the highest bid of Rs. 1,52,000/- per annum which was initially accepted by the officer conducting the auction but was not confirmed by the State Government. Re-auction was ordered. The appellant participated in the second auction which was held in May, 1981 and offered the highest bid of Rs. 3,87,000/-. That bid was also accepted by the concerned officer but was not confirmed by the State Government,. However, the fourth respondent in the appeal wrote a letter to the Chief Minister of State of Haryana alleging that he was not allowed to participate in the bid and offered a bid of Rs. 4,50,000/- for the lease of the mineral in question. That offer was accepted by the Government. Challenging the validity of the action of the Government in accepting the offer of the 4th respondent, the appellant filed the Writ Petition in Punjab and Haryana High Court, which was dimissed by the learned single Judge on the ground that the petitioner had alternative remedy of appeal. Having lost before the Division

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Bench, he approached the Supreme Court. There he offered the bid of Rs. 5,50,000/-. The Supreme Court conducted the auction of the mineral in question in court. The parties were allowed to bid therein and ultimately a final offer of Rs. 25,00,000/-was made by the appellant. The Supreme Court observed:

"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........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 fill up and shot in the arm."

15. Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, : In that case the agricultural lands belonging to the Mutt were proposed to be sold by private negotiations to the tenants of the land at Rs. 60,000/- per acre. The Commissioner, Endowments accorded the sanction to the proposal on enhancing the price by Rs. 2,500/- i.e. at the rate of Rs. 62,500/- which was approved by the Government. Section 74 of A.P. Charitable and Hindu Religious and Endowments Act, 1966 permits sale by private negotiations provided the Government is satisfied that it is in the interest of the institution and endowments to permit the sale of the lands otherwise than by public auction and records its reasons for reaching that satisfaction in the order granting permission thereunder. The Supreme Court quashed the order of the Government granting permission on the ground of non-compliance of pre- conditions for according sanction u/s 74 and directed sale of the land by public auction. The Supreme Court observed:

"why then permit sale by private negotiations which will not be visible to the public eye and may, even give rise to public suspicion unless there are special reasons to justify doing so."

16. In Mahesh Chandra v. Regional Manager, U.P. Finanical Corporation and Ors., AIR 1993 SC 235 the State Financial Corporation initiated action u/s 29 of the State Finanical Corporation Act, 1951 by taking possession of the unit and bringing the same to sale. His Lordship Justice K. Ramaswamy speaking for the court laid down the guidelines for initiating action u/s 29 of the said Act and with regard to sale of the unit observed.

"The Corporation or its officers or servants as trustee are bound to exercise their power in good faith in selling or dealing with the property of the debtor as a ordinary prudent man would exercise in the management of his own affairs to preserve and protect his own estate. Therefore, the acts of the officer or servant of the Corporation should be reasonable, just and fair which must meet the eye and the offer accepted must be of competitive and every attempt should be made to secure as maximum price as possible to liquidate the liabilities incurred

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by the industrial concern or the debtor under the Act."

It was further observed:

"sale by public auction is universally recognised to be the best and most fair method. It is expected to fetch best competitive price and is beyond reproach, and that the second best is sale by inviting the tenders, which should be resorted if the first is an impossibility, and that the sale by private negotiations should be avoided as it cannot withstand public gaze."

17. In Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, , tenders were invited by the Food Corporation of India to dispose of the damaged food grains. The highest bid offered in the tenders was not accepted and the tenderers were invited for negotiations. The highest bid given by one of the tenderers in the negotiations, was accepted. This course of action was challenged by the respondent - highest bidder in the tenders - in the High Court of Punjab and Haryana. The High Court allowed the Writ Petition. Food Corporation of India went in appeal to the Supreme Court. Allowing the writ appeal the Supreme Court observed.

"the object of inviting tenders for disposal of a commodity is to procure the highest price while giving equal opportunity to all the intending bidders to compete. Procuring the highest price for the commodity is undoubtedly in public interest since the amount so collected goes to the public fund. Accordingly inadequacy may be for several reasons known in the commercial field. Inadequacy of the price quoted in the highest tender would be a question of fact in each case."

It is further observed:

"A procedure wherein resort is had to negotiations with the tenders for obtaining a significantly higher bid during the period when the offers in the tenders remain open for acceptance and rejection of the tenders only in the event of a significant higher bid being obtained during negotiations would ordinarily satisfy this requirement. This procedure involves giving due weight to the legitimate expectation of the higher bidder to have this tender accepted unless outbid by a higher offer, in which case acceptance of the highest offer within the time the offers remain open would be a reasonable exercise of power for public good."

From the judgments of the Supreme Court, referred to above, the following principles emerge;

1. The Government, statutory corporation or authorities in selling or disposing of the public property is in the position of a trustee and must always be guided by the public interest and that the public interest is best served by securing the highest price possible;

2. There are three methods of disposing of public property;

(a) public auction; (b) by inviting the tenders; and (c) by private negotiations.

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The procedure of public auction is universally recognised to be the best and most fair; if this method is not suitable having regard to the nature of the property or otherwise not in public interest, the second best is by inviting tenders. Sale by private negotiations, by its very nature is not open to public and should be resorted to only in exceptional cases as the last course, if the other two methods fail to fetch the proper price;

3. If the procedure adopted by the authority is not fair and reasonable and /or does not lead to securing highest amount available for the property, subject-matter of sale, such action would be vitiated and beneficiary of such auction would get no right either by virtue of acceptance of tenders or entering into concluded contract.

18. We may point out here that sale of the property by private negotiations has to be distinguished from negotiations with the tenderer for enhancement of the bid given in the tenders, after the tenders are invited from the public for sale of public property. Where as the first method viz., sale of public property by private negotiations, is always looked upon with suspicion and is the least favoured by the courts, the second one is aimed at improving upon the highest priced offered in the tenders which provides a basis for negotiation and as this method is adopted to secure increase in the offer over the offer given in the tenders, as such is the least objectionable and is indeed approved by the Supreme Court (see Food Corporation of India v. M/s Kamadhenu Cattle Feed Industries-4 supra.)

19. Now adverting to the facts of this case the tenders for sale of Barytes were invited from the public and they were to be submitted on 8-9-1993 before 2.p.m. Five tenders have been received which were opened in the presence of the parties on the same day at 3 p.m. The Board of Directors of the first respondent constituted a sub-committee consisting of Vice-Chairman of the first respondent, Director of Mines and Geology; Joint Secretary to Government Finance and Planning (F.W.) Department: Deputy Secretary to Government, Industries and Commerce Department. That Committee co-opted the General Manager (Planning and Engineering) National Mineral Development Corporation Limited as a Member for the purpose of laying the guidelines and evaluating the tenders. The committee noted that as against the existing sale price of Barytes (Rs.306-00 per metric tonne) at ex-mine basis, the highest bid was Rs. 384-00 per metric tonne. It laid down certain guidelines and suggested negotiations with the tenderers. The tenderers were invited on 6-10-1993 at 10 a.m. at the office of the first respondent for negotiations. The Board of Directors met for the purpose of negotiations with the tenderers. The tenderers were asked to give their best revised offer. They were also told that no further opportunity would be given. The tenderers did not object to this course of action but accepted the same and acted upon it by giving revised offers in closed covers. Those offers were considered by the Board. We have perused the proceedings of the sub-committee dated 4-10-1993 as well as the minutes of the Board dated 6-10-1993. The board noted the recommendations of the sub- committee;

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"It would be advantageous to the Corporation to tie up the production as well as the sale of output so that the Corporation will have an assured production and as assured sale."

It was also noted that same procedure was adopted by the National Mineral Development Corporation Limited in awarding the contract to a single party. The second respondent offered tenders for both the works. The Board further clarified from the second respondent whether their offer for purchase of mineral was conditional on awarding of the contract for excavation of the mineral, and the second respondent clarified that their offer of purchase and escavation of tenders be treated as independent offers. The Board also noted that each tenderer was called separately and was given an opportunity to submit its best revised offer and that it was made clear that each of the tenderer accepted this and gave their revised offers in writing. It would be appropriate to peruse here the comparative statement of the tenderers.

Rate per metric tonne Name of the Tenderer Original Revised 1. CM. Ramanatha Reddy Rs. 384-00 Rs. 402-00 2. M/s. Indian Barytes & Chemicals Ltd., Madras Rs. 378-99 Rs. 421-30 3. M/s. Ashapura Minechem Ltd., Bombay Rs. 368-00 Rs. 401-00 4. M/s. Gimpex Pt. Ltd., Madras Rs. 360-00 Rs. 384-00 5. M/s. Trimex Agencies Pvt. Ltd. Rs. 333-00 Rs. 421-20

The Board mentioned that the second respondent has emerged as the highest bidder quoting Rs. 421-30 per metric tonne during the meeting of the Board of Directors. The Board was also satisfied that the second respondent had commitment to export five lakh metric tonnes of Barytes during the year 1993-94 and they had already entered into the contracts with the foreign buyers with substantial quantity. In view of those aspects the Board deliberated and resolved to award the contract in question to the second respondent and authorised the Vice-Chairman and Managing Director to enter into the contract with the second respondent for excavation of six lakh metric tonnes of ore and removal of 14 lakh metric tonnes of over burden at the rates noted therein and for sale of Barytes Ore of three lakh metric tonnes of the defined specific gravity for the two years at Rs. 421-30 per metric tonne.

20. We may point out here that the sub-committee noted that the existing price at Rs. 306/- per metric tonne as against that highest offer was Rs. 378 /- and the minimum offer was Rs. 333/- per metric tonne. The Board negotiated for a higher price and settled the deal at Rs. 421-30 per metric tonne. The procedure adopted by the Board at the time of negotiation was inviting each tenderer to give best of their revised offer in writing. The offers were accordingly given in writing. The counter-affidavit says that it was given in closed cover. This fact is not controverted in reply. Those offers were considered by the Board and the highest offer was accepted. To our mind nothing in this procedure suggests that it does not lead to securing the highest amount available to the State. All the tenderers were given equal opportunity to give their revised offer on negotiation by the Board. There is no allegation that any tenderer was either prevented from

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giving revised offer on negotiation or any tenderer''s offer was excluded from consideration. As such it cannot be said that the procedure adopted failed to secure the highest amount available for Barytes Ore to the State. For these reasons we are satisfied that the procedure adopted was fair and reasonable particularly in view of the fact that the case of the petitioner with regard to the mala fides and favouring the second respondent was given up.

21. Now we shall consider the second question. It appears that in the appeal filed against the interlocutory order vacating the interim order, the petitioner has offered in the memorandum of ground of appeal Rs. 460/- per metric tonne. The same offer is reiterated before us by filing a better affidavit. In the affidavit the petitioner has reitereated and affirmed the offer made by his counsel before the learned single judge at the rate of Rs. 460/- per metric tonne. The petitioner has also undertaken to indemnify the first respondent corporation against any loss or short fall that may occur as a result of difference between the amount offered, Rs. 460/- per MT and the price fetched in retendering should the amount be less that the offered amount. For performance of the undertaking, he expressed his willingness to furnish bank guarantee of any nationalised bank for the differential amount, which would be in addition to the amount required to be given by the awardee of the contract as per the terms and conditions of the tender.

22. In its counter, the first respondent submits that the offer of the petitioner is indefinite and vague, as such it cannot be accepted. It is pointed out that the petitioner has not stated whether the offer is for the entire quantity of 6 lakh metric tonnes of barytes or only for the quantity of 2 lakh metric tonnes at the rate of one lakh metric tonne for each year. It is submitted that the offer is made in changed circumstances in January, 1994. In view of the fact that all sub-leases of mining of barytes have come to an end in December, 1993. It resulted in increase in the demand for barytes. It is in that situation the petitioner has raised his offer to Rs. 460/- per M.T. It is pointed out that the petitioner has had an opportunity to increase his offer at the time of negotiations but then he offered only Rs. 410/- per matric tonne. It is stated that the petitioner entered into the contract with the first respondent for purchase of 50,000/- M.T. of barytes ore, but he did not fulfil the contract; it shifted only 3,800 M.T. resulting in forfeiture of security deposit given by it. Further even according to the petitioner it had exported only 1.61 lakh metric tonnes from February, 1988 to August, 1993 and the petitioner is not having any export orders worth mentioning; and that in the tenders it had stated that it had export orders for 34,000 metric tonne, though at the stage of negotiations it claimed to have export orders for 90,000 metric tonnes. Therefore, it is not possible to accept that the petitioner would fulfil the contract of 6 lakh metric tonnes over a period of two years.

23. The second respondent in his counter -affidavit asserted that the offer given by the petitioner to purchase barytes at the rate of Rs. 460/- per metric tonne is not bona fide and that the petitioner did not give such an offer either at the time

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of giving sealed tender or revised offer at the negotiations stage. As the petitioner failed to give the offer at the appropriate time he should not be given any further opportunity in giving another offer as he is the unsuccessful bidder. It is stated that the second respondent has been exporting the barytes ore to foreign countries pursuant to the foreign contract entered by it with the foreign buyers. It is further stated that the petitioner offered to purchase only one lakh metric tonne per annum as against the invitation of offer of six lakh metric tonnes at the rate of 3 lakh metric tonnes per year.

24. From the facts stated in the affidavit of the petitioner as weir as the counter-affidavit of the first respondent with regard to the enhanced offer the following postition becomes clear. The petitioner had ful opportunity of giving offer both at the initial stage of submitting tenders as well as at the stage of negotiations but the offers of the petitioner at the stage of receiving the tenders and also at the stage of negotiations were far below the offers of the highest tenderer. As against the requirement of tender to lift three lakh metric tonnes barytes ore, the petitioner came forward to take only one lakh metric tonne per year. The sub-leases of barytes granted in favour of various persons were cancelled by the Government of Andhra Pradesh in December, 1993 which resulted in increase of demand and consequently increase in prices for barytes ore in January, 1994. It may also be noted that the petitioner is not canvassing his position that the contract for sale of barytes ought to have been awarded in his favour. He is only contesting the case vis-a-vis public interest by bringing to the notice of the court that the procedure adopted by the first respondent in finalising the tenders resulted in loss of public revenue and was prejudicial to the public interest and to show his bona fide he came forward with the offer of Rs. 460/- per metric tonne.

25. Here two aspects are required to be examined; the first is: should the court examine the question of prejudice to the public interest by the action of the authorities in the light of and on the basis of the circumstances existing at the time when the decision to award the contract in question was taken or on the basis of facts and circumstances existing at the time when the matter comes up for judicial scrutiny?; and secondly if the circumstances change " after finalisation of the tender or the contract, and in the changed circumstances if the state can get more revenue, should the court set at naught the settled transaction, if otherwise valid, on the ground that state would stand to gain? In our view the appropriate stage to examine the question of prejudice to the public interest is, the stage at which the contract was finalised by the authorities. The issue has to be judged on the facts and the circumstances existing on the date of finalising of tender/contract by the authorities. If on the date of finalising the tender/contract in the then existing circumstances the authorities by their acts or omissions, failed to obtain the best available price of the public property a finding of prejudice to public interest will follow irrespective of the fact that on the date when the matter is being examined by the Court the prices have fallen down or gone up. So also on the date of finalising tender/contract, if the authorities obtained best available price in the circumstances then existing, the finding that

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the public interest suffered no prejudice will follow irrespective of the fact that on the date when the matter is examined by the Courts the circumstances have changed resulting in increase of price of the public property. In this case the contract was finalised on 6-10-1993. We have already found that the procedure adopted by the first respondent in awarding the contract, on finalising the tenders after inviting the tenderers for negotiations cannot be said to be unfair or unreasonable.

26. The sub-committee noted that the existing price on the date of evaluation of tenders was Rs. 306/- per M.T. As against that, the first respondent by inviting tenders received the highest tender of Rs. 384/- per MT and on negotiations with all the tenderers, giving them equal opportunity, secured the enhanced price of Rs. 421-30 offered by the second respondent. The petitioner on negotiation offered only Rs. 401-00. It is not the case that any tenderer was eliminated from the competition of any higher offer was ignored. However what is stated is that M/s. Trimax agencies sent their improved offer of Rs. 450/- per M.T. at the end of the day on 6-10-1993 and that was not taken into account. Apart from the fact that M/s. Trimax on negotiation gave offer of Rs. 421-20 per M.T. and their improved offer was not before the Board of Directors at the time of finalising of the tender and awarding contract to the second respondent, as is evident from the perusal of the records, the action of the said tendered, in filing a Writ Petition, yet withdrawing the same, suggests that it was not really serious about the subsequent offer so that price cannot be taken as market price on the date of finalising of the contract. The petitioner did not offer Rs. 460/- either on negotiation or at the time of filing of the writ petition but gave that offer in the changed circumstances. From the above discussion it follows that the first respondent did secure the best available price available at the time of finalising of tender/contract and consequently there has been no failure to protect the public interest and the public interest was well protected. The subsequent change of circumstances would not vitiate the earlier action of the first respondent in awarding contract to the second respondent.

27. In the changed circumstances viz., due to cancellation of sub-lease of mining of Barytes Ore by the Government in December, 1993, the demand and the price of ore have been increased in January, 1994. This also explains as to why the petitioner, in January, 1994, gave enhanced offer of Rs. 460/- per M.T. In the changed circumstances the barytes ore can fetch higher price than that quoted by the tenderers in the negotiated offer. The usual incidents of commercial transactions are fluctuations in prices. The changed subsequent circumstance may result either in increase of prices or in fall of prices. When they result in increase of prices, that would not be a relevant factor to unsettle the concluded transactions which were otherwise valid when they were finalised with a veiw to augment public revenue to the State on the ground of protection of public interest. Just as a private citizen cannot be permitted to be benefitted at the cost of the State or State owned Corporation or public authority, so also, all things being equal, the State cannot be conferred a benefit at the cost of private parties.

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28. For the aforesaid reasons we are unable to uphold the judgment of the learned single judge. The judgment under appeal is accordingly set aside and Writ Petition -W.P. No. 15441/93, is dismissed. The writ Appeals are accordingly allowed but having regard to the circumstances of the case we direct the parties to bear their own cost.

29. Immediately after pronouncement of this Judgment, Mr. B.V. Subbaiah. learned counsel for the respondent writ petitioner, prayed for a certificate to appeal to the Supreme Court against this judgment. In our view, no substantial question of law of general importance which needs to be decided by the Supreme Court is involved in this case. The oral application is therefore rejected.

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