

(1995) 03 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13707 of 1994

Priyadarshini Jattu Workers Labour, Contract Co-operative
Society

APPELLANT

Vs

The Food Corporation of India and Others

RESPONDENT

Date of Decision : 21-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 2 ALT 107

Hon'ble Judges : K.M. Agarwal, Acting C.J.

Bench : Single Bench

Advocate : G. Bikshapathy, for the Appellant; V. Rajagopal Reddi, for Respondents 1 and 2, B. Anjaneyulu and C.V. Mohan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Agarwal, Acting C.J.

1. This writ petition is by a Labour Contract Co-operative Society for quashing a labour contract granted in favour of the 4th respondent, another Labour Contract Co-operative Society, by the Food Corporation of India.

2. It appears that the petitioner and the 4th respondent are registered as Labour Contract Societies under the provisions of the A.P. Co-operative Societies Act, 1964. It also appears that earlier the petitioner society was either functioning under the name and style of "Priyadarshini Jattu Cooli Samkshema Sangam, (in short, the "sister concern" of the petitioner), or was working in close collaboration with it. The Food Corporation of India has godowns at various places in the country for storing its foodgrains. One such godown is located at Dowlaiswaram in East Godavari District of Andhra Pradesh. For the purpose of handling and transporting foodgrains at its Dowlaiswaram godown, the Food Corporation of India was and is required to employ labourers. Instead of employing labourers directly, it appears that the Food Corporation of India invited

tenders and on the basis of such tenders, it used to grant handling and transport contracts, (in short, "H&T Contract"), for its work at Dowlaiswaram godown. During the period between 14-4-1988 to 8-11-1990, the H&T Contract was given to the petitioner's sister concern as its rate being 99.99 per cent below the notified schedule of rates, (in short, the "BSR"). was the lowest. For the subsequent period between 9-11-1990 to 30-10-1992, the 4th respondent offered to do the work at 99.999 per cent BSR, which was lowest, and accordingly obtained the H&T Contract for that period. For next period of 1992 to 1994, no tenders were called, but the contract was awarded on nomination basis to the 4th respondent to do the work at the schedule of rates prescribed by the Food Corporation of India. This was challenged in W.P.No. 13673/1992., which was allowed on 1-4-1994 by a learned Single Judge of this Court. The judgment was affirmed in Writ Appeals, which were filed by the first and the 4th respondents separately. The Food Corporation of India, thereafter, invited tenders. In response to this invitation, the petitioner society submitted its tender and offered to undertake the work at the rate of 0.01 paise for every one lakh rupees worth work as per the notified schedule of rates. Though this rate was the lowest, the offer made by the 4th respondent to do the work at the notified schedule of rates was accepted after calling the parties for negotiation at Hyderabad on 16-7-1994. This contract was for the period between 17-7-1994 to 16-7-1996. Being aggrieved, the petitioner society has filed the present petition for quashing the H&T contract aforesaid in favour of the 4th respondent.

3. After hearing the learned Counsel for the parties and perusing the record, I am of the view that this petition has no substance and deserves to be dismissed. In such matters of contract by public auction or tenders, the lowest bidder has no right to claim the preference. The only thing that the Court has to see is whether there was any element of arbitrariness or malafide in granting the contract to a higher bidder. The office record of the zonal office of the Food Corporation of India would show the reasons why the contract was not awarded to the petitioner society. The record reveals that the SR (i.e., the schedule of rates) rate was Rs. 36/- per 100 bags for unloading and stacking, whereas the rate quoted by the petitioner society was 99.99999 per cent below SR. Thus according to the rate quoted by the petitioner society, it was to earn only 0.01 Ps. for every one lakh rupees worth of work as per SR. As against this, the rate quoted by the 4th respondent was the same as the SR rate. In this state of affairs, grant of contract to the petitioner society at the rate quoted by it was to result in exploitation of the labourers and encouragement of unfair labour practice. For all these reasons, I am of the view that the grant of contract to the 4th respondent at the SR rate does not appear to be in any way unreasonable or arbitrary, particularly when the SR rate itself does not appear to be very handsome rate and, therefore, this writ petition deserves to be dismissed.

4. From the allegations made in the petition and the counter, it is painful to note that the wisdom shown during the course of granting contract for the period between 17-7-1994 to 16-7-1996 by the 1st respondent was not shown by it

during the earlier periods of contract and that it took advantage of the unfair cut throat competition between the petitioner and the 4th respondent for obtaining the contracts during the various periods in the past. In fact it was guilty of practising and encouraging a system akin to bonded labour prohibited under the Bonded Labour System (Abolition) Act, 1976 by taking undue advantage of the unfair competition between the two societies and granting contracts on the basis of unconscionable bargains and at an unthinkable low and most unreasonable rate of remuneration for the work to be done, unmindful of the various decisions of the Supreme Court, such as People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, ; Labourers Working on Salal Hydro Project Vs. State of Jammu and Kashmir and Others, ; and Labourers Working on Salal Hydro-electric Project Vs. State of Jammu and Kashmir, . The record of this writ petition would show that during the period between 14-4-1988 to 8-11-1990, the H&T Contract was given to the petitioner's sister concern at the rate of 99.99 per cent below the notified SR. As a consequence, only a sum of Rs. 300/- was paid to the labourers employed through the sister concern of the petitioner society for the entire work contract worth Rs. 30 lakhs as per the SR., which was also not very attractive or lucrative. Similarly for the subsequent period between 9-11-1990 to 30-10-1992, the contract was given to the 4th respondent at the rate of 99.999 per cent BSR and the labourers employed to do the work through the 4th respondent were paid a sum of Rs. 30/- only for the entire contract work to the tune of Rs. 30 lakhs as per the SR. This is heart breaking and this Court cannot shut its eyes to such a case of blatant exploitation and refuse to grant such equitable and just relief to the sufferers on the ground that no such relief has been claimed in the petition by any of the parties to the petition.

5. In the facts and circumstances of the case and in exercise of the extraordinary powers of this Court under Article 226 of the Constitution, I feel it just and necessary to direct the 1st, 2nd, 3rd and the 5th respondents herein to deposit with the Collector, East Godavari District of Andhra Pradesh:

(1) A sum of Rs. 30 lacs minus Rs. 300 = 29 lakhs, 99 thousand, 7 hundred along with interest at the rate of 12 per cent per annum from 9-11-1990 to the date of deposit for the contract period 14-4-1988 to 8-11-1990 for being paid to the labourers directly, who actually performed the work, in the manner hereinafter indicated; and

(2) A further sum of Rs. 30 lakhs minus Rs. 30 = 29 lakhs, 99 thousand, 9 hundred, 70 only along with interest at the rate of 12 per cent per annum from 1-11-1992 to the date of deposit for the contract period 9-11-1990 to 30-10-1992 for being paid to the labourers directly, who actually performed the work, in the manner hereinafter indicated;

Within a period of 2 months from the date of this judgment. The direction for payment of interest, though may appear to be punitive in nature, is not in fact punitive. It is just and necessary, as well as reasonable, in the facts and circumstances of the case. A Government of India undertaking just like that of

the 1st respondent Food Corporation of India ought not have even thought of earning or saving income in the fashion it has done in the present case. The money, thus, saved was utilised by it during all these years and must not, therefore, hesitate to pay interest at the most nominal rate of 12 per cent per annum.

6. I think, it would not be proper to direct the amounts to be deposited by the 1st, 2nd, 3rd and 5th respondents to be paid to either the petitioner society or the 4th respondent society, through whom the labourers were employed; or to the labourers through them. I feel that the amounts must be directed to be directly paid to the labourers who actually did the work. The reason is simple. On being requested, the Bye-laws of the petitioner society were produced before me. According to these Bye-laws the objects of the society are:

"To promote the economic interests of the Labourers members of the society and to find suitable and profitable employment for them by obtaining contracts from Government, Public Bodies, Private Bodies or individuals, and by executing these contracts through or with the help of the members and to encourage thrift self-help and co-operation among the members. The society may also act as agent for the joint purchase of the domestic and other requirements of its members. It shall be competent for the society to raise money either by way of shares or otherwise to enable it to carry out these objects."

So also must be the objects of the 4th respondent society. Obtaining work contracts at such low rates as aforesaid cannot be said to be finding out "suitable and profitable employment" for the members of the society. The office bearers of the two societies, i.e., the petitioner and the 4th respondent cannot, therefore, be relied upon for disbursement of the amounts to be deposited by the Food Corporation of India for being distributed amongst the labourers. I have, therefore, come to the conclusion and accordingly ventured to direct the Collector to receive and pay the amounts to the labourers directly, who actually performed the work, in the manner I am going to indicate.

7. On receipt of the said amounts, the Collector, East Godavari District shall first ascertain from the records of the petitioner and those of the respondents as to the:

(1) Names and addresses of the labourers who actually performed the work during the periods 14-4-1988 to 8-11-1990 and 9-11-1990 to 30-10-1992; and

(2) The volume of work done by each of them; and then after due identification of the person or persons claiming the amount, pay the amount due to them as per the volume of work done at the SR rate less the amount already paid to them, plus the interest that is worked out on the amount payable to them. All this be done as expeditiously as possible and after completion of the work, a report shall be submitted before this Court by the Collector, who shall be at liberty to seek any clarification or guidance or direction, in case any difficulty is felt in implementation of these directions.

8. It may be made clear that in case the labourer, who actually performed the work is not traceable, or is reported to be dead, the amount payable to him as per directions made in this petition, may be paid to his heirs and legal representatives after due verification and identification of the persons making such claims as heirs and legal representatives.

9. In the result, this petition fails and it is hereby dismissed, but without any order as to costs.

10. In exercise of suo motu powers of this Court under Article 226 of the Constitution, I hereby make directions as contained in paragraphs 5, 7 and 8 of this judgment to the 1st, 2nd, 3rd and 5th respondents herein and to the Collector, East Godavari District of Andhra Pradesh to do and act accordingly.