

M/S. Karnataka State Forest ... vs M/S. Indian Rocks on 24 October, 2008

Equivalent citations: AIR 2009 SUPREME COURT 684, 2009 (1) SCC 150, 2008 AIR SCW 7883, 2009 (1) AIR KANT HCR 248, 2008 (2) CTLJ 465, 2008 (14) SCALE 98, (2008) 14 SCALE 98, (2009) 2 KANT LJ 193

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Bench: S.B. Sinha, Cyriac Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6274 OF 2008
[Arising out of SLP (Civil) No. 24242 of 2005]

M/s. Karnataka State Forest Industries Corporation ...Appellant

Versus

M/s. Indian Rocks ...Respondent

WITH

CIVIL APPEAL NO. 6275 OF 2008
[Arising out of SLP (Civil) No. 23148 of 2005]

M/s. Karnataka State Forest Industries Corporation ...
Appellant

Versus

State of Karnataka and others ... Respondents

JUDGMENT

S.B. SINHA, J :

1. Leave granted.

2. These two appeals involving similar questions of law and fact were taken up for hearing together and are being disposed of by this common judgment. We may, however notice the fact of the matters involving in both the appeals separately.

Civil Appeal arising out of SLP) No. 24242 of 2005

3. Appellant is a Government of Karnataka Undertaking engaged in sale of granite of seized and confiscated granite blocks to persons who intend to purchase in the Tender-cum-Allotment sale on "as is where is basis". The relevant terms of the said tender were:

"6. The tender/bidder should make arrangements to obtain transit permit at his own cost from Forest Department/KSFIC.

9. The successful Tenderer/Bidder should pay 1/10th amount of the sale value plus taxes as follows:-

(a)	Un-polished Granite Blocks	10% S.T.
(b)	Sur-charge on S.T.	15%
(c)	Forest Development Tax	5%
(d)	Income Tax	15%
(e)	Surcharge on I.Tax	5%

On the same day, the balance amount will be payable as follows:

(a) 50% within 15 days of the intimation of confirmation of tender.

(b) the remaining amount shall be paid by the end of the June, 1995 or before the stones are lifted whichever is earlier. The period of the contract shall be upto April, 30th 1995.

11. In case of breach of any of the conditions mentioned above, the Managing Director, KSFIC Ltd., is at liberty to cancel the Tender/Bid amount and make materials at the risk and cost of the original Tenderer/Bidder and the EMD/Security Deposit furnished by the Tenderer/Bidder be forfeited. If the K.S.F.I.C. incurs any extra expenditure in this regard the same will be recoverable from the original Tenderer/Bidder.

18. The successful Tenderer/Bidder shall make their own arrangements for inspection of seized and confiscated Granite blocks at their own cost located at different places in the Ranges as the offer for sale is on. AS IS WHERE IS BASIS.

Rejection due to colour, cracks etc. will not be entertained once the offer is submitted.

19. Sale of granite blocks is agreed upon in good faith and K.S.F.I.C. Ltd. shall not be liable for any damages or otherwise for failure to carryout the obligation which may be occasioned by Act of God, War, Civil Disturbance disorders, strike etc., or regulation of Government authorities or agencies or similar circumstances beyond its control.

20. Breach of any of the conditions specified supra, by the purchaser will entail forfeiture to K.S.F.I.C. of all deposits paid by him. Further, the Granite Blocks already paid for and lying in the field will also be liable to be attached towards the balance due. The Granite Blocks purchased, whether paid or not will also be resold at the risk and cost of the original Tenderer/Bidder who will be liable to make good to Government any loss arising out of such resale but shall not be entitled to profits.

34. No material shall be removed from the contract area unless it is covered by transit pass in accordance with the rules under Section 50 of the Karnataka Forest Act, 1963. If any problems arise while lifting the blocks from site, necessary assistance will be provided if need be under special circumstances."

4. Respondent participated in the tender process. It was successful in purchase of:

- (i) one lot containing 25 blocks (Mulegundi Area),
- (ii) one lot containing 37 blocks (Mulegundi Area) and
- (iii) one lot containing 43 blocks (Nehrudoddi Area).

5. The total sale value of the granite sold to the respondent herein was Rs. 21,24,574.85. Out of the aforementioned sum, admittedly, the respondent on or about 11.07.1995 had deposited a sum of Rs. 11,84,447.90. The balance amount due to the appellant from the respondent was Rs. 9,40,126.55. In terms of the said tender, the respondent was required to pay not only 10% of the value of the goods but also taxes and other statutory dues paid by the appellant herein. Appellant has paid an amount of Rs.6,85,642/- being the royalty amount, Forest Development Tax, Karnataka Sales Tax and Surcharge on Karnataka Sales Tax etc.

6. Respondent allegedly refused to pay the amount to which it was said to be otherwise liable in terms of Clause 8 of the terms and conditions of the tender.

7. There appears to be a dispute as regards the amount payable by the respondent on the aforementioned account insofar as whereas according to the appellant the amount of granite including tax and other statutory liabilities in respect of 10 blocks of granite which had been received by the respondent and transported by it is Rs. 3,25,193.90; according to the respondent, the total amount of goods received was Rs. 2,39,969.35. Appellant contended that the contract was not concluded within the stipulated period of time as the entire payment was not made by June,

1995 or before lifting of the stones whichever is earlier, as envisaged under Clause 9(b) of the terms and conditions of the tender.

8. Concededly the Government of Karnataka was approached. A question was also raised in the Legislative Assembly. The Principal Secretary, Forest, Ecology and Environment Department, Government of Karnataka issued a letter on or about 16.01.1996, which reads as under:

"Sub: Permission to Karnataka State Forest Industries Corporation Ltd., for the sale of Confiscated Granite Block through Tender.

With reference to the above subject, a copy of the Letter dated 14.12.1995 received from the Chairman & Managing Director, KSFIC Ltd., is here with enclosed. The KSFIC Ltd., has sold the Granite Blocks which were seized by the Forest Department, through public auction during the month of March 1995. Since the Granite scandal is under enquiry of Legislative Committee, it was decided not to confirm the said sale proceedings. In the meanwhile the Chairman & Managing Director of the Corporation reported to the Government that the purchasers are pressurizing for issue of transit permit to lift the Granite Blocks or refund their amount. They also requested the Government to bring these facts to the notice of the Legislative Committee.

Since the Joint Legislative Committee has objected for issue of transit permit by the Forest Department and also KSFIC Ltd., to granite blocks as there was no provision for the same in the KMMC Rules, 1994, the Government has suggested to the KSFIC Ltd., to take action with regard to transfer the Granite blocks to the Department of Mines and Geology and for refund of amount to the bidders (copy enclosed). But, directed to keep the Granite blocks in safe custody till the decision of the Joint Legislative Committee.

I have been directed to bring the contents of the Corporation letter and the Government suggestion to the Corporation thereon, to the notice of the Joint legislative Committee."

9. However, as there exists a dispute with regard to its correct translation, we may also notice the text of the said letter from the judgment of the learned Single Judge, which reads as under:

"In between this, the President and Managing Director of the Corporation reported to the Government that the purchasers are insisting on the Corporation to issue permit for transportation of granite and also to refund the amount received from them. The Corporation has also prayed for bringing the said matter to the notice of the Joint House Committee.

Since the Joint House Committee has objected the issue of permits by the Forest Department as well as by the Corporation and since there is no provision for the same

in K.M.M.C. Rules, 1994, Government has directed the Corporation to take appropriate action for transferring the granite blocks which are under its custody to the Department of Mines and Geology and also to return the amount (liable to be refunded) to the concerned bidders, which is already collected from them. But, it has further directed to preserve the granite stones safely till the decision of the Joint House Committee."

10. It is, however, stated that the appellant did not agree to the aforementioned suggestions/direction of the State and responded thereto stating that it was not feasible to refund the sale price. It had been stated that necessary permit should be directed to be issued in this behalf. By its letter dated 2.12.1996, appellant requested the respondent to remit the balance amount, stating:

"You are requested to remit the balance amount of the total purchase value of the Granite Blocks purchased by you in the auction sale conducted by the KSFIC Ltd. during the Month of March - 1995."

11. However, the said request was not acceded to. Appellant allegedly issued various other letters to the same effect on 29.01.1997, 25.04.1997 and 30.06.1997. Ultimately by its letter dated 5.06.1999, the appellant informed the respondent to immediately remit the amount and lift the granite blocks by 30.06.1999 failing which, it was threatened, the amount deposited shall be forfeited, stating:

"We therefore request you to kindly make immediate arrangements for remitting balance amount and lift the granite blocks purchased by you in Tender-cum-Auction-Sale held during the month of March-1995 within 30th June 1999 without any further delay. If we do not hear anything from your side within the time stipulated, action will be initiated to forfeit all deposit amount paid by you as per clause (11), (16) and (20) of the Tender Conditions, which may please be noted."

12. Respondent filed a writ petition, which was marked as Writ Petition No. 27456 of 1999. It is not in dispute that those permits were not granted in favour of the respondents. Respondents in their writ petition while contending that the agency of the appellant was terminated, stated :-

"8. It is humbly submitted that the petitioner has paid sum of Rs.11,84,447.90 towards the cost of granite blocks. The petitioner after paying the huge amount of Rs.11,84,447.90 requested the Respondent to obtain the mineral dispatch permit from the Department of Mines and Geology for transporting the granite blocks. After receipt of the money the Respondent did not pursue the matter in obtaining the mineral dispatch permits from the department of transport the granite blocks. The effort of the petitioner to convince the Respondent to obtain the mineral dispatch permit did not yield and result and the Respondent failed to obtain the mineral dispatch permits in terms of Rule 42 of the Rules.

9. It is humbly submitted that the Respondent Corporation appointed the Jadhav, Range Forest Officer to issue the permits. The said Range Forest Officer has issued permits which are termed as fake permits. Several persons appear to have transported the granite blocks on those fake permits. Under those circumstances the Karnataka Legislative Assembly constituted Committee of legislators to go into the question of fake permits issued by the said Jadhav. It may also be relevant to mention that the criminal case was filed against various persons and the matter was handed over to the COD of Police for investigation. It is also relevant to mention that both the houses of the legislature was rocked by the fake permits scandal.

10. It is humbly submitted that the Legislative Committee which was appointed for the purpose of looking into the fake permits has took (sic) a decision that the entrustment of selling of the seized and confiscated granite blocks in favour of the Respondent Corporation should be dispensed forthwith thereby terminating the agency given to the Respondent. The Government on the instructions of the Legislators Committee cancelled the agency that was given to the Respondent and instructed the forest corporation to return the granite blocks to the department of Mines and Geology (sic) is the owner of those Granite blocks. Only for the purpose of selling those granite blocks it was entrusted to the Respondent Corporation. The Corporation ceased to have its power or jurisdiction to continue to sell the granite blocks with effect from 16.01.1996. The true copy of the Government Notification dated 16.01.1996 is produced herewith as ANNEXURE-C."

In the aforementioned premise, it was inter alia prayed :-

b) ISSUE an order, direction or writ in the nature of Mandamus, directing the Respondents to implement the Government Order Annexure-C dated 16.01.1996.

c) ISSUE an order, direction or in the nature of mandamus, directing the Respondents to refund sum of Rs.9,44,478.55 together with interest calculated at 18% in terms of the Government order dated 16.01.1996 Annexure-C."

13. Appellant filed its counter-affidavit in the said writ petition.

14. It also filed an additional affidavit, stating:

"10. It is relevant to submit here that the petitioner should have completed the entire tender cum auction transaction by the end of 15th July 1995 by making payment of taking delivery of the entire granite blocks purchased as per Respondent letter dated 26.06.1995 at ANNEXURE R14. However, the petitioner delayed the same. In fact, the petitioner should have completed all these transactions before the issue of Government letter dated 16.01.1996 at Annexure-C. The Respondent cannot be blamed for failure and delay of the petitioner in not completing the transaction before the Government letter dated 16.01.1996. In fact, the petitioner in letter dated

19.04.1997 expressed willingness to take the granite as per ANNEXURE-R15. Then Respondent sent a letter dated 28.4.1997 as per ANNEXURE-R16 to the Deputy Conservator of Forest. In spite of reminder dated 30.06.1997 as per ANNEXURE-R17 the petitioner has not complied with the directions in payment of the balance amount. This Respondent is entitled to forfeit the entire amount as per clauseillegible the tender for failure of the petitioner in not paying amount and taking delivery of the goods within the stipulated time. Therefore, the petitioner cannot blame this Respondent.

11. In spite of all this, and without prejudice to the various contentions, the Respondent humbly submits that, if the petitioner pays the balance amount of Rs.9,40,426.55 and penalty immediately as per conditions of sale, this Respondent is ready and willing to complete the sale transactions by obtaining necessary permits from the concerned authorities as is being done in the case of other bidders who have paid full value after 16.1.1996 Annexure-C. 15, A learned Single Judge of the High Court by its order dated 19.02.2001 allowed the writ petition directing the appellant - Corporation to refund a sum of Rs. 3,75,905.35 with interest from the date of issuance of the letter, stating :

"8. In view of terms of Auction notice, if the balance amount of the sale considerations is not paid, the sale could not have been confirmed and a forfeiture would have resulted. The forfeiture would have been unconditional but for the intervention of Annexure C, where the owner of goods sold, called upon the agent to refund the excess amount. The agent has to abide by the instructions of the Principal. He has to deal with the estate of his principal as he commands.

9. A perusal of Annexure H shows that the Respondent has collected whatever tax is due under the sale and prima facie there is no scope for fresh demand. Besides, the petitioner cannot also dispute its liability to pay the stipulated tax, it being a condition of sale. In these circumstances, there is a no justification in the demand made by the Respondent in Annexure H. In such circumstances, Annexure H is quashed. There will be direction to the Respondent to refund the amount, a sum of Rs.3,75,905.35 with the interest from the date of Annexure C. The right of the Respondent to claim any damage sustained from its principal is left open. W.P. is disposed of."

16. A writ appeal preferred thereagainst by the appellant has been dismissed by reason of the impugned judgment. Civil Appeal arising out of SLP (C) No. 23148 of 2005

17. Respondent No.3, on 6th March, 1995, participated in the tender-cum- auction sale and was a successful bidder in respect of 3 lots of granite containing 75 granite blocks. It again participated in the tender auction on 14th March, 1995 and was declared successful in respect of 41 granite blocks. The total sale value of the granites purchased by respondent No.3, according to the appellant, was Rs.21,91,234.60 ps. Out of said amount, it deposited a sum of Rs.11,47,149.77. The sale price

included various taxes/royalty.

18. Appellant released 31 granite blocks of the value of Rs.5,92,556.57 ps. Vide its letter dated 28th June, 1995 appellant requested the respondent No.3 to lift the remaining granite blocks after remitting 100% of the total purchase value plus taxes on or before 15th July, 1995 failing which the amount already deposited was threatened to be forfeited.

19. Respondent No.3 filed a writ petition before the Karnataka High Court being Writ Petition No.25613 of 1996 praying inter alia for issuance of direction to issue permits for lifting the granite blocks. Appellant did not object to the release of the granite blocks towards which payments had already been made. While issuing Rule on 19th September, 1996 the High Court gave an interim direction which reads as under :-

"There shall be an interim direction to Respondents 4 and 5 to issue Mineral Despatch Permits to Petitioner for transporting the granite block purchased by the Petitioner from first Respondent and released by the first Respondent, without requiring payment of any royalty charges."

20 Vide its letter dated 3rd October, 1996 and 29th November, 1996, the appellant requested the respondent No.3 to remit the balance amount and lift the granite blocks purchased by it. However, no transit permit was issued.

21. Third respondent was not prepared to pay the balance of amount to get the granite blocks released and once again requested the appellant to refund the balance amount deposited by it.

22. Another writ petition being W.P. (C) No. 7611 of 1997 was filed by respondent No.3 to refund the payment made by it amounting to Rs.5,54,593/- with interest and further not to insist for making payment of balance bid amount.

23. However, the High Court by its judgment dated 21st October, 1997 directed :-

"13. For the reasons stated, the relief sought for by the petitioner company in this writ petition cannot be granted by this Court. The only relief that can be granted to the petitioner-company is to direct the respondent Corporation to consider the request that may be made by the petitioner - Company for refund of a sum of Rs.1,51,594.06 ps., if terms and conditions of tender-cum-auction sale notification permits for such refund within two months from the date of request that may be made by the petitioner company and secondly, if the petitioner company deposits the balance of sale consideration for purchase of granite blocks, the respondent-corporation is directed to lift the balance or rough granite blocks which it had purchased in the auction sale without insisting on the payment of interest on the balance of amounts or for production of proof of payment of royalty under KMMC Rules, 1994."

The High Court also opined :-

"Pursuant to such confirmation of sale, Petitioner- Company has already lifted granite blocks worth Rs.4,40,562.50 ps. and the taxes paid in full on the entire sale value has already been deposited with the State and Central Government. Therefore submits, the only amount that is remaining with the third respondent- Corporation is a sum of Rs.1,51,554.05 ps. The learned counsel further submits that the third Respondent-Corporation is prepared to refund the aforesaid amount, if the Petitioner-Company so desires. "

24. Pursuant to or in furtherance thereof a representation for refund of Rs.1,51,594.05 ps. was made. However, the appellant by its letter dated 15th November, 1999 rejected the said request. Aggrieved, the third respondent filed a writ petition before the High Court which was numbered as W.P. 45825 of 1999 praying inter alia for the following reliefs :-

"i) issue a writ of certiorari or any other writ order or direction quashing the letter/order bearing No. TEC-II/Sale/GNR/94-95/99-

2000 dated 15.11.1999 passed by the 3rd Respondent (Annexure-T).

ii) issue a writ of mandamus or any other writ order or direction directing the 3rd Respondent to refund a sum of Rs.1,51,594.05 with interest @ 18% per annum from the date of deposit till the date of refund.

iii) issue a writ of mandamus or any other writ order of direction directing the respondents 1 and 2 to refund a sum of Rs.95,088.60 deposited by the 3rd Respondent on account of Forest Development Taxes on the unreleased granite blocks.

iv) issue a writ of mandamus or any other writ order or direction directing the Respondent No.5 to refund the amount of Rs.1,36,689.90 deposited by the 3rd Respondent on account of Sales Tax and Surcharge on the unreleased granite blocks.

v) issue a writ of mandamus or any other writ order or direction directing the Respondent No. 6 to refund the sum of Rs.1,78,290.60 deposited by the 3rd Respondent on account of Income Tax on the unreleased granite blocks.

25. As regards further performance of the contract as well as release of the amount, the appellant in its counter-affidavit before the High Court stated:-

"8. IN REPLY TO PARA NO. 5: It is pertinent to note that the prayer of the petitioner in the earlier writ petition bearing No. 25613/96 there is no whisper of the claim of refund. Further there is no prayer for refund of the granite blocks. When the Petitioner has sought for a direction for the issue of dispatch permits it is not now open to the Petitioner to make the claim for refund. Further, the submission made on behalf of this Respondent that it has no objection to release the blocks corresponding to the payment made cannot be interpreted to mean that the granite blocks worth

Rs.5,54,593.22 should be released. It is pertinent to note that even before the filing of the earlier Writ Petition, the Petitioner had lifted 29 granite blocks.

It is submitted that the application produced at Annexure-G is not brought to the notice of this respondent. It appears to have been rejected as the Petitioner did not pay the balance consideration towards 85 granite blocks and consequently as this respondent also could not pay the same to the fourth respondent."

"11. IN REPLY TO PARA-8: Out of Rs.11,47,149.32 paid by the petitioner a sum of Rs.5,62,063.25 is towards the applicable taxes. What remains is Rs.5,85,086.07 which is to be adjusted towards the value of the granite blocks. Out of this the Petitioner has already lifted 176.225 Cmt. of granite blocks in Yadamarahalli- III worth Rs.4,40,562.50 ps. The remaining amount is Rs.1,51,594.05. In the absence of any indication by the petitioner, this amount cannot be adjusted to any of the remaining lots. As the petitioner has not indicated to which lot this amount has to be adjusted, the question of releasing the granite blocks corresponding to the payment does not arise at all. It is incorrect to say that the petitioner has deposited the necessary amount without any lapses. The watch and warde and maintenance of the granite blocks purchased by the petitioner in the auction is the responsibility of the petitioner. As the terms and conditions of tender notification do not provide for the refund of the amount, petitioner's request could not be conceded to. Against the order, dated 19.8.1999 passed by the learned Single Judge in W.P. No. 7611/97, the petitioner filed W.A. No. 8250/99. The petitioner withdrew this Appeal."

26. A learned Single Judge of the High Court by his order dated 26th September, 2002 allowed the writ petition. While quashing the letter dated 15th November, 1999 directed to refund the moneys stated at Prayer Nos. 2, 3,4 and 5 of the petition.

Aggrieved, the appellant filed a writ appeal which was dismissed by the impugned order.

27. Mr. Shyam Diwan, learned senior counsel appearing on behalf of the appellant urged :-

(i) The purported order dated 16th January, 1996 contained in the letter from the Principal Secretary to Government, Forest Ecology & Environment Department and addressed to the Secretary, Karnataka Legislative Assembly, a copy whereof was sent to the Chairman & Managing Director of the appellant-Corporation, does not contain any direction which can be said to be binding on the appellant and in that view of the mater, the impugned judgment cannot be sustained.

(ii) For the purpose of issuance of a Writ of or in the nature of mandamus it was obligatory on the part of the writ petitioner to show the existence of a legal right in itself and a corresponding legal duty in the respondent and in view of the fact that no such legal right having been found to be existing in favour of respondent, the impugned judgment is liable to be set aside.

(iii) The High Court could not have exercised its jurisdiction under Article 226 to enforce a contract qua contract, particularly when the same involved disputed questions of fact.

(iv) Respondents, being bound by the terms and conditions of tender, could not have been given any relief in derogation thereof.

28. Mr. Vikas Rojipura, learned counsel appearing in Civil Appeal arising out of SLP (C) No. 24242 of 2005 and Mr. P. Vishwanatha Shetty, learned senior counsel appearing in Civil Appeal arising out of SLP (C) No.23148 of 2005 on the other hand, :-

(i) No disputed question of fact being involved in the Writ Petitions, the High Court could exercise its discretionary jurisdiction even in a matter governed by contract qua contract.

(ii) The action of the State in all situations including contractual matters must be fair and keeping in view the fact that the appellant had taken a wholly unfair stand, this court should not interfere with the impugned judgment.

(iii) In any event, as in the appeal arising out of SLP) No. 23148 of 2005 the appellant itself agreed to refund a sum of Rs.1,51,554.05 it cannot be permitted to go back on its promise and refuse to enforce the same particularly when the other respondents against whom directions had been issued, including the State of Karnataka and income tax authorities have accepted the judgment.

29. Indisputably the confiscated granite blocks belonged to the State of Karnataka. They did not belong to the appellant-Corporation. Appellant was merely appointed as an agent of the State. It is only in that capacity the tender was issued by it. We may notice that although in terms of the said tender, the concerned respondents and others were bound to deposit the price of the granite blocks as also the amount of tax payable thereunder ; one of the essential conditions therefor, as quoted above, was issuance of permits to transport the same.

30. Indisputably a part of the contract was completed. It is furthermore not in dispute that some granite blocks were transported by using forged transit permits. A huge scam was unearthed. Questions were raised in the Assembly. A Committee was appointed. It is pursuant to the report of the Committee that was appointed by the Karnataka Legislative Assembly that the policy of the State changed. It terminated the agency of the appellant. It was only while doing so, the directions contained in the said letter dated 16th January, 1996 were issued.

31. We agree with the contention of Mr. Divan that such a direction which does not have any statutory force is not binding upon the appellant but herein strictly we are not concerned with such an issue.

32. Mr. Diwan relied on *Bharat Sanchar Nigam Ltd. And another v. BPL Mobile Cellular Ltd. and others*, [2008 (8) SCALE 106] wherein it has inter alia been held :-

"They might have been published by some publisher but indisputably they are not statutory in nature. They have not been framed under any statute. The Indian Telegraph Act or the Rules framed thereunder do not provide for issuance of such circulars. The circular letters collected at one place are loosely called rules. They, as noticed hereinbefore, are meant for office use only. The directions contained in the said circular letters are relevant for the officers who are authorized not only to grant licences but also enter into contracts and prepare bills. The circular letters having no statutory force undoubtedly would not govern the contract. If some authorities have violated the terms of the said circulars, they might have committed misconduct, but when a contract is entered into, the parties shall be bound thereby."

It was furthermore observed :-

"25. In view of the aforementioned law laid down by this Court, there cannot be any doubt whatsoever that the circular letters cannot ipso facto be given effect to unless they become part of the contract. We will assume that some of the respondents knew thereabout. We will assume that in one of the meetings, they referred to the said circulars. But, that would not mean that they are bound thereby. Apart from the fact that a finding of fact has been arrived at by the TDSAT that the said circular letters were not within the knowledge of the respondents herein, even assuming that they were so, they would not prevail over the public documents which are the brochures, commercial information and the tariffs."

33. To the same effect are the observations made by this Court in *M/s. New Bihar Biri Leaves Co. and others v. State of Bihar and others*, [(1981) 1 SCC 537], stating :-

"46. At the time of inviting Tenders in the prescribed Form or inviting purchasers to bid at the publication, all tenderers or bidders are treated equally in the sense that they can offer their rates or bids subject to the statutory conditions including the impugned provisions. While accepting the highest Tender of rates per standard bag or the highest bid, it is not possible to classify the purchasers whose offers/bids have been accepted into 'honest' purchasers and 'dishonest' purchasers. Everybody whose offer or bid is accepted, is assumed to be honest."

34. We are, however, concerned herein with a different situation. Transport of granite blocks was subject to issuance of transit permits. Such transit permits are granted in terms of the provisions of Rule 42 of the Karnataka Minor Mineral Concession Rules, 1994.

35. The question that arises for consideration is as to whether the State in exercise of its power under Article 162 of the Constitution of India could issue a binding direction so as to confer a legal right on a third party having regard to cancellation of contract of agency by the State in favour of the

appellant ?.

36. The letter dated 16th January, 1996 is to be treated as a communication from a Principal to an Agent. As an agent of the Government of Karnataka, the appellant, which, itself is a 'State' within the meaning of Article 12 of the Constitution of India, was bound to act thereupon. It is true that it had responded to the aforesaid communication of the State dated 16th January, 1996 stating its own reasons therefor. In its letter dated 29th January, 1966 addressed to the Secretary, Forest Ecology and Environment, it was stated :-

"The KSFIC Ltd. is facing financial crunch and incurring heavy loss since 2-3 years due to decline of day to day activities. It is very painful to say that even there is no fund for payment of the employees salary for the month of January 1996. The Units of the KSFIC Ltd. at Mysore, Shimoga and Dandeli are also facing same problems and even they have not paid the salary of their employees since last 2-3 months due to non availability of funds. The subject was also discussed in the recently held Board meeting of KSFIC on 19.12.1995 and the financial position was made known to the Board Members. The decision to take up granite trade by KSFIC was taken only after thorough discussion in the Board for nearly half a dozen times. The seized granite blocks were auctioned by the Corporation with the full knowledge of Government of Karnataka to the Hon'ble Minister of Forests and the Forest Development. In fact Forest Department gave the full support for this activity. Moreover the Mines and Minerals Department can dispose in the public auction only those minerals which are seized under sub-section (4) of 21 of the Act and sub-rule (6) of 43 and minor Minerals left at the quarry after expiry of termination of lease or licences. In this instant case granite blocks are seized under provision of Section 62 of Karnataka Forest Act and this can be disposed off only under Chapter 12 of Karnataka Forest Rules, 1963.

Hence, we request you to kindly prevail upon the Joint Legislative Committee and Mines and Geology Department to issue necessary permits for the remaining Blocks to KSFIC Ltd. as per the rules in force. There is no alternative left for the KSFIC Ltd. to make arrangement for issue of transit permits through Mines and Geology Department to the purchasers for lifting the remaining blocks purchased by them in Tender cum auction sale as the KSFIC Ltd. Is totally unable to refund the deposit amount to the purchasers in the circumstances explained above."

But there is nothing to show that the Government of Karnataka acted thereupon or withdrawn its direction contained in its letter dated 16th January, 1996.

37. The plea which was raised, therefore, was not a legal plea but a plea for show of compassion expressing its inability to refund the amount because of financial constraints. Its response to the State was not based on legal premise but it was based on its own difficulty. If the agency had been terminated and had not been restored, we would not know under what authority the appellant had been asking respondents to perform their part of contract.

38. In any view of the matter there is nothing on the records to show that the State of Karnataka and particularly the Joint Committee of the Karnataka Legislative Assembly directed grant of transit permits for transportation of granite blocks. If such permits had been granted, it might have been obligatory on its part while issuing the notice upon the concerned respondents to direct lifting of the remaining blocks of granites enclosing therewith copies of the said permits, but in absence thereof, it is idle to contend, on the one hand that the respondents were bound to perform their part of the contract and on the other that although they have asked for supply of permits, as per rules, they did not obtain the same.

39. Appellant is also guilty of *suppressio veri* and *suggestio falsi*. Its action in the entire matter appears to be wholly unfair. It was in a dominant position in terms of the provisions of the contract but then in a case of this nature when its authority to continue to deal with the granite blocks came to be questioned, it was obligatory on its part to clear its position in this behalf. We have no words to express our displeasure also in regard to the conduct of the State. It did not take a positive stand. As a principal, the State of Karnataka was also obligated to disclose the entire facts before the High Court.

40. Although ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract *qua contract*, it is trite that when an action of the State is arbitrary or discriminatory and, thus, violative of Article 14 of the Constitution of India, a writ petition would be maintainable. (See *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* [(2004) 3 SCC 553.

41. There cannot be any doubt whatsoever that a writ of mandamus can be issued only when there exists a legal right in the Writ Petition and a corresponding legal duty on the part of the State, but then if any action on the part of the State is wholly unfair or arbitrary, the superior courts are not powerless. Reliance placed by Mr. Divan on *G.J. Fernandez v. State of Mysore and other*, ([1967] 3 SCR 636) is not apposite. In that case itself it was held :-

"Thus under Art. 162 the State Government can take executive action in all matters in which the legislature of the State can pass laws. But Art. 162 itself does not confer any rule making power on the State Government in the behalf."

G.J. Fernandez (*supra*) was considered in *ABL International Ltd.* (*supra*)

42. Furthermore the concession made by the counsel for appellants in the earlier round of litigation also cannot be lost sight of. A specific concession was made. It may be that no specific direction was issued by the High Court therein, but the stand taken by it was clear and unequivocal.

43. Mr. Shyam Divan, when questioned, had very fairly submitted that the conduct of the counsel who had appeared on behalf of the appellant in the earlier round of litigation is not in question and it cannot be said that he acted beyond his authority.

44. If such a stand had taken in the earlier round of litigation we fail to see any reason as to why the concession made by it should not be given effect to. If a right has accrued to the respondents for maintaining a writ so as to compel the State to give effect to an earlier order passed by the Court as has been held by this Court in the case of Commissioner, Karnataka Housing Board v. C. Muddaiah, [(2007) 7 SCC 689, the same should not be denied to respondent herein.

45. Keeping in view the facts and circumstances of the case in its entirety and having regard to the legal propositions as noticed hereinbefore, we are of the opinion that these are not the cases in which this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India. The appeals are dismissed with costs. Counsel's fee assessed at Rs.50,000/- in each case.

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.....J. (S.B. SINHA)J. (CYRIAC JOSEPH) New Delhi October 24, 2008 IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. OF 2008 [Arising out of SLP (Civil) No. 24242 of 2005] M/s. Karnataka State Forest Industries Corporation ...Appellant Versus M/s. Indian Rocks ...Respondent WITH CIVIL APPEAL NO. OF 2008 [Arising out of SLP (Civil) No. 23148 of 2005] Dear Brother Cyriac Joseph, Draft Judgment in the aforementioned matter is being sent herewith for your perusal and kind consideration.

With kind regards, [S.B. Sinha] J.

New Delhi;

September 15, 2008 Hon'ble Mr. Justice Cyriac Joseph