
(1973) 01 OHC CK 0005

In the Orissa High Court

Case No : O.J.C. No. 1191 of 1970 and O.J.C. No. 165 of 1972

Sri Santosh Kumar Agarwalla

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-01-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226
Government of Orissa Business Rules — Rule 10
Orissa Forest Department Code, 1941 — Rule 152

Citation : AIR 1973 Ori 217

Hon'ble Judges : K.B. Panda, J;B.K. Patra, J

Bench : Division Bench

Advocate : L. Rath and U.K. Nanda, In O.J.C. Nos. 1191 of 1970 and 165 of 1972, for the Appellant; H.G. Panda and A.K.J. Mohapatra, In O.J.C. No. 1191 of 1970 and Additional Government Advocate In O.J.C. Nos. 1191 of 1970 and 165 of 1972, for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—Santosh Kumar Asar-walla who is the petitioner in both the cases is a Forest Contractor at Angul deal-ins in Genduli gum which is a minor forest produce. For the year 1970-71 (wrongly mentioned as 1969-70 in the petition), the sale of Genduli sum of Angul Forest Division was notified by the Divisional Forest Officer, Aneul (O. P. No. 3) to be held by public auction on the 20th and 21st October, 1970. The notification was published in the Orissa Gazette dated 18-9-1970. and the auction was on 20-10-1970. The petitioner's bid for Rs. 2,100/- was the highest bid and the sale was knocked down in his favour. The petitioner deposited the security money of Rs. 210/-. The fact of the petitioner be-ins the highest bidder was duly communicated to the Conservator of Forests (O. P. No. 2) who in turn communicated to the State Government (O. P. No. 1) for finalisation of the agreement. The State Government instead of finalising the sale in favour of the petitioner passed the impugned order Annexure-7 dated 2-12-1970 granting in favour of Dayal and Co. (O. P. No. 4), the lease of Genduli

sum of Angul Division (excluding therefrom the Talcher area) for three years on payment of royalty which was directed to be fixed at 25 per cent over and above the highest bid received during the year.

Aggrieved by this decision, the petitioner filed O. J. C. No. 1191 of 1970 for the issue of a writ of mandamus directing opposite parties 1 to 3 not to settle the coupe with opposite party No. 4 and to ratify the bid in favour of the petitioner. Pending disposal of the writ application, the petitioner prayed for and obtained an order staying the settlement of the coupe with the opposite party No. 4 and the working of the coupe by him. As the petitioner was the higher bidder in respect of the disputed coupe for the year 1970-71 and the writ application could not be disposed of during that period, a memo was filed on behalf of the State on 6-1-1972 that the relief as prayed for by the petitioner was no more available to him and that the writ application had become infructuous. It is thereafter that on 3-3-1972 the petitioner filed, O.J.C. 165 of 1972 praying for the issue of a writ of mandamus quashing the settlement of lease dated 2-12-70 made in favour of opposite party No. 4 in Annexure-6 ("which corresponds to Annexure-7 of O. J. C. 1191/70). As common questions of fact and law are involved in both the writ applications, they have been heard together.

2. The stand taken by the petitioner in both the writ applications is that the sale of Genduli gum having been advertised to be made by the process of auction and an auction having been held in accordance therewith the petitioner who was the highest bidder at the auction was entitled to obtain the lease and that the subsequent action of Government in resorting to the method of negotiation with opposite party No. 4 and settling the lease in the latter's favour for a period of three years without giving an opportunity to the petitioner to enter into negotiation is bad and mala fide and that the action of the Government (O. P. No. 11 is also hit by Articles 14 and 19(1) (f) and (g) of the Constitution. It is also complained that in settling the lease, the principles of natural justice were violated inasmuch as no notice was given to the petitioner regarding the intended cancellation of the settlement in his favour, although by such cancellation, the petitioner's rights were going to be affected. The legality of action of the Government is also challenged on the ground that under Rule 152 (4) of the Orissa Forest Department Code the only competent authority to accept the bid is the Conservator of Forests and Government have absolutely no power to give any contrary directions in the matter. In a case of this nature, where finances of the State are involved, it was incumbent and mandatory on the Forest Department of Government to consult the Finance Department before any action was taken and as no such consultation had been made in the instant case, the order of Government in Annexure-7 is liable to be quashed.

3. In the counter affidavit filed on behalf of opposite parties 1 to 3 it is admitted that the petitioner was the highest bidder for Genduli gum for Angul Forest Division in the public auction held at Angul on 20-10-1970 and that the bid was provisionally accepted by the Divisional Forest Officer subject to confirmation by

competent authority. But meanwhile, on 28-8-1970. opposite party No. 4 had submitted a petition (Annexure-A to the counter) to the Minister, Forests stating inter alia that he had established a factory for processing Genduli gum at Jharsuguda, that the industry was suffering for want of raw materials and in the circumstances requesting Government to settle the lease of Genduli gum of Angul Division in his favour by means of negotiations. Opposite party No. 4 was advised to get his application processed through the Industries Department which was duly done by him. The Industries Department recommended to the Forest Department the case of opposite Party No. 4 for sympathetic consideration. Pending final consideration of the application of opposite party No. 4. Govt. did not ratify the sale held by auction in which the petitioner was the highest bidder.

In due course, the application of opposite party No. 4 was considered and the impugned order dated 2-12-1970 (Annexure-7) was passed by Government granting the lease of Genduli gum of Angul division (Excluding Talcher area) to opposite Party No. 4 on payment of royalty at an amount which is 25 per cent over and above the highest bid offered by the petitioner at the public auction-In passing the impugned order, Government acted bona fide and in the best interests of the Revenues of the State. The allegation of mala fides made in the petition was denied. It was further averred that the bid offered by the petitioner at the auction sale which was subject to ratification having not been ratified, the petitioner had not acquired any right which he could enforce in application under Article 226, As the forest produce in question belongs to the State it is open to the latter to settle the same for higher revenue and there is no violation either of Article 14 or of Article 19 of the Constitution. In the circumstances of the case, no consultation with the Finance Department was necessary before settling the lease in favour of opposite party No. 4. It was therefore, contended that the petitioner had no right either to obtain the lease for the year 1970-71 or for an order quashing settlement of the lease granted in favour of opposite party No. 4. The application is premature and is not maintainable.

4. Opposite party No. 4 also filed counter affidavits in both the writ applications supporting the stand taken by opposite parties 1 to 3.

5. The facts of the case can be better appreciated if they are set out in a chronological order.

28-8-1970 (Annexure-A)

Petition by opposite party No. 4 to the Minister, Forests, Orissa informing that he had established a factory at Jharsuguda for processing gum and requesting Government to revoke the order for stoppage of sale of Genduli gum and allow the same to be sold by public auction, or in the alternative, by negotiations in which case he might represent his case before Government.

11-9-1970 (Annexure-B).

In reply to the above. Government in the Co-operation and Forestry Department advised opp. party No. 4 that his application for lease of Genduli gum should be processed through the Industries Department if any special consideration from the Forest Department was sought for.

16-9-1970 (Annexure-E/4).

Letter from the District Industries Officer, Sambalpur addressed to the Director of Industries, Orissa enclosing thereto a copy of the representation of opposite party No. 4 for consideration of his case for lease of Genduli gum. It is mentioned in the letter that opp. Party No. 4 had actually got a gum processing unit at Jharsuguda. The case of opposite party No. 4 for the lease was recommended.

29-9-1970 (Annexure-D/4).

Letter from the Director of Industries, Orissa, to the Secretary. Industries Department, Bhubaneswar stating therein that opp party No. 4 has a processing unit at Jharsuguda and since it is an existing unit and that is actually in need of procurement of gum crude etc. which are extracted from forests. It is desirable that this unit may be extended with all sorts of encouragement for its development. It was therefore, suggested that the Government in the Industries Department may recommend the case of opp. party No. 4 to the Co-operation and Forestry Department for providing suitable facilities for obtaining these materials from the forests as otherwise the industry would face closure.

3-10-1970 (Annexure-C)

Letter from the Industries Department to the Co-operation and Forestry Department requesting the latter to consider the difficulties faced by opposite party No. 4 a registered small scale industry engaged in processing of different varieties of gums and to grant it lease of the minor forest produce on long-term basis.

5-10-1970: (Annexure-C/4).

Letter from opp. Party No. 4 to the Secretary to Government, Co-operation and Forestry Department intimating that in accordance with the advice given to him he has moved the Industries Department which in turn has recommended his case to the Forest Department and requesting for issue of necessary orders to suspend the finalisation of the auction relating to Angul Division including Talc her portion till his case (OPP. party No. 4's case) was disposed of by Government.

Meanwhile, the Divisional Forest Officer at Angul in the normal discharge of his duties and obviously in the absence of any direction to the contrary from Government had advertised for selling the forest produce of his division including Genduli gum for the year 1970-1971. The sale notice was published in the Orissa Gazette dated 18th September, 1970 fixing auction to 20th and 21st of October 1970.

21-10-1970:

Auction for Genduli gum of the Angul Division was held on 21-10-1970 and the petitioner was the highest bidder for Rs. 2,100/-.

26-10-1970 (Annexure-2):

Letter from the Divisional Forest Officer, Angul to the Conservator of Forests, Angul circle stating therein that the petitioner was the highest bidder and that the highest bid amount was more than the up set price which was fixed at Rs. 2000/-. It was further intimated that on 23-10-1970 and 24-10-1970 two more offers were received each over Rs. 5000/- or more. He reported that the sale conducted on 21-10-1970 "has not been ratified pending receipt of further instructions."

28-10-1970 (Annexure-3):

Letter of Conservator of Forest to Govt enclosing a copy of Annexure-2 and recommending that the Divisional Forest Officer should be asked to ratify the sale.

24-11-1970 (Annexure-4).

Letter of the petitioner to the Minister intimating that he was the highest bidder at the auction and that he had learnt from the D. F. O. that the Government were pleased to stop the ratification order and requesting that instructions may be issued to the D. F. O. to ratify the sale and to issue working order.

24-11-1970 (Annexure-5).

Letter by the petitioner to the Secretary, Department of Forestry making the same prayer as in Annexure-4.

2-12-1970: (Annexure-7) (same as Annexure-D).

Letter of Government to the Conservator of Forests. Angul Circle embodying the impugned order granting lease of Genduli gum of Angul Division excluding Talcher area in favour of opposite party No. 4 for three years on payment of royalty which should be fixed at 25 per cent over and above the highest bid amount and further stating that the petitioner may be asked to take lease of Genduli gum of Talcher area only by negotiation for one year if he wanted to set up an industry. With this letter was enclosed a copy of the letter of the Industries Department recommending grant of lease to opposite party No. 4 (Annexure-C).

2-12-1970 (Annexure-6).

Letter from the Forest Department informing the petitioner that final orders have been communicated to the D. F. O. Angul Division.

6. In exercise of their executive powers, the State Government have issued a set of instructions in matters relating to management and working of forests and these instructions which admittedly are non-statutory have been embodied in the Orissa Forest Department Code, 1941. Rule 152 (4) thereof provides that the

normal method of sale of forest produce would be by annual auctions, the sale conditions of which would be subject to the approval of the Conservator of Forests. The Divisional Forest Officers are authorised to submit their sale notices direct to the Government Press for publication provided that the conditions of sale are according to standing practice and provided that only lots prescribed in working plans are offered for sale. Prior to every auction the Divisional Forest Officers are required to submit confidentially for the Conservator's approval a list of the minimum reserve prices Proposed for the lots sought to be sold and they are enjoined not to sell below such approved minimum prices. Sub-rule (2) of Rule 152 provides that sealed tenders may be called for as a rule only if the produce offered for sale is not worth the trouble involved in holding an open auction or if the produce has been offered at an auction unsuccessfully. Sub-rule (3) provides that sale by private treaty may not be effected by Divisional Forest Officers.

7. Having regard to the rules Quoted above, it is contended by Mr. L. Rath appearing for the petitioner that an auction has been actually held in accordance with the usual practice adopted for sale of Genduli Hum and as at that auction the highest bid amount offered by the petitioner was in excess of the minimum reserve price of Rs. 2000/-, it was not open to Government to stop ratification of the sale and to settle the lease in favour of opposite party No. 4 by means of private negotiation. It is argued that although the rules contained in the Orissa Forest Code are non-statutory, still Government, having issued the same to regulate the sale of forest produce, are bound by the same and any deviation therefrom resulting in any injury to the petitioner who was the highest bidder at the auction, gives him a right to move the Court under Article 226 to obtain the relief prayed for by him.

Government's action in settling the lease in favour of opposite party No. 4 is also attacked as mala fide. Reliance is placed on Rule 10 (11) of the Orissa Government Rules of Business made under Article 166 of the Constitution which provides that no department shall, without previous consultation with the Finance Department, authorise any orders (other than orders pursuant to any general delegations made by the Finance Department) which, either immediately or by their repercussions, will affect the finances of the State and it is argued that as admittedly in this case the Forest Department has not consulted the Finance Department in granting the lease in favour of opposite party No. 4, the impugned order issued by Government is invalid and liable to be struck down. It is complained that the impugned order is discriminatory because the petitioner was not given an opportunity as was given to opposite party No. 4 to negotiate with Government In the matter relating to settlement of coupes and is consequently violative of Article 14. The validity of the order is also challenged on the ground that it has adversely affected the petitioner's fundamental right to carry on trade and business and consequently is hit by Article 19(1) (f) and (g) of the Constitution. It is finally contended that the principles of natural justice have not been observed by Government in so far as no notice had been given to

the petitioner before rejecting the highest bid offered by him.

8. We would now proceed to examine the several contentions raised by the parties. The preliminary objection raised on behalf of the opposite party is that the application is premature inasmuch as the impugned order issued by Government has not yet been communicated to the petitioner and consequently there is no cause of action for him to come up with this writ application. The fact that the impugned order has not yet been communicated to the petitioner is not disputed. But the fact remains that the Government has passed the final order directing grant of the lease of Genduli gum for three years commencing from 1970-71 in favour of opposite party No. 4. But for the fact that the petitioner applied for and obtained a stay order, the impugned order would have been communicated to the petitioner. In fact, the petitioner has been informed under Annexure-6 that the final order of Government had already been despatched to the Divisional Forest Officer.

A writ under Article 226 can be granted by the High Court not only when the damage complained of has been done but also when there is reasonable likelihood of the damage being done. A mere apprehension on the part of the petitioner, if it is well founded, that his rights, if any, are going to be interfered with, can be the basis of an application under Article 226. This objection raised on behalf of the opposite parties is therefore, untenable and must be rejected.

9. It is next contended on behalf of the opposite parties that Government has got the right not to enter into a contract with a particular person and if it decides in this case to lease out the forest coupe to opposite party No. 4, the petitioner has no locus standi to challenge Government's action in an application under Article 226. Whether ultimately the Government would succeed in establishing that what they have done in this case is correct or not, is a question which would be dealt with hereafter and if it transpires that what they have done is correct, the petitioner is not entitled to any relief. But it does not necessarily follow that in all cases where on a consideration of merits the petitioner would be found not entitled to the relief prayed for by him, the application itself is not maintainable and he has no locus standi to challenge it. We are here considering only the preliminary point regarding maintainability of the petition. Law is well established that the High Court has got very wide powers under Article 226 to issue directions or writs of the nature mentioned therein not only for enforcement of the fundamental rights but also for any other purpose. It is clear from the decision of the Supreme Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, that a right that can be enforced under Article 226 shall ordinarily be the personal or individual right of the petitioner himself and that any person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or fiduciary interest in the subject matter thereof. The words "person aggrieved" occurring in Article 225 are of wide import and should not be subjected to a restrictive interpretation. They do not include a mere busy body who interferes in

things which do not concern him, but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interest. The meaning given to the words "person aggrieved" has to be applied to the expression person prejudicially affected.

The petitioner in this case is a forest contractor and is in the business of exporting Genduli gum to foreign countries. He had taken part in the auction held for the lease of this forest Produce for the year 1970-71 and was also the highest bidder. True it is, that having regard to the conditions in the sale notice (Annexure-1) and particularly to Clause (1) of Part III thereof which makes it clear that the bid offered at the sale is subject to confirmation by the competent authority. The petitioner has not acquired the right to get, the lease by merely being the highest bidder in the auction. But that does not mean that he is a stranger to the transaction and a mere busy body trying to interfere with the affairs of the State. But for the fact that the lease was granted by the State in favour of opposite party No. 4 the petitioner would have in all likelihood secured the lease himself being the highest bidder in the auction and in so far as that has not been done, his interest has been prejudicially affected. He is therefore, competent to maintain this application and put forth such contentions as are available to him to show that the action of the Government is invalid. We are, therefore, clearly of the view that the present application is maintainable. See *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, *Pamidimarri Chenchulakshamma Vs. The Estates Abolition Tribunal Nellore and Others*, and *K.C. Pazhanimala and Others Vs. State of Kerala and Others*,

10. It is well settled now and the position is not disputed that the power of the High Court under Article 226 is sufficiently wide and even extends to scrutinising and striking down of purely administrative acts and orders. But this would extend only to such administrative orders and acts which disregard or violate a Statute or statutory right which are in excess of the authority of Government or which constitute fraud on the Statute or Acts which are mala fide or corrupt or which fail to observe the rules of natural justice where binding provisions require them to be observed. It has been alleged by the petitioner that apart from other things the impugned action of the Government is mala fide, because, the decision to grant lease in favour of opp. party No. 4 was arrived at in the secrecy of the office without giving any opportunity to other contractors to carry on such negotiation with the Government. It is suggested that had that been done, it was quite likely that the Government would have received higher offers than the offer given by opposite Party No. 4 and failure to do so has resulted in the loss of revenue to the State.

We are unable to accept the contention that the Government have acted mala fide. From the chronological list of events given earlier, it would be apparent that long before the disputed coupe was advertised for sale by auction, opposite party No. 4 had submitted an application to Government to lease out the coupe to him as he required raw materials badly to feed the industry which he had set UP at

Jharsuguda. In reply to this application the Government in Forest Department advised him to get his application Processed through the Industries Department and this was done. Right from the District Industries Officer up to the Government in the Industries Department his application to get the lease was supported and by annexure-C dated 3-10-1970 the Industries Department recommended the case of opposite party No. 4 to the Forest Department. This event occurred before the auction of the disputed coupe was held by the D. F. O. on 21-10-1970.

While this matter was thus pending with Government, the D. F. O. in discharge of his normal duties advertised the disputed coupe for sale by auction. We are not prepared to believe the petitioner's allegation which was duly denied by opp. party No. 4 that although the latter was present at the auction, he did not Participate in the bidding. Because the application of opposite party No. 4 was pending consideration of Government, the latter appear to have instructed the D. F. O. not to confirm the sale which otherwise the D. F. O. is competent to do. When under these circumstances the Government in the Department of Forestry accepting the recommendation of the Industries Department settled the lease in favour of opposite party No. 4, that action cannot be said to be mala fide especially when the lease was settled at an amount 25 Per cent higher than the highest bid offered at the auction by the petitioner for an area larger than the one ordered to be settled with opposite party No. 4. The contention that had others been given an opportunity to negotiate with the Government, higher offers might have been given, is purely speculative. In any case in settling the lease in favour of opposite party No. 4, the Government appears to have taken into consideration the additional factor that opposite party No. 4 had an industry to process Genduli gum. Doubtless, the petitioner has also stated in the writ application that he has also started an industry but nowhere has he given the particulars as to where the industry is situated and when it was started. Having regard to these circumstances, we are not prepared to accept the petitioner's contention that Government's action in this case was mala fide.

11. It is next contended on behalf of the petitioner that the impugned action of Government infringes the fundamental rights guaranteed to him under Arts. 14 and 19 (1) (f) and (g) of the Constitution. Settlement of the coupe with opposite party No. 4 without affording an opportunity to the petitioner to enter into negotiations is said to be discriminatory and hit by Article 14. How the action of Government affects petitioner's fundamental rights under Article 19(1) (f) and (g) has not been spelt out in the petition but it is argued that by being the highest bidder in the auction, he has acquired a right, inchoate though it may be to obtain lease of the coupe and hold it for the year 1970-71 of which he is now deprived of and this has adversely affected his right to carry on trade in Genduli gum. Referring to Rule 152 of the Orissa Forest Department Code it is submitted that the normal method of sale of forest produce is by auction and when an auction was actually held after due publicity and notice, in which the petitioner was the highest bidder for an amount which is above the upset price,

Government were not justified in not finalising the bid and in settling the coupe by negotiations carried on only with opposite party No. 4.

12. That the rules contained in the Orissa Forest Code are not statutory cannot admit of any dispute. Article 162 of the Constitution provides that the executive Power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. This Article therefore merely indicates the scope of executive power of the State. It does not confer any power on the State Government to issue rules thereunder. As a matter of fact, wherever the Constitution envisages issues of rules, it has so provided in specific terms as in the proviso to Article 309. It is, therefore, clear that Article 162 does not confer any power on the State Government to frame rules. Of course, under such executive power, the State Government can give administrative instructions to its servants how to act in certain circumstances, but that will not make such instructions statutory rules which are justiciable in certain circumstances. The rules in the Orissa Forest Code being therefore purely administrative in nature, non-compliance with them cannot confer any right on the petitioner nor the violation of the same be justiciable. In *G.J. Fernandez Vs. State of Mysore and Others*, where their Lordships were dealing with the Mysore Public Works Department Code, breach of which was complained of by the petitioner in that case, their Lordships held

"We are therefore of opinion that instructions contained in the Code are mere administrative instructions and are not statutory rules. Therefore even if there has been any breach of such executive instructions that does not confer any right on the appellant to apply to the Court for quashing orders in breach of such instructions."

Undoubtedly, the property which is the subject matter of the lease belongs to the State. Under Article 298 of the Constitution, the executive power of the State extends, to acquisition, holding and disposal of property. It has not been shown that any fetters have been placed on this power of the State either under the Constitution or under any other statute. As early as in the year 1951, a Full Bench of the Allahabad High Court in *Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others*, observed:--

"There is no reason why the State should not have the right to manage its own property and carry on such trade or business as a citizen has the right to carry on so long as such activity does not encroach upon the rights of others or is contrary to law."

The same view was expressed by Sinha, J. in *Bidyadhari Spill Matsyajibi Samabaya Samity Vs. State and Others*, . In *C.K. Achuthan Vs. The State of Kerala and Others*, . the petitioner held contracts for the supply of milk to the Government hospital at Cananore ever since 1946 and previous to this his brother in the same business held similar contracts from 1936. In 1957 the petitioner and the Cooperative Milk Supplies Society, Cananore submitted their

respective tenders for supply of milk and, after scrutiny the tender of the petitioner was accepted. Later on the District Medical Officer cancelled the petitioner's contract for supply of milk and gave it to the Cooperative Society. The petitioner filed an application under Article 32 of the Constitution complaining that the action of Government violated Articles 14 and 19(1)(g). The Supreme Court repelled this contention observing--

"There is no "discrimination, because it Is perfectly open to the Govt., even as it is to a private party, to choose a person to their liking, to fulfil contracts which they wish to be performed. When one person is chosen rather than another, the aggrieved Party cannot claim the Protection of Article 14, because choice of the person to fulfil a particular contract must be left to the Government. Similarly, a contract which is held from Government stands on no different footing from a contract held from a private party. The breach of the contract, if any may entitle the person aggrieved to sue for damages or in appropriate cases, even specific performance, but he cannot complain that there has been a deprivation of the right to practice any profession or to carry on any occupation, trade or business, such as is contemplated by Article 19(1)(g)."

A similar view was expressed by the Supreme Court more recently in *State of Orissa and Others Vs. Harinarayan Jaiswal and Others*, . In that case, the first respondent was the highest bidder at the auction sale of eight country liquor shops. His bids were provisionally accepted by the Collector, subject to confirmation by Government. The Government rejected those bids being of the view that inadequate price had been offered as a result of collusion between the bidders. It ordered the Excise Commissioner to call for tenders in respect of those shops. After the tenders were duly received, the Government accepted the tender in respect of one shop and rejected the other tenders as it was again of the opinion that the price offered was inadequate. Thereafter it sold the seven shops by negotiating with some of the tenderers. The price ultimately fetched was substantially more than that offered either at the auction or as per tenders. The Supreme Court repelled the contentions advanced on behalf of the respondent that the action of Government was violative of Articles 14 and 19(1) (e) of the Constitution. Their Lordships observed:--

"The Government's power to sell the exclusive privileges set out in Section 22 (Bihar and Orissa Excise Act, 1915) was not denied. It was also not disputed that those privileges could be sold by public auction. Public auctions are held to get the best possible price. Once these aspects were recognised, there was no basis for contending that the owner of the privileges in question who had offered to sell them could not decline to accept the highest bid if he thinks that the price offered is inadequate. There was no concluded contract till the bid was accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids. By merely giving bids, the bidders had not acquired any vested rights. The fact that the Government was the seller does not change the legal position once its exclusive right to deal with those privileges was conceded. If the

Government was the exclusive owner of those privileges, reliance on Article 19(1) (g) or Article 14 became irrelevant. Citizens could not have any fundamental right to trade or carry on business in the properties or rights belonging to the Government nor could there be any infringement of Article 14. if the Government tries to set the best available price for its valuable rights."

It follows, therefore, that it is open to the Government as it is to a private party to choose a person of its liking to fulfil contracts and that in so doing, there is no violation either of Article 14 or of Article 19(1)(e). It is equally open to any person, in this case the petitioner, to bid at the auction and to offer tenders when tenders are called for. Although these transactions relating to the action of Government in giving lease of its own properties are administrative in character, Government cannot act arbitrarily or capriciously in refusing to have contracts or to do business with any person. It is in such circumstances that Article 14 of the Constitution comes into operation and puts an embargo on the State not to deny any person equality before law.

The decisions in *Railway Board, Government of India Vs. Observer Publication (P) Ltd.*, ; *M.K. Mathulla v. N.N. Wanchoo*, AIR 1970 Del195 and *Puran Chandra Das v. Director of Public Instructions, Orissa* (1971 C WR 147) on which the petitioner placed reliance are cases which fall in the category just mentioned, popularly known as cases of black-listing. These decisions proceed on the basis that although a particular act of Government in entering into a contract with a person may not be susceptible to criticism because Government has got freedom of contract, a general policy that a particular person cannot have any business with Government is *ex facie* unfair, discriminatory and is liable to be challenged in Court.

The protection against discrimination afforded by Article 14 extends not merely to legislative action, not merely to executive action in exercise of express statutory powers, but also extends to all executive action of all executive agencies of the Government taken in pursuance of the executive power vested in the State under Article 162 of the Constitution. The Court will not therefore hesitate to strike down an order of Government "black-listing" a person if it is not possible to discover any reason for the order from the records produced by Government or if the records and other material reveal that the order is *mala fide* or based on irrelevant considerations. On the other hand, if the records do disclose a relevant reason based on some relevant material the Court will not weigh that material with a view to find out whether it is sufficient to justify the order. The Court will naturally act with great care and restraint and will be slow to interfere with executive action since the Government, like others, must have "freedom of contract". In doing so, however, Courts should naturally take into account, the fact that while others deal with their own properties and affairs, the persons acting for the Government have no vested rights in the matters with which they deal and should not deal with such matters as if they have vested rights.

13. If we examine the facts of this case in the light of the principles enunciated above, we find that there is nothing on record to indicate that the Government acted either unjustly or capriciously. To repeat what has already been stated, long before the auction in question was held on 21-10-1970, opposite Party No. 4. who owns a factory at Jharsuguda where Genduli gum is processed had approached Government in the Forestry Department with a request to settle the coupe with him on long term basis so that he would get necessary raw materials for his nascent industry. On being directed to get his application processed through the Industries Department, which would naturally be in a better position to know about his industrial activities, the petitioner did so and his application was supported in the Department of Industries at all stages. Acting on the recommendation of the Industries Department, Government in the Forestry Department passed the impugned order directing settlement of the lease with opp. party No. 4 for a Period of three years. What was put to auction on 21-10-1970 was Genduli gum of the entire Angul Division and the highest bid amount offered by the petitioner was Rs. 2,100/-as against the upset price of Rs. 2000/-. What was settled with the OPP. party No. 4 by the impugned order was Genduli gum not of the entire Angul Division but of the Ansul sub-division excluding therefrom the Talcher area. The annual lease amount fixed for this reduced area was 25 per cent more than the highest bid amount offered for the larger area by this transaction, therefore, Government not only gained financially but it also came to help a person who had started an industry in Genduli sum. Government's action cannot therefore, be said to be either arbitrary or capricious. In matters like this, no question of hearing any interested party like the petitioner arises. All that is required is fair-play and we are satisfied that there has been fair-play.

14. The last contention advanced on behalf of the petitioner is the one based on Rule 10 of the Orissa Government Rules of Business made under Article 166 of the Constitution. That rule so far as is relevant runs thus:

10. (1) No department shall without previous consultation with the finance Department, authorise any orders (other than the orders pursuant to any general delegations made by the Finance Department) which, either immediately or by their repercussions, will affect the finances of the State or which in particular, either--

(a) xx xx xx (b) involve any grant of land or assignment of revenue or concession, grant lease or licence of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession: or

(c) xx xx xx

(2) No proposal which requires previous consultation with the Finance Department under Sub-rule (1) of this rule but in which the Finance Department has not concurred, may be proceeded with un less a decision to that effect has been taken by the Cabinet."

It is asserted by the petitioner, and not denied by the State, that the Finance Department was not consulted before Government sanctioned the lease in favour of opp. party No. 4. But it is contended on behalf of the State that in view of letter No. 22150-C-F. dated 10-12-1956 addressed by the Secretary to Government in the Forestry Department to the Director of Forests, Orissa which had been issued in consultation with the Finance Department, no prior consultation with the Finance Department was necessary before issue of the impugned order. The letter may be reproduced.

"No. 22150-C. F.

Government of Orissa

AGRICULTURE, COOPERATION AND FORESTRY DEPARTMENT

Bhubaneswar,

the 10th December, 1956.

From

Sri M. Ramakrishnayya, I. A. S.,

Secretary to Government.

To

The Director of Forests, Orissa.

Subject :-

Revision of administrative and financial powers among the various officers of the Forest Department

Ref :- Your letter No.2916 dated the 24th February 1956

Sir,

I am directed to say that after careful consideration Government have been pleased to decide that the various Officers of the Forest Department will exercise the administrative and financial powers as detailed in the statement attached herewith.

I am to request that steps may be taken to revise the existing Orissa Forest Department Code according to the revised powers now sanctioned.

The Deputy Accountant-General, Orissa, is being informed.

Yours faithfully,

K. S. Chandrasekharan

for Secretary to Government.

Memo No. 22151-C. F.

Dated the 10th December, 1956.

Copy forwarded to the *Finance Department for information and Communication to the Deputy Accountant-General Orissa.

* Consulted unofficially.

K.S. Chandrasekharan

for secretary to Govt."

The relevant Portion of the statement at tached to this letter runs thus:

Particulars. Director of Forests. Conservators of Forests. District/ Divisional Forest Officer. Remarks.

1 2 3 4 5

X Rs. Rs. Rs. X

X X X X X

FINANCIAL POWERS

X X X X X

S. Sanction of sale on forest produce. 40000 (period of contract upto 3 years)
20,000 (period of contract upto 3 years) * 2,000 * (Period of contact upto 18 months)

X X X X X

When the letter referred to above was issued with the concurrence of the Finance Department the delegation of financial powers envisaged in the statement enclosed thereto would, in our opinion, amount to a general delegation made by the Finance Department, as envisaged in Rule 10 of the Rules of Business. Had the various officers exercised the powers so delegated to them, no exception could have been taken on the ground that the Finance Department had not been previously consulted. When in this case instead of the various subordinate officers named in the statement exercising those powers Government in the Department of forestry who had delegated those powers to the subordinate officers had itself exercised the power, no exception can be taken thereto on the ground that the Finance Department was not specifically consulted, before issue of the impugned order.

The case of Haridwar Singh Vs. Bagun Sumbrui and Others, cited by the petitioner in support of his contention on this point is clearly distinguishable. All that was decided in that case was that Rule 10 of the Rules of Business of the Government of Bihar which is on the same lines as Rule 10 of the Rules of Business of the Government of Orissa is mandatory and in terms thereof prior consultation with the Finance Department is an essential pre-requisite to the exercise of the power. No question of delegation of powers of the Finance

Department by a general order arose in that case. The petitioner cannot therefore derive any assistance from that case, pur conclusion, therefore, is that the validity of the impugned order cannot be challenged on the ground of the supposed violation of the directive contained in Rule 10 of the Rules of Business.

15. All the contentions raised by the petitioner having thus failed, we see no merit in the writ petitions and they are accordingly dismissed with costs. Consolidated hearing fee in both the applications is rupees three hundred.

Panda. J.

16. I agree.