
(2000) 04 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No. 28994 of 1998

Priyadarshini Jattu Workers Labour Contract Co-operative
Society (LCCS), Dowleshwaram

APPELLANT

Vs

Senior Regional Manager, FCI, Hyd. and others

RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2000) 4 ALD 31 : (2000) 3 ALT 114

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. J. Sudheer, for the Appellant; Mr. M. Ratna Reddy, Mr. C.V. Mohan Reddy and Ms. P.A. Kamaleswari, for the Respondent

Judgement

1. The petitioners on the one hand and the 4th respondent on the other hand are the competitors for award of Handling and Transporting Contract Work in the Food Corporation of India (for short "FCI") godowns at Dowleswaram. This case has had a checkered career but after hearing the learned Counsel for the parties, I do not find it necessary to refer to all the earlier writ proceedings taken before the Supreme Court. Suffice it to state that during the block period 1994-96, the Handling and Transporting Contract Work was awarded to the 4th respondent in pursuance of the tender notification dated 23-6-1994. The petitioners herein assailed the above action of the FCI in WP No.13673 of 1992. The writ petition was dismissed, though the learned single Judge invoking suo motu extraordinary jurisdiction of this Court issued certain directions to the FCI. The matter was carried further before the Division Bench in WA Nos.520 of 1995 and 780 of 1998 by the FCI and the petitioners respectively. The Division Bench disposed of both the appeals by a common judgment and order dated 23-7-1998 affirming the judgment of the learned single Judge. During the pendency of the WA No.520 of 1995, the FCI issued tender notification dated 5-7-1996 calling for tenders from the eligible Co-operative Societies to award Handling and Transporting Contract Work for the years 1996-98. From the records, it is seen that the FCI did not

take further steps in pursuance of the tender notification dated 5-7-1996. On the other hand, they issued proceedings dated 23-7-1996 informing that the notification published on 5-7-1996 inviting sealed tenders from Labour Contract Co-operative Societies for Handling and Transporting Operations at F.C.I. Depot, Dowleswaram was deferred until further notice. When the matter stood thus, a police decision was taken by the FC! at the Central level in consultation with the Central Trade Union operating in the FCI to introduce Direct Payment System (for short "D.P.S."). This policy decision was taken on 5-11-1997. By virtue of this policy decision 163 members of the 4th respondent Co-operative Society were selected and appointed after subjecting them to eligibility tests in the Handling and Transporting Works by office order dated 11-11-1998 of the Regional Manager, District Office F.C.I. Kakinada. Subsequently, it appears from the records that 41 more members belonging to the 4th respondent Co-operative Society were also appointed.

2. In this writ petition, the petitioners have prayed for the following reliefs :

"For the reasons stated in the accompanying affidavit it is prayed that this Hon"ble Court may be pleased to direct the respondent Nos.1 to 3 herein to call for Tenders for the Handling and Transporting Contract Work at the Food Corporation of India godowns at Dowleswaram and/or to provide equal opportunity to the members of the writ petitioner society also along with the members of the respondent No. 4 Society basing on the list of workers/ members of the writ petitioner society who had really worked and who were exploited by the respondent Corporation, that would be prepared by the District Collector, East Godavari District, as directed by this Hon"ble High Court in WA No.520 of 1995 and WA No.780 of 1998, dated 23-7-1998, with all consequential benefits and attendant benefits declaring the action of the respondent Nos.1 to 3 herein in not calling for tenders for Handling and Transporting Contract Work in the Food Corporation of India godowns at Dowleswaram and not providing equal opportunity to the members of the writ petitioner society in the matter of employment as illegal, arbitrary, discriminatory, irrational, illogical, irregular and violative of Articles 14, 16 and 21 of the Constitution of India, by the issuance of writ or order or direction essentially in the nature of writ of mandamus and pass such other order or orders as this Hon"ble High Court may deem fit, proper and necessary in the circumstances of the case."

3. The question that arises at the threshold is whether the relief sought by the petitioners can be granted without violating the policy decision taken by the FCI dated 5-11-1997 abandoning the tender system and introducing the DPS. Should it be noted that the petitioners have not assailed the validity or legality of the new policy decision of the FCI. Should it also be noted that if the policy decision taken by the FCI administration holds the field, without declaring that policy as invalid being violative of Article 14 of the Constitution, the Court is not entitled to issue any direction which has the effect of directing the respondent-authorities to violate the policy.

4. Sri J. Sudheer, learned Counsel for the petitioners quite fairly and understandably and knowing limitations of judicial review of policy matters did not attack the new policy dated 5-11-1997. As pointed out supra, there is no challenge to the policy. There is no scope for the learned Counsel to attack the validity of the policy. The only limited contention and submission of the learned Counsel for the petitioners-Society is that there was absolutely no justification for the FCI administration to abandon the steps that ought to have been taken in pursuance of the tender notification dated 5-7-1996, and if the FCI were to take further steps in pursuance of the tender notification, there was every chance and scope for the petitioner-society to secure the award of the Handling and Transporting Contract Work, and if the petitioner-society were to be awarded with the Handling and Transporting Contract Work, its members would have gained experience, and that would have made them eligible for being considered for appointment in terms of the new policy dated 5-11-1997. This contention of the learned Counsel, in my considered opinion, is totally hypothetical. It could not be stated with any certainty that if FCI administration were to take further steps in pursuance of tender notification dated 5-7-1996, the Handling and Transporting Contract Work should have been awarded to the petitioner-society only, and not to the 4th respondent. It may be that not taking steps by the FCI administration in pursuance of the tender notification dated 5-7-1996 was an irregularity in the light of the judgments of this Court in WP No.7862 of 1990 dated 16-10-1990 and in WP No.13673 of 1992 dated 1-4-1994, but only on the basis of that flaw the certainty of awarding Handling and Transporting Contract Work to the petitioner-society for the block period 1996-98 cannot be inferred, and if the Court were to infer such certainty, it would tantamount to creating a fiction. Such a course is totally impermissible.

5. In the result, writ petition fails and it is accordingly dismissed with no order as to costs. However, this order shall not come in the way of the FCI administration in considering the claims of the members of the petitioners-society for appointment, if they are so advised.