
HIGH COURT OF GUJARAT

S C AGRAWAL
Versus
STATE OF GUJARAT

Date of Decision: 15 December 1997

Citation: 1997 LawSuit(Guj) 609

Hon'ble Judges: [S D Pandit](#)

Eq. Citations: 1998 2 GLR 1405, 1998 4 GCD 2944

Case Type: Special Civil Application

Case No: 8579 of 1997

Subject: Constitution

Editor's Note:

Constitution of India, 1950 - Arts 14, 226 - Government Contracts - State Government cannot act arbitrarily in contractual field and Court may intervene to prevent arbitrariness or favouritism - Principles in this regard narrated -

Constitution of India, 1950 - Arts 14, 226 - Government contract - Tenders for printing Khedut Pothis were invited, but after receiving tenders, decision taken to get them printed in government press - Later on, without inviting tenders, contract given to three printers - Printers who had submitted tenders earlier not called - Held, action to give contract to the three printers arbitrary - Petition allowed

Acts Referred:

[Constitution of India Art 226, Art 14](#)

Final Decision: Petition allowed

Advocates: [Harobhai Mehta](#), [V M Trivedi](#), [S N Shelat](#), [S H Sanjanwala](#), [R S Sanjanwala](#), [K S Nanavati](#), [Nanavati Associates](#), [S B Vakil](#)

S. D. PANDIT, J.

[1] Petition is heard at length for more than 2 days. All the respondents have filed affidavit-in-reply. Respondent Nos. 1 to 3 have also filed additional affidavit. In the above circumstances and in view of the nature of the petition and the facts of the case, I issue Rule and proceed to finally dispose of this petition.

[2] Mr. S. C. Agrawal, Managing Partner of Confisec Printers, Ahmedabad has filed the present petition to challenge the contract entered into by respondent Nos. 1 to 3 in favour of respondent Nos. 4, 5 & 6 as regards the work of printing and supplying KHEDUT POTHIS. The State Government of Gujarat had decided to prepare KHEDUT POTHIS and to deliver the same to the individual farmers of the State. In the said KHEDUT POTHIS the details regarding the land holdings of the villagers and other details regarding his land holdings are to be entered in the said KHEDUT POTHIS. The said KHEDUT POTHIS was to be maintained in duplicate. One was to be retained with the Revenue Department in the office of the Village Talati and one was to be retained by the village farmer. The State Government had assessed to prepare about 1 crore of KHEDUT POTHIS. The State Government had issued an advertisement on 28-2-1997 inviting tenders but it seems that in the said advertisement of inviting tenders certain conditions and norms were prescribed which were included not only in the advertisement but also in the tender form. It was allegation of some of the printers that the said conditions and norms were prescribed in order to favour some particular printer. Therefore, Gujarat Rajya Shala Pathya Pustak Association had filed S.C.A. No. 2049 of 1997 to challenge the said advertisement and to challenge the action of the State Government in regard to giving of the said contract for printing KHEDUT POTHIS by alleging that the conditions were put to favour Government particular private printers. The said petition was filed on 6-3-1997 after the advertisement for calling for tenders was published on 28-2-1997. This Court was pleased to issue notice to the respondent Nos. 1 and 2 who are respectively respondent No. 2 and 1 in this petition. That petition came before the Court on 18-3-1997. The learned Government Pleader made a statement before the Court that the State Government has cancelled the advertisement whereby tenders in question were invited and therefore, the petition has become infructuous. This Court recorded that statement of the learned Government Pleader and disposed of the said petition. It is the claim of the petitioner that the said statement was made by the learned Government Pleader as respondent Nos. 1 & 2 had realised that it was very difficult for them to defend their action and that there was likelihood of they being exposed. It is further stated by the petitioner that at the time of making the same statement before this Court in earlier proceeding, the Government had also made its stand publicly clear that the Government was not issuing tender to any party and the same work of printing and preparing KHEDUT POTHIS will be done by the Government Press itself. It is further alleged by the petitioner that on the floor of the House on 18-1-1997 the then Chief Minister had made a statement while giving

reply to the question of one of the M.L.A.s regarding the preparation of the said KHEDUT POTHİ; that the Government Press was competent to do the work and that the work was being done through the Government Printing Press.

[3] It is further claim of the petitioner that in pursuance of the tender notice issued on 28-2-1997 the present petitioner and about 22 other printers had purchased the tender papers-forms for the said printing of KHEDUT POTHİ but in view of the cancellation of the said tender advertisement and in view of the decision taken by the State Government to print and prepare the said KHEDUT POTHİ through its own presses, the petitioner and other printers had no alternative than to keep mum. It is further alleged by the petitioner that thereafter the work of printing and preparing the said KHEDUT POTHİ was carried out in the Government Presses. But all of a sudden the Government again decided to give that work to other outside agencies without calling any tender and without issuing a public advertisement. This news appeared in Gujarat Samachar on 9-2-1997. He also came to know that the respondent No. 4 was given the work of preparing 36 lacs copies of KHEDUT POTHİ. Print Vision Pvt. Ltd., respondent No. 5 was given the work of preparing 7 lacs copies and Gujarat Offset Works, respondent No. 6 was given the job of preparing 6 lacs of copies and that was done without inviting any public tender and without following the process set out in the Government Resolution. It is the contention of the petitioner that these respondent Nos. 4, 5 & 6 are to get printing material, i.e., paper from the Government and they have to carry out the work of printing as well as binding, sewing and laminating the cover page of the said KHEDUT POTHİ. It is his claim that the said job costs only Rs. 3/- per copy as per the Government Resolution but the said work is entrusted to the respondents at the rate of Rs. 8.95 per copy. It is his claim that he can undertake the responsibility of undertaking the said job by supplying each copy at the cost of Rs. 5/- only. Thus, according to him in the jobwork of 50 lacs copies there is a clear margin of Rs. 4/ - per copy and thus there is illegal spending of nearly Rs. 2 crores of public money. It is his claim that this job which will cost Rs. 2 crores excess has been granted by the respondents for illegal consideration. There must be some bribe and kickback and sharing profits by the Government and its officers with respondent Nos. 4 to 6. Thus, according to the petitioner the said action of the respondent is clearly case of fraud of public money and misuse of public funds. The said action is illegal, arbitrary and unreasonable and therefore, this Court should intervene and cancel the said agreements in favour of respondent Nos. 4 to 6 and to direct the State Government to recover the amounts paid to respondent Nos. 4 to 6.

[4] The respondent Nos. 1 to 3 have contested the claim of the petitioner by filing their affidavit. The first contention raised on behalf of the respondent Nos. 1 to 3 is that there is no impeachment of any fundamental rights of the present petitioner by

not awarding the contract in favour of the petitioner. It is their contention that the petitioner was considered for the said contract but as the petitioner did not possess the required individual capacity for the job in question he could not get the contract. Therefore, in these circumstances on this ground the petition deserves to be dismissed. It is further contended that the agreement in favour of respondent Nos. 4 to 6 has been executed and work order has also been placed and at the time of filing of the said affidavit-in-reply it is stated in para No. 3.1 that more than half of the work is already executed by the respondent Nos. 4 to 6 and therefore, it would not be appropriate for this Court to exercise this extraordinary jurisdiction under Art. 226 of the Constitution of India and Court should relegate the petitioner to the civil remedy.

[5] It is the contention of respondent Nos. 1 to 3 that after the Government had taken the decision to prepare and supply KHEDUT POTHJI to the village farmers it was decided that KHEDUT POTHJI would have features like using long lasting water-mark paper, especially designed hologram, four coloured title, heat lamination on both the sides of title, Machine numbering in 7 digits and thread-sewing. It is further contended that when the said Civil Application No. 2049 of 1997 was filed to challenge the terms and conditions of the said tendered advertisement the Government was also thinking as to whether it would be possible for the State Government Printing Presses to undertake the said job and secondly the statement was made by the Government Pleader on behalf of the State of cancelling the said advertisement. After disposal of the said petition the Government Printing & Stationery Department undertook the task of preparing and printing the KHEDUT POTHJI as the Company was to supply the same to the farmers on 1-5-1997 but the Government Press could prepare only 25,000 original and 25,000 duplicate KHEDUT POTHJI and they were inaugurated in a function arranged on 1-5-1997. It is further contended that in the second week of September 1997, the overall assessment of the progress in all the Government presses was taken and at that time it was found that part of the job, namely, Text printing 17.72 lakhs copies, title printing 34.32 lakhs copies, lamination 1.38 lakh copies and thread-sewing 00.41 lakh copies was completed. Consequently, the Government arrived at a conclusion that the completion of the work within the stipulated time was not possible and the entire work was of a very technical nature. It was decided to have survey of the private printing presses and therefore, a team consisting of Technical Consultants, 1. Director, Government Printing & Stationery and 2. Dy. Director (Technical) Government Printing & Stationery should verify three major aspects in respect of the private presses, i.e., 1. Capacity of the press, 2. Whether the press will be able to complete the work in the time-limit and 3. Quality of printing. The team was requested to carry out a survey of the permanent printing presses in Ahmedabad. Similarly, the said team was also asked to visit places at Rajkot, Baroda and Bhavnagar. It is the claim of the respondent Nos. 1 to 3 that at that time the said team had visited

petitioner's press and it was found that petitioner was not having the heat lamination machine and machine numbering facilities in seven digits and also the offset machine of the required reel width of 24 inches. Thus, it was contended that the petitioner did not qualify for getting the said job. It is their claim that respondent Nos. 4 to 6 were found qualified. Then they were invited to take up the said job. The labour cost for preparing the said KHEDUT POTHİ in the Government press worked out to Rs. 9.65 and on account of negotiations with respondent Nos. 4 to 6 they have agreed to take up the said work for Rs. 8.95 per copy. It is contended that there is no abuse of public money and there is no playing of any fraud with the public money. It is contended that most of the jobwork is completed by respondent Nos. 4 to 6 and it would not be proper and just to interfere in the said contract at this stage and therefore, the present petition should be dismissed.

[6] The respondent No. 4 has contested the claim of the petitioner by filing affidavit-in-reply. It is contended that the petitioner has not bona fide filed this petition and that it is mala fide filed in order to pressurise the petitioner's competitor in business. It is contended that the petitioner has come at a stage when contract given to respondent No. 4 has been subsequently carried out. It is contended that the petitioner must have known from the news report which appeared in Gujarat Samachar on 11-10-1997 that Government has thought it fit to give the printing work of KHEDUT POTHİ to private agencies as it was impossible for the Government to complete the same in the Government press within the stipulated time. The Government has placed the order with respondent No. 4 on 16th October and equities have changed substantially when this petition came before this Court and it would not be advisable as well as proper to interfere with the action of respondent Nos. 1 to 3 by exercising the powers under Art. 226 of the Constitution of India. It is contended that respondent No. 4 is quite confident to do the job in question. As against this the petitioner has no capacity to complete the said job as per the assessment made by the Government team. It is contended that the rate offered by respondent No. 4 was quite reasonable and there is no illegal spending of Public Exchequer as claimed by the petitioner. It is further contended that the claim of the petitioner that there is a margin of Rs. 2 crores is false and there is no kickback or bribe or sharing of profit with the Government or its officer as alleged by the petitioner. Thus, it is contended that the petitioner's petition be dismissed with costs.

[7] The Respondent Nos. 5 & 6 have also filed their affidavit-in-reply and they have raised the same contention as raised by respondent No. 4 and they also seek dismissal of the petition with costs.

[8] In this petition the petitioner has come before this Court asking this Court to review the action of the respondent No. 1 in giving contract to respondent Nos. 4 to 6

and to cancel the said contract given in favour of respondent Nos. 4 to 6. Respondent No. 1 is a State and not a private individual. Consequently, it does not stand on the same footing as a private person who is free to enter into contract with any person he likes. The action of the State in the matter of awarding of the contract has to satisfy that action and that its action is fair and reasonable, when the contract would either involve expenditure from the State Exchequer or augmentation of the Public Revenue. Consequently discretion in matter of selection of a person for awarding of the contract has to be exercised keeping in view the public interest involved in the selection. Therefore, the Government cannot act arbitrarily at its sweet-will like a private individual and deal with any person it pleases but its action must be in conformity with the standard of norms which are not arbitrary, irrational or irrelevant. It is, however, very well recognized principle that certain nature of "fair-play in the joints" is necessary for an administrative body functioning in an administrative sphere. The principles of judicial review would be applicable to the contractual action of the Government in order to prevent arbitrariness or favouritism. There are inherent procedures in exercising these powers of the judicial review. It is expected to protect the financial interests of the State but at the same time the principles laid down in Art. 14 of the Constitution have to be kept in view. It is settled law that there can be no question of infringement of Art. 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered as a arbitrary power; of course if the said power is exercised for any collateral letter or purpose, the exercise of that power will be struck down. The judicial questioning in administrative matter has been to find the right balance between the administrative discretion to decide the matters and the fairness in the decision. No doubt there are restraint on the judicial discretion. One is the ambit of judicial intervention and the other covers the scope of the Court's ability to quash an administrative decision on its merits. These restraints are hallmarks of the judicial control of the administrative action. The judicial review is concerned with reviewing not merits of the decision but the decision making process itself. In the case of Tata Cellular v. Union of India, AIR 1996 SC 11, the Apex Court has considered all its earlier decisions as well as the decision of English and American Courts and has laid down the following principles regarding the exercising of judicial review in Para No. 113 on Page No. 32 as under :-

"The principles deducible from the above are :

1. The modern trend points to judicial restraint in administrative action.
2. The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

3. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

4. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

5. The Government must have freedom of contract. In other words, a fair-play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

6. Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

[9] At this juncture I would also like to mention that certain cases are cited by both sides but all those cases are in the consonance with the above principles regarding the scope of judicial review. Most of those cases are considered by the Apex Court, in the above case of Tata Cellullar (supra) and on their consideration the above principles are deduced by the Apex Court and therefore, I am not referring to each and every case cited by both the sides. Therefore, bearing the above principles regarding the scope and limit of exercising judicial review, I proceed to consider the case before me.

[10] There is no dispute of the fact that the contract in question involves crores of rupees. It is also admitted fact that the Government of State of Gujarat had initially taken a decision to invite tenders for giving the contract in question and accordingly a public notice inviting tenders was issued by respondent No. 1 on 28-2-1997. It is also an admitted fact that while giving the said advertisement while calling the tenders certain conditions for giving tenders were mentioned in the said advertisement as regards the possessing and owning certain machinery of a specific description. Therefore, a petition was filed against respondent No. 1 to challenge the said action of respondent No. 1 mentioning those conditions and specific machinery in the said advertisement by alleging that those conditions were put with a view to eliminate the competitions and to see that the contract goes to specific printers. When those allegations were made in Petition No. 2049 of 1997 and when the Court was pleased to issue notice to respondent No. 1, the respondent made a statement before the Court

that they will withdraw the said advertisement. Thereafter as per the stand taken by respondent No. 1, the respondent No. 1 had decided to get the said work of printing and preparing KHEDUT POTH I through its own printing press. It is further mentioned by respondent No. 1 in its affidavit-in-reply that as per the said decision 25,000 copies KHEDUT POTH I were printed and prepared and they were distributed in a public function by State Government on 1-5-1997.

[11] It is the claim of the respondent Nos. 1 to 3 that thereafter it was found some time in September, 1997 that the Government printing presses were not in a position to comply and complete the said work of printing and preparing KHEDUT POTH I as required by the State Government within the stipulated time. It is very pertinent to note that in the affidavit-in-reply filed by respondent Nos. 1 to 3 it is not mentioned specifically that the Government printing presses were directed or expected to complete that work on or before a particular date. No material is produced to show that it had taken the decision that the KHEDUT POTH I should be distributed on or before a particular date. It is also very pertinent to note that respondent Nos. 1 to 3 have not produced alongwith their affidavits the reports of the persons who were in charge of the Government presses to show that they were incapable or unable to complete the work of printing of KHEDUT POTH I before the date which was specific while they were directed to complete the work. As a matter of fact the Union of the Workers working in the Government printing presses have passed a resolution saying that the Government printing presses have got the capacity and they could complete the work in question. Therefore, in these circumstances this Court is not in a position to accept the claim of the respondent No. 1 that as the Government printing presses were not in a capacity or position to complete the work in question the Government had to take a decision to go for private printers. In the affidavit-in-reply in Para No. 6.4 it has been said that in the second week of September 1997 overall assessment of the progress of preparing of KHEDUT POTH I was taken and it was found that Government may not be able to cope with the work immediately and forthwith. The relevant portion of the affidavit is running as under :-

"In second week of September, 1997, on overall assessment of the progress, the State Government reviewed the progress in respect of KHEDUT POTH I and it was reviewed that it may not be able to cope with the work immediately and forthwith."

[12] I have quoted the contents of the said Para No. 6.4 in verbatim as it is original appearing. It is very pertinent to note that in that averment also it is not a definite claim that the printing presses would not be in a position to complete work. Unless there was a positive conclusion that the printing presses would not be in a position to complete the work there was no question for going to the private printers. In my opinion it was incumbent on the State Government before going to the private printers

to obtain a report from the Managers of the printing presses to whom the work was assigned, a report stating therein that those printing presses would not be in a position to complete the work in question before the end of December, 1997. The respondent No. 1 State Government has given the work to respondent Nos. 4 to 6 to complete the work before the end of December, 1997. Therefore, in my opinion from the material on record it is not possible to hold that there was justification for the State Government to discontinue the partially carried out work by the Government printing press and to assign it to the private printers.

[13] Even assuming in the favour of the State Government, namely, that the State Government was justified in coming to the conclusion that the Government printing presses would not be in a position to complete the work in question before the end of December, 1997, the next question that arises is as to whether the action taken by the State Government in assigning the work in question to the three printers, i.e., respondent Nos. 4 to 6 is proper and just. At the cost of repetition, it must be stated that as a matter of fact there is no material on record to show that the Government had taken a decision to see that the said work of printing and preparing KHEDUT POTHU was to be completed before a particular date, i.e., 31-12-1997. Now, apart from this if the nature of the work in question is considered then it could not be said that it was of such an emergency that the State Government could not have waited beyond December, 1997. When the Government had initially issued an advertisement calling for tenders for contract for the work in question there was no justification for not following the said norm when it had again decided not to have that work done from the Government Agencies. The State of Government itself has passed a resolution that whenever the State Government has to give a contract involving an amount of more than Rs. 25,000/- the said contract is to be given only by calling tenders. The respondent No. 1 has not shown any material to justify its action not to follow its own decision. From the material on record, I am unable to hold that the work in question was of such an urgency or of such a technical nature that the normal procedure of calling tenders could not be followed.

[14] No doubt the Government has come with a case that the Government has formulated a Committee - a team consisting of Technical Consultants, Director, Government Printing & Stationery and Dy. Director (Technical) Government Printing & Stationery to visit the printing press and to verify the three major aspects, i.e., 1. Capacity of press, 2. Whether the press will be able to complete the work in time-limit, 3. Quality of printing. It is their further case that as per the said decision the said team has visited in all 18 private printing presses in Ahmedabad, 11 presses in Baroda. After the survey report of that Committee-team the respondents Nos. 4 to 6 were invited and negotiations were made with them by the Additional Chief Secretary, Industry;

Secretary, Industries and Secretary, Finance and the work was allotted to them to prepare the KHEDUT POTHU at the price of Rs. 8.95/- as against the assessment of the cost by the Government at Rs. 9.65. It is further case of the respondent Nos. 1 to 3 that the said survey team has visited the present petitioner's press and his claim was considered and he was not found suitable. As against the said claim of the respondent Nos. 1 to 3 petitioner has filed an affidavit stating therein that the said team had not at all visited his press. It is very pertinent to note that the documents which are produced by the respondent Nos. 1 to 3 are consisting only of a tabular form prepared wherein the names of 18 printing press of Ahmedabad and other details regarding the various machineries with printing presses are produced. It is not also quite clear as to what date the visit was paid to each of the printing press, whether any intimation in writing was sent to the printing press about the date and time of the visit of the survey team. It is contended by Haroobhai Mehta the learned Sr. Counsel for the petitioner that it is a practice of the printers to supply information to the Government regarding the various machines they possess and the various work which they undertake with a view to have on the record of the Government their information when they approached for the first time for the purpose of their consideration in allocation of work by the Government and according to him the said statement is prepared from such information supplied by the Printers. No doubt one B. M. Paliwal, Tech. Assistant has filed his affidavit at Page 174 denying the statement of the petitioner that there was no visit to his place. Even in that affidavit it is very particular to note that there is no mention of the date of the visit to his place. It is also very pertinent to note that this man B. M. Paliwal is as a matter of fact working with respondent No. 4 after his retirement from the Government service. This fact has been mentioned by the petitioner in affidavit on 9-12-1997 at Page 183 as well as in the affidavit of Kirtibhai Patel, partner of Krishna Printers at Page 194 as well as in the affidavit of Maneklal Patel, Chairman of Rajkalapa Mudranalaya Pvt. Ltd. at Page No. 192.

[15] It is very pertinent to note that when respondent No. 1 has issued an advertisement for the work in question on 28-2-1997, 23 printers whose names are mentioned in the list at Page 185 had purchased the tender papers. In the natural course of human conduct it was expected of the State Government that while giving the contract in question by negotiations with those 23 persons who had purchased the tender papers would have been made by them. Out of those 23 printers who had purchased the tender papers Sr. No. 1 Akshar Offset Pvt. Ltd., Sr. No. 9 Krishna Printers and Packagers, Sr. 15 Maruti Printers & Sr. 16 Sangam Printery and Sr. 17 Rajkalpa Mudranalaya were from Ahmedabad itself. Respondent No. 5 & 6 were not among the persons who had purchased the tender papers. Now, out of these five printers besides the petitioner and respondent No. 4 who had purchased the tender papers there was no visit to the printing presses of Sr. No. 1 Akshar Offset, Sr. 15

Maruti Printers & Sr. 16 Sangam Printery and there is no consideration of their presses at all as their names do not appear in the assessment list prepared by so-called Survey Committee. It is also very pertinent to note that the 2 printers, namely, Krishna Printers & Packagers & Rajkalpa Mudranalaya have filed their affidavits mentioning therein that as a matter of fact there was no visit by the Survey Committee to their press. Thus, out of the seven printers who had purchased the tender papers three including the present petitioner have filed an affidavit saying that as a matter of fact there was no visit to their printing press by the said Survey Committee and three printers were not visited as per the list of the respondent Nos. 1 to 3. Besides Survey Committee had not considered all the printers who had purchased the original tender form.

[16] Therefore, in view of all the above considerations, the procedure followed by the respondent Nos. 1 to 3 in selecting the respondent Nos. 4 to 6 does not seem to be either reasonable or proper. Even accepting for a moment the claim of the petitioner (sic.) that they can give the contract by negotiations and without calling tenders, the procedure followed by respondent Nos. 1 to 3 in selecting respondent Nos. 4 to 6 is not at all reasonable, proper and just. Even if the respondent No. 1 was not intending to issue advertisement for calling tenders the respondent No. 1 ought to have considered minimum those printers who had purchased the tender papers when they had issued an advertisement calling for tenders in February 1997. Then to consider whether these printers were having the necessary machineries and equipments to complete the said work the printers themselves ought to have been given an opportunity to put forward before the Committee as what equipments and machineries they possess. The visit to the printing presses by Survey Team without issuing notice to the printers and without giving them an idea as for what purpose the team was visiting the printing presses is not either justified or proper. This is particularly so in view of the fact that the claim of the respondents that the Survey Team had visited the printers have been denied by the printers by filing affidavits on record. The question to be considered for giving a contract was to see whether the person taking the contract had the capacity to complete the work in question or not could not be decided without giving that person had the opportunity to show that he has got the necessary equipment to complete the contract.

[17] The documents produced by respondent Nos. 1 to 3 alongwith their affidavit clearly show that respondent Nos. 5 & 6 were not possessing all the equipments which were required for the work in question as claimed by the respondent Nos. 1 to 3. It is also very pertinent to note that respondent Nos. 4 to 6 are printers having the sheds and buildings within one and the same compound and the respondent Nos. 4 & 5 are also former partners. If Annexure 1 given by the petitioner at Page 184 is considered

then it would be quite clear that the present petitioner was having more machinery than the machinery possessed by respondent Nos. 5 & 6. Therefore, if the said Table at Annexure 1 at Page 184, additional affidavit of the petitioner then it would be quite clear that there was no justification of preferring respondent Nos. 6 & 7 to the present petitioner.

[18] The presence of Mr. B. M. Paliwal in the Survey Committee particularly when he was working with respondent No. 4 gives a suspicion about the genuineness of the survey report particularly in view of the fact that the petitioner and other printers have filed affidavit saying that he had not at all visited their places.

[19] Admittedly, the present petitioner had given an application after he came to know that the Government was about to give the work to private printers. It was necessary to call him and to consider his claim; at least at that time he ought to have been informed that his claim could not be considered as he does not possess the necessary equipments as has been now tried to make out in the affidavit-in-reply.

[20] Thus, the material record clearly shows that there was no justification for respondent No. 1 for not following the usual normal practice of calling tenders and giving the contract in question. The material on record also clearly shows that respondent Nos. 1 to 3 had not taken reasonable and proper steps for selecting the proper person for the work in question by not considering all the persons who are eligible for the said work. Then it is also doubtful as to whether the rate at which the work is given to respondent Nos. 4 to 6 of Rs. 8.95 is a reasonable and agreed rate. The petitioner has stated that he is ready and willing to give the same work and same output at the cost of Rs. 5/- and according to him the actual cost of the job will only be Rs. 3/-. No doubt the respondents have stated that as per the assessment of Government the cost of one KHEDUT POTH I was of Rs. 9.65 and the job has been given at the rate of Rs. 8.95/-. But here also it is not quite clear whether the said cost of Rs. 9.65/- is the cost including the price of the material to be used for preparing the KHEDUT POTH I or the cost of printing, cutting, binding and lamination. When the petitioner has specifically averred in the petition that cost for the jobwork assigned to respondent No. 4 to 6 will cost only Rs. 3/- and he would give the said work at the cost of Rs. 5/-, it was incumbent on respondent No. 1 to 3 to put before the Court the necessary detailed material to show that the cost assessed by the Government was of Rs. 9.65/- as claimed in the affidavit-in-reply but no material is put before the Court to justify the said claim. It is the claim of the petitioner that cost which was assessed by the Government at the rate of Rs. 9.65 per KHEDUT POTH I is the cost including the cost of material used in preparing the said KHEDUT POTH I. From the material on record it is not possible for me to hold that claim of him is totally false. Therefore, it is

also doubtful as to whether the rate at which the work in question is given is reasonable and proper rate.

[21] No doubt as stated by all the respondents the majority of the work assigned to the present respondent Nos. 4 to 5 has been completed and therefore, at this stage the relief of cancelling the contract would be of no use.

[22] But in view of all the above discussion and the material on record the conduct of respondent Nos. 1 to 3 in assigning the contract to respondent Nos. 4 to 6 is suspicious and it deserves a thorough inquiry and investigation into the whole affair. From the above discussions it would be quite clear that it is very difficult to hold that there was any justification in not following the normal procedure of calling tender for giving such contract which was involving crores of rupees and it is also not possible to hold that the selection of respondent Nos. 4 to 6 by respondent Nos. 1 to 3 is reasonable, proper and is done by following the normal and usual course. It is also doubtful as to whether the rate of Rs. 8.95 at which the jobwork is assigned to respondent Nos. 4 to 6 is reasonable and proper rate. Therefore, in these circumstances instead of quashing the contract in question I would direct the Accountant General of State of Gujarat to appoint a Committee to hold an inquiry as regards giving the contract by respondent Nos. 1 to 3 in favour of the respondent Nos. 4 to 6. The said Committee should record its findings on the following questions :

1. Whether the respondent No. 1 was justified in not inviting tenders by giving an advertisement for the contract in question ?
2. Whether the procedure followed by respondent Nos. 1 to 3 in selecting respondent Nos. 4 to 6 for the job in question is proper and correct in the circumstances of the case ?
3. Whether there was any giving of kickbacks or undatable dealing in giving the said contract ?
4. Whether the rate of Rs. 8.95 per KHEDUT POTHU given to the respondent Nos. 4 to 6 is the reasonable and proper rate ? If not, what is the reasonable rate ?
5. Whether any action - Civil or Criminal is to be taken against anybody ?

The said Committee should be formed by him within one month from today and the said Committee to hold and complete its inquiry within 4 months from the date of the constituting the said Committee. Without being influenced anyway by the observation made in the judgment the said Committee should record its findings on the above issues and then to make recommendations to the State Government as

per its findings as to whether the full amount to respondent Nos. 4 to 6 should be paid or not and whether any action against any Government employee and public officer of the Government is to be taken by filing proceedings either in the Criminal Court or Civil Court or in the Department. Therefore, in the meantime I will restrain the Government-respondent No. 1 to withhold the payment to respondent Nos. 4 to 6 to the extent of 40% of their bills till the report of the Committee is finally published. The respondent Nos. 4 to 6 be paid the amount out of the amount withheld by this order as per Committee's findings on point No. 4. Rule is thus made absolute accordingly.

FURTHER ORDER

The learned Advocate for the respondent prays for stay of operation of the order passed by this Court today, with a view to go before the Letters Patent Appeal Bench. Taking into consideration the question involved in this matter I am of the view that they must be given an opportunity to go before higher forum. I would, therefore, stay operation of the final order passed by this Court, except stopping of payment to the extent of 40% because if that order is stayed than the very purpose of passing of order is likely to be frustrated. Therefore, I stay operation of the order of this Court, except stopping of payment to the extent of 40% till 10-2-1998. The order passed by this Court to stop payment to the extent of 40% to respondent Nos. 4 to 6 is to remain in force.

Mr. S. N. Shelat, learned Additional Advocate General alongwith learned Advocates for the respondent Nos. 4 to 6 has appeared and he stated that he wants to file a review application before this Court and therefore, the publicity of the judgment and final order in the matter be stayed till the consideration and decision of the said review application. He wanted to file such review application tomorrow itself, but this Court is not available till reopening after the winter vacation. In these circumstances, I am of the view that the party should not suffer on account of the Court's absence. Learned Advocate for the petitioner stated that no such prayer should be granted. However, he stated that the petitioner will not give any publication in respect of the judgment. In the interest of both the sides I direct the office not to issue either ordinary or certified copy of the judgment to any party till 17th January 1998 and it is further directed that the office will not permit any reporter to read and consider the said judgment for publication of the same till the said date. Learned Additional Advocate General states that he will instruct the State Government to abide by the orders and not to make payment to the extent of 40% of the amount to respondent Nos. 4 to 6 as stated in the judgment till 17th January, 1988.

Petition allowed.

