

(2001) 02 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 7111 of 2000

President, M/s Shivaji Multipurpose Co-operative Society
Limited

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 91 CLT 524 : (2001) 1 OLR 395

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Mr. Subha Bikash Panda, for the Appellant; A.G.A., for the Respondent

Judgement

1. Heard Mr. S. B. Panda, learned counsel for the petitioner and learned Additional Government Advocate for the opposite parties.

2. The petitioner, a Co-operative Society, has prayed for quashing the Notice under Annexure-1 and Clause-3 of item No. 4 of Tender Notice No. 2 under Annexure-3 series. The petitioner has banked upon the Resolution issued by the State Government in Department of Co-operation, which has been published in the Orissa Gazette dated 4th. August, 1995, as per Annexure-4 and has submitted that item No. 4(3) of Annexure-3 runs contrary to the aforesaid Government Resolution. The relevant portion of the Resolution is extracted hereinbelow :--

"3. (d) That while purchasing their respective required material as aforesaid, the concerned departments of the Government and all other bodies under the Government Departments and the Government Undertakings, on the basis of the aforesaid directives of the Central Government, vis-a-vis under the continuing provisions of the State for last many years, shall extend benefits such as 5% rate preference, exemption from Earnest Money and Security deposits etc. to the State Consumers Co-operative Federation and to other Central and Primary

wholesale Co-operative Stores."

In the Resolution it has been stated that preference shall be given to the various Co-operative Societies in the matter of supply of articles to the various Government Departments. In item No. 4(3) of Annexure-3, it has been indicated that "in accepting the tenders, preference will be given to manufacturers". Learned counsel appearing for the petitioner submits that this being in contravention of the Resolution under Annexure-4 should be quashed. Similarly, the learned counsel for the petitioner submitted that in Tender Notice No. 2, tenders were invited from "bona fide manufacturers/authorised dealers/suppliers for supply of stationery articles and Press materials". The learned counsel for the petitioner submits that by excluding the "Co-operative Societies", illegality has been committed.

3. In the counter filed on behalf of opposite parties 1 to 3, reliance has been placed upon the Industrial Policy Resolution of the year 1996, (in short, "I. P. R., 1996"). In paragraphs-20.2 and 204 of I. P. R , 1996, it has been indicated that preference shall be given to the local small scale industrial units. It is further stated in the counter that there appears to be some confusion between the two Resolutions and clarification has been sought for from the Government.

4. So far as notice under Annexure-1 is concerned, by inviting tenders from manufacturers/authorised dealers/suppliers, it cannot be said that the Cooperative Societies have been excluded. A Cooperative Society may be a manufacturer, supplier or an authorised dealer and as such, there is no prohibition for a Cooperative Society from submitting the tender pursuant to the Tender Notice under Annexure-1. As a matter of fact, it appears that the present petitioner has also submitted its offers in accordance with the aforesaid notice.

5. So far as the contention relating to giving preference to the Cooperative Society is concerned, the submission of the petitioner stands on a firm footing. There is no doubt that under Annexure-4, a Resolution of the Government has been published indicating the policy of the Government to give preference to Cooperative Societies. At the same time, it cannot be denied that under the relevant Industrial Policy Resolution some incentives are meant to be given to small scale industries located inside the State. Paragraph-20.2 of the I. P. R., 1996 is quoted hereunder :--

"20.2. Purchase from "exclusive list" :

A list of store items reserved for exclusive purchase from industries located in the State may be prepared from time to time keeping in view the production capacity of the local industries and requirement of State Government Departments and agencies under the control of the State Government. The latter will have to purchase their requirements of those items from local industries with ISO/ISI/EPM certification for the items only by inviting competitive quotations from such industries. Efforts will be made to distribute the purchase order equitably among the participating industries prepared to accept the lowest

negotiated rate keeping in view their capacity. Local small scale industrial units will enjoy a price preference of 5% and Khadi and village industrial units including handloom and handicrafts over local medium/large industries. Any local small scale industrial unit having ISO-9000 and ISI certification for its products will get an additional price preference of 3 per cent and 2 per cent respectively."

From the aforesaid resolution, it is apparent that small scale industrial units located inside the State are entitled to price preference as in Paragraph-20.2. However, it is apparent that the I, P. R., 1996 does not purport to supersede the Resolution under Annexure-4 and both the Resolutions are to be harmoniously construed.

6. In view of the aforesaid position and having regard to the facts and circumstances of the case, as indicated earlier; I dispose of the writ application with a direction to opposite parties that local small scale industrial units shall be entitled to price preference as quoted in paragraph-20.2 of I.P.R., 1996, Since I.P.R. 1996 does not purport to override the Resolution under Annexure-4, both the Resolutions should be given effect to while considering the tenders. It is further directed that the opposite parties shall consider the offers given by the petitioner as well as others in respect of Schedule-II and Schedule-III as classified in Annexure-1 and shall finalise the matter keeping in view the policy decision incorporated in Annexure-4 as well as in the I.P.R., 1996.

7. During the pendency of the writ application, another advertisement was issued as per Annexure-5 to the writ application. An affidavit has been filed today indicating that the said advertisement under Annexure-5 has been subsequently cancelled as per Annexure-B series which has been published on 15-2-2001 in "The Samaj" and "The Prajatantra", the daily Oriya newspapers. In other words, the advertisement under Annexure-5 sought to be challenged in Misc. Case No. 12281/2000 appears to have been superseded.

8. Subject to the aforesaid directions and observation, the writ application is disposed of.

Copy of this order shall be handed over to the learned Additional Government Advocate.

9. Writ application disposed of.