

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.8685 of 2011

In the matter of an application under Articles 226 and 227 of the Constitution of India.

M/s. COVER AGE,
Anand Bhawan Lane,
Umar Colony, Rourkela,
District : Sundargarh,
represented through its
Proprietor Md. Khurseed Anwar,
S/o. Late Md. Sulaiman. ... Petitioner

-Versus-

Rourkela Municipality and another ... Opp. Parties

For Petitioner : Mr. J. Pattnaik, Sr. Advocate
M/s. Biplab Mohanty,
T.K. Patnaik, S. Patnaik,
S. Rizvi, A. Patnaik, R.P. Roy &
B.S. Rayaguru.

For Opp. Parties : M/s. P.K. Nayak, H.B. Das &
G.C. Mohapatra
(Caveator & O.P. No.1)

Mr. R.K. Mohapatra
(Opp.Party No.2)

P R E S E N T:

**THE HONOURABLE THE CHIEF JUSTICE SHRI.V.GOPALA GOWDA
AND
THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA**

Date of Judgement:23.12.2011

B.N. Mahapatra, J. This writ petition has been filed with a prayer to quash the order dated 29.03.2011 (Annexure-1) issued by the Executive Officer, Rourkela Municipality by which the Executive Officer ordered to cancel the licence granted to the petitioner and directed the petitioner to remove

all advertisements and advertising materials within seven days from the date of service of the order, failing which appropriate steps would be taken in accordance with law for removal and confiscation of all those materials. The petitioner has further prayed to declare the action of opposite parties as illegal and arbitrary in cancelling the agreement under Annexure-3 and order dated 15.07.2008 under Annexure-2.

2. Bereft of unnecessary details, the petitioner's case in a nutshell is as follows:

3. The petitioner is an advertising and marketing agency in the name and style of M/s. COVER AGE. It entered into an agreement with opposite parties to carry on trade of putting hoardings/kiosks and back lit/front lit in Rourkela Municipality electrical poles. The petitioner's agreement dated 16.07.2008 with Rourkela Municipality was in respect of areas of Rourkela Municipality for a period of 5 years, i.e., with effect from 01.12.2008 to 30.11.2011 and 01.04.2009 to 31.03.2012. As per the terms of the agreement, the petitioner-firm had already deposited the licence fees in advance with opposite party-Municipality till March, 2011. As per the agreement, the petitioner- firm was to deposit Rs.80,636/- per month as advance and the opposite parties were required to renew the licence for the period starting from 01.12.2008 to 30.11.2011 and 01.04.2009 to 31.03.2012 and on expiry of each one year the trade licence shall be automatically renewed on payment of the licence fees with 10% increase in every financial year. Opposite parties on 15.07.2008 also passed an order vide Annexure-2 wherein it has

given the licence to the present petitioner-firm for the same period from 01.12.2008 to 30.11.2011 and 01.04.2009 to 31.03.2012 and in the said order eight conditions were envisaged to operate in the Rourkela Municipal area. After passing of the said order and execution of the agreement dated 16.07.2008, the petitioner-firm was continuing as a trade licence holder of opposite parties and was carrying on the business of the advertising smoothly and no complaint whatsoever was received from any quarter.

4. When the matter stood thus, opposite parties by an order dated 17.12.2009 cancelled the previous order dated 15.07.2008 without adhering to the principles of natural justice. Being aggrieved by the said order, the petitioner approached this Court in W.P.(C) No.19836 of 2009. This Court disposed of the said writ petition vide order dated 15.11.2010 holding that without compliance of the principles of natural justice cancellation of the entire licence to display advertisements by installing hoardings is bad in law and accordingly, this Court quashed the aforesaid order of cancellation. While disposing of the said writ petition, this Court also gave liberty to the opposite parties to notify the petitioner-firm that if any of the hoardings or Kiosks is obstructing the traffic or destroying the beauty of the landscape or coming in the way of widening of the road. After such things were notified, the petitioner would be at liberty to file its objection. If the objection is filed, the same shall be considered and appropriate orders shall be passed. In spite of such specific direction of this Court, opposite parties in hot haste have

cancelled the licence of the petitioner-firm illegally in respect of the hoardings/kiosks that have been erected in stead of intimating the petitioner firm about those hoardings/Kiosks which cause obstruction and prevent the developmental work. After the order was passed, a notice dated 03.12.2010 (Annexure-5) was served on the petitioner firm, wherein the opposite parties had intimated the petitioner-firm that display of the advertisement has caused traffic hazards, destruction of scenic beauty, road congestion, apprehension of accident and is creating hindrance in widening of road and as such in the interest of the public, the Municipality proposes to cancel the said agreement and accordingly, directed the petitioner-firm to file its objection, if any.

5. In response to the said notice dated 03.12.2010 (Annexure-5), the petitioner-firm replied to the said notice vide letter dated 09.12.2010 (Annexure-6) read with letter dated 10.01.2011 (Annexure-7), wherein the petitioner-firm has categorically stated that not a single board is presently available on roadside which may cause any traffic hazard or obstruction in widening of the road and also further stated that the opposite parties may intimate to the petitioner-firm, if any such advertisement is hindering any developmental purpose. In the said reply letter, the petitioner also brought to the notice of opposite parties that as per the order of this Court though show cause notices were issued to the petitioner-firm but no such show cause notices were issued to other advertising agencies, who are operating in the said area. The opposite parties vide their letter dated 15.02.2011 (Annexure-8 series), directed

the petitioner-firm to appear in person before them for hearing. Pursuant to the said letter dated 15.02.2011, the petitioner-firm requested opposite parties vide letter dated 18.02.2011 to allow the petitioner to represent itself along with an Advocate which was permitted to the petitioner-firm. Thereafter, the petitioner-firm with its Advocate appeared in person before opposite parties on 01.03.2011. On the very same day, the petitioner-firm once again reiterated before opposite parties that it has already removed the boards as directed by the opposite parties. The petitioner also stated that it may be informed about other advertising hoardings which cause obstruction in any manner so that it can remove and relocate the same. It also stated that there are other advertising agencies in the same location which cause obstruction in developmental projects, but no steps whatsoever are taken against those erring advertising agencies. The petitioner also emphasised on Clause 15 of the agreement which clearly states that during the licence period the licensor shall not disturb the licensee or raise any sort of dispute and shall not allow any other advertiser to put up hoardings/kiosks. The petitioner further brought to the notice of opposite parties that it has raised financial loans to the tune of Rs.30,00,000/- approximately from various sources to develop the infrastructure and putting the hoarding boards/kiosks and as such sudden cancellation of the licence will put the petitioner in high die condition and consequently the petitioner will not be able to repay the loan. Moreover, the petitioner-firm has also invested an amount of

Rs.1,17,39,200/- for development of infrastructure and electrical connections.

6. While the matter stood thus, the petitioner firm came across an advertisement dated 26.03.2011 published in the daily “KHABAR” wherein the opposite parties have notified for registration of the agency/individual for permission to carry on the trade of displaying commercial advertisement in Rourkela Municipality area, i.e., the same area where the petitioner firm is operating at present. Pursuant to the said advertisement, the petitioner-firm vide its letter dated 29.03.2011 intimated the opposite parties that the agreement of the petitioner-firm is valid till 31.03.2012 and it has been paying licence fee every month regularly and further stated therein that as per Clause 15 of the agreement, the opposite parties had no authority to allow any other firm to fix up their hoarding boards inside the municipal area. However, opposite parties in a very clandestine manner did not pay any heed to such representation dated 29.03.2011 and in a despotic manner axed down the petitioner-firm vide order dated 29.03.2011 by cancelling the licence under Annexure-1. Hence, the present writ petition.

7. Mr. J. Pattnaik, learned Senior Advocate appearing on behalf of the petitioner submitted that the direction of this Court dated 15.11.2010 passed in W.P.(C) No.19832 of 2009 has not been carried out even though the petitioner has furnished the detailed information in form of a chart which was annexed to the letter dated 10.01.2011 regarding those advertising agencies who are operating in the same area

and hindering the developmental works. The opposite parties did not venture to take any effective steps against those firms. This action of the opposite parties clearly reflects the vindictive and step-motherly attitude towards the petitioner-firm. Such discrimination of opposite parties is blatantly perverse, grossly unfair and fails to stand a close judicial scrutiny. It is further submitted that Rourkela Municipality Regulation of Tax on Advertisement, 2010 has come into force on 10.01.2011. Opposite parties are deliberately victimizing the petitioner-firm to feed fact their ancient grudge as the petitioner-firm had earlier approached this Court and this Court gave liberty to the petitioner to file objection, vide order dated 15.11.2010 under Annexure-4.

8. Mr. Pattnaik, placing reliance upon Annexure-14 to the rejoinder filed by the petitioner-firm submitted that the Municipality has been collecting fees up to 23.03.2011 for these advertisements which is much after the issuance of notice to the petitioner. Further, placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Union of India vs. The Steel Stock Holders Syndicate, Poona, AIR 1976 SC 879*, Mr. Pattnaik submitted that the regulation does not expressly provide for cancellation of existing licences thus cannot supersede an existing contract agreement. Further, placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi & others, AIR 1978 SC 851*, he submitted that the opposite parties cannot be allowed to advance a ground in the counter affidavit if the same has not been

indicated in the impugned order which is under challenge. Concluding his argument, Mr. Pattnaik, learned Senior Advocate submitted that the action of the opposite parties is oblique and the same constitutes legal malice.

9. Per contra, Mr. R.K. Mohapatra, learned counsel appearing on behalf of opposite party No.2 submitted that there is no infirmity or illegality in passing the impugned order under Annexure-1 cancelling the agreement under Annexure-3 and order under Annexure-2. Mr. Mohapatra relying on the counter affidavit filed by opposite parties submitted that so far as execution and renewal of agreement are concerned, the same is of paramount consideration which involves public interest. Since Rourkela Municipality is to sub-serve public interest in these matters, genuine public demand and public interest are to be taken into consideration and due weightage should be given. Permission granted under Annexure-2 can not override the larger public interest. In view of the order of this Court dated 15.11.2010 passed in W.P.(C) NO.19832 of 2009, the petitioner was duly issued with show cause notice and granted personal hearing before cancellation of licence. On consideration of the show cause reply and oral submissions, order of cancellation has been passed. The cancellation of licence is justified in view of Clause-8 of the order in Annexure-2 and Clauses 6 and 8 of the agreement under Annexure-3. The different hoarders, who were authorized to install the hoardings under the Municipality, were communicated about the enforcement of the Regulation of Rourkela

Municipality in Annexure-B/1 vide order No. 2241 dated 23.03.2011. The petitioner and another licensee M/s. SWADESHI AD have been allowed to have their advertisements in the most important areas in the Municipality. These two agencies unlike others have been granted about 3 years/5 years to operate and display their hoarding boards/bulletins on road side, electric poles and own poles in Rourkela Municipality area i.e. Bisra Road, Main Road, Daily Market Road, Kachery Road, Chhend Ring Road to Chinmaya School Chowk etc. In almost all important places the petitioner is having hoardings and kiosks and more particularly the entire area from Bisra Chowk to Panposh via Uditnagar has been used for display of hoardings and kiosks by the petitioner. The aforesaid area is known to be the heart of Rourkela town under Rourkela Municipality.

10. Mr. Mohapatra, further submitted that cancellation of licence is just and proper in view of the enforcement of the Regulation of Tax on Advertisement, 2010 which was enacted in due process of law in the interest of public. It is stipulated in Clause-9(c) of the Notification (Annexure-10) that the licence shall be for a period of one year except in the case of sites used for temporary congregation. In Clauses – 7(a) and (8) of the said notification, it is stipulated as to how the hoardings or advertisements will be placed and the restrictions to be imposed regarding safety of public. Therefore, the petitioner cannot claim immunity taking advantage of agreement made prior to the enforcement of the Regulation of Tax on Advertisement, 2010. In view of Clause (6) of

the agreement, the licensee shall be bound to follow the provisions of Orissa Municipal Act and Law relating to the trademark and shall not put up the advertisement boards/hoarding/kiosks and back lit/front lit on own pole and/or electric pole and on Municipal pole in such a manner so as to create traffic hazard or affect the beauty of landscape in particular. In Clause (16) of the agreement, it is agreed that the licensee will abide by the terms and conditions laid down in the hoarding bye-laws of Rourkela Municipality. Thus, the present Regulation, 2010 being formulated by the Municipality regarding advertisement, the petitioner is bound by the said regulation and the earlier agreement is liable to automatic cancellation in view of the said regulations. In Regulation, 2010, it is described in Clause 9(g) that the Municipality will go for an open tender and the highest bidder over and above the base price will be selected as an appropriate agency/firm to make advertisements.

11. It was further argued that since the allegation made by the present petitioner is confined to privity of contract, the writ petition is a misconceived one and not maintainable in the eye of law and therefore, the same is liable to be dismissed. So far as the advertisement under Annexure-11 is concerned, the Municipality has published the advertisement after enforcement of Gazette Notification of Rourkela Municipality Regulations of Tax on advertisement since 10.01.2011.

Mr. Mohapatra, learned counsel submitted that in view of the Orissa Gazette (Extraordinary) notification vide No.52 dated 10.01.2011, it is found that the advertisement displayed by the

petitioner is contrary to public interest and causes distraction to motorist, endangers public safety, traffic hazards and creates inconvenience and difficulty in widening of road etc. Moreover, installations of such advertisements have stalled widening of road.

12. On the rival contentions advanced by the parties, the only question that falls for consideration by this Court is as to whether opposite party No.2-Executive Officer, Rourkela Municipality is justified to pass the order dated 29.03.2011 (Annexure-1) cancelling the licence granted to the petitioner and directing it to remove all advertisements and advertising materials within seven days from the receipt of the order.

13. The undisputed facts are that opposite party No.2-Executive Officer vide order No.4185 dated 15.07.2008 (Annexure-2) renewed and extended the licence granted to the petitioner vide order No.875 dated 05.02.2008, order No.1808 dated 10.03.2008 and order no.4866 dated 15.12.2007 for display of hoardings Boards/kiosks on electrical poles, WESCO poles and own poles for a period of three year commencing from 01.12.2008 to 30.11.2011/ 01.04.2009 to 31.03.2012 with increase of 10% licence fees respectively subject to the terms and conditions mentioned in the said order (Annexure-2). In Annexure-1 dated 29.03.2011, the Executive Officer, Rourkela Municipality cancelled the licence granted to the petitioner directing it to remove all advertisements and advertising materials on the ground that the advertisement displayed by the petitioner is contrary to public interest causes

distraction to motorist, endangers public safety, causes traffic hazards and creates inconvenience and difficulty in widening of road etc. Undisputedly the licence under Annexure-2 was granted with certain terms and conditions. Condition No.5 is that the Hoardings/Kiosks installed should be free from traffic hazards and not obstruct traffic movement. Condition No.8 is that the authority reserves right to withdraw the permission/licence at anytime in case of any emergency in the public interest. The order under Annexure-1 was issued after the Orissa Gazette (Extraordinary) Notification Vide No.52 dated 10.01.2011 was published. Clauses 3, 4, 5, 6, 7 and 8 of the Notification reads thus:-

“3. Prohibition on erection, exhibition, fixation, retention or display of advertisement on historic Public building—

No person shall erect, exhibit, fix, retain or display or cause to be erected, exhibited, fixed, retained or displayed any advertisement so as to cause damage to the amenities or obstruct the view of any historic public building or buildings of national importance, monument or public garden, etc.

4. Places prohibited for erection, exhibition, fixation, retention or display of advertisement.

No person shall erect, exhibit, fix, retain or display or cause to be erected, exhibited, fixed, retained or displayed any advertisement —

(a) On roads or any land, building which may be opened to the view of traffic causing distraction to motorists thereby endangering public safety.

(b) On Temples, Mosques, Gurudwars, Churches and other such religious places and lands buildings within one hundred meters of such religious places.

(c) Within one hundred meters of Schools & Colleges and other Educational Institutions.

(d) On cremation grounds or lands and buildings within one hundred meters of cremation grounds.

(e) Near any flyover, railway over bridge, water tank, communication tower, transmission tower or land and buildings within one hundred meters or such flyover or railway over bridges.

(f) On any other street, road, crossing, junction, place, area, locality or part thereof as may be decided by the Executive Officer from time to time in public interest for reasons to be recorded in writing.

5. Manner of display of advertisement on vehicles

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No vehicles used for the purpose of advertisement shall display any advertisement in a manner different from that as approved by the Executive Officer of the Municipality.

6. Defacement of sign or mark or letter of advertisement prohibited—

No person shall deface or cause to be defaced any sign or mark or letter or words that shall have been put by the Executive Officer on the advertisements erected, exhibited, fixed, retained or displayed in token of their having been permitted or approved by him and of the tax having been collected.

7. Advertisement of hoardings—

(a) Shall not be of more than 20' height from the ground level/roof-top whichever case may be.

(b) Shall not project or be on or over the public passage beyond the general store or buildings in the street for which a regular location has been prescribed.

(c) Shall not exceed the size approved by the Executive Officer.

(d) Shall not be put up or executed on the right of any road, provided that, advertisement hoardings may be put up or erected adjacent to or near the footpaths of the roads, if such hoardings run parallel to the road and are otherwise permitted by the Executive Officer.

(e) Shall not be put up over roof-top of any Private/Government/Municipality Institutions buildings without prior permission of Executive Officer of the Municipality.

8. Placement of hoardings—

(a) The base of the hoarding shall be at a height of 5' from the ground level and shall be at proper alignment, in conformity with other hoardings and at a distance of at least 10' from any other hoarding.

(b) Hoarding shall be fixed minimum 12' away from road pavement.

(c) Permission for roof-top hoarding on private buildings/institutions shall be considered subject to verification of structural stability, no objection from the concerned authorities undertaking on factor of safety of the structure."

14. The conditions stipulated in the order under Annexure-2 also provide that the hoardings/kiosks installed by the licensee should be free from traffic hazards and should not obstruct traffic movement. As per the said order, the authority reserves the right to withdraw the permission/licence at any time in case of any emergency in public interest. Therefore, the grounds on which Annexure-1 has been passed cannot be said that those grounds are invalid.

15. This Court, however, in the earlier writ petition directed that it was open to the Municipality to notify the petitioner, if any of the hoardings or kiosks obstructs the traffic or destroys the beauty of landscape or coming in the way of widening of the road and objection thereto may be filed by the petitioner which shall be considered. From notice dated 03.12.2010 (Annexure-5), it reveals that the said notice was issued to the petitioner in respect of all the hoardings and kiosks on consolidated grounds of traffic hazards, destruction of scenic beauty etc. without connecting it to any specific place. The representation of the petitioner dated 10.01.2011 (Annexure-7) shows that opposite party no.2

has allowed huge number of hoardings/Boards /roof top boards to continue unauthorisedly without paying licence fee.

16. Though there is no concept of negative equality yet the Municipality cannot adopt 'pick and choose' method without indicating any valid basis therefor and cancel the licence/permission granted to the petitioner firm.

17. Law is well settled that every action of the State and its instrumentality should be fair, legitimate and above board and without any affection or aversion. (See **Haji T.M. Hassan Rawther Vs. Kerala Finance Corporation**, AIR 1988 SC 157; **E.P. Royappa Vs. State of Tamil Nadu**, AIR 1974 SC 555 and **State of Andhra Pradesh & Anr., -vs- Nalla Raja Reddy**, AIR 1967 SC 1458).

18. The Hon'ble Supreme Court in the case of **Ramana Dayaram Shetty vs. The International Airport Authority of India and others**, AIR 1979 SC 1628 held as under:

"20. Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

21. This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well settled as a result of the decisions of

this Court in *E. P. Royappa v. State of Tamil Nadu*, (1974) 2 SCR 348 : (AIR 1974 SC 555) and *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 : (AIR 1978 SC 597) that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C. J., in *Erusian Equipment and Chemicals Ltd. v. State of West Bengal* (AIR 1975 SC 266) (*supra*) where the learned Chief Justice pointed out that 'the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing -A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful

calling - It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods.' It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.

22. It is interesting to find that this rule was recognised and applied by a Constitution Bench of this Court in a case of sale of kendu leaves by the Government of Orissa in *Rasbihari Panda v. State of Orissa*, (1969) 3 SCR 374 : (AIR 1969 SC 1081). The trade of kendu leaves in the State of Orissa was regulated by the Orissa Kendu Leaves (Control of Trade) Act, 1961 and this Act created a monopoly in favour of the State so far as purchase of kendu leaves from growers and pluckers was concerned. Section 10 of the Act authorised the Government to sell or otherwise dispose of kendu leaves purchased in such manner as the Government might direct. The Government first evolved a scheme under which it offered to renew the licences of those traders who in its view had worked satisfactorily in the previous year and had regularly paid the amounts due from them. The scheme was challenged and realising that it might be struck down, the Government withdrew the scheme and instead, decided to invite tenders for advance purchases of kendu leaves but restricted the invitation to those individuals who had carried out contracts in the previous year without default and to the satisfaction of the Government. This method of sale of kendu leaves was also challenged by filing a writ petition on the ground inter alia that it was

violative of Articles 14 and 19 (1) (g) and this challenge, though negatived by the High Court, was upheld by this Court in appeal. The Court pointed out that the original scheme of offering to enter into contracts with the old licencees and to renew their terms was open to grave objection, since it sought arbitrarily to exclude many persons interested in the trade and the new scheme under which the Government restricted the invitation to make offers to those traders who had carried out their contracts in the previous year without default and to the satisfaction of the Government was also objectionable, since the right to make tenders for the purchase of kendu leaves being restricted to a limited class of persons, it effectively shut out all other persons carrying on trade in kendu leaves and also the new entrants into that business and hence it was *ex facie* discriminatory and imposed unreasonable restrictions upon the right of persons other than the existing contractors to carry on business. Both the schemes evolved by the Government were thus held to be violative of Articles 14 and 19 (1) (g) because they 'gave rise to a monopoly in the trade in kendu leaves to certain traders and singled out other traders for discriminatory treatment'. The argument that existing contractors who had carried out their obligations in the previous year regularly and to the satisfaction of the Government formed a valid basis of classification bearing a just and reasonable relation to the object sought to be achieved by the sale, namely, effective execution of the monopoly in the public interest, was also negatived and it was pointed out that : "exclusion of all persons interested in the trade, who were not in the previous year licencees, is *ex facie* arbitrary : it had no direct relation to the object of preventing exploitation of pluckers and growers of kendu leaves, nor had it any just or reasonable relation to the securing of the full benefit from the trade, to the State." The Court referred to the offer made by a well known manufacturer of bid is for purchase of the entire crop of kendu leaves for a sum of Rs. 3 crores which was turned down by the Government and expressed its surprise that no explanation was

attempted to be given on behalf of the State as to why such an offer, from which the State stood to gain more than Rs. 1 crore, was rejected by the Government. It will be seen from this judgment that restricting the invitation to submit tenders to a limited class of persons was held to be violative of the equality clause, because the classification did not bear any just and reasonable relation to the object sought to be achieved, namely, selling of kendu leaves in the interest of the general public. The standard or norm laid down by the Government for entering into contracts of sale of kendu leaves with third parties was discriminatory and could not stand the scrutiny of Article 14 and hence the scheme was held to be invalid. The Court rejected the contention of the Government that by reason of Section 10 it was entitled to dispose of kendu leaves in such manner as it thought fit and there was no limitation upon its power to enter into contracts for sale of kendu leaves with such persons it liked. The Court held that the Government was, in the exercise of its power to enter into contracts for sale of kendu leaves, subject to the constitutional limitation of Article 14 and it could not act arbitrarily in selecting persons with whom to enter into contracts and discriminate against others similarly situate. The Court criticised the Government for not giving any explanation as to why an offer for a large amount was not accepted, the clearest implication being that the Government must act in the public interest; it cannot act arbitrarily and without reason and if it does so, its action would be liable to be invalidated. This decision wholly supports the view we are taking in regard to the applicability of the rule against arbitrariness in State action.”

19. In view of the above, opposite parties are not justified to allow some persons/firms to display their advertisements in different places in Rourkela Municipality and cancel the petitioner’s licence to debar it from displaying hoardings, boards/kiosks in those places.

Therefore, the Rourkela Municipality is directed to adopt a uniform treatment to all the parties, who are interested to display their hoardings in Rourkela Municipality area. Opposite Party Municipality also can take action against the petitioner as well as any other parties who are displaying their hoardings/kiosks after expiry of the period of licence. If the hoardings/kiosks are not removed after expiry of the period of licence, the Municipality is not bound by the clause in the agreement to extend the further period of licence as the same is impermissible in law and oppose to the public policy.

20. In the meantime, the opposite parties has floated advertisement dated 25.03.2011 inviting applications from interested persons who want to carry on the trade of displaying commercial advertisements in Rourkela Municipal jurisdiction for the period from 01.04.2011 to 31.03.2012 to register their names/agencies in Rourkela Municipality.

If the opposite party-Municipality intends to grant any permission/licence to any person to display hoardings/kiosks in Rourkela Municipal area they are directed to do the same by public auction or by inviting tender after publishing the same in widely circulated newspapers and any other modes.

At this juncture, it is beneficial to refer to the judgment of the Hon'ble Supreme Court in the case of ***Nagar Nigam, Meerut Vs. Al Faheem Meat Exports Pvt. Ltd. & Ors.***, (2006) 13 SCC 382, wherein the Hon'ble Supreme Court held as under:-

“The law is, thus, clear that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well known newspapers having wide circulation, so that all eligible persons will have opportunity to bid in the bid, and there is total transparency. In our opinion, this an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence.”

21. With the aforesaid observations and directions, the writ petition is disposed of.

No order as to costs.

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B.N. Mahapatra, J.

V. Gopala Gowda, C.J. I agree.

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Chief Justice