

(1997) 01 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16667 of 1996

M/s. Lotus Constructions

APPELLANT

Vs

The Government of Andhra Pradesh and another

RESPONDENT

Date of Decision : 21-01-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 299
Contract Act, 1872 — Section 7
Evidence Act, 1872 — Section 115
Government of India Act, 1935 — Section 175(3)

Citation : AIR 1997 AP 200 : (1997) 2 ALT 608

Hon'ble Judges : S. Sudershan Reddy, J

Bench : Single Bench

Advocate : P.M. Gopal Rao, for the Appellant; Advocate General and Smt. K. Satya Kumari, for the Respondent

Judgement

1. The petitioner in the instant writ petition prays for an appropriate writ, particularly one in the nature of Writ of Mandamus declaring the impugned G.O. Ms. No. 54, Youth Advancement, Tourism and Culture (T) Department, dated 6-8-1996 of the first respondent to be null and void, so far as granting of lease under the earlier G.O.Ms. No.31, Youth Advancement, Tourism and Culture Department, dated 14-5-1996 regarding Bhavanipuram Islands, Vijayawada in favour of the petitioner and further direct the first respondent to abstain from implementing the impugned Governmental Order.

THE FACTUAL MATRIX:

2. Andhra Pradesh Travel and Tourism Development Corporation Limited consequent to the policy decision of the State Government to harness private enterprises to promote, establish and run tourist activities at several places and projects in the State of Andhra Pradesh as joint enterprises issued an advertisement inviting tenders from reputed groups for the development of tourism and inter-related activities at three different places viz., (1)

Bhavanipuram Island (2) Nagarjuna-sagar and (3) Rishikonda cottages at Visakhapatnam. The advertisement was published in daily news papers on 14-9-1994. The tenders were invited from reputed groups or individuals or hoteliers with experience in the line of tourism with proved track-record indicating their offer with detailed project profile to develop the places mentioned in the notification on lease basis. The notification briefly indicates the proposed development such as developing of Golf courses, Amusement Parks, Restaurants and Cottages, Water sports and other facilities. The maximum period of lease was to be settled by way of negotiations. The intending tenderers were required to furnish information relating to

- (a) Planning and Schematic concept;
- (b) Detailed background of the organisation;
- (c) Administrative set-up and implementing agency;
- (d) Financial sources and tie-ups to be indicated; and
- (e) Offer of lease amount on annual basis to the Corporation.

The very notification indicates that the management of the Corporation reserves the right to reject the offers without assigning any reasons whatsoever.

3. The petitioner herein was only a firm at the relevant time of submitting the tender and claims to have experience in several fields of development of civil projects, hotels, Golf courses and other entertainment and cultural activities. The petitioner submitted its tender in respect of Bhavanipuram Island scheme at Vijayawada. The tenders were opened on 11-10-1994 and the tender submitted by the petitioner was found to be in order.

4. The second respondent-Corporation through its notice dated:21-2-1995 required the tenderers, including the petitioner herein to be present on 27-2-1995 for discussions along with necessary documents viz., (a) Detailed Project Report; (b) Finance Profile; and (3) The final offer of the lessee. It is an admitted fact that the tenders were treated only as tentative and were to be finalised after discussions and negotiations. The petitioner submits that World renowned experts in the relevant field were consulted and a scheme was prepared by incurring heavy expenditure of more than Rs. 6.00 Lakhs. The petitioner has to spend that amount even for the purpose of preparing project report itself. The petitioner's representative was present on 27-2-1995 and filed the project report along with other documents. The Respondent-Corporation again by notice dated 8-12-1995 invited the petitioner for another meeting to be held on 14-12-1995 for detailed discussions and for submission of annual accounts, reports and financial profile, letters of acceptance of any collaborating and financial agency etc. The petitioner's representative appeared and displayed the proposed development of the project and submitted a letter from M/s. Fortune International India, an American sponsored financial institution guaranteeing the provision of financial assistance of Rs. 24 Crores to the project;

Consent letters from nine persons promising to contribute Rs. 4.59 Crores towards the promoters quota for the project were also submitted along with Certificates of Credit worthiness of the said persons from Banks and other financial institutions.

5. The State Government by its order dated : 9-2-1996 passed orders constituting a High Level Committee and the said High Level Committee evolved certain criteria for consideration of each of the tenders. The Government vide G. O. Ms. No. 28, dated 16-4-1996 constituted a sub-committee to examine the project details such as costs, lease duration, time frame for completion of the project and other pre-requisites. However, there is some controversy as to whether the petitioner has attended the interview on 10-5-1996. In the counter affidavit filed by the first respondent, itself, it is stated that the petitioner actually attended the interview on 21-5-1996 with required information, but not on 10-5-1996 as alleged by the petitioner. This may not be of much consequence. It is an admitted fact that on the recommendation of the High Level Committee, the Government decided to entrust the project work i.e., leasing of lands in Bhavanipuram Island in Krishna district for promotion of tourism to the petitioner and orders were accordingly issued directing the second respondent-Corporation to prepare a Memorandum of Understanding (for short "MOU") and also to Issue necessary work order after the MOU is signed and after finalisation of terms of the components by the sub-committee, vide G.O.Ms. No. 31. Youth Advancement, Tourism and Culture Department, dated 14-5-1996. It may not be necessary to notice all the details with regard to the terms and conditions, except with regard to the period of lease. The petitioner is said to have submitted a proposal that instead of renewing the lease for every 25 years as originally advertised, a consolidated period for 99 years may be granted so that the members of the petitioner's concern may have-necessary incentives for public participation, including that of time share system regarding cottages etc.

6. The fact remains that Bhavanipuram Islands project was awarded to the petitioner by the Government through G.O.Ms. No. 31, dated 14-5-1996, and the Managing Director of the second respondent-Corporation was directed to prepare MOU as per the instructions contained in U.O. Note. No. 550/Cab/ 95-1, GA(Cab) Dept., dt. 7-8-1998. The very Governmental order further directs the Managing Director to issue "necessary work order to the ... for taking up the work, after MOUs are signed by both the parties and after finalisation of the terms and conditions of the components by the sub-committee constituted ...". The fact remains that no MOU as such was entered into and signed by the parties and the terms and conditions were not finalised. Therefore, no work order, as such was issued by the second respondent-Corporation to the petitioner.

7. It is, however, asserted by the petitioner that pursuant to the Governmental order a meeting was held on 21 -5-1996 and the MOU was also finalised; but, the same is seriously disputed by the Government in its counter affidavit, by stating that the committee held talks with the petitioner "only on terms and

conditions of lease," as reiterated by the second respondent-Corporation and the discussions held were preliminary in nature.

8. The petitioner further submits that it has acted upon the Government order with right earnestness and has devoted whole time attention for implementing the scheme and incurred huge expenditure in this regard. The petitioners promoted a limited company and enlisted the services of experts in the field of sports. Amusement parks, Restaurants and consulted even with Foreign Experts, who arrived on the invitation at the expenses of the company and visited the spot along with their team of Assistants for detailed plans. The Government, however, in its counter-affidavit states that it has never asked the petitioner to float any company and proceed further in the matter before signing the MOU and the necessary agreement between the parties and, therefore, the Government is in no way responsible for the expenditure incurred by the petitioner, if any.

9. It is evident from the record, that while the matter stood thus, one Priya Estates Resorts Limited, who was a tenderer for the Rishikonda project filed W.P. No. 11258/96 questioning the Government's decision of accepting the offer for the Rishikonda project and entrustment of the work to M/s. Toshali Internationals. This was followed by another writ petition No. 14399/96 filed by a former Minister as Public Interest Litigation. This Court granted stay of all further proceedings in both the writ petitions. It is required to note that as far as the writ petition filed in the public interest, the decision of the Government even with regard to Bhavanipuram was attacked. While the said writ petitions were pending, the first respondent issued the impugned Government order -- G.O.Ms. No. 54, Youth Advancement, Tourism and Culture (T) Department, dated 6-8-1996 cancelling the earlier Government order wherein it was decided to entrust the projects to successful tenderers, including the Bhavanipuram Island in favour of the petitioner. It is the said Governmental order which is questioned in this writ petition on various grounds.

10. It is argued on behalf of the petitioner that the impugned G.O., suffers from incurable jurisdictional errors and has to be declared as illegal and unconstitutional. Sri P. M. Gopal Rao, learned counsel for the petitioner submits that the decision to award contract vide G.O.Ms. No. 31 dated 14-5-1996 has become final resulting in a concluded contract between the petitioner and the respondents. According to the learned counsel the execution of the lease-deed is only a formality and there is clear offer and acceptance between the petitioner and the respondents. The Government's acceptance of the offer made by the petitioner is communicated to the petitioner vide G.O.Ms. No. 31 and even if no formal document is executed, the transaction has acquired the nature of concluded contract and is binding on the parties. The argument proceeds: The Government after detailed and careful examination of the recommendations made by the committee constituted by it, has decided to entrust the project to the petitioner and the matter was scrutinized at various levels. The petitioner had successfully passed through the rigorous scrutiny of the committee specially

constituted for the purpose and it was ultimately accepted by the Government. The minutes of the meeting held on 21-5-1996 itself would show the firm commitment of the respondents in the matter. The Governmental Order -- G.O.Ms. No. 31 itself is a contract and no further lease-deed as such is required. The contract has got matured into lease by the action of the Government in issuing the G.O.Ms. No. 31. The Government cannot be allowed to go back of its commitment to entrust the project to the petitioner and should be compelled by way of a Writ of Mandamus to entrust the project in question to the petitioner.

11. Sri V. Venkataramanaiah, the learned Advocate General appearing on behalf of the State counters the submissions made on behalf of the petitioner and submits that there is no concluded contract as such between the petitioner and the respondents and the decision of the Government to entrust the project to the petitioner is subject to further scrutiny of finalising the terms and conditions to be witnessed by a MOU and in such a view of the matter no right as such is accrued to the petitioner. The learned Advocate General proceeds and further submits that the discussions held on 21-5-1996 were preliminary in nature and the petitioner could not have acted further in the matter and at any rate the State would not be held responsible if the petitioner had acted further in the matter and spent some amounts towards expenditure. The learned Advocate General submits that unless and until MOU is signed and terms and conditions are finalised there is no valid and binding contract between the parties. The learned Advocate General relied upon Clause No. 43 of the Tender form in which it is clearly mentioned that "The Managing Director reserves the right to call any one or all the tenderers for negotiations or reject or accept any tender irrespective of whether it is highest or not or allot any part or cancel any or all tenders without assigning any reasons."

12. The learned counsel for the petitioner made another submission by urging that the impugned G.O., has to be quashed for the simple reason that it is violative of principles of natural justice as no prior notice whatsoever was issued to the petitioner before cancelling the decision to entrust the project to the petitioner. The learned counsel submits that no reasons are stated in the impugned G.O., and, therefore, the same suffers from vice of arbitrariness. The impugned G.O., according to the learned counsel for the petitioner, is liable to be declared as unconstitutional as it infringes upon the petitioner's fundamental right guaranteed under Article 14 of the Constitution of India. It is urged that the action of the State is required to be reasonable and fair even in the matter of awarding contract and the Government cannot claim any immunity from operation of law.

13. It is further urged by the learned counsel for the petitioner that the impugned G. O., is issued by the Government for extraneous reasons and political considerations. It is a mala fide exercise of power. The impugned order of the Government is solely prompted by political consideration of avoiding criticism from the political opponents rather than of upholding the law. No order

could be passed by the Government solely on the basis of political considerations and only with a view to avoid public criticism,

14. The doctrine of Promissory Estoppel is also sought to be invoked; but not seriously.

Re: Contention one: Submission about the concluded contract.

15. The learned counsel for the petitioner relied upon the following Judgments of the Madras High Court in support of his submissions that there is a concluded contract between the petitioners and the respondents.

(i) The firm of A. M. Mylappa Chettiar v. Aga Mirza Mohammed Shirazee (1919) 37 Mad LJ 712 :AIR 1920 Mad 177.

(ii) Manickam Chettiar (Died) and Others Vs. State of Madras, .

(iii) Maheswari Metals and Metal Refinery, Bangalore Vs. The Madras State Small Industries Corporation Ltd., .

16. In Mylappa Chettiar case (supra) it is held that the contract is concluded as soon as all the essential terms are settled though the formal documents are yet to be executed. If a contract has to be made out from the correspondence between the parties, the whole of the correspondence must be taken into consideration in determining whether there ,was a completed contract.

17. Similar is the view taken in Manickam Chettiar (Died) and Others Vs. State of Madras, and the Madras High Court held that the execution of a formal document is not absolutely essential, provided the other conditions are satisfied, (emphasis is of mine). In Maheswari Metals and Metal Refinery, Bangalore Vs. The Madras State Small Industries Corporation Ltd., the same view was reiterated by holding that the contract becomes concluded even if tenderer required to execute an agreement after acceptance of his tender. The Madras High Court came to the conclusion in that particular case that under Clause 9 once the defendant accepted the tender there would be a concluded contract, because of the material terms would become settled by that stage itself. It was more a decision confining to facts and circumstances of the case where the terms and conditions of the tender schedule were interpreted. It is required to be noticed that all the said decisions cited by the learned counsel for the petitioner arise out of a civil proceeding, wherein document containing terms and conditions was accepted and construed by the Court. The Court was resolving a dispute in a private law remedy and without any reference to the principles in public law. Even in that case, the Madras High Court held that whole of the correspondence must be taken into consideration in determining whether there was a concluded contract and regard must be had to find out as to whether all other conditions were fulfilled. These decisions, in my considered opinion, would not provide guidance in the matter and the Court cannot come to a conclusion in the matter by relying upon the said decisions.

18. The terms and conditions attached to the tender itself would disclose that the lease would be for a period of 20 to 25 years, renewable on negotiation of financial terms and admittedly the petitioner in the instant case, during the meetings, wanted the period of lease to be for a consolidated period of 99 years. Evidently, there was no agreement as such between the petitioner and the respondents with regard to the crucial issue relating to the period of lease. This was to be finalised and the MOU was to be entered into by the parties after the issuance of G.O.Ms. No. 31. Clause 37 of the same terms and conditions requires that the Contractor should execute an agreement bond in the prescribed pro-forma and pay the costs of the preparation and completion of the Agreement bond, including stamp and registration charges and the important condition prescribed under Clause 40 is required to be noticed and it reads as follows:

"Successful tenderer should enter into an agreement within the stipulated time and date as mentioned in the letter of communication of acceptance. Failure to enter into an agreement within the stipulated period shall result in forfeiture of Earnest Money Deposit and the letter of acceptance issued to the tenderer shall be deemed to have been cancelled and the Managing Director shall be free to prefer another party in the alternative."

19. A reading of these clauses would undoubtedly show that a letter of communication of acceptance itself is not enough unless the same is followed by an agreement and if no agreement is entered within the stipulated period shall result in forfeiture of Earnest Money Deposit and the letter of acceptance issued to the tenderer shall be deemed to have been cancelled. Entering into an agreement, thus, is not mere formality; but, one of the necessary conditions for concluding the contract.

20. The decision relied upon by the learned counsel for the petitioner in *Union of India v. A.L. Rallia Ram* AIR 1963 SC 1655 would also render no assistance to the plea advanced on behalf of the petitioner. The Apex Court while interpreting Section 175(3) of the Government of India Act, 1935, held that section does not in terms require that a formal document executed on behalf of the Dominion of India, and the other contracting party, alone is effective. In the absence of any direction by the Governor General u/s 175(3) of the Government of India Act prescribing the manner, a valid contract may result from correspondence if the requisite conditions are fulfilled. The requisite condition as to the period of lease was never settled between the parties in the instant case. In *Kollipara Sriramulu Vs. T. Aswathanarayana and Others*, the Apex Court observed that (at p. 1031 of AIR):

"It is well established that a mere reference to a future formal contract will not prevent a binding bargain between the parties. The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract. There are, however, cases where the reference to a future contract is made in such terms as to show that the parties did not intend to be bound until a formal

contract is signed. The question depends upon the intention of the parties and the special circumstances of each particular case."

It is, thus, clear that the issue as to whether there is any existence of binding contract would depend upon the intention of the parties and the circumstances of each case. Like the Madras High Court, the Supreme Court was also dealing with the rights of the parties arising in a civil dispute.

21. Having regard to the facts and circumstances of the case and the terms and conditions attached to the tender, I am of the considered opinion that there was no concluded contract between the petitioner and the respondents. The Government order proposing to entrust the project of Bhavani-puram Island to the petitioner cannot be construed as-concluded contract. The directions issued through the very same Government order -- to issue necessary work order for taking up the work after MOUs are signed by both the parties and after finalisation of the terms and conditions of the components by the sub-committee would conclusively show that the contract would be concluded only after the finalisation of the terms and conditions. The MOU itself was to be prepared as per the instructions issued in U.O. Note N0.550/CAB/95-1, dated: 7-8-1995. The said U.O. Note itself directs that meti- culous care should be taken before finalising and settling the terms and conditions in the MOU, as it being a document of special nature, requiring a high degree of expertise in the field, The note instructs all the depart-ments of the Secretarial to ensure that the intenations of entering into MOUs are clearly decided upon in advance, as to whether the Memorandum of Understanding is in the nature of enforceable contract or not has to be discerned from the intention of the parties --as spelt out from the various clauses of the MOUs. The very note envisages that in some cases, the MOU may contain the clauses which bind the parties whereby they agreed to discharge certain duties and obligations on their part. In such cases, a conclusion contract ensues out of the MOU and it become enforceable. These instructions were to be borne in mind before settling the terms and conditions of the MOU. For all the aforesaid reasons, it is clear that in the absence of MOU / Agreement no concluded contract has come into existence.

22. Be that as it may, the petitioner is virtually asking for the relief of specific performance of a contract and such relief cannot be granted by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Rights if any accrued in favour of the, petitioners are nebulous in nature and cannot form the basis of foundation for issuing a writ in the nature of Mandamus. If the petitioner is complaining breach of an agreement/Contract the Forum is elsewhere.

Re: Contention No. 2:

(i) Whether the impugned G.O., issued cancelling the earlier G.O.Ms. No. 31 under which the petitioner claims certain rights suffers from any incurable defect ?

(ii) Whether the decision making process is vitiated ? Could the decision be set aside as unfair ?

23. The learned counsel for the petitioner placed reliance upon the following well known decisions rendered by the Apex Court:

(i) Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, .

(ii) Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, .

(iii) Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, .

(iv) LIC of India and Another Vs. Consumer Education and Research center and Others, .

(v) Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, .

(vi) Pancham Singh Vs. The State of Bihar and Others .

24. There is no need to refer in detail to all these Judgments, Many and almost all the Judgments and other relevant cases are reviewed and considered by the Apex Court in Tata Cellular Vs. Union of India, . Suffice it to notice the principles culled out in the said case covering the entire field, in the matter of awarding contracts by the State and the instrumentalities of the State. The Apex Court held that (Paras 84 to 86):

"A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender:

1. It must be unconditional.
2. Must be made at the proper place.
3. Must conform to the terms of the obligation.
4. Must be made at the proper time.
5. Must be made in the proper form.
6. The person by whom the tender is made must be able and willing to perform his obligations.
7. There must be reasonable opportunity for inspection.
8. Tender must be made to the proper person.
9. It must be of full amount.

It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is

the guardian of the finances of the State, It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review."

And further held (Paras 93 to 95):

"The duty of the Court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its power?
2. Committed an error of law,
3. Committed a breach of the rules of natural justice,
4. Reached a decision which no reasonable tribunal would have reached or,
5. Abused its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* (1991) 1 AC 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the Court should, "consider whether something has gone wrong of a nature and degree which requires its intervention."

25. It is thus clear that the scope of judicial review in the matter of awarding contracts by the State is some what limited. It is true that the decision is required to be fair and reasonable. The State without adequate reason cannot exclude a person from dealing with it or take away largess arbitrarily. It has no absolute right to enter into contract with any person it pleases. The Government is still a Government even when it enters into contract. The decision making process is required to be fair. In spite of the authoritative pronouncements by the Summit Court in *Tata Cellular Vs. Union of India*, , the debate with regard to the very same issue keeps on coming up for adjudication and thanks to Forensic skills of the legal Fraternity the very same issues are presented in a different colour, as if they are arising for the first time. May be concept of fairness has many un-explored ramifications.

26. It is settled law that ho lowest bidder or tenderer can insist that his offer should be accepted by the State. The State for good reasons is entitled to reject even the lowest offer or tender as the case may be but for the reasons to be recorded, after all the public interest is the paramount consideration even in the matter of awarding or refusing to award contract by the State and what is required is that the State should not exercise its power even in the matter of awarding a contract for a collateral purpose. The right to choose a person to whom a contract is to be entrusted and exercise of that right itself cannot be said to an arbitrary exercise of power. Such a selection may depend upon variety of factors and some times involving the process which may be technical in nature. The law on this aspect of the matter is summarised by the Apex Court in *Sterling Computers Limited and Others Vs. M and N Publications Limited and Others*, and *N. P. Singh, J.*, speaking for the Court held (Para 12):--

"At times it is said that public authorities must have the same liberty as they have in framing the policies, even while entering into contracts because many contracts amount to implementation or projection of policies of the Government. But it cannot be overlooked that unlike policies, contracts are legally binding commitments and they commit the authority which may be held to be a State within the meaning of Article 12 of the Constitution in many cases for years. That is why the Courts have impressed that even in contractual matters the public authority should not have unfettered discretion. In contracts giving commercial element, some more discretion has to be conceded to the authorities so that may enter into contracts with persons, keeping an eye on the augmentation of the revenue. But even in such matters they have to follow the norms recognised by the Courts while dealing with public properly. It is not possible for Courts to question and adjudicate every Decision taken by an authority, because many of the Government Undertakings which in due course have acquired the monopolist position in matters of sale and purchase of products and with so many venture in hand, they can come out with a plea that it is not always possible to act like a quasi-judicial authority while awarding contracts. Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the over-all situation for purpose

of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the Courts, such decisions are upheld on the principle laid down by Justice Holmes, that Courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive."

The Apex Court further held (Para 19):

"By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry."

The Court however, in exercise of its judicial review jurisdiction can examine whether the decision making process was reasonable, rational and not violative of Article 14 of the Constitution of India.

27. But, what exactly are the rights of a person who intends to enter into a contract with a public body or the State ? Can a person insist/compel the Government to grant Government largess to him ? The Government or a public body may not have unlimited and unfettered discretion even in the matter of awarding a contract or grant of largess. Power in this regard is to be exercised by the State to do public good and serve public interest. The State owns and controls vast extents of public lands and natural resources. The natural resources are available for utilisation by individuals and Corporations. Such Corporations could be a private enterprise or joint ventures. It is now known that how many individual and business houses enjoy the public generosity in the form of Government Contract. Many enterprises are set-up by private individuals exclusively to do business. Every modern welfare State is a regulator or dispenser of benefit. No person can claim any right to get a particular contract of benefit or grant of largess from public bodies as a matter of right. There is no such legal right, much less a fundamental right. The only right that can legitimately be claimed by a citizen is that he should not be subjected to a discriminatory treatment by a public body or the State. His claim or offer should not be excluded from consideration in an arbitrary manner, since any such discriminatory or arbitrary action on the part of public body or State would be violative of Article 14 of the Constitution of India. Once the decision is free from arbitrariness and not discriminatory in nature, no further scrutiny of the discretion exercised by the Authority is permissible in a judicial review proceeding. The Court cannot be persuaded to issue a Writ of Mandamus against a public body or the State directing them to part away with its property or grant of a contract.

28. Viewed from this back-ground, can it be said that the decision of the Government in cancelling/withdrawing the proposal to entrust lease of lands at Bhavanipuram Island as illegal or unfair? The decision making process, in my considered opinion, is not at all vitiated. The action cannot be said to be

unreasonable or unfair. The land in question is undoubtedly a valuable asset of nation and the Government thought it fit to evolve fresh parameters for the development of tourism and inter-related activities in it. The Government thought it fit to give a fresh look at the whole scheme. The very demand from the petitioner during negotiations that the period of lease should be for ninety-nine years might have acted as one of the reasons to have a fresh look at the whole scheme. It is not a case where the Government after accepting the proposal of the petitioner cancelled the same and allotted or entered into contract with another third party. The whole scheme of tourism development is postponed. In such view of the matter it cannot be said that the petitioner is subjected to any unfair or discriminatory treatment. The action of the Government in this regard cannot be viewed with any suspicion. The decision appears to have been taken by the Government in public interest. The Court in such circumstances is required to balance the competing interests of individual and larger public interest. The rights, if any, of a private individual have to yield to do a larger public good. It is not as if the procedure for accepting the tenders and finalising the scheme is regulated by any statutory provisions. It is not as if the Government has acted in violation of any statutory provision. The Government has exercised its discretion and withdrawn its earlier proposal for good reasons. The petitioner cannot insist that the State should be compelled to enter into contract or agreement with it.

29. The Government responding to suggestions from the public and acting on such suggestions, itself, cannot be said to be an arbitrary action. Responding to well informed critical evaluation of an action of the Government from responsible quarters should be a welcome feature. Democratic process envisages an active interplay of various politico socio and economic forces. The decision making process of any Government is likely to be influenced by such a democratic process. There is nothing unusual about it.

30. Citizen's participation in the decision making process through various forums is ensured and is a feature of any functioning democracy. Otherwise the twin requirement that every Governmental decision should be transparent and accountable becomes meaningless. Revising executive decisions in response to public opinion is a normal feature in a democracy.

31. The submission that the impugned decision of the Government is purely for political consideration and therefore has to be set aside cannot be accepted. Every decision taken for political consideration cannot be said to be a partisan decision. Governments do take political and policy decisions and such decisions per se cannot be held to be bad unless it is established that such decisions contravene Constitutional or statutory provisions. The Constitutional mediators do bear this aspect in mind. It would be entirely a different matter, if the discretion of the Government is structured by any statutory provision. Viewed from any angle, the decision of the Government cannot be said to be illegal, arbitrary or unfair. For the aforesaid reasons, it cannot be said that the impugned

decision of the Government is a mala fide one or taken for extraneous considerations.

Re: Contention No. 3 -- PROMISSORY ESTOPPEL

32. It is stated by the petitioner in the affidavit filed in support of the writ petition that a limited company was promoted after the Government had issued G.O.Ms. No. 31 entrusting the scheme in question to the petitioner and enlisted the services of experts in the fields of Sports, Amusement Parks and Restaurant and consulted even Foreign Experts. The petitioner acted upon the Government's order in right earnestness by devoting whole time and attention and in that process incurred expenditure of Rs. 6.00 Lakhs in this regard. The petitioner, thus, invokes the doctrine of Promissory Estoppel and submits that the State should be compelled to fulfil its promise. The learned counsel for the petitioner placed reliance upon the well known decisions in:

(i) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, .

(ii) D.C.M. Ltd. and Another Vs. Union of India (UOI) and Another, .

In my considered opinion, the decisions relied upon by the learned counsel for the petitioner would not support the case of the petitioner. After an elaborate consideration of the earlier decisions, the Apex Court in D.C.M. Ltd.'s case (1996 AIR SCW 3672) (supra) observed (para 5):

"It is well settled that the doctrine of promissory estoppel represent a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the inter-position of equity which has always proved to its form, stepped in to mitigate the rigour of strict law. It is equally true that the doctrine of promissory estoppel is not limited in its application only to defence but it can also find a cause of action. This doctrine is applicable against the Government in the exercise of its governmental public or executive functions and the doctrine of executive necessity or freedom of future executive action, cannot be invoked to defeat the applicability of this doctrine. It is further well established that the doctrine of promissory estoppel must yield when the equity so requires. If it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be unequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise any equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it."

It is required to notice the decision of the Supreme Court in State of Himachal Pradesh and others etc. Vs. Ganesh Wood Products and others, etc., in which the

principle of promissory estoppel and its application in the field of administrative law is elaborately considered. Entire case law on the subject is reviewed and speaking for the Court Jeewan Reddy, J., summarised the law as (at pp. 3865 and 3866 of AIR SCW):

"The doctrine of promissory estoppel is by now well recognised in this country. Even so it should be noticed that it is an evolving doctrine, the contours of which are not yet fully and finally demarcated. It would be instructive to bear in mind what Viscount Hailsham said in *Woodhouse Ltd. v. Nigerian* 1972 AC 741.

"I desire to add that the time may soon come when the whole sequence of cases based upon promissory estoppel since the war, beginning with *Central London Property Trust Ltd. v. High Trees House Ltd.* 1947 KB 130 may need to be reviewed and reduced to a coherent body of doctrine by the Courts. I do not mean to say that they are to be regarded with suspicion. But as is common with an expanding doctrine, they do raise problems of coherent exposition which have never been systematically explored.

The doctrine should not be reduced to a rule of thumb. Being an equitable doctrine it should be kept elastic enough in the hands of the Court to do complete justice between the parties. Now, can the doctrine of promissory estoppel be put on a higher pedestal than the written contract between the parties? Take a case where there is a contract between the parties containing the very same terms as are found in the "approval" granted by IPARA (Sub-Committee) and then the Government resiles from the contract and terminates the contract. The promisee will then have to file a suit for specific performance of the contract in which case the Court will decide, having regard to the facts and circumstances of the case and the provisions of the Specific Relief Act, whether the plaintiff should be granted specific performance of the contract or only a decree for damages for breach of a contract. It must be remembered that the doctrine of promissory estoppel was evolved to protect a promisee who acts on the faith of a promise/representation made by promisor and alters his position even though there is no consideration for the promise and even though the promise is not recorded in the form of a formal contract. Surely, a representation made or undertaking given in a formal contract is as good as, if not better than, a mere representation."

33. Following the principle laid down, the Court would have to take into account and balance the public interest and the interest of petitioner. The Court has to decide as to where the interest of justice and equity lie. For the reasons already expressed and recorded, I am of the considered opinion that the principle of promissory estoppel has no application to the facts of the instant case and the State cannot be compelled to enter into any contract with the petitioner and on the other hand, the decision of the State to resile from the promise if any made to the petitioner is to be upheld.

34. Be that as it may, the petitioner on its own could not have spent amounts, if

any, as asserted in the affidavit in the absence of any clear cut promise from the respondents. The MOU was yet to be fialised and the terms and conditions were not settled. The petitioner, if at all, could have commenced the work only after the settlement of the terms and conditions. The State cannot be held responsible for the amounts, if any, spent by the petitioner on its own accord,

35. For all the aforesaid reasons, I do not find any merit in the writ petition and the same is accordigly dismissed. No costs.

36. Petition dismissed.