

(2013) 01 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 9198 of 2012 (O and M)

M/s. Punjab Construction Company	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)

Citation : AIR 2013 P&H 67

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Vishal Gupta, for the Appellant; J.S. Puri, Addl. A.G. Punjab and A.S. Mainaise, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioner is a partnership firm carrying on a business of civil contractors, builders and suppliers. The case set up by it is that respondent No. 3, by way of e-tender, issued notice inviting tender for the work relating to Majitha Division, UBDC, Amritsar in respect of Irrigation Department, Punjab for earth work evacuation i.e. burn cutting and silt clearance from the canals/distry . Respondent No. 4 called for nine tenders in which the petitioner participated by depositing earnest money and submitted its bid online as per the e-tender process. The bid of the petitioner firm was duly registered and was given the tender after e-payment. It is alleged that the petitioner firm had duly submitted his bid below the CSR common schedule of rates 2010 but to their surprise, their bid was not even considered by the respondents in view of instructions dated 11.7.2011 issued vide" notification of the Government of Punjab, Department of Co-operation (Co-operation I Branch), which provided certain concessions to the Co-operative Labour and Construction Society for a further period upto 14.8.2014. According to the instructions dated 11.7.2011 all unskilled works upto any value and skilled works upto limit of Rs. 30 lacs for each works of all the Superintending Engineers of the branches of PWD shall be

allotted to these societies only by way of tenders within the common schedules of rates fixed by the Department and upto the capacity these societies can get the work executed. In case these societies fails to tender within the ceiling rates so fixed, the work may be executed by inviting open tenders from both the contractors and the societies. The works upto Rs. 30 lacs for which tenders were called by the process of e-tendering, in these tenders only Co-operative Labour and Construction Societies was allowed to compete. The only submission made by counsel for the petitioner is that the preference given to the Co-operative Labour and Construction Societies is a monopolistic trait which violates the freedom of trade and commerce guaranteed under Article 19(1)(g) of the Constitution of India.

2. After the issuance of notice, separate replies have been filed on behalf of respondent Nos. 1, 3 & 4, respondent No. 2 and respondent Nos. 5 & 6. Their common case is that certain concessions have been provided to Co-operative Labour and Construction Societies, registered in the State of Punjab since, 1957 by way of different notifications issued from time to time. The impugned notification dated 11.7.2011 has also been issued in continuation of the earlier notification dated 13.8.2009 vide which the concession has been extended upto 14.8.2014 . It is alleged that the aim and object of the concession is to promote the growth of the Co-operative Labour and Construction Societies in various fields of economic activity. It is also alleged that a similar notification was earlier issued by respondent No. 2 on 15.8.1999 vide which similar concession was extended on the recommendations of the Labour Advisory Board, which has been upheld by a Division Bench of this Court in the case of Maya Construction Company and Others Vs. State of Punjab and Others, and another similar Civil Writ Petition No. 6294 of 2005 titled as "Jaskaran Singh v. State of Punjab and others" in which policy of the State Government giving concession to Cooperative Labour and Construction Societies was challenged, was also dismissed by Division Bench of this Court on 1.9.2008 and similar notifications have already been upheld.

3. We have heard learned counsel for the parties and have perused the record. The petitioner is aggrieved only against the concession having been given to the skilled works upto the limit of Rs. 30 lacs to the Co-operative Labour and Construction Societies, alleging it to be discrimination and violation of fundamental guarantees extended under Articles 14 and 19(1)(g) of the Constitution of India.

4. It would be relevant to refer to the Division Bench judgment of this Court in the case of Maya Construction Company and Others Vs. State of Punjab and Others, in which the petitioners, who were enlisted and registered with Municipal Councils, S.A.S. Nagar (Mohali) and Barnala, had challenged notification dated 10.9.1999 by contending that reservation of all unskilled works without any monetary limit and skilled work up to the limit of Rs. 10 lacs for Co-operative Labour and Construction Societies is in violation of their fundamental right of

equality guaranteed under Article 14 and also their right to trade and business guaranteed under Article 19(1)(g) of the Constitution of India. In the said case, the Division Bench approved the earlier decision of the single Bench of this Court in the case of " Surinder Singh Vs. State of Haryana and Others, in which similar preferences to the Cooperative Labour and Construction Societies were given and the Court had observed as under:

Where the Public Works Department of the State issued a direction by way of a notification stipulating that all unskilled works up to any value and skilled works up to the limit of Rs. 2 lacs for each work should be allotted to the Co-operative Labour and Construction Societies by way of tenders within the ceiling rates fixed by the competent authority, the notification could not be said to be violative of Article 14 on ground of discrimination or on the ground that it created monopoly in favour of such societies to the exclusion of individual private contractors. If the Government, in the light of their experience of dealing with the private contractors, took a policy decision to prefer the cooperative societies for execution of their works, it cannot be held that there was any discrimination. Also, the impugned notification does not create any monopoly in favour of the societies. It confers certain concessions on them. If the Societies fail to tender or do not accept the work within the ceiling rates, option is left with the authorities concerned to get them executed by inviting open tenders from both the contractors and the societies. All that the impugned notification provides is that the societies are given an opportunity to execute the work within the ceiling rates fixed by the authorities but if they do not agree to do so, then the matter becomes open to all and the works can be got executed by inviting open tenders from both the contractors and the societies. It is not that the private contractors are altogether excluded from consideration. Thus, the notification does not affect the right to carry on the trade by private contractors. The classification between the Co-operative Societies "and the private contractors is reasonable one and has a direct nexus with the object intended to be achieved.

5. The Division Bench in the case of Maya Construction Company and Others Vs. State of Punjab and Others, made the following observations:-

In our opinion, the judgment of the learned single Bench in Surinder Singh Vs. State of Haryana and Others, which" is in consonance with the ratio of the three judgments referred to hereinabove, represents, the correct position of law and policy framed by the government to extend certain concessions to the Co-operative Labour and Construction Societies.

In view of the above discussion, we hold that notification dated 10.9.1999 does not suffer from any constitutional or legal infirmity.

Thus, the matter is no more res integra I to take a view different from the view taken by the Division Bench in the case of Maya Construction Company and Others Vs. State of Punjab and Others, and as such the present writ petition is found to be without any merit and hence the same is hereby dismissed though

without any order as to costs.