

(2024) 04 KL CK 0223

In the High Court Of Kerala

Case No : Writ Appeal Nos.44,47 Of 2021 Writ Petition (C) .Nos.16921, 23696, 27723 Of 2023

Cherian Varkey Construction Company (Pvt) Ltd Vs

Date of Decision : 11-04-2024

Acts Referred:

Constitution of India, 1950 — Article 13(2), 13(3), 14, 15(5), 19(1)(g), 19(6), 37, 39, 39(b), 39(c), 43A, 43B, 243ZI

Citation : (2024) 04 KL CK 0223

Hon'ble Judges : A.Muhammed Mustaque, J;Shoba Annamma Eapen, J

Bench : Division Bench

Advocate : Santhosh Mathew, Arun Thomas, Jennis Stephen, Vijay V. Paul, Karthika Maria, Anil Sebastian Pulickel, Divya Sara George, Jaisy Elza Joe, Abi Benny Areeckal, K.Gopalakrishna Kurup, K.V.Manoj, M.Sasindran, Athul Shaji, V.M.Krishnakumar, S.Shyam Kumar, Renjith Thampan, Anwin John Antony

Final Decision : Dismissed

Judgement

A.Muhammed Mustaque, J.

1. These matters raise a challenge to government orders that grant preference to labour contract societies up to 10% over the quoted amount of the lowest bidder. These matters are at the instance of private contractors and are arising from writ petitions negating the challenge by the learned Single Judge. Additionally, there are fresh writ petitions contesting the government orders and consequential stipulations in the notice inviting tenders. Since the questions to be considered in all these matters are the same, it is appropriate that all these cases are disposed of by a common judgment.

2. The Government of Kerala, by an order dated 13/11/1997 decided to accord preference to labour societies. In that Government order, the maximum value of the work at a time that can be undertaken by 'A' class society is for an amount of Rs.50 lakhs, 'B' class society is Rs.30 lakhs and 'C' class society is Rs.10 lakhs. The labour society will have a preference for the award of the work if their tender is up to 10% of the lowest tender. It outlined eligibility conditions such as a

minimum 50 labourers as actual members of society and sympathisers up to 10% of the actual membership. Subsequently, through another order dated 19/3/2004, the Government stated that labour societies are not eligible for any price preference for the contract administered by the Public Works Department (PWD). Thereafter, another order of the Government dated 2/8/2008 restored the priority benefits of the Government order dated 13/11/1997 to the Uralungal Labour Contract Co-operative Society Ltd. (hereinafter referred to as "ULCCS") without any restriction on financial limits. Furthermore, the PWD Department issued another order dated 19/3/2020 allowing labour contract societies subject to class of registration, to participate in tenders floated by the Government with eligibility for price preference up to 10% over the quoted amount of the lowest bidder. On 4/11/2020, the Co-operative Department of the Government issued another order on a request from the Managing Director of ULCCS to undertake all types of work on preferential treatment. Accordingly, the Government granted sanction to ULCCS to have preference of work in the light of government order dated 13/11/1997. The Government by an order dated 13/6/2023 exempted ULCCS from producing eligibility certificates, in the light of the fact that the above society has been recognised as an accredited agency by the Government.

3. In the matters pertaining to writ appeals, the challenges were raised against these orders. The learned Single Judge negated the challenge, holding that the preference is given to the ULCCS as a matter of State policy and does not involve any infringement of fundamental rights in this matter. Some of the writ petitions raising similar challenges have also been tagged. These writ petitions raised additional challenges to the subsequent government orders that modified the PWD manual to ensure preference for labour societies, especially ULCCS.

4. We heard the matter in detail. We heard Shri Santhosh Mathew who appeared for the appellant in the writ appeals and for the writ petitioner a Builders Association of India and others in W.P.(C).No.27723/2023 and connected writ petitions. We heard Shri Haris Beeran, who appeared for the writ petitioner in W.P (C) 23696/2023. We also heard the learned Advocate General Shri K.Gopalakrishna Kurup and Shri M.Sasindran who appeared for ULCCS. While the writ petitions and appeals pertain to certain awarded and proposed contracts, we will not delve into the specifics of each contract, as they all hinge on the substantial challenge raised against the government order giving price preference to ULCCS in the government order.

Submissions:

5. The learned counsel, Shri Santhosh Mathew, submitted that the government orders are arbitrary and illegal. Firstly, on the ground that the fundamental rights of private contractors have been violated by executive orders. According to him, fundamental rights cannot be violated through executive orders as executive orders are not law as prescribed under Articles 13(2), 13(3), 14, 15(5) and 19(6) of the Constitution. Expanding on his argument, he highlighted the spoils system and submitted that State policy to extend the benefit to a particular labour

society, namely, ULCCS is a part of the spoils system which is against the egalitarian ideals enshrined in the Constitution. He asserted that providing price preference would drain the public exchequer without benefiting the public at large. He also emphasized that granting such preferential treatment to a labor society compromises public interest. He also relied on the provisions of the Essential Commodities Act and argued that executive instructions issued under the Essential Commodities Act to secure an equitable distribution of goods at fair prices are based on the plenary power issued under the Act and in the absence of any legislative mandate, executive instructions cannot regulate or prohibit the production and supply of goods and services. The learned counsel further pointed out to the various provisions of the Kerala Co-operative Societies Act and submitted that provisions under the Co-operative Society do not allow any unlimited price preference but only contemplate providing financial assistance for deserving individuals after taking into account their financial weakness through loans and advances. We shall advert to the various precedents cited by the learned counsel at appropriate stages. The learned counsel for one of the writ petitioners, Shri Haris Beeran argued that government orders contravene Articles 19(1)(g) and 19(6) of the Constitution. According to him, fairness as emphasized in Article 14 of the Constitution is an essential ingredient. Treating contractors of the same class disparately constitutes unfair treatment and is against the public interest, and thus violative of Article 14. According to him, a responsible Government is bound to create a level playing field for all builders, ensuring principles of fairness and equity in competition. The learned Advocate General submitted that the Government policy cannot be subjected to judicial review. It is submitted that no one has a fundamental right to obtain a contract from the Government. The Government is like any other awarder of the contract and can award the contract based on sound policies to advance common interest. The learned counsel Shri M.Sasindran appearing for ULCCS submitted that the above society was established in the year 1925. It is contended that the labourers are the members of the society and also submitted that the Government holds 84.7% shares of the society. According to the learned counsel, price is not a determining factor in assessing the fairness of the award of the contract; rather the broader interest of the State plays a crucial role as a decisive factor to determine fairness. He elaborated on the premise of socialist ideology as proclaimed in the Constitution, and submitted that fair distribution of assets and wealth of the State to reach out to a large section of the Society is the basis for preferential treatment given to labour society. He emphasized that members of the labour society are the real beneficiaries of the price preference, benefiting a large number of workers engaged by them. The learned counsel highlighted that nearly 14,000 labourers and staff are the direct beneficiaries of the work undertaken by the labour society. It is argued that unlike the individual benefits accrued to private contractors, the benefits of work undertaken by the labour society are distributed among labourers, who constitute the primary members of the society.

Discussions:

I.The Government and awarding of contract:

6. The Government is free to enter into a contract with various entities, individuals, co-operative society, etc. Normally the Government cannot carry out its functions of undertaking works which are done by private parties. The Government will have to entrust a range of the work undertaken by them through private hands while scheming the public function. Instead of public servants implementing Government projects, the Government engages private parties through contracts to perform the work. However, outsourcing its work to private players often faces legal challenges, as the process itself may be flawed for any reasons sustainable under the Constitutional parameters. Although the Constitution stipulates that all contracts made in the exercise of executive power shall be executed on behalf of the President or Governor, it does not specify the manner in which this power should be exercised by the executive. Generally, the legality of public-private arrangements through contracts made by an executive is ensured through the principles of executive accountability to the public and the Constitution. The relationship between the public and private sectors is normally assessed through the scale of accountability, premised to eschew arbitrariness. However, in this case, an argument has been raised that the executive has no power to curtail the fundamental right to engage in contract through executive orders, except through the plenary power of the legislation. Shri Santhosh Mathew, learned counsel for the appellants and for some of the petitioners relied on the following judgments: *Bijoe Emmanuel v. State of Kerala* [(1986) 3 SCC 615] paras.9 to 14, 16 and 17; *K.S. Puttaswamy v. Union of India*, [(2019) 1 SCC 1] para.270.6, 498-504; *Raju Sebastian and Others v. Union of India and Others* [2019 (4) KHC 615] para.12 and 13 and 20; and *Bishambar Dayal Chandra Mohan v. State of UP*[(1982) 1 SCC 39]; to argue that executive instructions or order cannot curtail fundamental rights. He submitted that in the absence of law enacted by the Legislature, such restrictions cannot be imposed on fundamental rights.

7. This argument proceeds on the premise that the freedom to carry out any occupation or trade under Article 19(i)(g) of the Constitution also extends to obtaining a contract from the Government. This, according to us is a wrong notion on fundamental rights. The freedom to pursue any occupation or business does not automatically grant the right to demand the award of a contract. The right to demand a contract is distinct from the right to remove barriers to engage in trade or business. A right presupposes legal interest with a corresponding duty on the Government. The jural postulates as mentioned above are imminent in a claim based on fundamental rights as well. The Constitution nowhere acknowledges such rights of a contractor. The Government also has equal freedom in the matter of awarding contracts like ordinary citizens. This freedom emanates from executive power. However, this freedom is circumscribed by constitutional accountability, preventing arbitrary actions. The steer of this

restriction of choice is founded on Article 14, making the executive accountable to the Constitution and the public. Nonetheless, this accountability should not be misconstrued as implying that citizens have a fundamental right to demand a contract from the State. Article 19(6) of the Constitution contemplates law imposing restrictions on fundamental rights conferred upon the citizen. The freedom to carry out trade or business is not synonymous with demand for the award of contract as a matter of right to claim from the Government. In every right, there exists a corresponding relationship, which in turn brings forth the axis of rights and duties. The process of awarding contracts is intertwined with the State's authority, granting it the legal capacity to undertake certain actions, such as awarding contracts in this context. Article 19(6) is regarding curtailing the freedom of the citizen rather than curtailing the power of the executive, as latter's freedom is curtailed only within the sphere of accountability. Therefore, the law as understood in Article 19(6) is the law relating to the law imposing restrictions on the fundamental rights of the citizen and not related to the power of executive authorities' freedom to advance public function. In *Achuthan v. State of Kerala* [1959 KHC 322] the Apex Court held that no one has a fundamental right to claim a contract from the State and it is entirely permissible for the State to enter into contracts, much like a private party, to select individuals of their choice to fulfill the contracts they wish to undertake. Not being awarded a contract should not be seen as a denial of the right to engage in trade or business. In *Krishan v. Government of Kerala* [1997 KHC 76], also it was held that although a citizen has a fundamental right to carry on trade and business, he has no right to insist upon the Government or other individuals for doing business with them.

8. Citizens do not have any fundamental right to demand a contract from the State. Fundamental rights are acknowledged rights of citizens to express their will in a sphere of their choice. The State's sphere of activity is limited by the Constitution including its engagement in trade, commerce, and award of contract. The State's freedom to contract and to award the contract is not the same as the fundamental right of a citizen to engage in trade and occupation. Therefore, the authority of the State to allocate contracts, according to its discretion, does not necessitate legislation by the legislature, as it does not amount to curbing the freedom of citizens. It is only subjected to those limitations as prescribed under the Constitution. That would become more restrictive when the State engages private entities to carry out its functions, as it must treat all such entities without discrimination. Article 14 of the Constitution does not contemplate equality of unequals. The labourers who lack the resources to compete with affluent individual contractors, forming a co-operative society to compete with such contractors who have all wherewithal, cannot be considered as belonging to the same category. Article 14 acts as a safeguard against arbitrary power and discrimination, thereby holding the executive accountable to both the Constitution and the public. Whether the State has any justifiable reason to treat labour society differently will also have to be discussed here.

9. Decisions regarding executive orders that grant price preference to co-operative societies must be made based on the executive's accountability to the Constitution and the public.

II Price Preference to the labour society and challenge thereon.

10. It is apparent that granting price preference to labour society would result in economic loss to the State. Highlighting such apparent arbitrariness in such a decision and underscoring the discrimination by treating private entities differently, the learned counsel for the appellants-writ petitioners (contractors) argued that equality of law would imply the absence of any special privilege in favour of any individual. It is their argument that Article 14 forbids discrimination between persons who are substantially in similar circumstances and conditions. According to them all contractors, as far as the Government stand on the same footing, require equal protection from the State while considering the award of the contract. It is further argued that by State policy, a monopoly will be created in favour of one society at the cost of exchequer. It was submitted that when all other factors are equal and competing parties are also equal, the standard rule is that the lowest bid should be accepted. Placing reliance on *Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.*, [(2007) 8 SCC 1], the learned counsel further elaborated their argument and submitted that level playing field is important to consider under Article 19(i)(g) therefore, co-operative societies as well as private contractors have to be treated equally. Also placing reliance on *Karnataka State Industrial Investment & Development Corpn. Ltd. v. Cavalet India Ltd.*, [(2005) 4 SCC 456] it is submitted that fairness and reasonableness are the dominant consideration for the Government while awarding the contract. The learned counsel Santhosh Mathew also placed reliance on the judgment of the Apex Court in *Karnataka State Industrial Investment & Development Corporation Limited v. Cavalet India Ltd. & Ors.* [(1999) 1 SCC 492]; *Maa Binda Express Carrier v. North-East Frontier Railway*, [(2014) 3 SCC 760]; *O. Janardhan Reddy v. Spl. Dy. Collector*, [(1994) 6 SCC 456] to hold the argument that the decision-making process of the executive must be reasonable, and any relaxation must be bona fide to actuate public interest. The learned counsel for the appellants-writ petitioners also relied upon the judgment of the Apex Court in *Assn. of Registration Plates v. Union of India*, [(2004) 5 SCC 364]; and argued that the State's freedom cannot be used as a cloak for conferring benefit to a few and creation of a monopoly would result in inequalities in opportunities.

III The State policy on Distributive justice and Economic justice:

11. The concept of the welfare State, as envisioned by the Indian Constitution, places the responsibility on the State to ensure the welfare of its citizens. This is possible only by providing adequate means of livelihood. The preamble ensures its citizens not only political and socialist justice but also economic justice.

12. During the discussions in the Constituent Assembly regarding the economic

order of the country, Shri Brajeshwar Prasad suggested that the future of India must be secured in socialism. According to the learned member, he believed in a socialist order and socialism means an egalitarian socialist order. The learned member said that equality of opportunity without equality of income is a mere shibboleth. Though the expression "socialist" was not initially included in the preamble, it was introduced through the Constitution 42nd Amendment in 1976. The concept of socialism is not explicitly defined in the Constitution, but these principles are often invoked to make the directive principles more comprehensive and practical. The relevant portion of the constituent assembly discussion is reproduced here:

"Shri Brajeshwar Prasad: I have laid stress on another word. I refer to the Word 'Socialist'. I believe that the future of India is in Socialism. I believe in a Socialist order. When I say that I believe in a socialist order. I do not mean that I accept the Marxian interpretation of History. I do not believe in class war nor in the materialist Philosophy which is so widely prevalent among the socialist circles. By socialism I mean an equalitarian social order. Equality of opportunity without equality of income is a mere shibboleth. I believe that in India we have to evolve a new type of socialism consistent with the tradition and history of this land. The theory of materialism is a well-knit dogma. I think that we people in India have not to learn anything from Germany on philosophical speculation."

13. In *D.S. Nakara v. Union of India* [AIR 1983 SC 130] Desai, J. said:

"The principle aim of socialist State is to eliminate inequality and status and standards of life. The basic frame work of socialism is to provide a decent standard of life to the working people and specially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian socialism."

14. The welfare State canalises its function to fulfill the aspiration of the citizen in accordance with Constitutional principles and philosophy. *L. C. Golak Nath and Others v. State of Punjab and Another* [1967 KHC 740] the Apex Court spoke about the preamble:

"It contains in a nutshell, its ideals and its Aspirations. The preamble is not a platitude but the mode of its realisation is worked out in detail in the Constitution."

15. Article 39(c) outlines the guiding principles for the State to prevent wealth concentration and promote means of production for the common good. Additionally, Article 43A emphasizes worker participation in industrial management, while Article 43B refers to the promotion of co-operative society by the State. These constitutional provisions aim to shape the economic structure by enhancing production capabilities and ensuring equitable wealth distribution. Another aspect of economic policy aims to alleviate the sense of injustice, as those at a disadvantage would fear that in the economic structure of the State,

those who are having an advantage alone would benefit from the State. When formulating economic or social policies, the State's primary concern is the pursuit of justice. This concept of justice hinges on balancing advantages and disadvantages within society. John Rawls in his seminal book *A Theory of Justice* (Rawls 1971) and *Political Liberalism* (1993) proposed two principles of justice.

? Each person has an equal claim to fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

? Social and economic inequalities are to satisfy two conditions: (a) They are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and (b), they are to be to the greatest benefit of the least advantaged members of society.

This gave rise to the idea of distributive justice, which focuses on the equitable distribution of resources across diverse groups. This idea is against the concentration of wealth on individuals. It promotes the distribution of wealth to impact community interest.

16. Peter Vallentyne in his article *Distributive Justice* argues on prioritarianism as a pattern of distribution. Available @ <https://philarchive.org/rec/VALDJ> , last visited on 11/4/24

"Pure egalitarianism is concerned with the purely comparative concern of giving people equal shares, whereas prioritarianism is concerned with making people's lives go better, with greater importance assigned to lives that are going less well."

17. In *Article Justice* by Arnold F Adolf Mckee *Review of Social Economy*, Arnold F Mckee, XXXIX VOLUME, 1981 he explains distributive justice as:

"Turning now to distributive justice in my preferred sense and beginning with the stage of basic concept, I take this as requiring a fair sharing out of community benefits and burdens among members. When a group of individuals composes a communion, properly speaking, (cf., a labor union and a crowd at an accident), certain common goods and charges arise, and distributive justice calls for equivalence between what is due to or from each and what is received or contributed. In the modern state what are primarily in question in the economic domain are public and merit goods and the means of financing them. At bottom, distributive justice is a form of virtue, of course, concerned with human behavior, even if, as in all talk about justice, we tend to focus in a natural way on the reflection in practical affairs of behaviour. Accordingly, the obligation to ensure distributive justice falls primarily on those in authority; citizens for their part have the duty in social justice (its origin as "legal" justice makes the point clearer) of complying with the just decisions of the government and its executive arm."

18. As our preamble proclaims, justice encompasses both social justice and economic justice. It promises transformation through universally acknowledged measures. Social choice theory and welfare economics serve as a method of preference to reflect the values of social change. American economist Kenneth J. Arrow explored social choice theory. This theory is related to translating individual preferences into the preferences of the group. Our Constitution prioritizes collective transformation over individual preferences. This group transformation is not only confined to the transformation of socially and economically marginalized communities on social indices but also empowering economically disadvantaged groups. Economic justice is rooted not in social criteria but rather in addressing economic disadvantages. Amartya Sen, an Indian economist, in his article "Social Choice and Social Welfare" reflected on Arrows view and states about social choice theory for welfare economics as follows:

"The study of social choice as a formal discipline first came into its own in the late eighteenth century, when the subject was pioneered by French mathematicians, particularly J. C. Borda and Marquis de Condorcet. The intellectual climate of the time was greatly influenced by the European Enlightenment, with its interest in reasoned construction of a social order, and its commitment to the creation of a society responsive to people's preferences."

19. There may be various ideals to comprehend justice and while the Courts are not experts in defining ideals, they are experts in holding that the Constitution recognizes such ideals in defining justice. Another aspect of justice is the dimension of the welfare State. The concept of the welfare State itself embodies economic justice. Article 39, Directive Principles of State Policy are considered fundamental in the governance of the Country. Article 39B specifies that the ownership and control of material resources of the community are distributed to subserve the common good. Rawls' concept of justice as fairness revolves around regulating social institutions for collective benefit and for the advantage of all for cooperation. Rawls' argument is that "a just system must generate its own support. This means that it must be arranged so as to bring about its members the corresponding sense of justice, an effective desire to act in accordance with rules for the reasons of justice Theory of justice, The concept of justice in political economy chapter V, Page 261"

20. In *Dalmia Cement (Bharat) Ltd. v. Union of India*, [(1996) 10 SCC 104], the Apex Court opined as follows in para.11 and 13.

11. The Preamble of the Constitution is the epitome of the basic structure built in the Constitution guaranteeing justice — social, economic and political — equality of status and of opportunity with dignity of person and fraternity. To establish an egalitarian social order, the trinity, the Preamble, the Fundamental Rights in Part III and Directive Principles of State Policy (for short, 'Directives') in Chapter IV of the Constitution delineated the socio-economic justice. The word 'justice' envisioned in the Preamble is used in a broad spectrum to harmonise individual

right with the general welfare of the society. The Constitution is the supreme law. The purpose of law is realisation of justice whose content and scope vary depending upon the prevailing social environment. Every social and economic change causes change in the law. In a democracy governed by rule of law, it is not possible to change the legal basis of socio-economic life of the community without bringing about any corresponding change in the law. In interpretation of the Constitution and the law, endeavour needs to be made to harmonise the individual interest with the paramount interest of the community keeping pace with the realities of ever-changing social and economic life of the community envisaged in the Constitution. Justice in the Preamble implies equality consistent with the competing demands between distributive justice with those of cumulative justice. Justice aims to promote the general well-being of the community as well as individual's excellence. The principal end of society is to protect the enjoyment of the rights of the individuals subject to social order, well-being and morality. Establishment of priorities of liberties is a political judgment.

13. Social justice is the comprehensive form to remove social imbalances by law harmonising the rival claims or the interests of different groups and/or sections in the social structure or individuals by means of which alone it would be possible to build up a welfare State. The ideal of economic justice is to make equality of status meaningful and life worth living at its best removing inequality of opportunity and of status — social, economic and political.

21. In Natural Resources Allocation, In re, Special Reference No. 1 of 2012, [(2012) 10 SCC 1]

113. Finally, reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b). The said Article enumerating certain principles of policy, to be followed by the State, reads as follows:

"39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

(a)***

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;"

The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(b) mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on "distribution" built into the Constitution. But the restriction is imposed on the object and not the means. The overarching and underlying principle governing

"distribution" is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word "distribution". Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately subserve the "common good".

"119. The norm of "common good" has to be understood and appreciated in a holistic manner. It is obvious that the manner in which the common good is best subserved is not a matter that can be measured by any constitutional yardstick—it would depend on the economic and political philosophy of the Government. Revenue maximisation is not the only way in which the common good can be subserved. Where revenue maximisation is the object of a policy, being considered qua that resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable methods, though not the only method. Where revenue maximisation is not the object of a policy of distribution, the question of auction would not arise. Revenue considerations may assume secondary consideration to developmental considerations."

22. It is in this background the role of the co-operative societies and their importance in the distribution of ownership and control of material resources preventing concentration of wealth have to be understood.

IV. The earliest co-operative movement and its economic ideals:

23. In 1844 Rochdale pioneers in Lancashire in England showed the world how ordinary people could become powerful through co-operative movement. The labourers who organized the Rochdale Pioneers, 150 years ago, were people suffering from the social dislocations of the industrial revolution. They struggled to survive periodic unemployment, low pay, unhealthy cities, and dangerous workplaces. They had no social benefits—no insurance or health care or pensions from their employers or from the state. They were dependent on merchants who were sometimes unscrupulous, who exploited the helplessness of the poor by selling at high prices, by adulterating goods, or by trapping them with offers of credit. And the Rochdale labourers faced these challenges in a time and place when they had no vote, no democratically elected government to represent them, no interventionist state to protect them. Their answer to daunting social problems was a special kind of self-help: mutual self-help, in which they would help themselves by helping each other. It was a small start to a large international movement (The Meaning of Rochdale: The Rochdale Pioneers and the Co-operative Principles by by Brett Fairbairn , viewed from <https://ageconsearch.umn.edu/>)

24. The Co-operative movement embodies a community endeavor. Part IX B of the Constitution, introduced by the 97th amendment, embodies the realization of an economic model aimed at regulating the distribution of wealth. The principles of co-operative movement encompass self-help, self-responsibility, democracy, equality, equity and solidarity. Article 243ZI of the constitution reads thus:

'Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning.'

These principles ensure shared community benefit. In the post-independence era, cooperative development received a boost, with cooperatives being given a vital role in the various plans formulated by the Planning Commission. The First Five Year Plan (1951-56), outlined in detail the vision of the cooperative movement in India and the rationale for emphasizing cooperatives and panchayats as preferred organizations for economic and political development. The Plan emphasized the adoption of the cooperative method of organization to cover all aspects of community development. It provided for the setting up of urban cooperative banks, industrial cooperatives of workers, consumer cooperatives, housing cooperatives, diffusion of knowledge through cooperative training and education and recommended that every government department follow the policy of building up cooperatives. https://www.cooperation.gov.in/sites/default/files/2022-12/History_of_cooperatives_Movement.pdf

25. These executive orders are grounded in well-established principles and economic policies of the Government, with the backing of the Constitution. Its validity is not tested on the basis of loss or gain to the public exchequer. The Court is not the master of governance but rather the State is responsible for shaping its policy in line with constitutional objectives. If the distribution of assets and wealth is intended to benefit a co-operative society, any monopoly created thereon cannot be said to be a disadvantage to the group left out, as the group was left out based on a fair dealing on the anvil of economic policy of the State. The revenue gain or revenue loss is not the criteria upon which a policy should be tested. The court cannot interfere with the policy except in cases where it results in manifest arbitrariness. If the State has adhered to economic policies consistent with constitutional objectives, it cannot be questioned through judicial review. The labourers of co-operative society belonged to the least advantaged group, while an individual contractor belonged to the advantageous distinct group. Although both groups may share the same subject in pursuing business goals, if the State can identify distinction, not related to the subject, but differentiation on a larger goal; they become distinct in the eyes of the Constitution. There cannot be any symmetrical claim based on the subject of the contract awarded as claimants are asymmetrically placed in terms of state policy. State policy to promote a co-operative society (rather it is used as a means) but to promote the underlying community interest of the co-operative society. The learned author Michelle Maisese in his article on distributive justice Review of social economy Arnold F Mckee, XXXIX Volume 1981 refers as follows: "some suggest a system of competition that includes safety nets for those who cannot compete. This sort of system combines the principle of equity with that of need. It attempts to reward people for their productivity at the same time that it

ensures their basic needs are met” Review of social economy Arnold F Mckee, XXXIX Volume, 1981. The focus of the executive order, though ultimately related to the award of the contract, is essentially a focus to promote community interest consistent with the policies of the welfare State. Therefore, individual contractors cannot claim parity of treatment with co-operative entities. The Court cannot find any arbitrariness in government having such policies in pursuit of the larger well-being of the community. In the absence of any fundamental right that can be claimed by the individual contractors, the rest is a matter of State policy and where no parity can be claimed as the object of differentiation is not in recognising individual interest but rather the larger community interest.

In the light of the discussions, we find no reason to interfere in the matter. Writ appeals fail and writ petitions are accordingly dismissed.