

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE SRI JUSTICE T.VINOD KUMAR**

**+ WRIT PETITION (PIL).No.1 of 2023**

% Date:24.08.2023

# Gonewar Chandu

... Petitioner

**v.**

\$ The State of Telangana, Rep. by its Principal Secretary,  
Housing Department, Secretariat, Hyderabad,  
and others.

... Respondents

! **Counsel for the petitioner** : Mr. E.Ramesh Chandra Goud

^ **Counsel for respondent No.1:** Mr. Pasham Krishna Reddy,  
learned Government Pleader for Housing,  
Municipal Administration & Urban  
Development Department.

^ **Counsel for respondent No.2:** Mr. Ch.Jayakrishna,  
Learned counsel representing Mr. K.Ravinder Reddy,  
Learned Standing Counsel for Greater Hyderabad  
Municipal Corporation

^ **Counsel for respondent No.3:** Mr. M.Govind Reddy,  
Learned Senior Counsel  
Representing learned counsel Mr. M.P.K.Aditya

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. 2023 SCC OnLine SC 5
2. (2006) 3 SCC 434

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**WRIT PETITION (PIL) No.1 of 2023**

**ORDER:** *(Per the Hon'ble the Chief Justice Alok Aradhe)*

This public interest litigation has been filed by the petitioner, who claims himself to be a public spirited person and is interested in carrying out social service.

2. The petitioner has assailed the award of contract for construction of flats to homeless persons by respondent No.2 – Greater Hyderabad Municipal Corporation (GHMC) to respondent No.3 – M/s. DEC Infrastructure Projects India Pvt. Ltd.

3. Facts giving rise to filing of this petition are that the Government of Telangana was committed to providing two bedroom houses to all the houseless poor families in the State through 2 Bed Room Housing Programme in a phased manner. Therefore, by G.O.Ms.No.10, dated 15.10.2015, guidelines were issued for implementation of

2BHK houses across the State to all the families at the cost of Rs.1.5 lakh per each flat. Thereafter, by G.O.Rt.No.3, dated 06.01.2016, the cost of flat was increased from Rs.5.30 lakhs to Rs.7.00 lakhs.

4. By G.O.Rt.No.212, MA & UD Department, dated 06.04.2017, sanction was granted for construction of 1162 2BHK houses at Gattupally on Survey No.13/2 and 1296 2BHK houses at Munugnoor on Survey No.83. Thereafter, tenders were invited for construction of 1116 2BHK houses at Gattupally on land bearing Survey No.13/2 and the work was entrusted to the lowest bidder namely respondent No.5 – M/s. Arrow Constructions Limited. Similarly, on 08.11.2017 the construction of 1296 2BHK houses at Munugnoor on Survey No.83, Abdullapurmet, was entrusted to the lowest bidder namely respondent No.4 – M/s. Rizzu Constructions.

5. Respondent No.4 – M/s. Rizzu Constructions and respondent No.5 – M/s. Arrow Constructions Limited submitted a communication on 23.04.2018 for willingness of execution of work at Mansanpally on Survey No.140/2.

Thereupon, agreement was executed on 17.01.2019 by which the project was directed to be completed within 12 months i.e., up to 16.01.2020. However, respondents No.4 and 5 requested the officials vide communications dated 23.12.2019 and 04.01.2020 to close the contracts.

6. Thereafter, the Government of Telangana by order dated 25.11.2020 directed respondent No.3, namely M/s. DEC Infrastructure Projects India Pvt. Ltd., to finish the balance work at Mansanpally Phase-I and Phase-II for construction of 2412 2BHK houses.

7. It is pertinent to note that a writ petition by one T.Venkat declaring the action of the authorities to cancel the work entrusted to respondent No.3, namely W.P.No.21807 of 2020, was dismissed by an order dated 04.03.2021. The respondent No.3 completed the work allotted to it in the month of October, 2022 and was handed over the completion certificate dated 11.10.2022.

8. After completion of the work, the petitioner filed this writ petition on 01.11.2022, in which *inter alia* it is prayed

that the action of GHMC in awarding the construction work worth Rs.180 crores without inviting any tenders for construction of 2412 2BHK houses in Mansanpally Phases I and II without calling any tender is arbitrary. It is the grievance of the petitioner that the excess amount is being paid to the respondent No.3 and bills worth Rs.68 crores be held up, as they are above 38% of the contract amount.

9. The Bench of this Court while entertaining the writ petition by an interim order dated 10.01.2023 directed that no payment shall be made to respondents No.3 to 5.

10. Learned counsel for the petitioner submitted that the action of GHMC in awarding the contract on 25.11.2020 to respondent No.3 for construction of 2412 2BHK houses without issuing any tender and in violation of terms and conditions of grant of Rs.68 crores has been agreed to be paid to respondent No.3. It is, therefore, submitted that appropriate directions be passed to dismantle two buildings where 216 families are residing.

11. Learned counsel for the respondent No.3 has submitted that in the facts of the case, negotiations were considered to be a preferred method for award of contract as it can fetch best price. Therefore, the action of allotment of remainder of work left by respondents No.4 and 5 by negotiations is neither arbitrary nor violates requirement of Article 14 of the Constitution. It was contended that contract was not awarded 38% in excess over the normal value.

12. It is pointed out that the contract was awarded on same terms and conditions on which it was awarded to respondents No.4 and 5 which includes the benefit of subsidized cement, steel and sand. It is also pointed out that contract was awarded to respondent No.3 on 25.11.2020 and the same has been completed by it in the month of October, 2022. It is also urged that beneficiaries under the Scheme already occupied the building. However, at the time of disbursement of the amount, the writ petition was filed by the petitioner solely with an object to

ensure that payment due to respondent No.3, under contract is withheld.

13. We have considered the submissions made on behalf of both sides and perused the record. The Hon'ble Supreme Court in **Indian Medicines Pharmaceuticals Corporation Limited v. Kerala Ayurvedic Cooperative Society Limited**<sup>1</sup> has held as under:

**17.** This Court has consistently held that government contracts must be awarded by a transparent process. The process of inviting tenders ensures a level playing field for competing entities. While there may be situations which warrant a departure from the precept of inviting tenders or conducting public auctions, the departure must not be unreasonable or discriminatory (*Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir*, (1980) 4 SCC 1); *Sachinand Pandey v. State of West Bengal*, (1980) 4 SCC 1; *Haji T.M.Hassam Rawther v. Kerala Financial Corporation*, (1988) 1 SCC 166). In *Centre for Public Interest Litigation v. Union of India* ((2012) 3 SCC 1)) the 'first-cum-first serve' policy was held to be arbitrary while alienating natural resources. However, the Court observed that though auction is a 'preferred' method of

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<sup>1</sup> 2023 SCC OnLine SC 5



allocation, it cannot be construed to be a constitutional requirement.

**18.** In *Natural Resources Allocation, in re Special Reference No. 1 of 2012 ((2012) 10 SCC 1)*, a Presidential Reference was made in the backdrop of the decision in *Centre for Public Interest Litigation (supra)* where this Court had held that the method of first-cum-first serve used to allocate 2G radio spectrum was arbitrary and illegal. The reference was on whether the ‘only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions’. Justice Khehar in his concurring opinion in *Natural Resources Allocation (supra)* held that while there is no constitutional mandate in favour of auction under Article 14, deviation from the rule of allocation through auction must be tested on grounds of arbitrariness and fairness. In this context, it was observed as follows:

“148. In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as ultra vires the constitutional mandate.

149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution.”

**19.** In *Vallianur Iyarkkai Padukappu Maiyam v. Union of India* ((2009) 7 SCC 561), a three-judge Bench of this Court held that the

State is not bound to allot resources such as water, power, and raw materials through tender and is free to negotiate with a private entrepreneur. In that case, the Government of Pondicherry entered into an agreement for the development of Pondicherry Port without issuing an advertisement or inviting tenders. This Court held that the action of the Government of Pondicherry was justified because on account of historical, political and other reasons, the Union Territory is not yet industrially developed and thus, entrepreneurs have to be offered attractive terms to persuade them to set up industries. The relevant observations are extracted below:

“171. In a case like this where the State is allocating resources such as water, power, raw materials, etc. for the purpose of encouraging development of the port, this Court does not think that the State is bound to advertise and tell the people that it wants development of the port in a particular manner and invite those interested to come up with proposals for the purpose. The State may choose to do so if it thinks fit and in a given situation it may turn out to be advantageous for the State to do so, but if any private party comes before the State and offers to develop the port, the State would not be committing breach of any constitutional obligation if it negotiates with such a party and agrees to provide

resources and other facilities for the purpose of development of the port.

172. The State is not obliged to tell Respondent 11 “please wait I will first advertise, see whether any other offers are forthcoming and then after considering all offers, decide whether I should get the Port developed through you”. It would be most unrealistic to insist on such a procedure, particularly, in an area like Pondicherry, which on account of historical, political and other reasons, is not yet industrially developed and where entrepreneurs have to be offered attractive terms in order to persuade them to set up industries. The State must be free in such a case to negotiate with a private entrepreneur with a view to inducing him to develop the Port and if the State enters into a contract with such an entrepreneur for providing resources and other facilities for developing the Port, the contract cannot be assailed as invalid because the State has acted bona fide, reasonably and in public interest.”

**20.** In *Nagar Nigam v. Al Farheem Meat Exporters (P) Ltd.* ((2006) 13 SCC 382), the respondent was granted a license for a year to run a slaughterhouse owned by the appellant-corporation. On the completion of the term of the license, the appellant issued an advertisement inviting applications for granting a fresh contract.

The respondent challenged the advertisement. The Court observed that it is the requirement of the principle of non-arbitrariness postulated in Article 14 that contracts by the State, its corporations, instrumentalities, and agencies should as a general rule be granted through public tender. Noting that it is necessary to maintain transparency in the grant of public contracts, the Court ruled that the State must give contracts only by tender and not through private negotiations. This Court held that a contract can be granted by private negotiation only in exceptional circumstances having regard to the 'nature of the trade or largesse or for some other good reason'. Some of the exceptional circumstances that were listed were : (a) award of contracts in the event of natural calamities and emergencies; (b) situations where the supplier has exclusive rights over goods and there is no reasonable alternative; and (c) there are no bidders or where the bid offered is too low. The Court has upheld the award of contracts without holding a public auction in situations where conducting a public auction is impossible given the surrounding circumstances. When the government deviates from the general rule of allotting a contract without following a transparent process such as inviting tenders, it

has to justify its actions on the touchstone of the principles postulated in Article 14:

13. This Court time and again has emphasised the need to maintain transparency in grant of public contracts. Ordinarily, maintenance of transparency as also compliance with Article 14 of the Constitution would inter alia be ensured by holding public auction upon issuance of advertisement in the well-known newspapers. That has not been done in this case. Although the Nagar Nigam had advertised the contract, the High Court has directed that it should be given for 10 years to a particular party (Respondent 1). This was clearly illegal.

14. It is well settled that ordinarily the State or its instrumentalities should not give contracts by private negotiation but by open public auction/tender after wide publicity. In this case the contract has not only been given by way of private negotiation, but the negotiation has been carried out by the High Court itself, which is impermissible.

15. We have no doubt that in rare and exceptional cases, having regard to the nature of the trade or largesse or for some other good reason, a contract may have to be granted by private negotiation, but normally that should not be done as it shakes the public confidence.

16. The law is well settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject-matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of government contracts through public auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the

auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through “private negotiations”. (See *Ram and Shyam Co. v. State of Haryana* [(1985) 3 SCC 267 : AIR 1985 SC 1147].”

**21.** Inviting tenders and conducting public auctions are considered to be preferred methods of allocation for two reasons : *firstly* procurement can be made at the best price; *and secondly*, allocation is through a transparent process. However, if the purpose of allocation by the State is not revenue maximization, the State could award contracts through other methods, provided it is non-arbitrary and meets the requirements of Article 14.

**22.** The appellant-State contends that since in the present case, there is no involvement of ‘State largesse’ and no disposal of State property, it was not bound to grant the contract to IMPCL through tender. It is argued that in such a situation, the High Court on a perusal of the relevant material, ought to have only scrutinised if there was an oblique motive involved in purchasing medicines from IMPCL. Government contracts involve expenditure out of the public exchequer. Since they involve payment out of the public exchequer, the moneys expended must not be spent



arbitrarily. The State does not have absolute discretion while spending public money. All government actions including government contracts awarded by the State must be tested on the touchstone of Article 14.

**23.** The following principles emerge from the discussion above:

- (i) Government action must be just, fair and reasonable and in accordance with the principles of Article 14; and
- (ii) While government can deviate from the route of tenders or public auctions for the grant of contracts, the deviation must not be discriminatory or arbitrary. The deviation from the tender route has to be justified and such a justification must comply with the requirements of Article 14.

14. In the backdrop of the aforesaid legal principles, we advert to the facts of the case in hand. The Executive Engineer under Andhra Pradesh Detailed Standard Specifications (APDSS) has the authority to ensure completion of the part of the work which could be abandoned by anyone. The relevant clause (c) of P.S. 60 reads as under:

P.S. 60 (c) : It shall be a further right of the Executive Engineer, under this clause, at any time the “Rate of Progress” in the agreement is not maintained, to give any part of the work to any other contractor at his discretion, in order to maintain the “Rate of Progress” upon the completion of that part of the work that is withdrawn, the Executive Engineer shall certify the amount of expenditure incurred by the department for getting it completed by another contractor or contractors. Should the amount so certified be less than the amount which would have been due to the contractor on the completion of that part of the work by him, the difference shall not be paid to the contractor. Should, however the former exceed the latter, the difference shall be recovered from the contractor by the Government, provided however that such a recovery shall not exceed 5% of the total contract amount.

15. The Executive Engineer acting under the aforesaid P.S. 60(c) of the APDSS made a recommendation for award of contract in favour of respondent No.3. Thereupon, the Government of Telangana by an order dated 15.11.2020 directed respondent No.3 to complete the balance work at Manasanpally Phases I and II for construction of 2412

2BHK houses. The work was completed by respondent No.3.

16. In pursuance of the aforesaid order passed by the Government of Telangana, the respondent No.3 completed the work allotted to it in October, 2022 and a completion certificate was issued to it on 11.10.2022. Thereupon, the possession was handed over to the beneficiaries. Thereafter, this petition as public interest litigation has been filed.

17. There is no material on record to rebut the contention of respondent No.3 that by negotiations best price was fetched. The petitioner has not placed material on record to show that any financial loss is caused to the public exchequer. Therefore, in the facts of the case, we hold that the action of respondents No.1 and 2 is just, fair and reasonable and the deviation from route of tender is neither discriminatory nor arbitrary inviting the wrath of Article 14 of the Constitution of India.

18. For yet another reason, no interference is made out on the ground of delay and laches. It is trite law that the doctrine of delay and laches applies to the public interest litigation as well. The Hon'ble Supreme Court in **Bombay Dyeing and Manufacturing Company Limited v. Bombay Environmental Action Group**<sup>2</sup>, in paragraph 341 has held as under:

**341.** Delay and laches on the part of the writ petitioners indisputably have a role to play in the matter of grant of reliefs in a writ petition. This Court in a large number of decisions has categorically laid down that where by reason of delay and/or laches on the part of the writ petitioners the parties altered their positions and/or third-party interests have been created, public interest litigations may be summarily dismissed. Delay although may not be the sole ground for dismissing a public interest litigation in some cases and, thus, each case must be considered having regard to the facts and circumstances obtaining therein, the underlying equitable principles cannot be ignored. As regards applicability of the said principles, public interest litigations are no exceptions. We have heretofore noticed the scope and object of public interest litigation. Delay of such a nature in some cases is considered to be of vital importance. (See *Chairman & MD, BPL Ltd. v. S.P. Gururaja* [(2003) 8 SCC 567] .)

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<sup>2</sup> (2006) 3 SCC 434

19. The contract was awarded to respondent No.3 on 15.11.2020 and he completed the work of construction of 2412 2BHK houses in the month of October, 2022. The completion certificate was issued to respondent No.3 on 11.12.2022. The petitioner has not explained the delay on his part in not approaching the Court within the reasonable time before completion of the work. It is obvious that the delay in the facts of the case on the part of petitioner in approaching this Court is of vital importance which is unexplained which is fatal to this proceeding. Therefore, prayer of petitioner for demolition of 2 BHK houses which have already aconstructed and handed over to beneficiaries cannot be entertained in this public interest litigation. We, therefore, hold that the writ petition suffers from delay and laches for which no explanation has been offered. For this reason also, the petitioner is not entitled to any relief.

20. In view of the preceding analysis, we do not find any merit in the writ petition. The same fails and is hereby dismissed. However, the respondents No.1 and 2 are

directed to ensure that the payment is made to respondent No.3 as per the terms and conditions of the contract.

21. In the result, the writ petition is dismissed.

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**ALOK ARADHE, CJ**

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**T.VINOD KUMAR, J**

24.08.2023

Note: LR copy to be marked.

B/o.  
Pln