Karnataka High Court V. Gokulkrishna vs M.C. Nanaiah on 13 May, 1993 Equivalent citations: ILR 1993 KAR 1615 Author: Shivashankar Bhat Bench: S Bhat, Raveendran JUDGMENT Shivashankar Bhat, J 1. The fourth respondent in the Writ Petition is the appellant. Respondents-1 and 2 before us are the petitioners who filed the Writ Petition. The third respondent in the Writ Petition is ranked as 5th respondent in this Appeal, while the second respondent is the 4th respondent before us. The Writ Petition seems to have been filed on 16th July 1992. On 22.9.1992 the learned Single Judge ordered the State Government not to make any further payment to the appellant and the said order was continued thereafter. The Writ Petition was allowed on 3.12.1992. 2. The petitioners sought the quashing of a Government Order dated 31.3.1992 whereby approval was accorded for purchase of 100 numbers of Apple Macintosh Computer Systems from M/s. Classik Computer Systems ('the appellant') at a total cost of Rs. 5.27 crores, with the configuration stated therein, and, which shall be subject to the approval of the High Power Committee and the Technical Advisory Panel. The order also approved release of 30% of the total amount as advance payment subject to meeting the expenditure from the contingency fund initially and subject to regularisation later. Petitioners, further, sought for a direction to the appellant herein to refund the advance sum of Rs. 1.58 crores. The petitioners also sought a Mandamus to respondents-2 to 4 in the Writ Petition to refund the sum of Rs. 1.58 crores jointly or severally. The first petitioner is a member of the Karnataka Legislative Council and is the Leader of the Opposition. The second petitioner is a citizen of this Country who was a Member of the Legislative Assembly for two terms between the years 1967 and 1978. He was also a Minister in the State Cabinet earlier; he was also a Member of the Loksabha between 1979 and 1989. As persons interested in the administration of the State, in accordance with the Constitution and Law, they have approached this Court. According to the Writ Petition there was a news item published on 1st July 1992 stating that respondents-2 and 3 in the Writ Petition have passed an order on 31.3.1992 and that the entire deal was finalised just within one hour and a sum of Rs. 1.58 crores was paid as advance at about 5.40 p.m. The petitioners filed a copy of the letter addressed by the appellant to the Additional Chief Secretary on 31.3.1992 as Annexure-C to the Writ Petition. They have also produced a copy of the proceedings dated 7.5.1992, of the Technical Advisory Panel as Annexure-D, whereunder the Technical Advisory Panel ('the TAP' for short) after examining the proposal to purchase the Apple Macintosh Computer Systems opined that it was non-standard, non-popular and non-compatible with the IBM and IBM based systems and also not manufactured in India; the TAP pointed out several draw backs and ultimately suggested that the Department of Personnel and Administrative Reforms ('DPAR' for short) should procure equivalent IBM based systems from rate contract firm. According to the petitioners there was undue haste in finalising the release of Rs. 1.58 crores on 31.3.1992. The Writ Petition describes the sequence of events as follows: "3.30 PM (31.3.92): V. Gokulkrishna meets J. Alexander in Vidhana Soudha and gives a proposal to sell 100 Apple Macintosh computers to Government at a total price of Rs. 5.27 crores. 3.40 PM: J. Alexander writes and

sends a note recommending purchase of Apple Macintosh to S. Bangarappa for approval. 4.00 PM: S. Bangarappa approves the note and sends it back to J. Alexander. 5.00 PM: The GOs. (Government Orders) are issued approving purchase of 100 Apple Macintosh computers from V. Gokulkrishna. 5.30 PM: The bills are presented to Treasury. 5.40 PM: The Treasury issues a cheque worth Rs. 1.58 crores (as part advance) to personal Assistant to J. Alexander. 5.41 PM (31.3.92) The personal assistant to J. Alexander hands the cheque to V. Gokulkrishna. (Incidentally acknowledgement is taken on a plain paper without stamp)". The petitioners further asserted that fourth respondent (the appellant) has no business premises in the City or in this Country and the address given by him was that of his residence. The business concern "Classik Computer Systems" was not registered as a dealer under the provisions of the Sales Tax Laws. The petitioners also asserted that the Apple Macintosh was an obscure Company. It was further asserted in the Writ Petition that the respondents-2 and 3 did not call for tenders for the supply of the articles in question, which was the basic procedure to be followed by the Government. It was also stated that the matter was raised before the Legislature. The sum of Rs. 1.58 crores, according to the petitioners, were thus squandered and that the impugned order was vitiated by fraud, malafide and favouritism and that there was a close nexus between the respondents-2 and 3. The petitioners stated that the third respondent was an accused under the provisions of the Prevention of Corruption Act and was kept under suspension when Sri Veerendra Patil was the Chief Minister and a criminal complaint had been registered against the third respondent. The complaint was lodged with the Special Judge, Bangalore. After the second respondent became the Chief Minister he got the Investigating Officer to file 'B' report and thereafter re-instated the third respondent in office, and this action is challenged and is pending consideration by this Court in several Writ Petitions. It is further asserted that the third respondent was promoted as the Chief Secretary by the second respondent superseding many senior I.A.S. officers. 3. The Writ Petition was amended on 10th November 1992 and it was averred by the petitioners that as on the said date not a single machine was supplied and that the provisions of Article 299 of the Constitution was contravened and the payment of Rs. 1.58 crores to the appellant was without the execution of any agreement, by the Director of Stores and Purchase Department. No norm was applied while placing the order. It was further pleaded that the Supplementary Estimates 1992-93 was not duly passed by the Legislative Council. The first respondent, the State of Karnataka, filed its statement of objections, initially raising the question of locus standi of the petitioners and the maintainability of the Writ Petition. There was another statement of objection. The first respondent in the Writ Petition asserted that the policy of the Government was to increase the use of Kannada as official language and that the Government evinced interest in Apple Macintosh Computers in 1991 when it came to know that Apple Computers alone have the ability to use Kannada Language besides English in all applications and that Apple Computers were being extensively used in several Governmental Departments at the Centre as well as by the Tamil Nadu Government. The release of Rs. 1.58 Crores was under a tenta-

tive decision and that the configuration would have to be cleared by the High Level Committee ('the HLC' for short) and the TAP and the final approval of the Government. It was stated that the proposal as well as the report of the TAP were considered by HLC on 21.5.92. The HLC sought the opinion of other individuals and organisations with the experience in computerisation and after obtaining these opinions, the HLC at its Meeting held on 2.7.92 recommended the proposal. The proposal was thereafter placed before the Cabinet on 3.7.92 and the Cabinet ratified the the proposal to make the purchase. The payment of Rs. 1,58,10,000/- was approved by the Legislature, when it approved the demand No. 41; thus the payment made out of the contingency fund was actually approved by the Legislature in view of the Appropriation (No. 3) Act, 1992. According to the first respondent the proposal to acquire Apple computers was "hanging fire" eversince 11.10.1991 when the TAP opined unfavourably. As to the sequence of events dated 31.3.92 stated in the Writ Petition, the first respondent averred that "the exact hour and minute furnished by the petitioner are incapable of verification" and that the relevant statement in the Writ Petition was like an extract from a "Railway time-table" and that the petitioners have drawn heavily on their own imagination. However, the statement of objections in no way suggests even broadly the time taken for finalising the making of the Government Order dated 31.3.92 and the release of Rs. 1,58,10,000/-. It was also stated that the most important consideration to choose Apple computers was that they were the only computers that could work both in English and in Kannada and "when the indent was only for Apple Computers, there was no scope nor need for inviting tenders since those computers could be supplied only by the authorised dealer namely, Respondent No. 4" The allegation as to personal benefit, favouritism and abuse of power were rejected as vague and indefinite and it was pointed out that no details were forthcoming in the Writ Petition regarding the allegations of fraud, malafide and favouritism. The opinion received from some of the organisations regarding the Apple Computers were filed as Annexures to this statement of objections. Another Annexure is a letter of the Government to the appellant dated 17.7.1992 placing an order for the supply of 100 numbers of Apple Macintosh Computers (referred as 'computers in question' hereafter). 4. The second respondent, the then Chief Minister, also filed his statement of objections stating that the action taken to place orders with the appellant was ratified by the Cabinet and that "besides according the approval referred to above this respondent was not directly concerned with the transaction impugned in the Writ Petition". The second respondent repudiated all allegations of favouritism, abuse of power, etc. It was denied that there was any nexus between the second respondent and the third respondent and that the only relationship that existed was the one arising out the respective offices. The third respondent who was by that time Chief Secretary to the Government, (he was earlier the Additional Chief Secretary), also filed his statement of objections. According to him the proposal to acquire the computers in question was prompted by the policy of the Government to computerise its administration as much as possible and his active interest in the proposal started, on coming to know that the computers in question were being widely used in other

parts of India because of their capacity to be operated in Indian languages; and that after a study of the relevant literature and also witnessing a demonstration and presentation of the computer systems in question he sought the approval of the second respondent for the purchase of these computers from the fourth respondent (appellant). The appellant had made offers earlier which was renewed on 31.3.92. On the said date certain savings were available, being the end of the year, and it was found that a part of the savings could be utilised for purchasing the computer systems. According to this respondent there was no hasty decision and ultimately the Cabinet had approved to place a firm order after the proposal was cleared by HLC. He denied any nexus between himself and the second respondent. 5. Interestingly this objection statement also no where traverses the allegations made in the Writ Petition about the sequence of events and the various timings given in the Writ Petition, though it was this respondent who set the ball in motion on the said date, as could be seen hereafter. 6. The appellant, who was the fourth respondent in the Writ Petition, in the objection statement averred that reckless and baseless allegations were made by the petitioners against him. Apple Macintosh Computers, according to this respondent are recognised even in the United States as being in many respects superior to certain brands produced by IBM and both of them were giant companies. The computer in question was a world renowned product and that these machines have been specially developed to meet the Kannada Language requirements of State Government and that there is no other computer available in India which can perform the functions which these computers are equipped to perform and they are simple to operate. Questions of considering any other computer did not arise in view of this fact. It is unnecessary to refer to several other general averments in this statement of objections. As to the credentials of the appellant the objection statement reads thus: "This Respondent is certainly not an anonymous entity as is made to appear in the Writ Petition. Classik Computer System was started mainly to market Apple Computer Systems. It acquired dealership in August 1991; ANNEXURE-2 is the letter of appointment dated 10.08.91 issued by Raba Contel Pvt. Ltd. Its office premises are at Jayanagar, Bangalore, which is not the residence of the Proprietor. It is duly registered under the Central and State Sales Tax laws. It has capable and highly experienced staff and support service and can train both Hardware and software Apple Products". The fourth respondent (Appellant) asserts that the HLC was not impressed with the views expressed by the TAP and that the members of the TAP had no practical knowledge or experience of Apple Computers. The Appellant-Gokulkrishna, whose affidavit is filed in support of the statement of objections just describes himself as the resident of Bangalore. In the cause title to the Writ Petition 4th respondent is described as Gokulkrishna, Director, Classik Computer Systems, obviously because that is how the 4th respondent signed his letter dated 31.3.92 produced as Annexure-C to the Writ Petition. We are noting this here because ultimately it has come to light that Classik Computer systems is a proprietory concern of the appellant. At no time it was a firm nor an incorporated Company. However, we have come across a few documents or letters signed by the appellant, either as "authorised sig-

natory" of Classik Computer Systems or as its "Director". Quite strangely, the appellant tried to project himself not as the proprietor of the Classik Computer Systems. It is quite possible that he was attempting to create an impression that Clasik Computer Systems was a big business concern belonging to a group of people. 7. In the course of the hearing the learned Attorney General placed before the learned Single Judge all the relevant files relating to the impugned transaction and on perusal of the files the learned Judge sought certain clarifications and these were furnished on behalf of the State on 2.12.1992. The entire note is extracted below: "Points on which learned Single Judge sought clarification: Clarification by the State 1. Para 2 of Additional Chief Secretary's Note in File No. DPAR 83 DFR 92 it is stated that the proposal has been under consideration for sometime and the same has been deferred in view of the resources position. This is not true since Technical Committee had already rejected earlier. The Technical Advisory Panel had earlier recommended that the procurement of the computers may be deferred. However, in the middle of the year, the resources position would not be known to meet the expenditure in this regard as there was no budget provision. Hence after knowing the resource position at the end of financial year, orders were issued on 31 st March 1992. 2. At the time of issue of orders, whether the fact that National Informatic Centre is computerising the Secretariat has been taken note of? So far as the Karnataka Government Secretariat is concerned, these computers were meant for installation in all the Ministers Offices. The computer network provided by the N.I.C. is only English whereas the Apple Computers are bilingual both in Kannada and English which are more useful in the Minister office. 3. Whether the then Chief Secretary's views dated 26.5.1992 has been taken note of while submission of papers to the Cabinet? The entire file including this note was before the Cabinet. 4. There was no technical member except the KGCC Director in the High Level Committee which considered the proposal. High Level Committee is concerned only with identification of areas for computerisation. It is a fact that there was no Technical Member except the representative of KGCC on the HLC which considered the proposal. Therefore, the HLC decided to obtain the opinion of the Organisations who are using Apple Macintosh Computers. 5. Whether the Note dated 26.5.1992 of the Chief Secretary is taken care of? Since in the Cabinet Note, only decisions are recorded and discussions held are not recorded and since the entire file was before the Cabinet, the Note might have been taken note of. 6. Whether the Chief Secretary can refer the matter to High Level Committee? Yes. The Chief Secretary to Govt., and the Additional Chief Secretary to Government can refer the matter to High Level Committee". 8. The learned Single Judge allowed the Writ Petition and quashed the Government Order dated 31.3.1992 and the further action taken thereto was declared as null and void. The first respondent State was directed to take such further action as is consequential upon the declaration made by the Court. The learned Single Judge held as follows: (1) The petitioners have requisite locus standi to file the Writ Petition. (2) The Appropriate Act was Constitutionally valid and it was not permissible to consider the contention that the relevant Bill was not even placed before the Legislative Council and that the said Bill was

not passed by the Council, in view of the certification made by the Speaker to the effect that the Bill has been duly passed. (3) Thereafter, the learned Judge proceeded to consider the case on the basis that the Appropriation Act was duly passed by both the Houses of Legislature; the learned Single Judge observed; "Section 3 thereof (The Appropriation (No. 3) Act, 1992) provided that sums authorised to be paid and applied from and out of the Consolidated Fund of the State by Karnataka Appropriation (No. 3) Act, 1992 shall be appropriated for the services and purposes expressed in the schedule in relation to the said year and in the schedule under the head 'General Administration-Revenue- Rs. 1,58,10,000/- is mentioned and that was for the purpose of 'Modernisation of Government Offices' as is clear from the supplemental Estimate placed before the Legislature, which was voted. Of course, in the Explanatory Note it is stated as follows: Explanatory Note With a view to modernise Government offices and to have better monitoring of both physical and financial achievements of various Schemes, sanction was accorded to purchase 100 Apple Macintosh Computers from M/s. Classik Computer System at a cost of Rs. 5.27 crores. 30% of the cost had to be paid in advance in order to get certain amount of concession. As no budget provision was made for this purpose, a sum of Rs. 158.10 lakhs was released from Contingency Fund. An equal sum is required for repayment to the fund". The Explanatory note was held as irrelevant because even the objects of the Bill or Notes or Debates thereof would become irrelevant when the statute is clear. The learned Single Judge held: "... The question is whether expenditure has been properly made under that authority or not. The issue before the Court is not whether there is due authority to incur the expenditure but the manner of incurring the same- Therefore I do not think the learned Attorney General is right in his submission that after the Appropriation Act is passed it is no longer open to this Court to go into the validity of the transaction arising out of the administrative act and paying the money to a particular party. Money had been drawn from the contingency fund to pay to respondent-4. When moneys are drawn from the contingency fund on account of incurring some unforeseen expenditure the expression 'unforeseen' will have to be understood in its proper context". It was held that the exercise was to regularise the expenditure incurred which was unforeseen earlier. What was approved by the Legislature was the expenditure for modernisation of Government offices and not the particular contract awarded to the appellant and if, perchance the contract with the appellant could not be concluded or there was any breach of contract, the Government was still competent to incur a similar expenditure without further approval of the Legislature; therefore the Explanatory Note was entirely irrelevant. 4. On facts, the Note prepared by the Additional Chief Secretary on 31.3.1992 was approved by the second respondent, the then Chief Minister. However, in none of the files it is disclosed that any decision had been taken or note made to keep in abeyance the earlier proposal, to know the resource position. On the other hand the files disclosed that the TAP had rejected the offers made by the appellant on various grounds. In para 2 of the Note made by the third respondent on 31.3.1992 was plainly incorrect. Thereafter the learned Single Judge observed that: "... To say the least the third respondent was not responsible in having

made the assessment. Further, if earlier offers had been made it is not clear as to why this file was not linked with the earlier files nor the offer in question was processed along with earlier offers made by 4th respondent. Moreover, a suggestion is made that 30% of the total amount is to be paid in advance immediately. Even that was not the demand made by 4th respondent. All that 4th respondent wanted was once firm orders were placed 30% advance would be paid. Firm order was placed with 4th respondent only in the month of July and not in March 1992. Therefore there is absolutely no hurry on the part of the 3rd respondent to recommend release of 30% of the amount in advance. As to why such payment was made when that was not the demand of 4th respondent is shrouded in mystery. The 3rd respondent is not a raw junior officer but an experienced top functionary at the level of Chief Secretary. It is also difficult to accept that second respondent was either naive or gullible to accept the offer made by 4th respondent without processing the same. It is also difficult to accept as to why 2nd respondent approved the same even without calling for the earlier files when there was reference to the earlier offers made by 4th respondent. Without even ascertaining the fate of those offers how he can approve the offer made by 4th respondent is difficult to understand. I must observe here that a person in the position of 2nd and 3rd respondents could accept the offer of 4th respondent without following due procedure is unimaginable. I cannot agree that the transaction in question was a routine one without anything more to it, but on the other hand If 2nd or 3rd respondents could accept the offer made by 4th respondent without due verification, it only shows that there is no application of mind at all". The Note made by the Under Secretary to the Government was referred, which pointed out that on two earlier occasions Technical Committee had rejected the offers made by the 4th respondent. The Note of the Under Secretary was extensively referred by the Court and it was observed: "In that view of the matter, I specifically asked the learned Attorney-General as to why this file did not move as is ordinarily done from the bottom to the top and why the file in this case had a topsy-turvy journey. He hardly had any answer to that question". (6) As to the Cabinet decision it was held that the various facts noted in the Under Secretary's Note had not been considered in the Cabinet meeting; placing of the entire file before the Cabinet by itself is not sufficient to hold that the Cabinet considered the relevant factors and that the Cabinet Note must have been prepared under the instructions of third respondent (who had become the Chief Secretary by that time) and that there was suppression of facts. In the words of the learned Single Judge: "... Neither the cabinet note nor the decision of the cabinet will indicate that these files had been placed or taken note of before arriving at a decision, Entire decision is based on the cabinet note alone. If all the files or all the facts had been placed before the cabinet what decision it would have taken is another matter. Hence I must hold that relevant factors had not been placed before or taken note of by the cabinet and the cabinet merely approved without due consideration of relevant materials the decision arrived at by 2nd and 3rd respondents to which factors I have adverted to earlier. Thus the conclusion is irresistable that the action of the Government is vitiated in issuing an order in favour of 4th respondent in spite of the

cabinet decision". (7) After summing up the decision, the learned Single Judge again observed in para 8 thus: "... These factors clearly show that second and third respondents were bent upon issuing orders in favour of 4th respondent. For what reasons, it is difficult to ascertain with the material placed before me. No nexus is established between respondents 2 and 3 on the one hand and respondent-4 on the other to establish malafides. On the material on record it may be difficult to say that there are malafides on the part of second and third respondents but I dare say that the decision taken by them is not bona fide but very strange. The decision has been taken in stultification of all financial and administrative norms and procedures. The action was taken without due care and caution and not with due responsibility by respondents 2 and 3 for motives which are not clear. And, it is difficult to delve into minds of men for devil knoweth not the mind of man". 8. The learned Judge also observed that this Court has a duty to examine the matter in detail when serious complaints were made in the matter of purchase of computer systems and therefore the files of the Government were looked into, though normally such files were not being examined by the Court. It was also observed that the file was sought to be processed, after the respondents-2 and 3 decided to place the orders without taking into consideration all relevant facts. 9. Before us Mr. Jayaram, learned Counsel for the appellant, advanced the following propositions, which we have repeated in the words of the learned Counsel: "I. The petition filed as public interest litigation by two politicians who had failed in their attempt to raise the same question on the floor of the Legislature, not maintainable as it does not involve any violation of constitutional or statutory obligations and the transaction in essence consists only of a pure and simple case of purchase of goods by the State Government. II. While the Writ Petition challenged the provisional order of the State Government dated 31.3.1992, it had failed to challenge the Government Order dated 17.7.1992 which was actually the firm-placing of the order with the appellant. It was therefore impermissible for the learned Single Judge to grant a prayer which had not been sought for. III. The learned Single Judge having accepted the material placed on behalf of the respondents in the Writ Petition and come to the conclusion that the petitioners had not established either malafide or any other illegality, it was impermissible for the learned Single Judge to call for files and embark upon an enquiry of his own into what was essentially the areas of Executive action unamenable to judicial scrutiny. This approach is also opposed to the basic principle of the adversary system of justice which is one of the corner stones of our legal system. Having held that the Writ Petitioners had failed to establish any nexus between respondents 4 and 5 (Chief Minister and Chief Secretary) or to establish malafide, he ought to have declined to grant the relief at the instance of petitioner who had failed to make out any grounds for such reliefs. IV. The order of the learned Single Judge is opposed to the settled law as laid down by various decisions of the Hon'ble Supreme Court that in matters which are purely Executive, Courts will not sit in judgment or interfere. This position is particularly so when the matters involved relate to economic policy and in regard to such decisions Courts will not sit as appellate authority. The learned Single Judge's order constitutes a

violation of these well recognised principles. V. The learned Single Judge failed to hold, on the basis of clear principles consistently laid down by the Hon'ble Supreme Court; that once the transaction enters into the realm of contract, parties are governed by the law relating to contracts and Courts in the exercise of their power under Article 226 of the Constitution, will not investigate into such matters. The learned Single Judge failed to note that the Government in its Objection Statement had made its position fully known that it had accepted the contract and was willing to proceed further in the matter, but for the pendency of the Writ Petition. It had also refuted all allegations of the petitioner assailing the validity of the contractual transaction. In any event, these were matters which could not be gone into in writ jurisdiction. VI. The learned Judge failed to attach due importance to the fact that the appropriation of Rs. 1,58,10,000/- had been made by the Legislature and his technical approach that the Explanatory Note could not be looked into is opposed to the well-settled principles of interpretation. He ought to have held that the matter having received the approval of the Legislature, it was no longer open to the Court to sit in judgment over the same. VII. In laying down the principle that the decision to purchase the computers from the appellant which had been approved at the Cabinet Meeting was bad in law for"non-application of the mind", the learned Single Judge failed to appreciate that the decision of the Cabinet in the present case was not the exercise of judicial or quasi-judicial power but purely an Executive action. Concepts such as the 'application of the mind' and 'observation of prescribed norms' were inapplicable in the said situation. In enunciating this principle, the learned Judge has opened a new door for judicial interference with every Cabinet decision on the ground of 'non-application of the mind', an intervention which has been prohibited by the principles laid down by the Hon'ble Supreme Court consistently in many decisions. VIII. The learned Single Judge failed to appreciate that the Technical Advisory Panel was purely an advisory panel and its advice could not have any binding force. In any event, on the facts he ought to have held that the said Committee did not have adequate experience or knowledge of computers operating in Kannada language and was therefore not qualified to judge. IX. Having come to the conclusion that the appellant was entitled to sympathetic consideration, the learned Judge nevertheless failed to dismiss the petition when there was no justification whatsoever for allowing the same and thereby inflicting upon the appellant a loss of several crores of rupees for no fault committed by it. The learned Judge failed to note that the Apple computers which were to be supplied by the appellant were the only computers which had the bi-lingual facility, and upon this ground alone there was no question of considering any other choice by the Government. The Note placed by the Advocate General on an enquiry made by the learned Single Judge made it clear that the entire file relating to the transaction had been placed before the Cabinet Meeting. In view of this also, there was no question of omission to supply information'. 10. Mr. Santhosh Hegde appearing for the 5th respondent in appeal contended that the remarks made by the learned Single Judge against the fifth respondent were unnecessary and any judicial remark made in strong words would affect his service-career

and this Court should not keep alive those remarks. 11. Mr. Muthanna, the learned Counsel for the fourth respondent (Chief Minister), also reiterated the submissions of Mr. Santhosh Hegde. Mr. Muthanna further submitted that the decision to place orders with the appellant was approved by the Cabinet and it cannot be held that there was any nexus between respondents-4 and 5 and that fourth respondent had no communication at all with the appellant and therefore no adverse remarks could be made against the 4th respondent, At a later stage Mr. G. Ramaswamy, the learned Counsel appearing for 4th respondent, submitted that: (1) The decision of the learned Single Judge is entirely based on the Cabinet files and in view of Article 163(3) of the Constitution the Court cannot look into those files, (2) There was no specific allegation of malafides in the original Writ Petition; in view of the finding given that there is no evidence to establish malafides the learned Single Judge could not have further remarked that the impugned action is"not bonafide". (3) The 4th respondent, as Chief Minister, had no personal role to play in the entire matter; his role was the one he played as part of the entire Cabinet. (4) The State Government cannot go beyond its own pleadings filed in the Writ Petition and thus take a different stand in this appeal. (5) The order dated 31.3.1992 was a provisional and a conditional order. The real order was the final order dated 7.7.1992 and this later order had been approved by the State Legislature under the Appropriation (No. 3) Act, 1992 read with Demand No. 41. Therefore the question raised before the Court is not justiciable. RE: LOCUS STANDI: 12. It is too late in the day to contend that the petitioners lacked locus standi to challenge a Governmental action involving expenditure from public funds. The petitioners have no personal interest in the subject matter of the litigation. They are men of long standing in public life. Their contribution to the democratic system and its functioning in the State has been highlighted in the Writ Petition. Even an ordinary citizen could approach this Court challenging a Governmental action if the said action is contrary to the public interest. In S.P. GUPTA AND ORS. v. MISS LILY THOMAS AND ORS., Justice Bhagawathi (as he then was) explained the principle. The learned Judge observed at page 185 thus:"... It is necessary to democratise judicial remedies, remove technical barriers against easy accessibility to Justice and promote public interest litigation so that the large masses of people belonging to the deprived and exploited sections of humanity may be able to realise and enjoy the socio-economic rights granted to them and these rights may become meaningful for them instead of remaining mere empty hopes". At page 188 it was held as follows:"It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or Writ in the High Court under Article 226 and in case

of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. Where the weaker sections of the community are concerned, such as undertrial prisoners languishing in jails without a trial inmates of the Protective Home in Agra or Harijan workers engaged in road construction in the Ajmer District, who are living in poverty and destitution, who are barely eking out a miserable existence with their sweat and toil, who are helpless victims of an exploitative society and who do not have easy access to justice, this Court will not insist on a regular Writ Petition to be filed by the public spirited individual espousing their cause and seeking relief for them. This Court will readily respond even to a letter addressed by such individual acting pro bono publico. It is true that there are rules made by this Court prescribing the procedure for moving this Court for relief under Article 32 and they require various formalities to be gone through by a person seeking to approach this Court. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public minded individual as a Writ Petition and act upon it". As to another type of cases the observations are:"... But there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation, resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury. Who would have standing to complain against such act or omission of the State or public authority? Can any member of the public sue for judicial redress? Or is the standing limited only to a certain class of persons? Or there is no one who can complain and the public injury must go unredressed". After some discussion it was held:"... But if no specific legal injury is caused to a person or to a determinate class or group of persons by the act or omission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty. If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owned by it. The Courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the Courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a Public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona

fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busy-body or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice". The learned Judge also pointed out that the public injury is an injury to an intermediate class of persons and in these cases the duty which is breached, giving rise to the injury, is owed by the State or a public authority not to any specific or determinate class or group of persons but to the general public; the duty is not co-relative to any individual rights. Mr. Jayaram relied on some observations made in SRI SACHIDANAND PANDEY AND ANR. v. THE STATE OF WEST BENGAL AND ORS., AIR 1987 SC 1109 (1987) 2 SCC 295 [1987] 2 SCR 223, wherein Khalid, J. made certain observations in respect of public interest litigation, and against filing of such cases without any rhyme or reason in us and it was pointed out that traditional litigation would suffer if Courts do not restrict the free flow of public interest cases. We think that the observations of Khalid, J. in no way goes against the maintainability of the present Writ Petition. The impugned action of the Government is alleged to be the result of non-consideration of relevant factors and a failure to observe appropriate procedure resulting in payment of a huge sums of over Rs. 1.58 crores to the appellant without any security. The principle involved is against brought out by the Supreme Court in a recent Decision in STERLING COMPUTERS LTD. v. M. & N PUBLICATIONS LTD. AND ORS., 1993 AIR SCW 683 The Court is concerned primarily as to whether there has been any infirmity in the"decision making process" of the State while awarding a contract. The purpose is to find out whether the Government has taken care to safeguard the public interest. The decision making process resorted to by the Government would disclose whether the Government acted objectively and whether the process was such that it would prevent favouritism in the matter of awarding contract and whether the Government acted "free from bias, discrimination and under the exigencies of the situation then existing to be just and proper" (vide para 26 of the above Decision). In CHAITANYA KUMAR v. STATE OF KARNATAKA, ILR 1986 KAR 1723 the Supreme Court stated, at page 1737: "...When arbitrariness and perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its Writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations". In INDIAN HUME PIPE CO. LTD. v. BANGALORE WATER SUPPLY & SEWERAGE BOARD, one of us made the following observations in para 8: "Since the act impugned is of the instrumentality of the State, same is liable to be tested by the touchstone of reasonableness and unarbitrariness. This test is applied, not to enforce the right of anyone of the parties who submitted the tender. The object of the judicial examination is to see whether the public interest would suffer, by the transac-

tion in question, and the State has failed to play fairly while entering into the transaction. Court's jurisdiction is invoked usually, by one of the parties, who made the tender offering to purchase the public property or articles put up for sale at a price which he asserts as the highest, or, offering to supply goods or works to the Government of a State instrumentality, at a rate which he asserts as the lowest. In such a situation, Court is not concerned as to how far, the party's interest suffered, by non-acceptance of his tender. The judicial review is permitted, in order to safeguard the public interest. Public interest could be advanced or safeguarded only when the State acts reasonably and rationally". The Decision of the Supreme Court in R.R. DALAVAI v. THE STATE OF TAMIL NADU, once again illustrates the principle involved. The Tamil Nadu Government granted pension to "Anti-Hindi" agitators. The grant was approved by the State Legislature by sanctioning the fund, under the Appropriation Act. The Supreme Court pointed out that: "... The appropriation in the present case shows that a fund was kept apart to meet the pension scheme. There is no legislative sanction for such pension scheme. The Government by an executive order could not authorise payment of pension scheme. The appellant is right in his contention that the pension scheme is unconstitutional and the budget sanction is equally unconstitutional". For our immediate purpose the relevancy is that the Writ Petition was entertained at the behest of a member of the public; certainly it was a public interest litigation. Consequently the first proposition of the learned Counsel for the appellant is rejected. RE; PROPOSITION II: 13. Under the second Proposition it was contended that, in the Writ Petition challenge was made only against the Government Order dated 31.3.1992; this order stood merged with the Government order dated 17.7.1992 and the later order was the result of the decision of the Cabinet. There was no challenge made by seeking specific relief against this subsequent order and therefore the learned Single Judge erred in quashing the contract awarded to the appellant. 14. The Writ Petition was filed on 16th July 92, however Writ Petition was amended subsequently in some respects, in November 1992. It was pointed out that the petitioners did not care to seek any relief against the order of the Government made in July 1992. 15. The contention is highly technical. All the parties before the Court were fully aware of the real issue involved. The petitioners were challenging the Governmental action starling with the order dated 31.3.1992. The real question before the Court was whether placement of the order for the supply of the computers in question with the appellant and the payment of the advance sum of Rs. 1,58,10,000/-was valid at all and whether the Governmental action was preceded by a proper consideration of the relevant factors. Even in a private litigation it has been held that if a litigation is fought out by the parties knowing fully well the respective contentions involved, lack of proper pleading and failure to frame a proper issue would not vitiate the ultimate finding. (Vide NAGUBAI AMMAL AND ORS. v. B. SHAMA RAO AND ORS., . The parties were fully aware of the question that was being considered by the Court and in fact the learned Attorney General himself placed all the relevant files before the learned Single Judge. High technical rules of pleading should not control the public interest litigation. A person who espouses the cause of public inter-

est, has no personal interest in the litigation. When he agitates a public cause and the impugned action is of the Government, he has certain disadvantages with regard to the relevant material. Public interest is the key note, to the Court's approach, there is a failure on the part of the appellant to establish as to how he has suffered in his defence by the lack of a proper pleading. In the circumstances, it is not possible to accept the contention now advanced on his behalf in the appeal. 16. The third proposition putforth by the learned Counsel for the appellant has to be considered along with the contention of Mr. G. Ramaswamy that the Court should not have examined any of the files placed before the Court having regard to the constitutional bar imposed by Article 163(3) of the Constitution. Before considering this question a few other contentions may be conveniently disposed of. RE: PROPOSITIONS IV AND V: 17. These propositions could be considered together. It was contended that Government was competent to award contact by placing the order for supply of required goods, in the exercise of its executive power, when the subject in question is not occupied by any particular legislative enactment. The Decision of the Supreme Court reported in RAI SAHIB RAM JAWAYA KAPUR AND ORS. v. THE STATE OF PUNJAB, was cited in support of these propositions. Several other Decisions were cited to contend that this Court cannot scrutinise the terms of a contract even though one of the contracting party is the Government. It is unnecessary to consider these Decisions because we are concerned here with the propriety of the procedure followed by the Government before entering into the contract. Further the Government's power to enter into contract and placing an order for the supply of computers, in the exercise of its executive power, is not at all challenged. At the cost of repetition we have to state that the propriety of the ultimate decision is questioned because of the alleged impropriety in the procedure followed preceding the impugned action of the Government. RE: PROPOSITION VI: 18. The sixth proposition pertains to the effect of the Appropriation Act read with the Explanatory Note appended to the relevant Bill. The Explanatory Note attached to Demand No. 41 placed before the Legislature along with the Supplementary Estimates 1992-93 reads thus: "With a view to modernise Government Offices- and to have better monitoring of both physical and financial achievements of various schemes, sanction was accorded to purchase 100 Apple Macintosh Computers from M/s. Classik Computer System at a cost of Rs. 5.27 crores. 30% of the cost had to be paid in advance in order to get certaim amount of concession. As no budget provision was made for this purpose, a sum of Rs. 158.10 lakhs was released for Contingency Fund. An equal sum is required for repayment to the fund". The relevant heading was given as "Other Administrative Services". Under "Sub and Detailed Heads" the matter was referred as "Modernisation of Government Offices". In the Appropriate Act of the State Legislature the sum of Rs. 1,58,10,000/- was referred in the schedule against the heading "General Administration - Revenue". There is no reference to the particular order placed with the appellant. The Legislature did not specifically sanction the amount for payment exclusively towards the fulfilment of the contract entered into with the appellant by the State Government. As observed by the learned Single Judge,

this amount of Rs. 1,58,10,000/- could have been utilised by the State Government for any of the purposes of general administration. The Appropriation Act does not even provide for the transfer of this amount to the Contingency Fund from which the amount was drawn on 31.3.1992 for payment to the appellant. 19. In this context it is necessary to consider the constitutional propriety of drawing the amount on 31.3.1992 from the Contingency Fund for payment to the appellant and whether this withdrawal from the Fund has been properly ratified by the State Legislature. Article 204 of the Constitution provides for the appropriation bills. The Bill is to provide for the appropriation out of the Consolidated Fund of the State required to meet - (a) the grants so made by the Assembly; and (b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses. Article 267(2) provides for the Contingency Fund of the State. It reads as follows: "The legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled 'the Contingency Fund of the State' into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the legislature of the State by law under Article 205 or Article 206". Article 205 and 206 provide for the approval of the Legislature, of the amounts expended which were not specifically authorised earlier under the relevant Appropriation Act. 20. The Karnataka Contingency Fund Act, 1957 (the Karnataka Act No. 11 of 1957) was enacted under Article 267(2). Section 2 provides for the establishment of a Contingency Fund by drawing the amounts stated in the said Act from and out of the Consolidated Fund. In the year 1957 the Contingency Fund was established with a sum of Rs. 1 crore drawn out of the Consolidated Fund and this amount was enhanced by subsequent amendments to the Act Section 3 of the Act states, inter alia, that no advance shall be made out of such Fund except for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the State Legislature under appropriation made by law. Section 4 contemplates the making of rules. 21. The Contingency Fund Rules 1957 was accordingly framed. It provides for an application for advances from the Contingency Fund and the application shall be made to the Secretary to the Finance Department of the State Government. The application shall give several particulars including the circumstances in which provision could not be included in the budget and why its postponement is not possible. It is unnecessary to refer to other provisions of these Rules. 22. According to the contesting respondents in the Writ Petition the proposal for the computers in question was pending since the year 1991. According to the Note put up by the Additional Chief Secretary on 31.3.1992 though the Government had received an offer from the appellant and the appellant had made similar offers earlier, the decision was kept in abeyance in order to assess the resource position at the end of the year. "Now it is found that there are certain savings available at the end of the year and therefore it is proposed to utilise part of this savings to purchase the

computer system". Can it be said that the amount required for the purchase of the computer system is "an unforeseen expenditure"? The obvious answer could be in the negative. If the proposal was already pending and the policy of the Government was to encourage computerisation, the proposed expenditure will be an expenditure known already. In this context another important circumstance to be considered is whether there was a compulsion to make the payment on 31.3.1992. The appellant expected the advance of 30% only on the placement of a confirmed order. The order of the Government dated 31.3.1992 did not place any firm order. This position is admitted by all including the appellant. In fact, Mr. Jayaram repeatedly told us that the appellant never insisted for the payment of Rs. 1,58,10,000/- on 31.3.1992. He expected the advance only when a final and firm decision is taken by the Government. The order dated 31.3.1992 itself states that the approval accorded for the purchase of the computers at a total cost of Rs. 5.27 crores shall be subject to the approval of High Power Committee and the TAP for computers and that the terms and conditions offered by the Company would be accepted only after finalisation of the configuration. Therefore, on this admitted position, there was no immediate necessity to expend this sum of Rs. 1,58,10,000/-. It was not an unforeseen expenditure at all. In the circumstances there can be no doubt that the drawing up of this sum from the Contingency Fund for payment to the appellant was clearly unconstitutional and the executive action in drawing the amount and paying the same to the appellant was on the face of it contrary to the public interest. 23. In the realm of Constitutional Law, exercise of power by an authority, which is not warranted by the Constitution, is referred as a fraud on the power. It is a case of colourable exercise of the power, when in reality the power could not have been exercised in that particular manner. The drawing up of the money and payment to the appellant from the Contingency Fund, purporting to act and take advantage of Article 267(2) of the Constitution read with the relevant enactment of the State Legislature certainly was a colourable exercise of the power; the payment was under the colour of unforeseen expenditure when in reality the expenditure was no unforeseen. The reality was entirely coloured by wrong picture depicted while exercising the power. RE: PROPOSITIONS VII AND VIII: 24. Propositions VII and VIII shall have to be considered along with Proposition III. RE: PROPOSITION IX: 25. Assuming that the appellant acted bona fide and he has become a victim of circumstances, the question is whether the Governmental action could be upheld to save the appellant from suffering any injury. If the process of awarding the contract was vitiated by illegality or impropriety, the resultant Governmental action will contravene Article 14 of the Constitution, as held by the Supreme Court in Sterling Computers Ltd.'s Case. The placing of the order with the appellant is not the outcome of a contract between two private parties. One of the contracting parties is the State Government and the latter has to act in consonance with propriety, bearing always in mind that the public interest should not suffer in any manner. Any arbitrariness involved in taking the decision by the Government renders the decision unconstitutional and void. The invalidity attached to the decision cannot be legalised, merely on the ground that one of the contracting parties

would suffer in spite of his innocence. The State Government is like a trustee and its powers are normally to be exercised in a manner, a trustee exercises his powers. The beneficiaries (the public) are entitled to question the exercise of the power and to have the action nullified when the public interest suffers. Those who deal with the Government should be always aware of the risk involved and should be prepared to suffer any injury. If the contract in the instant case is nullified, the nullification is part of the risk which a trader normally takes as part of his business life. RE: PROPOSITIONS III. VII AND VIII: 26. Article 163(3) is similar to Article 74(2) of the Constitution. While Article 163 pertains to the advice tendered to the Governor by the Council of Ministers, Article 74(2) governs the advice tendered to the President. 27. As per Article 163(3), the question whether any, and if so what advice was tendered by Ministers to the Governor shall not be inquired into in any Court. A literal reading of this provision bars the Court from inquiring into the nature of advice given to the Governor by the Ministers. However, it has been held that the advice tendered by the Ministers necessarily would include the basis for the advice and therefore all relevant papers leading to the advice would be part of the advice. 28. In DOYPACK SYSTEMS PVT. LTD. ETC.ETC. v. UNION OF INDIA AND ORS. ETC. ETC., the Supreme Court had an occasion to consider the scope of Article 74(2) of the Constitution. The question before the Supreme Court pertained to the scope of an Acquisition Act and whether by virtue of the said Acquisition Act certain shares held by the Company vested in the State as a consequence of acquiring the Company. The petitioners before the Supreme Court contended that the shares held by the Company in question did not vest in the Union of India. To understand the scope of the acquisition the Counsel for the petitioners contended that certain documents were necessary, and an application was filed for a direction to the Union of India to produce those documents. The learned Attorney General contended that those documents were privileged documents and the Court is precluded from looking into them by virtue of Article 74(2) of the Constitution. The Supreme Court held that the provisions of the Acquisition Act in the said case were quite clear and there was no ambiguity at all in the relevant provisions and therefore no other document was relevant to understand the scope of the provisions. Thereafter the Supreme Court proceeded to consider the scope of Article 74(2) and upheld the plea of the learned Attorney General. An earlier Decision of the Supreme Court in S.P. GUPTA's case was referred by the Supreme Court and it was held that the context and the nature of the documents sought for in the S.P. Gupta's case were entirely different. The Supreme Court observed at page 798 thus: "... In this case these documents as we see are part of the preparation of the documents leading to the formation of the advice tendered to the President of India and as such these are privileged under Article 74(2) of the Constitutional which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired into in any Court. This Court is precluded from asking for production of these documents In S.P. Gupta's case (supra) the question was not actually what advice was tendered to the President on the appointment of Judges. The question was whether there was the factum

of effective consultation between the relevant constitutional authorities. In our opinion that is not the problem here. We are conscious that there is no sacrosanct rule about the immunity from production of documents and the privilege should not be allowed in respect of each and every document. We reiterate that the claim of immunity and privilege has to be based on public interest, Learned Attorney General relied on the decision of this Court in the case of State of U.P. v. Raj Narain . The principle or ratio of the same is applicable here. We may, however, reiterate that the real damage with which we are concerned would be caused by the publication of the actual documents of the Cabinet for consideration and the minutes recorded in its discussions and its conclusions. It is well settled that the privilege cannot be waived". Thereafter, again the Supreme Court observed thus: "... It is well to remember that it is duty of this Court to prevent disclosure where Article 74(2) is applicable. We are convinced that the notings of the officials which lead to the Cabinet note leading to the Cabinet decision formed part of the advice tendered to the President as the Act was preceded by an ordinance promulgated by the President. We respectfully follow the observations in S.P. Gupta v. Union of India (supra). We may refer to the following observations at page 608 (of SCR): (at page 238 of AIR) of the report: 'It is settled law and it was so clearly recognised in Raj Narain's case (supra) that there may be classes of documents which public interest requires should not be disclosed, no matter what the individual documents in those classes may contain or in other words, the law recognises that there may be classes of documents which in the public interest should be immune from disclosure. There is one such class of documents which for years has been recognised by the law as entitled in the public interest to be protected against disclosure and that class consists of documents which it is really necessary for the proper functioning of the public service to withhold from disclosure, The documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong. This class includes cabinet minutes, minutes of discussions between heads of departments, high level interdepartmental communications and despatches from ambassadors abroad (vide Conway v. Rimmer (1968 AC 910 at pp. 952, 973, 979, 987 and 993) and Reg v. Lewes J.K. Ex parte Home Secretary (1973) AC 388 at 412. Papers brought into existence for the purpose of preparing a submission to cabinet vide Lanyon Property Ltd. v. Commonwealth 129 Commonwealth LR 650 and indeed any documents which relate to the framing of government policy at a high level (vide re. Grosvenor Hotel, London (1964) 3 ALL ER 354 (CA)).' Cabinet papers are, therefore, protected from disclosure not by reason of their contents but because of the class to which they belong. It appears to us that Cabinet papers also include papers brought into existence for the purpose of preparing submission to the cabinet". 29. While making the above observations the Supreme Court had also pointed out that there is no sacrosanct rule about the immunity from the production of documents and the privilege should not be allowed in respect of each and every document and that the claim of immunity and privilege has to be based on public interest; Cabinet papers also include papers brought into existence for the purpose of preparing submission to the Cabinet. 30. In the

earlier Decision in S.P. Gupta's case there is a discussion of the question by Bhagawathi, J. (as he then was) at page 230. There is an observation that the "material on which the reasoning of the Council of Ministers is based and the advise is given cannot be said to form the part of the advise. After applying the anology of the judgment of the Court it was pointed out that the evidence on which the reasoning and the decision of the Court are based would not be part of the judgment; similarly the material on which the advise tendered by the Council of Ministers is based, cannot be said to be part of the advise. . . .". At page 234 the learned Judge observed thus; "This is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no except. The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an except justified only where the strictest requirement of public interest so demand. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest. It is in the context of this background that we must proceed to interpret Section 123 of the Indian Evidence Act". 31. The learned Judge pointed out that there may be classes of documents which public interest requires, should not be disclosed. The relevant passage has been quoted by us already while referring to M/s. Doypack Systems' case . At page 241 it was observed thus: "There is nothing sacrosanct about the immunity which is granted to documents because they belong to a certain class. Class immunity is not absolute or inviolable in all circumstances. It is not a rule of law to be applied mechanically in all cases. The principle upon which class immunity is founded is that it would be contrary to public interest to disclose documents belonging to that class because such disclosure would impair the proper functioning of the public service and this aspect of public interest which requires that justice shall not be denied to any one by withholding relevant evidence. This is a balancing task which has to be performed by the Court in all cases". 32. Class of papers protected from revelation consists of documents which are really necessary for the proper functioning of the public service to be withheld from disclosure. This class includes Cabinet minutes, "minutes and discussions between heads of departments, high level inter-departmental communications. . . .". Papers brought into existence for the purpose of preparing a submission to Cabinet are also included in this class. (Vide S.P. Gupta's case, and M/s. Doypack Systems' case). There are two aspects to be considered here; one is the effect of Section 123 of the Evidence Act and the other is Article 163(3) or 74(2) of the Constitution of India, 33. The protection afforded by Section 123 of the Evidence Act is not absolute; the privilege conferred by this provision can be waived, as the very Section states. However, the protection under Section 163(3) or 74(2) of the Constitution is absolute and the mandate of these provisions is against the Court from inquiring into them, because, the papers which are part of the advice tendered by the Cabinet to the Governor/President, are integrated into

and merges in the advice tendered by the Cabinet. 34. There is need to prevent disclosure of the Cabinet's decision and the process anterior to it; equally, it is necessary to note that an excessive protection may not be conducive to the public interest, because, a wholesale and all pervading protection to a variety of documents and papers may prevent the Courts from inquiring into matters, 'while examining the constitutionality of a particular action of the Government. Therefore, it is necessary to limit the operation of Article 163(2) to such of the papers which were prepared solely for the purpose of the decision of the Cabinet and to the proceedings of the Cabinet, leading to the Cabinet's decision, which, in turn is conveyed to the Governor as its advice. 35. The papers and documents which came into existence in the course of the executive and ministerial functioning of the Government cannot form part of the exclusive privileged class, constitutionally protected by Article 163(3) or 74(2); some of them may fall within the privileged category, protected by Section 123 of the Evidence Act. For the sake of convenience, we may refer to the class protected by Section 123 of the Evidence Act, as quasi-privileged class, while, the one protected by Article 74(2)/163(3), as belonging to the class of absolute privilege, (as has been referred in STATE OF BIHAR v. KRIPALUSHANKER). 36. The observations of the Supreme Court in Doypack Systems' case obviously refer to the class of documents having absolute privilege. In fact, this approach has been indicated in the said Decision itself, when the Court observed: "We are conscious that there is no sacrosanct rule about the immunity from production of documents and the privilege should not be allowed in respect of each and every document. We reiterate that the claim of immunity and privilege has to be based on public interest". 37. It was a case, where privilege was claimed by the Government in respect of documents prepared for the purpose of a decision by the Cabinet, resulting in the tendering of advice to the President; it was a case of Article 74(2). At first, the Supreme Court held that the documents sought to be produced were irrelevant to the question involved; thereafter the Court, as an alternative ground, considered the applicability of Article 74(2) to the documents in question. 38. Here, we are concerned with the files produced by the State Government and the question is whether this Court could go into all the papers in these files, irrespective of the class to which they belong. If the papers in the files are integrated into and merged in the ultimate decision of the Cabinet, in the sense, without those papers the advice tendered to the Governor would be meaningless, then, certainly such of those papers falling within the class of papers enjoying the absolute privilege, should be excluded from consideration. 39. In the case of a decision to place an order for supply of goods, several papers shall have to be considered, such as the papers reflecting the history of the case, any earlier policy formulated by the Government, enquiries made, rival tenders submitted to the Government, processing of the tenders, etc. etc. In the case of a sole tender for supply of goods, the normal enquiry would also include enquiry as to why there is only a single tender, and whether other similar suppliers are available who can be asked to submit the tenders. But most of these enquiries are antecedent enquiries and some of them relate to, what may be termed as, 'historical facts'. The Cabinet may look into them, or may not look into them.

For example, a tender submitted by the supplier, shall have to be necessarily placed before the Cabinet while considering the advisability of placing orders with the said supplier; from this, can it be said that the very tender forms part of the papers enjoying absolute privilege; if it is held that the very tender cannot be considered by the Court while examining the propriety and validity of the order passed by the Government, it will be impossible for the Court to discharge its constitutional obligation to safeguard the public interest and no contract of the State Government, could be examined. The public interest to be safeguarded and the Constitutional bar under Article 14 of the Constitution against the arbitrary actions of the Government will be rendered illusory. Therefore, to balance the interests of the public, with the need to protect the advice tendered by the Cabinet under Article 163(3)/74(2), the background papers reflecting the historical facts, and the manner in which the tender was procured and processed and what steps were taken earlier, should be excluded from the class of papers enjoying absolute privilege. 40. In the instant case, there are atleast three stages involved, The first stage, is the preliminary stage - (ultimately forming the very foundation of the Government's impugned action of placing order with the supplier) - of the tentative decision taken on 31.3.1992, including the release of Rs. 1,58,10,000/- for payment to the appellant on the said date. The second stage is the stage, at which, the executive officers took a particular decision and the final stage is the decision taken by the Cabinet in July 1992. 41. In connection with the scope of Article 163(3), one more decision of the Supreme Court is very relevant. In STATE OF MADHYA PRADESH v. NANDLAL JAISWAL AND ORS., the Supreme Court observed at page 278: "...It is true that what has been produced before the Court by way of policy decision dated 30th December 1984 is the decision of the Cabinet and if its production had been objected to on behalf of the State Government, a question would perhaps have arisen whether it is barred from the scrutiny of the Court under Clause (3) of Article 163 of the Constitution. But, it has been produced by the petitioners without any objection on the part of the State Government and once it is produced, the Court is entitled to look at and at clearly contains the decision of the State Government and must be held to fall within the last clause of Rule XXII. This view finds complete support from the decision of this Court in L.G. Chaudhari v. Secy. L.S.G.Deptt., Govt. of Bihar". 42. Above Decision, if applied, would permit this Court to look into all the files produced by the State Government before the learned Single Judge voluntarily and in fact, those files were produced by the highest Law Officer of the Union of India, the Attorney-General. However, we have proceeded on the basis of the subsequent Decision of the Supreme Court in Doypack Systems Case. 43. A Circular dated 29.4.1989 issued by the DPAR refers to the decision of the HLC dated 10.4.1989 with regard to computerisation. As per this, TAP should determine the choice of hardware and software when computers are being purchased by Government Departments. The Secretaries to Government/Heads of Departments proposing to purchase computers were requested to consult the TAP which would decide the suitability of the PCs, etc. HLC was reconstituted on 26.9.1990 under the chairmanship of the Additional Chief Secretary; this is referred in another circu-

lar dated 4.12.1990; this circular also states that TAP should be consulted and that TAP would decide the suitability of PCs., etc.; objects of TAP are detailed in this circular; the objects include the determination of choice of computer hardware, approving of rate contract, etc. 44. On 24.4.1991, Computronics Inc. addressed a letter to the Chief Minister, introducing themselves as the authorised dealers for the Apple Macintosh Products of U.S.A. for the entire State of Karnataka; a proposal for modernising office equipment by installing Apple products was enclosed to the letter. The quotation gives the description of the units and unit prices for each unit, separately. 45. On 10.6.1991, the Joint Secretary to the Chief Minister forwarded the offer to Secretary DPAR, to offer his comments. Ultimately matter went to TAP, which, on 25.10.91, stated that the systems proposed was non-standard and not compatible with the IBM Computers, thereby the systems cannot be used to run several popular programmes sold: TAP pointed out, further, that the vendor had no service facilities and maintenance would be a problem; TAP advised that procurement of the system, may be deferred. In view of the advice of the TAP, the file was closed on 31.12.1991, in the office of the Chief Minister. 46. On 27.1.1992 Classik Computer Systems wrote to the Chief Minister introducing themselves as one of the leading suppliers of Apple Macintosh Computer systems in South India, stating that the system is a completely integrated system which can be used to general reports, letters (both in English and Kannada languages) budgets, estimates and analysis data; letter further states that, they have been supplying these systems to various Government organisations in Tamilnadu and that almost all the Departments were using the system to generate reports and letters in the regional language and that the Classik Computer Systems was in business for nearly 4 years, the offer to the Karnataka Government was enclosed to this letter. It is signed by V. Gokulkrishna (Appellant before us) as "Director". The offer mentioned the rate per one unit at Rs. 5,27,000.00 and the offer was to be valid for 30 days. Payment of 30% advance with firm order was required. This offer is tagged on to the order sheet ending with 31.12.1991 referred by us already. 47. On 31.3.1992, another letter was addressed to the Additional Chief Secretary/Finance Commissioner by Classik Computer Systems. This letter thanks the Additional Chief Secretary for "the kind courtesy extended to" Classik Computer Systems and to the demonstration held in the office of the addressee; it also refers to the quotation dated 27.1.1992 for the system. Letter recommends 100 systems as the first phase of implementation and mentions the cost at Rs. 5.27 crores inclusive of installation of software development charges and training. It also refers to the Terms and Conditions, one of which was that the offer was valid for 30 days only and that 30%, advance was to be paid with "firm order". 48. On the very day, the Additional Chief Secretary purported to consider the quotation and prepared a note, which is quite relevant here. Before referring to this note, we reiterate that the appellant's offer and the order of the Government made on 31.3.1992, including the release of 30% of Rs. 5.27 crores advance are under challenge and this note of the Additional Chief Secretary and consequential notings of others were not prepared at that time for the purpose of submission to the Cabinet at all. These notings at the most enjoy

the status of quasi privilege, but the privilege was clearly waived by the State Government which unhesitantly and willingly placed the relevant files before the learned Single Judge as well as before us. Before the learned Single Judge, the then Attorney-General had appeared, and and none raised the plea of any privilege, either under Article 163(3) of the Constitution, or under Section 123 of the Evidence Act; the quasi-privilege, if any, available to these papers was thus clearly given up and there is no Constitutional bar against us looking into these papers. 49. If none of these papers could be perused, the Court will be left with the pleadings in the Writ Petition and if the pleadings are to be the only basis for the decision, the resultant position would in no way help the appellant; the release of the amount on 31.3.1992 and the order of the Government of the said date as well as the subsequent agreement dated 10.8.92 are liable to be quashed on the ground of arbitrariness; non-consideration of relevant factors, such as: the need to purchase computers, availability of alternative suppliers, the suitability and qualitative merit of these particular computers as against other available computers in the market, the fairness of the price quoted and agreed upon, the reason for releasing the advance on 31.3.1992, when, no firm order was placed with the appellant, the credentials of the appellant to whom such a large amount was released without insisting on any security (especially when it was understood that there was no commitment by the Government to place orders), would vitiate the order dated 31.3.1992 and the agreement dated 10.8.1992. 50. Admittedly, the Chief Secretary was the head of the DPAR; computerisation of the Government Departments had to be dealt by him. Surprisingly, the Chief Secretary was ignored and the appellant approached the Additional Chief Secretary directly with his letter dated 31.3.1992; the letter of the appellant indicates that there was some sort of demonstration of the system in the chamber of the Additional Chief Secretary, earlier. It looks as if the Additional Chief Secretary took the initiative which resulted in making the order of the same date (31.3.1992). 51. We have proceeded on the basis that we would not consider the documents, falling within the privileged class of documents in view of Article 166(3) of the Constitution. Therefore the note prepared in July 1992 for the purposes of the Cabinet proceedings has to be ignored; if so some of the observations of the learned Single Judge on this aspect of the case are also liable to be ignored. Therefore the last sub-para of para 7 of the Judgment of the learned Single Judge, commencing with the observation, "I shall now examine the effect of the Cabinet decision on the decision taken on 31.3.1992", and ending with the said para shall have to be passed over as unnecessary. However, this would not affect the essence of the judgment and the ultimate conclusion of the learned Single Judge with regard to the invalidity of the Government order dated 31.3.1992 and all consequential actions arising out of the said order. 52. In para 8 of the Judgment under Appeal, there is a clear finding that no nexus is established between respondents 2 and 3 on the one hand and respondent-4 on the other to establish malafides. (Ranking of the respondents here is with reference to the Writ Petition). It was further observed, "on the material on record it may be difficult to say that there are maiafides on the part of second and third respondents but I dare say that the decision taken by them is not

bonafide but very strange". It is true that technically, the observation is self-contradictory; if there is no malafide, the action taken should be bonafide; it is not possible to have a "grey area", where lack of bonafides and lack of maiafides operate. This sentence has to be understood in the context of this case. The disbursement was of a huge sum without any security and the decision placing an order with the 4th respondent has been taken in "stultification of all financial and administrative norms"; this, certainly is a strange executive action. 53. The further observations, "The action was taken without care and caution and not with due responsibility by respondents 2 and 3 for motives which are not clear. And, it is difficult to delve into minds of men for devil knoweth not mind of men" certainly suspects the motives of the then Chief Minister and the Chief Secretary. Purpose of the Writ Proceedings is not to investigate into the motives of the men in power; motives are certainly relevant, in cases where the validity of the action depends on the motives. A Governmental action will not be valid solely because the motive behind it was pervaded with good intentions. If the decision-taking process failed to consider relevant factors, and establish norms of good administration were ignored, motive becomes irrelevant. Extraneous motive reflected in the decision taking process, would also invalidate the ultimate decision, because in such a case, the motivated action leads to a biased decision and becomes arbitrary. However in the case of malafides, it shall have to be clearly pleaded and proved; malafides cannot be attributed to anyone, on mere suspicion. (See: EXPRESS NEWS PAPERS PVT. LTD. v. UNION OF INDIA, AIR 1986 SC 782 : Para 119 and KEDARNATH v. STATE OF PUNJAB, . 54. In the instant case it is unnecessary to delve into the actual motives of the then Chief Minister and of the Additional Chief Secretary, because "if people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion" (quoted from an English decision by the Supreme Court in S.R. VENKATARAMAN v. UNION OF INDIA AND ANR., . The Supreme Court, observed, further: "...It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another". The Supreme Court again stated: "An administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an abuse of power". To the same effect are the observations in the Express News Papers Case. At page 926, it was held: "Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires, It would be a case of fraud on powers". 55. If the decision taking process is vitiated by considering non-existent facts as in existence, and

there was a failure to follow the established norms and procedure, the decision has to be necessarily struck down as violative of Article 14 of the Constitution; if so, the hidden motive of the decision maker need not be unearthed at all, by the Court while deciding the validity of the impugned action. 56. It was vaguely submitted that release of Rs. 1,58,10,000/- on 31.3.1992 was to avail of certain concessions offered by the appellant; we do not find any reference to such a concession and no where such a concession was specified; the learned Counsel for the appellant also could not spell out the concession offered by the appellant; in fact, his specific statement made before us repeatedly, was that, the appellant did not seek any advance until a firm order was placed by the Government with him and on 31.3.1992 he did not expect any advance at all. 57. It was further contended that the goods arrived in India, in pursuance of the order of July 1992 and this fact alone is sufficient to prove the credentials of the appellant and that appellant had the capacity to fulfil his part of the bargain. This was in October 1992; by that, petitioners had moved the Court on 16th July 1992 and the transaction had received wide publicity; the placement of the order was under challenge before this Court. Naturally, those responsible for the deal would try to justify the action by having the goods imported to give a colour of authenticity and credibility to the entire transaction. This apart, the Court is concerned here with the decision making process of the State Government prior to the importation of the goods by the appellant. We asked the question as to how Government could have obtained the refund, if for any reason there was a failure on the part of the appellant to supply the goods, or something happened to him between the date of payment of Rs. 1,58,10,000/- and July 1992; question could not be answered by any one. 58. By way of analogy, Manual of the Stores Purchase Department may be referred. Chapter III contains "general principles of entering into contract. Para 11 (5) states that in selecting the tender to be accepted, the financial status of the individual firm tendering must be taken into consideration in addition to ail other relevant factors. Para 25(1) insists of taking security deposit, except in cases of registered suppliers for a store, provided they have already furnished adequate Bank guarantee; nature of the security is stated in Para 25(2). 59. Para 59 governs the tenders for plant and machinery and provision for"after sales" service and Para 63 provides for obtaining of technical advice, as and where required. 60. The above provisions in the Manual indicate the need to obtain security before an order is placed for supply of goods, because, due performance of the contract to supply goods, should also provide for the refund of advance received by the supplier, in case, supply could not be done. 61. According to the petitioners, the contract for any stores could be executed only by the Director of Stores and Purchase Department, in view of a Notification dated 15.6.1974; we don't think it is necessary to consider this contention, in the light of the executive order issued directly by the Government to place order with the appellant. Fact remains that, the placement of the order and the earlier order of 31.3.1992 were in utter disregard of the public interest and huge amount was released blindly without reference to any security or credentials of the appellant. 62. The ultimate finding of the Court, in the instant case, is not strictly based on the averments made in the Writ Pe-

tition, though, it is clear that all the parties before the Court were fully aware of the real issue; the real issue was the propriety of the decision making process involved in making the order dated 31.3.1992 and the further order made in July 1992 placing firm order with the appellant, by the Government. The facts and circumstances are: (1) The TAP, which is the competent body to evaluate the system did not approve these computers. (2) The High Level Committee/High Power Committee had no technical expertise to consider the relevant question. (3) There was no evaluation of the requirements of the State Government and there is absolutely no material as to how a decision for 100 numbers of computers was arrived at: (4) Whether the price quoted by the appellant was a fair one was not at all considered, which again shows the evaluation requirement was not respected. (5) The initiation should have come from the DPAR and not from the Additional Chief Secretary. (6) The Chief Secretary, who was the head of the DPAR was ignored. (7) Opinion expressed by the DPAR in the year 1991, while considering an earlier offer regarding the very systems, was ignored; it had opined that the existing computer system could, if necessary, be expanded a little and in this regard the suggestion of NICNET was relied upon. (8) Incorrect note, containing wrong facts was put up by the Additional Chief Secretary on 31.3.1992; which is the basis for the orders issued on the same day - The noting stated that, earlier, decision was deferred in order to assess the resource position at the end of the year; this is manifestly incorrect; the statement that "now there are certain savings available at the end of the year", is again far from the truth, because, no amount was found in balance under the sanctioned grants; the amount available in the Contingency Fund, cannot be considered to purchase articles, especially when, the expenditure to be incurred for the purchase was not at all an "unforeseen expenditure" referred in Article 267 of the Constitution; the further statement in the note of the Additional Secretary that, "the terms and conditions" of the appellant's firm, for the Apple Macintosh Computer System, "are quite attractive and competitive", has no factual basis at all, because, none has considered this aspect; no reason is given why an advance of 30% was to be paid, when firm order was not placed, and when the appellant did not insist on any advance till a firm order was placed; what was the need to unburden the State by releasing its funds on the very date; the solvency of the appellant and other credentials of the appellant were not at all verified and no steps taken to safeguard the payment, by insisting on any security or guarantee and, how the State could have obtained refund in case no firm order was ultimately placed or something happened to the appellant and the supply was not effected, was not pointed out. (9) The ultimate order of the DPAR, was only due to the specific directions of the Additional Chief Secretary and of the Chief Minister, and the Under Secretary to DPAR once again pointed out that NIC had already covered a substantial section of the secretariat. (10) The noting of the Chief Secretary dated 26.5.1992 suggested the withdrawal of the reference to the High Level Committee in view of the opinion expressed by the TAP; the Chief Secretary observed, at para 47 of the file, "I would like to add here that a purchase involving the said outlay is in any case to be approved by the Cabinet. I find it strange, to say the least, that

I am the Officer in over-all charge of DPAR, which deals with this mater, was not kept in the picture at all". 63. Court is concerned with the validity of the Government order; the decisions taken by the Cabinet is the ultimate step in the decision making process. We proceed on the assumption that the papers prepared for submission to the Cabinet cannot be looked into in view of the decision of the Supreme Court in Doypack Systems' case ; if so, the inevitable inference from the earlier stages of the decision making process in the instant case, would throw the entire burden of justifying the ultimate order would be on the State Government. A substantial part of the decision taking process reveal the haste with which the Government acted to release the funds and eagerness to finalise the deal; the established norms of fair administration were by-passed. 64. In these circumstances it is inevitable to conclude that there has been an abuse of power in making the impugned order dated 31.3.1992; therefore the ultimate Government order made in July 1992 placing a firm order with the appellant also is legally bad. 65. The remarks of the learned Single Judge show that the conclusion, in no way be different, if the Cabinet papers also could be referred and considered. 66. The note prepared by the Additional Chief Secretary on 31.3.1992 requires to be noted frequently and therefore it is quoted below: "The Government of Karnataka has been encouraging the use of computers in order to not only modernise the office systems but also to enable better monitoring of both physical and financial achievements of various schemes etc. All over the world it has now been accepted that management information system is an essential input in modern office management. With increasing plan expenditure and increasing number of schemes it is vital to have facilities in various offices which would enable creation of a data base which can be updated frequently and allows retrieval of information in the required form. In various forums and committees of the Government it has already been felt that Government must go in for computerisation in a targe way. The Hon'ble CM has also expressed that the Government should spare no efforts in going in for computerisation which would improve the quality of administration in terms of more effective monitoring of various things. Apart from this, this would also form an important part of the Government's intention to have a more responsive administration. The Government has received an offer from M/s. Classik Computer Systems which is enclosed below. The said firm has also made similar offers earlier also but the decision was kept in abeyance in order to assess the resource position at the end of the year. Now it is found that there are certain savings available at the end of the year and therefore it is proposed to utilise the part of this savings to purchase the computers system. The offer made by M/s. Classik Computer Systems is to supply 100 systems of Apple Macintosh Computers which are of standard quality, The details of the terms and conditions as well as the configuration and details of the software enclosed with the offer are placed below. I have gons through the details and I am of the opinion that the terms and conditions of this firm for the Apple Macintosh Computer System are quite attractive and competitive and therefore I am of the opinion that Government should place orders with this firm for purchase of 100 systems. The total cost works out to Rs. 5.27 crores of which 30% has to be paid in advance. The

Secretary, DPAR may be asked to take immediate action to issue a GO placing the order with M/s. Classik Computer Systems for supply of 100 Apple Macintosh Computer Systems on the terms and conditions mentioned in their offer. The GO may also mention that FD has given concurrence for release of 30% of the total amount as advance payment. After the issue of the GO DPAR may send the file to FD to enable it to issue the corresponding contingency fund order". This note was approved by the then Chief Minister on the very day and thereafter the Additional Chief Secretary made further note for the issuance of orders. The necessary order had to be issued by the DPAR and when the file went to the DPAR the Under Secretary put up a note as follows: "After issue of the Government Order DPAR would have to send the file to Finance Department to enable to issue the corresponding contingency fund. The proposal has been approved by the Chief Minister as in para 6 nA. Accordingly, a draft G.O. is placed in the file for approval. In this connection, it is brought to the kind notice that in Government Circular No. DPAR 47 AMC 88 dated 29.4.89 (copy placed in the file), it is stated that the High Level Committee on Computerisation in Administration constituted in G.O.No. PED 12 PCM 87 dated 11.1.88 (copy placed in the file) along with the Technical Advisory Panel should determine the choice of hardware and software when computers are being purchased by Government Departments. The Secretaries to Government/ Heads of Departments are required to consult the Technical Advisory Panel for the suitable configuration before such purchases are made. This is specifically required to be done in all cases where the proposals involved the expenditure of more than Rs. 50,000/-. In continuation of this another Circular No. DPAR 94 AMC 90 dated 4.12,90 has also been issued (copy placed in the file) indicating the objectives of the Technical Advisory Panel and the High Level Committee, In the instant case the total expenditure is Rs. 5.27 crores and invariably before purchase of this system the High Level Committee and the Technical Advisory Panel will have to clear the configuration to be procured. However, in view of the concessions extended by the Classik Computers Systems, if order is placed before 31.3.1992 and also in view of the specific orders of the Additional Chief Secretary and the Finance Commissioner and the Chief Minister, draft order is placed in the file. Incidentally, it is also brought to the kind notice that the National Informatic Centre has already provided Computer Network in Vidhana Soudha and M.S. Buildings for which infra-structure facilities have been provided by Government. Already the main National Informatic Centre controls are installed in the Finance Department connecting all the 20 districts. The National Informatic Centre has already covered the Secretaries to Government in Vidhana Soudha and they are likely to cover all the Secretaries in about a month's time in M.S. Buildings. After completion of this, it is understood that they would be covering the Ministers as well. In the meanwhile, Cabinet has also taken a decision to supply Personal Computers to all the Cabinet Ministers and the State Ministers and matter is before the Director, Computer Centre to select a suitable configuration required by the Ministers. Therefore, in the instant case, before finally procuring the systems from Classic Computers, it would be advisable to interact with the National Informatic Centre also so that

the systems given by National Informatic Centre and the systems to be given by the Classik Computers do not repeat in any office. In the meanwhile, in view of the urgency and the directions issued in previous paras, a draft order is placed in the file which may please be approved. Thereafter the Secretary to DPAR also made a note to issue the order. 67. There is no dispute that the Government Order was issued on the very day and sum of Rs. 1,58,10,000/- was ordered to be paid to the appellant. It was stated before us that a bank account was opened in the name of the appellant and the amount was credited to the said account by the appellant by seeking the encashment of the cheque issued by the Government Treasury. In the course of the arguments it was observed that very shortly thereafter the entire amount of Rs. 1,58,10,000/- was drawn by the appellant in cash and a sense of astonishment was expressed by the learned Counsel for the petitioners as to the manner in which such a huge amount was taken away by the appellant in cash. It is unnecessary for us to express any opinion on this aspect of the encashment. However the fact remains that no firm order was placed with the appellant admittedly on 31.3.92. The payment was a tentative payment; if for any reason no firm order is placed in future the appellant had to refund the amount. However, there is absolutely no material to indicate the credentials and solvency of the appellant who was permitted to encash such a huge amount without obtaining any security from him. The manner in which the order was made to release the sum of Rs. 1,58,10,000/-without satisfying about the credibility and solvency of the appellant and without safeguarding the interest of the State to get back the amount in case no firm order is placed, certainly would shock the conscience of any prudent and reasonable person. There can be no doubt that public interest was completely ignored while making this payment to the appellant. It is true that there is no direct evidence to show that the Additional Chief Secretary or the Chief Minister or both of them had any link with the appellant and the payment was ordered to favour him for any reason. We are not concerned with the motives of these high office holders. We are concerned with the real impact of their action. We are concerned with the question whether the persons responsible for the payment had kept in mind the need to protect the public interest as well as the interest of public revenue. We are constrained to hold that the basic requirement of public administration has been completely overlooked while the amount in question was released to the appellant. 68. Undisputedly the TAP again rejected the offer made by the appellant as unsuitable to the requirements of the State Government. The TAP met on 7.5.92. The members of the TAP unanimously felt that the DPAR should procure equivalent IBM based system from a rate contract firm. The members of the TAP were; 1) The Commissioner and Secretary, Department of Science and Technology, who was the Chairman of the TAP, 2) Director, Karnataka Government Computer Centre, 3) Additional Secretary, Department of Science and Technology, 4) Deputy Secretary, (PP-1) Planning Department, 5) Chairman, SCEPC, Indian Institute of Science, Bangalore, 6) Dr. Subramanyam, from School of Automation, Indian Institute of Science, Bangalore, 7) An Officer from National Informatic Centre, Bangalore region. The members of the TAP unanimously observed that the proposed Apple Macintosh

System is"non-standard, non-popular and non-compatible" with the IBM-IBM based systems and also not manufactured in India. Thereby the proposed system has several draw backs including the following":"....." omitted here. The TAP also pointed out that the Apple Macintosh System is both inferior and costlier than IBM based systems. This Committee again pointed out that similar two proposals have been rejected by the said Committee earlier. It is unnecessary to refer to a few other events except to point out that HLC opined that it is advisable to get opinions from the users of the computers in question. The Junior Scientific Officer of the Government of India, Department of Electronics stated that these machines are highly usable/user friendly compared to counter part IBM PC compatibles. C.M.C.Ltd. also pointed out that these computers were more favourable cost-wise and in performance when compared with the Apple machines. Dr. Koteswara Rao of the Planning Commission stated that these computers required by the State Government for the purpose of desk top publishing will be useful and that these machines are to be used for generating the master for publication and refers to annual budget papers, etc. However, there is a note of caution suggesting that the actual requirements are to be studied by the State Level Technical Committee and that the points also may be discussed in the NIC State Co-ordination Committee to finalise the actual requirements. The last sentence also is very relevant "in our experience in computerisation in different Government departments, the Apple Macintosh Computers have a limited purpose of DTP". Dr. N.V.K.Rao of NIC pointed out that NIC provided the state of the art computer under works and that there is no need for any other computers and for meeting the DTP needs like making the budget documents or notes for the legislative assembly, etc. two or three Apple Macintosh systems will be sufficient for the Secretariat. Dr. Koteswara Rao again wrote on 20th June 1992 on the same lines as Dr. N.V.K.Rao. ISRO Satellite Centre pointed out that it was not in a position to recommend the use of any one particular computer and that it is essential to define the goals of the project very clearly so that people on the project have well defined target to work towards. The Director (Budget) of the Government of India stated that Apple Macintosh system is used for processing the budget from the formulation stage and that the system is user friendly and possess useful features. It was written on behalf of National Aeronautical Laboratory that Apple Macintosh computers are popular and are highly user friendly but it was not possible to comment on the suitability of those computers for the use of the State Government without knowing the exact requirements. The Project Management Group of Tamilnadu reacted favourably towards the projects of these computers. 69. A perusal of these various opinions show that there was no uniform definite opinion expressed in favour of Apple Macintosh systems. In fact the Experts seem to have advised to have a thorough look into the requirements; NIC in fact suggested that it was unnecessary. 70. We are not referring to the Cabinet note and the decision taken by the Cabinet. In other words we proceed as if we have no idea of the note prepared and put up for the purpose of Cabinet proceedings which ultimately resulted in placing a firm order with the appellant. The fact remains that there is a Government order. The relevant

materials indicate that on 31,3.1992 the then Chief Minister and the Additional Chief Secretary directed the issuance of a Government Order to release the sum of Rs. 1,58,10,000/- even though no firm order was placed with the appellant. It is also clear that the note put up by the Additional Chief Secretary did not reflect the true position regarding the facts stated in the said note. We do not express any opinion as to whether the Chief Minister knew about the wrong notings made by the Additional Chief Secretary or whether the Chief Minister acted on the basis of the note put up by the Additional Chief Secretary on the assumption that the Additional Chief Secretary would not put up any wrong note. At the same time it is unbelievable that the Chief Minister would have been unaware of the earlier decision taken in pursuance of the opinion expressed by the TAP not to place orders with the appellant Similarly it is unthinkable that the Chief Minister would have acted mechanically without verifying as to whether proper security would be taken or not from the appellant. Some of these aspects resulted in the learned Single Judge making the remarks he made (which we have already quoted). 71. While summing up, the following facts and circumstances required to be reiterated: (1) The Additional Chief Secretary put up a note containing wrong statement of facts. (2) Even though the expenditure was not unforeseen still the amount was directed to be paid out of the contingency fund. (3) A sum of Rs. 1,58,10,000/- was paid to the appellant without taking any security from him and without any material on record guaranteeing his solvency, when the said payment was not even insisted upon by the appellant. (4) No undertaking was taken from the appellant to refund the amount in case no firm order is placed in future. (5) Whether Classik Computer Systems is a firm, a limited company or a proprietory concern, itself is not clear from the records; at any rate the appellant held himself out in various colours such as Director, Authorised Signatory and now as its Proprietor. (6) Whether the price quoted and offered by the appellant is a proper price to the articles has not been considered at all by any authority. Absolutely there has been no evaluation of the price of the goods and the quotation has been accepted as to the price without any bargain and without any material as to its reasonableness. (7) There has been no evaluation of quantity required and there is no material as to why and how 100 computers would be necessary for the State. 72. Apart from the above factors and the documents and files we have referred in this judgment, there is no other material to show that the Government acted fairly, objectively and considered all relevant factors while placing a firm order with the appellant. No material has been placed as to why no tenders were called and as to why the appellant was chosen for the supply of the articles in question. The ultimate Government Order placing the firm order in July 1992 is nothing but the final stage and its validity entirely depends upon the foundational stage which we have referred as the first stage. If the first stage collapses the edifice built thereon naturally shall have to fall. 73. The ratification by the Cabinet will not validate an unconstitutional act. Assuming that the State Government took an independent decision dehors the order made on 31.3.1992, still the said order is liable to be scrutinised and tested by applying various principles evolved by the Supreme Court and we are constrained to hold

that the Government order is arbitrary and is the result of non-consideration of relevant factors and therefore violative of Article 14 of the Constitution. 74. There was one argument which was repeatedly pressed before us pertaining to the conduct of the present State Government in supporting the Judgment of the learned Single Judge. The learned Advocate-General submitted before us that the Government had filed an objection statement earlier in the Writ Petition, after hearing the entire case the learned Single Judge has come to a particular decision and set aside the transaction in question as contrary to the public interest, the Government has accepted this Judgment; there is nothing wrong in the Government now taking a fair stand before the Appellate Bench, after being satisfied that the decision of the learned Single Judge is correct. 75. We have no doubt that the learned Advocate-General has taken a fair stand. In fact the learned Advocate-General did not advance any particular argument in support of the case pleaded by the Writ petitioners. The relevant files were placed before us and the facts were analysed chronologically and in doing so naturally the facts and events were pointed out with reference to the admissible papers. 76. In the result we hold that: (1) The order of the Government dated 31.3.92 is entirely unconstitutional and void.

(2) The payment of a sum of Rs. 1,58,10,000/- out of the Contingency Fund was contrary to

(3) The then Additional Chief Secretary who put up the note on 31.3.1992 did not disclose

(4) The procedure preceding the order dated 31.3.1992 was entirely improper.

(5) The ultimate decision of the Government dated 17.7.1992 placing a firm order with the

Writ Appeal is accordingly dismissed.

ORDER ON ORAL SCLAP

The learned Counsel for the appellant made an oral application under Article 134A of the Constitution, seeking a Certificate to go in Appeal to the Supreme Court.

We have followed the principle firmly established by the several Decisions of the Supreme Court to the facts of the case and therefore we don't think this is a case for issuance of any Certificate to go in Appeal to the Supreme Court. The application is rejected.