Supreme Court of India
Ram And Shyam Company vs State Of Haryana And Ors on 8 May, 1985
Equivalent citations: 1985 AIR 1147, 1985 SCR Supl. (1) 541
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
RAM AND SHYAM COMPANY

Vs.

RESPONDENT:
STATE OF HARYANA AND ORS

DATE OF JUDGMENT08/05/1985

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
ISLAM, BAHARUL (J)

CITATION:
1985 AIR 1147 1985 SCR Supl. (1) 541
1985 SCC (3) 267 1985 SCALE (1)1237
CITATOR INFO :
R 1987 SC1109 (30,38)
RF 1988 SC 157 (8)
R 1989 SC 157 (5)

ACT:
Constitution of India, 1950, Article 226-Jurisdiction of High Court-Petitioner to exhaust normal statutory remedies-Insistence on-When arises-Rule of exhaustion of alternative remedies-Whether a rule of law or a rule of convenience and discretion
Haryana Minor Minerals (Vesting of Rights) Act, 1973 and Punjab Minor Mineral Concession Rules, 1964, Rule 130 (4) (2)-Auction of minor mineral quarry-Chief Minister declining to confirm highest bid-Awarding right to another person without giving opportunity to the highest bidder in the earlier auction, High Court, whether entitled to Interfere in a writ
Administrative Law-Public Property-Norms for disposal of Principles of natural justice-Applicability of

HEADNOTE:
The State Government-respondent No. 1 issued a notification for auctioning a minor mineral quarry situated in the State. The appellant offered the highest bid in the

amount of Rs. 3.87 lakhs per annum as rent/royalty. The Presiding Officer accepted the bid of the appellant. The State Government however under the belief that the highest bid did not represent the adequate lease rent, exercised powers under clause (4) of sub-rule 2 of Rule 130 or the Punjab Minor Mineral Concession Rules 1964 and declined to confirm the same. Respondent No. 4 wrote a letter to the Chief Minister casting serious aspersions on those who participated in the auction, and made an offer that if the contract for a period of 5 years is given he was willing to pay Rs. 4.5 lakhs per year. The Chief Minister accepted this offer.

Being aggrieved, the appellant challenged the order of the Chief Minister, in a writ petition before the High Court, contending that respondent No. 4 had participated in the auction and made false allegations against the appellant, and without giving him any opportunity, the offer of respondent No. 4 was accepted which has denied equality of opportunity to the appellant in the matter of distribution of the State largesse. The High Court following the decision of this Court in Assistant Collector of Central Excise v. Jainson Hosiery Industries, [1979] 4 SCC 22, dismissed the writ petition on the ground that the appellant had an alternative remedy and that he must have exhausted the normal statutory remedies before invoking the extraordinary jurisdiction under Article 226.

542

Being aggrieved, the appellant filed an appeal to this Court and during is hearing filed an affidavit, that if the Court orders re-auction, and if the highest bid falls short of Rs. 4.5 lakhs then he would undertake to accept the contract at the value of Rs. 5.5 lakhs per annum. The Court held are auction and both the appellant and respondent No. 4 participated there in and the appellant offered the highest bid at the value of Rs. 25 lakhs.

Allowing the Appeal,

^

HELD: 1. (i) The Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective adequate alternative remedy. It has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than a rule of law. It does not oust the jurisdiction of the Court It is made specifically clear where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of a person adversely affected would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy. [550 C-F]

In the instant case, power was exercised by the authority set up under the rules to grant contract. The High Court did not pose to itself the question who would grant the relief when the impugned order is passed at the instance of a Chief Minister of the State. This is therefore a case in which the High Court was justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. [550 G-H]

Assistant Collector of Central Excise v Jainson Hosiery Industries, [1979] 4 S.C.C. 22 and The State of Uttar Pradesh v Mohammad Nooh, [1958] S.C.R. 595, referred to.

(2) (i) There is a clear distinction between the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to any one else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. Tho marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the other hand, dispose at of public property partakes the character of a trust in that in its disposal their should be nothing hanky panky and that it must be done at the best price so that large revenue coming into the offers of the State administration would serve public purpose viz. the welfare state may be able to expand its beneficient activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or oven for a token price to achieve some defined constitutionally recognised Public purpose, one such being to achieve the goals set out in Part IV of the

543

Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy. [552 G-H; 553 A]

(ii) The Government is not free like an ordinary individual, in selecting recipient for its largesse and it cannot chose to deal with any person it please a in its absolute and unfettered discretion. The law is now well-settled that the Government need not deal with anyone, but if it does so, it must do so fairly and without discretion and without unfair procedure. Even though the State is not bound to accept the highest bid, this proposition of law has to be read subject to the observation that it can be rejected on relevant and valid considerations, one such being that the concession is to be given to a weaker section of the society who could not outbid the highest bidder. In the absence of it, the approach must be as clearly laid down by the Constitution Bench of this Court in K. N. Guruswamy v. The State of Mysore and Ors. [19551 SCR 305. Before

giving up the auction process and accepting a private bid secretly offered, the authority must be satisfied that such an offer if given in open would not be outmatched by the highest bidder. In the absence of such satisfaction, acceptance of an offer secretly made and sought to be substantiated on the allegations without the verification of their truth, which was not undertaken would certainly amount to arbitrary action in the matter of distribution of State largesse which by the decisions of this Court is impermissible. 1554 G-H; 556 A-B; 555 G-H]

Trilochan Mishra etc v. State of Orissa and Ors. [1971] 3 SCC 153, State of Uttar Pradesh and Ors v. Vijay Bahadur Singh and Ors. [1982] 2 SCC 365 and State of Orissa and Ors. v. Harinarayan Jaiswal and Ors. [1972] 3 SCR 784 held inapplicable.

Raman Dayaram Shetty v The International Airport Authority of India and Ors. [1979] 3 SCR 1014 and Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir and Anr. [1980] 3 SCR 1338 relied upon.

3. Rule 28 of Punjab Minor and Mineral Concession Rules, 1964 permits contract for winning mineral to be granted by the Government by auction or tender. It is open to the State to dispose of the contract by tender. Even here the expression 'tender' does not mean a private secret deal between the Chief Minister and the offerer. Tender in the context in which the expression is used in rule 28, means 'tenders to be invited from intending contractors.' If it was intended by the use of the expression 'tender' in Rule 28 that contract can be disposed of by private negotiations with select individual, its validity will be open to serious question. The language ordinarily used in such rules is by public auction or private negotiations. The meaning of the expression 'private negotiations' must take its colour and prescribe its content by the words which precede them. And at any rate disposal of the State property in public interest must be by such method as would grant an opportunity to the public at large to participate in it, the State reserving to itself the right to dispose it of as best subserve the public weal. [559 F-H; 560 A-B
544

Nand Kishore Saraf v. State of Rajasthan and Anr . [1965] 3 SCR 173 and Fertilizer Corporation Kamgar Union (Regd). Sindri and Ors. v. Union of India and Ors. [1981] 1 SCC 568 relied upon.

State of Uttar Pradesh v. Shiv Charan Sharma and Ors. etc. [1981] Supp. SCC 85 referred to.

4. In the instant case, it is clear that respondent No. 4 was not selected for any special purpose or to satisfy any Directive Principles of State Policy. He surreptitiously ingratiated himself by a back-door entry giving a minor raise in the bid and in the process usurped the most undeserved benefit which was exposed to the hilt in the court. A unilateral offer, secretly made, not correlated to

any reserved price made by the fourth respondent after making false statement in the letter was accepted without giving any opportunity to the appellant either to raise the bid or to point out the falsity of the allegations made by the fourth respondent in the letter as also the inadequacy of his bid. The appellant suffered an unfair treatment by the State in discharging its administrative functions thereby violating the fundamental principle of fair play in action. When he gave the highest bid, he could not have been expected to raise his own bid in the absence of a competitor. Any expectation to the contrary betrays a woeful lack of knowledge of auction process. And then some one surreptitiously by a secret offer scored a march over him. No opportunity was given to him either to raise the bid. Application of the minimum principles of natural justice in such a situation must be read in the Statute and held to be obligatory. When it is said that even in administrative action, the authority must act fairly, it ordinarily means in accordance with the principles of natural justice variously described as fair play in action. That having not been done, the grant in favour of the fourth respondent must be quashed. [554 H; 555 A-E; 560 D-E]

JUDGMENT:

CIVIL, APPELLATE JURISDICTION: Civil Appeal No. 3751 of 1982.

From the Judgment and Order dated 15.9.1982 of the Punjab and Haryana High Court in L.P. A. No. 1232 of 1982.

Soli J. Sorabjee Ram K.B. Rohtagi and H.N. Salve, for the Appellant.

P.P. Rao, Arun Madon, R. Venkataramani and A Marriarputtam for the Respondent No. 4.

L.N. Sinha, Attorney General and R.N. Poddar for the Respondents.

The Judgment of the Court was delivered by DESAI, J. As the matter brooked no delay, when the arguments were concluded, the Court pronounced the order which reads as under -

> "The appeal is allowed and the decision of the High Court of Punjab and Haryana at Chandigarh in L.P.A. No. 1232 of 1982 dated September 15, 1982 as well as the decision of the learned Single Judge in Civil Writ Petition No. 2321 of 1981 dated August 30, 1982.
>
> The writ petition filed by the present appellant succeeds. The order of the Director of Industries dated May 25, 1981 granting a quarry lease to M/s Pioneer Crushing Co. (respondent No. 4) in respect of Serai Khawaja Plot No. II Quarry (except the area of

Green Field colonies) for the period ending with 31st March, 1984 is quashed and set aside.

The first respondent the State of Haryana and the second respondent the Director of Industries are directed under and subject to the relevant provisions of the Haryana Minor Minerals (Vesting of Rights) Act, 1973 read with Punjab Minor and Mineral Concession Rules, 1964 as applicable to the State of Haryana to grant a right to the appellant in the form of contract usually entered into in similar cases to extract stones from Serai Khawaja Plot No. II on compensation howsoever described at the rate of Rs. 25 lacs per, year for a period of five years commencing from January I, 1983 and upto and inclusive and ending with December 31, 1987.

The appellant herein is directed to appear before the second respondent within a weak from today to execute the contract and/or necessary documents, instruments and to carry out all formalities including the making of deposits and/or payments, if any, required to be made under the relevant provisions of the Act and Rules. The fourth respondent is given time upto December 31, 1982 to clear out from the area and this time is given to him as and by way of locus penitentae to wind-up his affairs as far as the quarry involved in this appeal.

In the circumstances of the case, there will be no order as to costs.

Reasons will follow."

Here are the reasons.

It must be confessed that reasons in support of the decision are delayed but without offering an alibi for the tardiness, one aspect which inhibited giving of the reasons may be mentioned. My learned colleague suddenly left the Court and the doubt nagged me for some time whether one Judge alone can give the reasons. It was an agreed order. Before pronouncing the order broad discussion took place which showed identity of views on all points involved in the matter. In this background to give reasons which appealed to us though drawn up by one of us would any day provide a better choice than not to give reasons because it would always annoy and distress the party who lost the legal battle whether there are legal or logical reasons in support of the order or it is merely an arbitrary exercise of power. However, what happened in the Court in the presence of all parties and the learned counsel is res ipsa loquiter. What started before the Court as a minor whisper, hardly audible, ended with the experience in a whispering gallery where the whisper multiplied at the other end of the gallery in volleying thunders. There would have been no qualms of conscience if the matter was disposed of sub-silentio as to reasons because of the outcome of the Court's exercise of jurisdiction under Art. 136. The reasons which dictated the choice and indicated the path did stand in need of justification because the end product justified interference. The very outcome would provide the raison d'etre for the exercise of power. Yet to bow to the tradition to convince the protagenis of reasoned orders, these are the reasons.

Factually matrix first. The State of Haryana in exercise of the power conferred upon it by Haryana Mioner Minerals (Vesting of Rights) Act, 1973 ('1973 Act' for short) grants lease for winning minor mineral vestige in it. The grant of the lease is regulated by Punjab Minor Mineral Concession Rules, 1964 ('Rules' for short) in their application to the State of Haryana. A notification was issued on December 26, 1980 specifying that minor mineral quarries at various places in Faridabad District would be auctioned on February 20, 1981. At the auction held on that day, appellant-Ram & Shyam Company gave the highest bid for Sarai Khawaja Plot No. II in the amount of Rs 1,52,000 p.a. The presiding Officer conducting the auction accepted the bid but the State Government did not confirm the same. A fresh auction was notified to be held on May 4, 1981. The appellant participated and gave the bid for the same plot, his highest bid rising to Rs 3,87,000 for a period of three years. The same routine followed. The Presiding Officer accepted the bid and the State Government declined to confirm the same. Then there happened something which cannot have any parallel or precedent in a constitutional democracy like ours but one could have profitably drawn parallel from the administration of old princely States. Respondent No. 4 wrote a letter dated May 9, 1981 (Anx. R-1 in the High Court) addressed to the Chief Minister, Haryana State setting out therein the history of various auctions, and casting serious aspersions on those who participated in the auction inter alia saying that the bidders at the auctions have formed a syndicate and want to monopolise the business by not outbidding each other so that the State gets uneconomical rent/royalty. It was further alleged that 'the goondas and anti-social elements are assisting those monopolists/bidders and successfully pushed out a party like respondent No. 4. The letter further proceeds to make an offer/that if the contract for a period of five years is given to respondent No. 4 in respect of Sarai Khawaja Plot No. 2, it is willing to pay Rs 4,50,000 per year. There is also an offer for Sarai Khawaja Plot No. 1 with which we are not concerned. Promptly this offer was accepted by the Chief Minister. The appellant challenged the action of the Chief Minister in Writ Petition No. 2321/81 in the Punjab and Haryana High Court inter alia contending that those who formed the firm styled as M/s Pioneer Crushing Co. respondent No. 4, had participated in the auction and Then made false allegations against the appellant whose bid was the highest and without giving him any opportunity, the offer of respondent No. 4 was accepted which has denied equality of opportunity to the appellant in the matter of distribution of State largesse.

A learned Single Judge issued a notice to the respondents calling upon them to show cause why rule nisi may not be issued. In response to the notice, respondent No. 4 appeared and contended that the petitioner had an alternative remedy and on this short ground, the learned Single Judge rejected the writ petition. A Division Bench of the High Court in the Letters Patent Appeal filed by the appellant concurred with the learned Single Judge and dismissed the appeal. Hence this appeal by special leave.

At this stage it would be advantageous to refer in some details what transpired at the hearing of this appeal in this Court. Let us at once recapitulate what happened in the court because that by itself provides a tell-tale piece of evidence compelling the court to interfere and set aside the impugned order. Mr. L.N Sinha, learned Attorney General raised a sort of a preliminary objection that this Court should not assist the syndicalists to join hands to deprive the State of its legitimate revenue. Then he made a pertinent observation a interposing an objection when Mr. Sorabjee, learned counsel for the petitioner was making his submissions. The question posed was: if the Court

interferes and quashes the grant in favour of the fourth respondent, the only option open to the court would be to direct a fresh auction. He posed the further question that if at the time of re-auction, the highest bid does not reach upto Rs 4,50,000 p.a. for which the lease is granted to the fourth respondent, would the Court make good the loss ? Apart from the rhetoric of the question, the issue raised was of primary importance. We, therefore, asked Mr. Sorabjee whether his client is willing to make an affidavit incorporating therein that if the highest bid at a reauction, if the court so directs, falls short of Rs 4,50,000 the appellant would agree and undertake to accept the contract at the value of Rs 5,50,000 p.a. Such an affidavit was immediately filed. In order to give the fourth respondent to whom contract under the impugned order was given, an opportunity whether he would like to raise his offer. Mr. P.P. Rao voiced his apprehension about his contentions. We assured him that without prejudice to his contentions, it would be open to his client to raise his offer. What transpired may be tabulated in a chart: Appellant's offer Respondent's offer

1. 5.50 lacs 2. 6 lacs

3. 6.50 lacs 4. 7 lacs

5. 7.53 lacs 6. 8 lacs

7. 8.50 lacs 8. 9 lacs

9. 10 lacs 10. 10.50 lacs Court intervened at this stage and said that the raise must be minimum at the rate of Rs 1 lac.

11. 12 lacs 12. 14 lacs

13. 15 lacs 14. 16 lacs

15. 17 lacs 16. 18 lacs

17. 19 lacs 18. 20 lacs

19. 21 lacs 20. 22 lacs

21. 25 lacs.

Shock and surprise was visible on the face of each one in the court. Shock was induced by the fact that public property was squandered away for a song by persons in power who holds the position of trust. Surprise was how judicial intervention can serve larger public interest. One would require multi-layered blind-fold to reject the appeal of the appellant or any tenuous ground so that the respondent may enjoy and aggrandize his unjust enrichment. On this point we say no more.

Before we deal with the contentions, let us have a look at the relevant provisions of the Act and the Rules.

Rule 28(1) of the Rules provides that contracts for extraction of minor mineral may be granted by the Government by auctioning or tendering for a maximum period of five years after which no extension shall be granted' Sub-rule (2) provides that 'the amount to be paid annually by the contractor to the Government shall be determined in auction or by tender to be submitted for acceptance, by the authority competent to grant the contract.' Rule 29 confers power on the Presiding Officer to reject or accept any bid or tender without assigning any reason to the bidders or tenderers. However, where the highest bid or tender is rejected, the reason shall however, be reported to the Government. Rule 30 provides for notifying of the proposed auction on the notice board of the Director, Mining Officers and at least in one newspaper having wide circulation in the locality nearest to the area in question in the regional language as also in the Government Gazette. Sub-cl. (4) of sub-r. (2) of Rule 30 provided that 'no bid shall be regarded as accepted unless confirmed by Government.' Rule 58 confers power on the Government to relax any of the provisions of the Rules in the interest of mineral development or better working of the mine.

Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as well as the Division Bench recalling the observations of this Court in Assistant Collector of Central Excise v. Jainson Hosiery Industries rejected the writ petition observing that 'the petitioner who invokes the extraordinary jurisdiction of the court under Art. 226 of the Constitution must have exhausted the normal statutory remedies available to him'. We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art. 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in The State of Uttar Pradesh v. Mohammad Nooh it is observed that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the in stance of person adversely affected by it, would lie to the High Court under Art. 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister ? The clutch of appeal from Ceasar to Ceasar wife can only be bettered by appeal from one's own order to oneself. Therefore this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister. There was no answer aud that by itself without anything more would be sufficient to set aside the judgment of the High Court.

Turning to the merits of the case, the arguments covered a much larger canvass than was anticipated when the hearing opened. It was submitted that India being a Sovereign Socialist Secular Democratic Republic, the property of the Union or of the Slate is socialist property which would imply that it is community property and every citizen of this country has vital interest in its effective use and legitimate disposal.

It was never disputed nor could it have been disputed that minerals vest in the state. The minor minerals vast in the State where the land from which they are to be extracted is situated and minerals other than minor minerals vast in the Union. 'Minor minerals' have been defined in The Mines and Minerals (Regulation and Development). Act, 1957 to mean, 'building stores, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.' Minor minerals vest in the state in which the land is situated. The first respondent State of Haryana notified that an auction would be held for mineral quarries of Faridabad District. The appellant gave his bid at the auction so notified. It is an admitted position that his was the highest bid. Anyone conversant with auction would not be naive enough to believe that one can go on raising his own bid. His was the highest bid in the amount of Rs. 3,87,000 p.a. Though the Presiding Officer accepted the bid of the appellant, being the highest bid at the auction, yet the State Government in the exercise of the power conferred by cl. (4) of sub-r. (2) of Rule 30 declined to confirm the same presumably under the belief that the highest bid did not represent the adequate lease rent which the State Government was entitled to get. The right of the State Government not to confirm the bid as also its action of not confirming the highest bid of the appellant is not questioned. Therefore, various decisions laying down that the Government is not bound to accept the highest bid to which our attention was drawn by Mr. P.P. Rao, learned counsel for the fourth respondent are of no relevance in this case. This Court in Trilochan Mishra etc. v. State of Orissa & Ors. State of Uttar Pradesh & Ors. v. Vijay Bahadur Singh & Ors. and State of Orissa & Ors. v. Harinarayan Jaiswal & Ors. held that the Government is under no obligation to accept the highest bid and that no rights accrue to the bidder merely because his bid happened to be the highest. The Court also observed that the Government had the right, for good and sufficient reason, not to accept the highest bid but even to prefer a tenderer other than the highest bidder. In Vijay Bahadur Singh's case the Court further observed that the power conferred on the Government by the act to refuse to accept the higher bid, cannot be confined to inadequacy of bid only. There may be variety of other good and sufficient reasons to reject the same. The appellant has no grievance that even though his was the highest bid, the same was not accepted nor Mr. Sorabjee on his behalf contends that the highest bid of the appellant was rejected on grounds which are either irrelevant or extraneous. This aspect therefore need not detain us any more.

Let us put into focus the clearly demarcated approach that distinguishes the use and disposal of private property and socialist property. Owner of private property may deal with it in any manner he likes without causing injury to any one else. But the socialist or if that word is jarring to some, the community or further the public property has to be dealt with for public purpose and in public interest. The marked difference lies in this that while the owner of private property may have a number of considerations which may permit him to dispose of his property for a song. On the other hand, disposal of public property partakes the character of a trust in that in its disposal there should

be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficient activities by the availability of larger funds. This is subject to one important limitation that socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy An owner of private property need not auction it nor is he bound to dispose it of at a current market price. Factors such as personal attachment, or affinity kinship, empathy, religious sentiment or limiting the choice to whom he may be willing to sell, may permit him to sell the property at a song and without demur. A welfare State as the owner of the public property has no such freedom while disposing of the public property. A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm. Financial constraint may weaken the tempo of activities. Such an approach serves the larger public purpose of expanding welfare activities primarily for which the Constitution envisages The setting up of a welfare State. In this connection we may profitably refer to Ramana Dayaram Shetty v. The International Airport Authority of India and Ors in which Bhagwati, J. speaking for the Court observed:

> "It must, therefore. be taken to be the law that where the Government is dealing with the public, whether by E way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award to jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

At another place it was observed that the Government must act in public interest, it cannot act arbitrarily or without reason and if it does so, its action would be liable to be invalidated. It was further observed that the object of holding the auction is generally to raise the highest revenue. The Government is entitled to reject the highest bid if it thought that the price offered was inadequate. But after rejecting the offer, it is obligatory upon the Government to act fairly and at any rate it cannot act arbitrarily. Following this line of thought, in Kasturi Lal Lakshmi Reddy v. State of Jammu & Kashmir and Anr. while upholding the order of the Government of Jammu & Kashmir dated April 27, 1979 allotting to the second respondent 10 to 12 lacs blazes annually for extraction of resin from the inaccessible chir forests in Poonch, Reasi and Ramban Divisions of the State for a period of 10 years on the terms and conditions set out in the order, observed as under:

> "Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot for example give a contract or sell or lease out its property For a consideration less than The highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so.
>
> " (emphasis supplied) At one stage, it was observed that the Government is not free like an ordinary individual, in selecting recipient for its largesse and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well-settled that the Government need not/deal with anyone, but if it does so, it must do so fairly and without discretion and without unfair procedure. Let it be made distinctly clear that respondent No. 4 was not selected for any special purpose or to satisfy ally Directive Principles of State Policy. He surreptitiously ingratiated himself by a back-door entry giving a minor raise in the bid and in the process usurped the most undeserved benefit which was exposed to the hilt in the court. Only a blind can refuse to perceive it.

Approaching the matter from this angle, can there be any doubt that the appellant whose highest bid was rejected by the Government should have no opportunity to improve upon his bid more so when his bid was rejected on the ground that it did not represent adequate market consideration for the concession to extract minor mineral. A unilateral offer, secretly made, not correlated to any reserved price made by the fourth respondent after making false statement in the letter was accepted Without giving any opportunity to the appellant either to raise the bid or to point out the falsity of the allegations made by the fourth respondent in the letter as also the inadequacy of his bid. The appellant suffered an unfair treatment by the State in discharging its administrative functions thereby violating the fundamental principle of fair play in action. When he gave the highest bid, he could not have been expected to raise his own bid in the absence of a competitor. Any expectation to the contrary betrays a woeful lack of knowledge of auction process. And then some one surreptitiously by a secret offer scored a march over him. No opportunity was given to him either to raise the bid or to controvert and correct the erroneous statement.

What happened in this case must open the eyes both of the Government as well as the people at large. How an uncontrolled exercise of executive power to deal with socialist property in which entire community's interest was sacrificed so as to cause huge loss to the public exchequer would have gone unnoticed but for the vigilance of the appellant who no doubt is not altruistic in its approach but its business interests goaded it to expose the unsavoury deal. Conceding that on weighty and valid considerations, the highest bid can to rejected by the State one such which can be foreseen is that the highest bid does not represent the adequate market price of the concession, yet before giving up the auction process and accepting a private bid secretly offered, the authority must

be satisfied that such an offer if given in open would not be outmatched by the highest bidder. In the absence of such satisfaction, acceptance of an offer secretly made and sought to be substantiated on the allegations without the verification of their the truth, which was not undertaken, would certainly amount to arbitrary action in the matter of distribution of State largesse which by the decisions of this Court is impermissible. Even though repeatedly, this Court has said that the State is not bound to accept the highest bid, this proposition of law has to be read subject to the observation that it can be rejected on relevant and valid considerations, one such being that the concession is to be given to a weaker section of the society who could not outbid the highest bidder. In the absence of it, the approach must be as clearly laid down by the Constitution Bench of this Court in K.N. Guruswamy v. The State of Mysore & Ors. In that case, the appellant and the fourth respondent were rival liquor contractors for the sale of the liquor contract for the year 1953-54 in the State of Mysore. The contract was auctioned by the Deputy Commissioner under the authority conferred upon him by the Mysore Excise Act, 1901. The appellant's bid was the highest and the contract was knocked down in his favour subject to formal confirmation by the Deputy Commissioner. The fourth respondent was present at the auction but did not bid. Instead of that he went direct to the Excise Commissioner and made a higher offer. The Excise Commissioner cancelled the sale of favour of the appellant and directed the Deputy Commissioner to take action under the relevant rule. The latter accepted the tender of the respondent. The appellant moved the High Court for a writ of mandamus which was dismissed. In appeal by the certificate, it was urged on behalf of the State that the Deputy Commissioner acted within the ambit of his powers under the relevant rule which gave him an absolute discretion either to re-auction or to act otherwise and no fetters are placed upon the 'otherwise' method. The court negatived this contention observing that arbitrary improvisation of an ad hoc procedure to meet the exigencies of a particular case is ruled out. Therefore, the grant of the contract to the fourth respondent was wrong. Repelling the contention that a writ petition at the instance of the appellant would not be maintainable, the Constitution Bench observed as under:

> "The next question is whether the appellant can complain of this by way of a writ. In our opinion, he could have done so in an ordinary case. The appellant is interested in these contracts and has a right under the laws of the State to receive the same treatment and be given the same chance as anybody else. Here we have Thimmappa who was present at the auction and who did not bid-not that it would make any difference if he had, for the fact remains that he made no attempt to outbid the appellant. If he had done so it is evident that the appellant would have raised his own bid. The procedure of tender was not open here because there was no notification and the furtive method adopted of setting a matter of this moment behind the backs of those interested and anxious to compete is unjustified. Apart from all else, that in itself would in this case have resulted in a loss to the State because, as we have said, the mere fact that the appellant has pursued this with such vigour shows that he would have bid higher. But deeper considerations are also at stake, namely, the elimination of favouritism and nepotism and corruption: not that we suggest that occurred here, but to permit what has occurred in this case would leave the door wide open to the very evils which the Legislature in its wisdom has endeavored to avoid. All that is part and parcel of the policy of the Legislature. None of it can be ignored. We would there- fore in the ordinary course have given the appellant the writ he

> seeks. But, owing to the time which this matter has taken to reach us (a consequence for which the appellant is in no way to blame, for he has done all he could to have an early hearing), there is barely a fort night of the contract left to go. We were told that the excise year for this contract (1953-54) expires early in June. A writ would therefore be ineffective and as it is not our practice to issue meaningless writs we must dismiss this appeal and leave the appellant content with an enunciation of the law."

Fact of no two cases are alike, but if one attempts to compare the situation, the conclusion is inescapable. Appellant's bid was the highest bid. It was in the amount of Rs. 3,87,000 p.a. Respondent No. 4 approached the Chief Minister with a slightly higher bid of Rs. 4,50,000 per year. This was granted without any reference to the appellant to raise his bid. Such a thing, if allowed to pass once is bound to be repeated because this method is open to the abuse of favouritism and nepotism and the loss of revenue in this case to the State is enormous. What happened in tho court staggered everyone. Learned Attorney General Shri L.N. Sinha, who questioned the competence of the court to deal with the matter when he witnessed the rising crescendo of the auction in the court and the bid reached Rs. 12 lacs per year, he quietly left the court frankly stating that he does not wish any contention to be raised on behalf of the State of Haryana. Apprehension voiced by the Constitution Bench has literally come true in this case. This view of the Constitution Bench was reaffirmed in Nand Kishore Saraf v. State of Rajasthan & Anr., the only distinguishing feature of the case being that the highest bid of the appellant was rejected and the contract was given to Dharti Dan Shramik Theka Sahkari Samiti Ltd., a cooperative Society of the workmen. Though the court did not so specifically state, it upheld the rejection of the highest bid of the appellant on the ground that the benefit of the concession was given to a cooperative society formed by the weaker section of the society and thereby it serves the public purpose as set out in Art. 41 of the Directive Principles of the State Policy. In Fertilizer Corporation Kamgar Union (Regd), Sindri and Ors. v. Union of India & Ors., Krishna Iyer, J. speaking for himself and Bhagwati, J. Observe as under:

> "A pragmatic approach to social justice compel us to interpret constitutional provisions, including those like Articles 32 and 226, with a view to see that effective policing of the corridors of power is carried out by the court until other ombudsman arrangements-a problem with which Parliament has been wrestling for too long-emerges. I have dwelt at a little length on this policy aspect and the court process because the learned Attorney General challenged the petitioner's locus standi either qua worker or qua citizen to question in court the wrong doings of the public sector although he maintained that what had been done by the Corporation was both bona fide and correct. We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien System of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to I l task. The function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public

administration."

In a concurring opinion, Chandrachud, CJ. Observed that sales of public property, when the intention is to get the best price, ought to take place publicly.

In State of Uttar Pradesh v. Shiv Charan Sharma & Ors. etc., this court observed that public auction with open participation and a reserved price guarantees public interest being fully subserved.

Even though later on, learned Attorney General did not invite us to examine any specific contention on behalf of the State of Harayana, it may in passing be stated that with regard to transactions with the State, the principle enunciated in Sec. 55(5) (a) of the Transfer of Property Act would apply with greater vigour. Proceeding along it was submitted that if that is accepted and if it appears to the court that the State of Haryana did not appear to have full appreciation of the value of the property and the other party i.e. respondent No. 4 by reason of its profession was aware of the same and the resulting transaction is materially unfair, then such a case falls outside the principle enunciated by the decision of this court, on which reliance was placed on behalf of the respondent No. 4. We consider it unnecessary in the facts of this case to examine this aspect.

The position that emerge is this. Undoubtedly rule 28 permits contracts for winning mineral to be granted by the Government by auction or tender. It is true that auction was held. It is equally true that according to the State Government, the highest bid did not represent the market price of the concession. It is open to the State to dispose of the contract by tender. Even here the expression 'tender' does not mean private secret deal between the Chief Minister and the offerer. Tender in the context in which the expression is used in rule 28, meant tenders to be invited from intending contractors.' If it was intended by the use of the expression 'tender' in rule 28 that contract can be disposed of by private negotiations with select individual, its validity will be open to serious question. The languages ordinarily used in such rules is by public auction or private negotiations. The meaning of the expression 'private negotiations' must take its colour and prescribe its content by the words which precede them. And at any rate disposal of the state property in public interest must be by such method as would grant an opportunity to the public at large to participate in it, the State reserving to itself the right to dispose it of as best subserve the public weal. Viewed from this angle, the disposal of the contract pursuant to the letter by the fourth respondent to the Chief Minister is objectionable for more than one reason. The writer has indulged into allegations, the truth of which was not verified or asserted. The highest bidder whose bid was rejected on the ground that the bid did not represent the market price, was not given an opportunity to raise his own bid when privately a higher offer was received. If the allegations made in the letter influenced the decision of the Chief Minister, fair-plan in action demands that the appellant should have been given an opportunity to counter and correct the same. Application of the minimum principles of natural justice in such a situation must be reading the statute and held to be obligatory. When it is said that even in administrative action, the authority must act fairly, it ordinarily means in accordance with the principles of natural justice variously described as fair play in action That having not been done, the grant in favour of the fourth respondent must be quashed.

Apart from various considerations herein examiner, if any other view is taken in the facts and circumstances of this case, it may provide a classic example of ostrich burying its face in sand and declining to see the reality.

M.L.A. Appeal allowed,