

A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) NO.3369 OF 2010

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

Sri Subas Singh,
S/o. Late Damodar Singh, Convener,
Cuttack Banchao Committee,
resident of Kaligali, Chandinchowk,
P.S. Lalbag, Town & Dist: Cuttack and others Petitioners

Versus

State of Orissa and others Opp. Parties

For Petitioners : M/s. Asim Amitav Das, M.B.Roy,
A.K. Behera, J. Mohanty,
B.K. Parida, B. Sahoo, S. Roy &
R.K. Das

For Opp. Parties : Mr. Ashok Mohanty,
(Advocate General) &
Mr. Hrusikesh Tripathy
(for O.P. No.1 to 3)

Mr. S.K. Padhi,
Senior Advocate (for O.P. No.4)

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 Judgment: 20.12.2012

B.N. MAHAPATRA, J. By means of the present writ petition, challenge has been made to the decision of the opposite party-authorities for leasing out the land, building and other infrastructure of Badambadi Bus Stand, Cuttack in favour of opposite party No.4-Reliance Retail Ltd. (for short, 'RRL') on the

ground that such decision is illegal, unwarranted and uncalled for, and against the interest of the people of State of Odisha, more particularly the people of Cuttack.

2. The present writ petition has been filed in the nature of public interest litigation. Petitioner No.1 is a social worker and a Trade Unionist and also the Convener of the “Cuttack Banchao Committee”, which has been formed in the year 2005 and since then it has been taking the issues relating to the interest of the people. Petitioner No.2 is a renowned person of Cuttack and presently is the President of Utkal Sahitya Samaja. He is associated with various social organizations and is also one of the functionaries of Cuttack Banchao Committee. Petitioner No.3 is an eminent educationist and former Vice-Chancellor of Berhampur University and also associated with different social organizations and activities concerning the public issues. Thus, all the petitioners claim to be public spirited persons.

3. Petitioners’ case is that Badambadi Bus-Stand situates in both sides of the road which is called “Link Road” measuring about 50 acres of land belonging to State Government. The Bus stand was established in the early part of 1970 by the State Government. At that point of time, Government was owner of two main Transport Corporations, namely, Orissa Road Transport Corporation (ORT) and Orissa State Road Transport Corporation (for short ‘OSRTC’) which were plying their buses from Badambadi Bus Stand. Besides the Government Corporation owned buses, some private buses were plying from Badambadi Bus Stand when the bus

stand was established. Initially, Badambadi Bus Stand was planned to provide parking place for 100 buses in the early 1970. By efflux of time, number of buses increased and many private buses came to ply. Practically, there are three bus stands, namely, main bus stand, Rourkela-Angul bus stand and Puri-Bhubaneswar bus stand. All the bus -stands were being maintained by the State opposite parties and the private buses were plying from the said bus stands on payment of prescribed fees and were enjoying the facilities on *quid pro quo* basis. At present, about 2200 buses are plying from Badambadi Bus stand to different parts of Odisha. Out of that, 1000 buses are express buses, which reach Badambadi in the morning and mostly park on the road side. Apart from that, about 4000 auto rickshaws, 200 taxies and about 1000 town buses are operating daily from Badambadi Bus Stand. Thus, more than 7000 vehicles are operating from Badambadi Bus Stand everyday catering to the need of the people and provide private transport facilities. In the year 2006, petitioners came to know that the State Government has taken a decision to sell out/lease out the land of five Bus stands of the State, such as, Cuttack, Dhenkanal, Sundargarh, Berhampur and Baripada to private parties and also to handover the maintenance of those bus-stands, which was seriously objected by the Social Organizations at the relevant point of time. In the year 2008, members of the Cuttack Banchao Committee had taken up the issues with the State Government for making the Bus stand a model and planned one under control of the State Government and also to provide all other necessary facilities for parking of

the buses and amenities to the passengers as Badambadi Bus stand is linked with the State Transport and it is the prime Bus stand of the State. The petitioner-Cuttack Banchao Committee protesting the transfer of Badambadi Bus Stand staged a two days' day and night Dharana on 3rd and 4th December, 2008. A similar Dharana was also staged on 28th February, 2009 for development of Badambadi Bus Stand and for opposing the sale of land belonging to the Corporation to RRL. Despite the protest against leasing out the Badambadi Bus Stand to RRL and when the State Government without reversing its decision proceeded to lease out Badambadi Bus Stand, petitioners approached this Court by filing the present writ petition for appropriate order.

4. Mr. A. A. Das, learned counsel appearing for the petitioners, submits that the decision of the State Government to lease out Badambadi Bus stand to RRL is against the public interest and such a decision has been taken with mala fide intention. The deal with the RRL is clandestine one; no public notification was made in this regard, the land in question has been leased out to opposite party No.4-RRL just to favour it. Since vast valuable Government land in Cuttack town at Badambadi Bus Stand is leased out in favour of RRL, the petitioners as well as the other social organizations have raised their protest. The Odia daily newspaper "Dharitri" has also published in an editorial revealing the fact and clandestine deal of the State Government and State opposite parties in leasing out the Badambadi Bus Stand in favour of opposite party No.4-RRL instead of

making it a model bus stand by providing better facilities for transport as demanded by the petitioners.

5. Per contra, Mr. Asok Mohanty, learned Advocate General appearing for opposite party-authorities vehemently argued that the Badambadi Bus stand has not been decided to be leased out in favour of any private party, rather it has been decided to be developed on public-private participation mode. No decision has also been taken to hand over the Badambadi Bus stand to RRL. As per the decision of the State Government, to liquidate the arrear liabilities and pending dues of the retired employees of OSRTC, unutilized land of OSRTC was decided to be developed on public private participation basis. Accordingly, unutilized lands of 5 places, such as Keonjhar, Dhenkanal, Bhubaneswar, Cuttack, Barbil were initially decided to be given on rent and land at Baripada was decided to be sold out. The decision taken to lease/sell out the property in question is not illegal, unwarranted and uncalled for. The said decision was taken in the interest of Corporation. No land or building or other infrastructure of any other bus stand where buses are parking and passengers are boarding has been leased out. The main bus stand at Badambadi consists of an area of Ac.4.059 decimals and the Corporation is maintaining the said bus stand and collecting parking fees. Only 700 numbers of buses are using three bus stands and paying their parking fees to OSRTC.

6. It was further argued that keeping in view the growing need and increasing inflow of buses, the main bus stand at Badambadi has been

decided to be developed on Public Private Participation mode and tender process for the same is in progress. The OSRTC is paid a sum of Rs.2.75 lakhs per month towards parking fees for three bus stands. An area of Ac.2.605 decimals which was lying vacant and one dilapidated building standing therein was proposed to be leased out for commercial purposes since the State Government was not in a position to pay the outstanding dues of OSRTC employees. A policy decision was taken by the OSRTC and the Government that some of the unutilized lands which were being used earlier as garage, office and bus stand would be leased out for commercial purpose and the money which would be fetched shall be utilized for payment of unpaid wages and other liabilities and for compliance of several orders of this Court for payment of wages and other VRS dues. The land in question is vulnerable for encroachment and utilization by antisocial elements and outsiders.

7. On 29.4.2007, a comprehensive proposal was received from the RRL for utilization of unutilized lands of OSRTC at Bhubaneswar, Cuttack, Berhampur, Keonjhar, Dhenkanal, Barbil and Baripada for commercial use in which they had submitted that they shall make down payment of Rs.20 crores towards sub-lease of lands and Rs.6 crores towards purchase of Baripada land and will pay monthly rent of Rs.15 lakhs for 33 years with increase by 10% after expiry of every five years. The proposal of RRL was forwarded to the Government on 14.5.2007 as it was a much better offer than all other offers which were received earlier and

pending with the Government; after decision of the Government and as per the Swiss Challenge mode the offer placed by RRL was made public. It is submitted that Swiss Challenge mode received approval of the Hon'ble Supreme Court in the case of *Ravi Development V. Shree Krishna Prathisthan and others*, 2009 (7) SCC 462. The OSRTC issued paper publication in various newspapers and it was uploaded in Government Website. There was no challenge in any form to the publication of 2004 and subsequent publication in 2007 issued by OSRTC of its proposal to tie up with the private Company for sub-lease of its lands at Cuttack, Bhubaneswar, Berhampur, Keonjhar, Dhenkanal for a period of 33 years. On 13.09.2007, the State Government approved the proposal of sub-lease of the lands of those areas including Cuttack and directed to prepare a draft tripartite agreement. On 14.12.2007, RRL deposited Rs.7 crores which included Rs.6 crores for down payment for sale of land and building at Baripada and Rs.1 crore as advance towards the down payment in respect of other areas. On 6.8.2008, RRL deposited the rent of Rs.19 crores towards the balance down payment of Rs.20 crores to OSRTC. The tripartite agreement which was prepared by OSRTC was also sent for approval of the State Government. On 25.04.2008, the State Government approved the said tripartite agreement.

8. A decision had been taken not to lease out the area of Cuttack and Angul Bus stand which were being utilized for bus stand. An area of Ac.1.224 which was being utilized as bus-stand was demarcated and kept apart and rest land of Ac.2.605 decimals was proposed to be given for

commercial purpose to RRL. After deposit of the initial money, possession of the land was handed over to RRL and the land at Cuttack measuring Ac.2.605 decs. was settled in favour of RRL on 28.8.2008. An agreement was entered into on 29th September, 2009 and the same was sent to the District Sub-Registrar, Cuttack for registration.

9. Learned Advocate General further submitted that the aforesaid lands were the subject-matter of an earlier writ petition bearing W.P.(C) No.10907 of 2006 filed before this Court with a prayer that this area should be utilized for an ideal parking place. This Court after hearing the parties dismissed the writ petition on 19.11.2007. Only a part of the land of OSRTC not being used as bus stand is now being given on lease for commercial purpose. The present writ petition in the nature of Public Interest Litigation is filed belatedly in the year 2010. A policy decision taken after due approval of the State Government following proper procedure, cannot be said to be illegal. With all these averments, learned Advocate General submitted that the writ petition is not maintainable and the same is liable to be dismissed.

10. Mr. S.K. Padhi, learned Senior Advocate appearing on behalf of RRL, the intervenor-O.P. No.4 while supporting the stand taken by opposite parties Nos. 2 & 3 submitted that land measuring Ac.2. 605 decimals, which has been handed over to RRL does not belong to Badambadi bus stand. It is an old garage of the bus stand not being in use and has remained unutilized and abandoned since 1998-99. The amount offered by

RRL was published in all the leading newspapers and in the Government website since 2007. Since no better offer was received, it was decided to accept the offer of the intervenor-RRL. The present public interest litigation has been filed almost after 3 years of finalization of the tender process and after the entire process of tender was examined and scrutinized, a tripartite agreement was executed among the State Government, OSRTC and RRL. Relying on a decision of the apex Court in the case of *BALCO Employees' Union (Regd.) v. Union of India & others*, AIR 2002 SC 350, it was contended that the process of disinvestment is a policy decision involving complex economic factors, and Courts have consistently refrained from interfering with the economic decisions taken by the Executives.

The tripartite agreement has also been entered into. RRL has already invested a huge sum and is in the process of setting up of the commercial Complex which would in no way affect the public interest as the said land has remained unutilized for a pretty long period.

11. On rival contentions, both factual and legal, raised by the parties, questions that fall for consideration by this Court are as follows:-

- (i) Whether the action of opposite party-Authorities in leasing out the lands earmarked to be used as bus stand at Badambadi for a long term of 33 years with option to renew the same on mutual consent after completion of the period of lease to RRL, a private party for its commercial use amounts to development of Badambadi Bus-stand on Public Private Participation mode?

- (ii) Whether opposite party-authorities are justified in leasing out the lands earmarked to be used as Bus-stand at Badambadi for a long term of 33 years to a private party to generate funds to liquidate the arrear liabilities and pending dues of the retired employees of the OSRTC and for compliance of several orders of this Court for payment of such dues at the cost of larger interest of public?
- (iii) Whether in the facts and circumstances of the case this Court should refrain itself from interfering with the economic decision taken by the Executive to sell/lease out the properties in question to private party?
- (iv) What order?

12. Question No.(i) is as to whether action of opposite parties authorities in leasing out Badambadi Bus stand on long term basis to private party-RRL amounts to development of Badambadi Bus stand on Public Private Participation mode as contended by opposite party authorities.

In the counter affidavit, opposite parties have stated time and again that it has not been decided to lease out Bus stands in favour of any private party, rather it has been decided to develop the Bus stands on Public Private Participation mode. If such a decision has been taken by opposite party-authorities, then the alleged action of the authorities in leasing out the lands in 5 places ear-marked for bus-stand and selling out one land at Baripada is contrary to the decision taken by opposite parties to develop the land in question on Public Private Participation mode. If the land ear-marked for bus-stand is sold out to a private party as has been

done at Baripada, there is no question of developing the said land for bus-stand purpose on public private participation. Similarly, if any land earmarked for bus-stand is leased out for a long term of 33 years with option to renew the same for further period on mutual consent after completion of the period of lease to a private party to utilize it for its commercial purpose, the very purpose of developing the land for bus-stand on public private participation would be frustrated.

13. At this juncture, it is necessary to refer to clauses (1), (2), (3), (5) and (10) of the notice inviting tender published in different newspapers and also Government website as extracted in paragraph 12 of the further affidavit dated 10.05.2010 of opposite party nos. 2 and 3. The said clauses read as under:

“(1) The sub-lease for six places will be given initially for a period of 33 years, which may be renewed after mutual consent after completion of the period of lease.

(2) Bid price for 6 places will be at least Rs.98/-crores of which at least Rs.20 cores will be deposited with OSRTC in one instalment at the time of execution of agreement and the balance to be paid to OSRTC IN MONTHLY INSTALMENTS OF Rs.15 lakhs over the entire period of lease with 10% increase every 5 years.

(3) Purchase price of land and building at Baripada shall be at least Rs.6 crores including stamp duty and registration fees.

XX XX XX
(5) The sites will be for commercial use and not to be used for residential purpose.

XX XX XX

(10) The tender will bid a consolidated amount for sub-lease of all the six places and purchase of the Baripada land, and bids for any single site or for

less than all the lands referred to will not be considered”.

14. Thus, as per the above Tender Call Notice, the property earmarked for bus-stand was decided to be leased out initially for a long period of 33 years with the option of renewal on mutual consent after completion of period of lease. According to clause (5), the site will be used for commercial purpose. Purchase price of land and building at Baripada is fixed at Rs.6 crores. Thus, perusal of the entire advertisement does not reveal that leasing out of the lands in 5 places and selling of land in one place were for the purpose of development of the bus-stand.

15. It goes without saying that the constitutional obligation on the part of the State is to provide to its citizens adequate facilities like transport, education, health, electricity, water supply etc. Compared with the increase in population, the number of buses is also increasing. Due to increase in number of buses, more space is required for parking of the buses so also various other amenities are required, such as, shelter to the commuters and rest rooms etc. for passengers. On the other hand, the extent of land earmarked for bus stand is not increasing rather the same remains constant. Therefore, the land already earmarked for bus-stand should not be sold or leased out to any private party causing

prejudice to the larger interest of general public. Opposite party-authorities instead of selling/leasing out the property earmarked for bus-stand to private party for its commercial use, should take steps to make model bus-stands in a planned manner and provide all necessary facilities for parking of more number of buses and amenities to the passengers and also provide commercial accommodations to restaurants and other allied facilities so as to render better services to the commuters as the bus-stand has link with the State Transport Service.

16. For the reason stated above, we are of the view that the action of opposite party-Authorities in leasing out the lands earmarked to be used as bus stand at Badambadi for a long term of 33 years with option to renew the same on mutual consent after completion of the period of lease to RRL, a private party for its commercial use does not amount to development of Badambadi Bus stand on Public Private Participation mode.

17. Question no.(ii) is whether opposite parties are justified to lease out the property in question to the private party for generation of funds to liquidate the arrear liabilities and pending dues of the employees of the OSRTC.

It does not appear to be appropriate to sell and lease out the land earmarked to be utilized for the purpose of Bus Stand in view of the growing population and increase in the number of buses. In order to liquidate the arrears and pending liabilities of the retired OSRTC employees, the opposite parties-authorities should

adopt other methods as have been adopted by different Government Sector Undertakings running in loss to meet their liabilities. Sale / lease out of the land earmarked to be used as Bus Stand

cannot be the only option to liquidate the arrear liability and pending dues of the retired employees of the OSRTC, that too at the cost of larger public interest.

18. The other plea of opposite party-authorities to justify their action is that the land was vulnerable to encroachment and utilization by antisocial elements and outsiders. If a private party could able to evict the antisocial elements from the land in question for its own commercial use, we fail to understand how opposite party-authorities are not able to do so. It is ridiculous. Government is competent to take possession of its own land and the land belonging to the Corporation from antisocial elements.

19. In the rejoinder affidavit dated 27.09.2010, petitioners took a stand that about Rs.6 crores was sanctioned by the State Government for expansion of Badambadi bus stand which has not been implemented because of the shortage of land. Instead of selling/leasing out the land in question for commercial purpose, opposite parties should take steps to expand the parking area and provide necessary amenities to the passengers, which is more important. Therefore, the land can be utilized by the State Government for other public purpose connected to running a model Bus stand instead of leasing and selling out the same to RRL, a private concern.

20. Question No.(iii) is as to whether in the facts and circumstances of the case this Court should refrain itself from interfering with the economic decision taken by the Executive to sell/lease out the properties in question to private party?

It is true that the Courts have very limited power of judicial review in the matter of policy decision of the Government. At the same time, the Courts have constitutional duty and responsibility in exercise of their power of judicial review to see that constitutional goals set down in the Preamble; the Fundamental Rights and Directive Principles of the Constitution are achieved. (See ***Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development and others***, AIR 1995 SC 94).

21. It is settled position of law that when the Court is satisfied that there is substantial amount of public interest the Court should intervene under Article 226 of the Constitution of India [See *Jagdish Mandal Vs. State of Orissa*, (2007) 17 SCC 517; *Air India Limited Vs. Cochin International Airport Limited*, (2000) 2 SCC 617; *Assn. of Registration Plates Vs. Union of India*, (2005) 1 SCC 679]

22. In the case at hand, the decision taken by opposite party-authorities to sell/lease out the land earmarked for bus-stand amounts to flagrant violation of the very object sought to be achieved by the Road Transport Corporation Act, 1950, which has been enacted to enable the State Governments to set up Transport Corporation with the object of providing

efficient, adequate, economical and properly organized system of road transport services.

23. It is the constitutional obligation on the part of the State to provide better transport facility and maintain the bus-stand properly for convenience of the citizens of the State. In that view of the matter, the action of opposite parties-authorities in the present case to sell/lease out the property earmarked for the purpose of bus-stand to a private party for their commercial use is contrary to such constitutional goal.

24. The decision of the apex Court in ***BALCO Employees Union (Regd.)*** (supra) relied upon by opposite party-authorities has no application to the present case. In BALCO case, the employees had challenged the decision to disinvest majority of shares of Bharat Aluminum Co. Ltd. which is a Public Sector Undertaking. The workmen contended that they have been adversely affected by the decision of the Government of India to disinvest 51% of the shares in BALCO in favour of a private party. It was also contended that because of disinvestment the workmen have lost their rights and protection under Articles 14 and 16 of the Constitution and this having an adverse civil consequence, they had a right to be heard before and during the process of disinvestment. The question arose for consideration in that case was whether such a decision is amenable to judicial review and if so, within what parameters and to what extent. It is held that process of disinvestment is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been

recognized that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason that the Courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of authority. There was no case made out by the petitioners that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law.

In the present case, the basic issue is as to whether the land earmarked for development of bus-stand could be sold/leased out to a private party on long term basis with a renewal clause. Here the question is not with regard to investment or disinvestment of share of the State Government in any business organization like BALCO. The paramount consideration in the present case is the interest of citizens of the State and not of a few employees of any commercial organization. Therefore, in the BALCO case the Hon'ble Supreme Court has held that while it was a policy decision to start BALCO as a Company owned by the Government, as a change of policy that disinvestment has taken place. If the initial decision could not be validly

challenged on the same reasoning, the decision to disinvest also cannot be impugned without showing that it is against any law or *mala fide*.

Therefore, the decision of the Hon'ble Supreme Court in the case of *BALCO Employees Union (Regd.)* (supra), has no application to the case at hand.

25. Law is also settled that the Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade; that decision cannot be allowed to operate (Vide ***Onkar Lal Bajaj & Ors. Vs. Union of India & Ors.***, AIR 2003 SC 2562).

26. At this juncture, it is necessary to refer to the decision of Hon'ble Supreme Court in the case of ***Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh & Ors.***, AIR 2011 SC 1834, wherein it is held as follows:-

“31. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by

publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.”

27. In the present case, we summoned the records which were produced by the learned Government Advocate.

From page No.277/C it appears that on 16.01.2003 Cabinet has taken a decision as follows:-

“Transport Department should consult Revenue Department in particular cases for disposal of land after which the Cabinet approval is to be obtained.”

In the note sheet on 19.05.2007 at page 181/N, CRC & Special Secretary put a note to the Principal Secretary to Government, wherein he noted that in the Cabinet meeting held on 27.02.2007 the proposal of selling out the land of OSRTC at Baripada was approved. In the said note sheet, joint report of CMD, OSRTC and Transport Commissioner have been referred to. As per the proposal ‘d’, “the Cabinet approval may be obtained after the deal is finalized.”

28. From the note sheet at Page 218 it appears that the decision of the Cabinet dated 16.01.2003 and proposal by CRC and Special Secretary dated 19.05.2007 at page 181/N was not given effect to in view of the

decision of the Hon'ble Chief Minister at page 470/C followed by the Commissioner of Revenue and Disaster Management Department at page 292/C.

29. From page 470/C, it appears that on 20.08.2007 the Hon'ble Chief Minister, Odisha has taken a decision that the Administrative Department is competent to accord necessary permission for sanction of sub-lease within the over-all terms and conditions of the original lease deed. Hence, they may dispose of the proposal by following the due procedure in a transparent manner.

From page 292/C, it appears that the Joint Secretary to Government in Revenue and Disaster Management Department informed the CMD, OSRTC that after careful consideration of proposal of CMD, the Government has decided that the OSRTC may sub-lease the Government land leased out to the Corporation at Dhenkanal, Barbil and Keonjhar and the land acquired for OSRTC through land acquisition process at Cuttack in favour of the Company desirous of taking land on sub-lease basis following the due procedure in transparent manner.

30. Fact remains that on 16.01.2003 the Cabinet had taken a decision that the Transport Department should consult with the Revenue Department in particular cases for disposal of the land after which the Cabinet approval is to be obtained.

31. At this juncture, it is necessary to refer the Orissa Government Rules of Business published vide Notification No.4192-Gen/14.12.1956.

Rule 8(1) of the said Rules provides as follows:

“8. (1) All cases referred to in the Second Schedule shall be brought before the Cabinet by the direction of—

- (i) the Chief Minister, or
- (ii) the Minister in-charge or the Minister of State in-charge of the case with the consent of the Chief Minister.”

Clause 19 of the Second Schedule of Orissa Government Rules of Business provides as follows:

“19. Proposal involving the alienation (temporarily or permanently), abandonment or reduction of revenue, or sale, grant or lease of Government property exceeding rupees one lakh in value, except when such alienation, abandonment, reduction sale, grant or lease is in accordance with the rules or a general scheme already approved by the Cabinet.”

32. Therefore, in view of the decision of the Cabinet dated 16.01.2003, in all fairness, before taking a final decision in the matter of leasing out the property in question to opposite party No.4 and executing the agreement with it, the Cabinet approval ought to have been obtained which has been given a go by in the case at hand.

33. In the peculiar fact situation, it would be appropriate that the Cabinet should take a decision in the matter of selling/leasing out of the properties in question to private party at different places including Badambadi Bus Stand at Cuttack, keeping in mind our observations made above, the earlier decision of the Cabinet dated 16.01.2003, proposal of CRC and Special Secretary dated 19.05.2007 and provisions contained in Clause 19 of the Second Schedule of the Orissa Rules of Business.

34. If the Cabinet ultimately approves the proposal for selling/leasing out of properties in question then a transparent method should be followed to ensure that best price is fetched.

In case the Cabinet does not approve the proposal for selling/leasing out the properties in question or for any reason opposite party No.4-RRL shall not be entitled to be granted with lease of the properties in question, opposite party-State Authorities are directed to return the amount paid by opposite party No.4-RRL to it.

35. The writ petition is disposed of with the above observations/directions.

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