

(1999) 08 P&H CK 0138

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5374 of 1999 and Civil Miscellaneous No. 1964 of 1999

R.K. Electronics

APPELLANT

Vs

National Fertilizers Limited and Others

RESPONDENT

Date of Decision : 23-08-1999

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2000) 125 PLR 498 : (1999) 4 RCR(Civil) 499

Hon'ble Judges : Mehtab Singh Gill, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Sanjiv Sharma, for the Appellant; None for Respondent No. 1, Gopal Mahajan, for Respondent No. 2, Vinod Sharma and Chetan Mittal, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—The questions which arise for adjudication in this petition are:-

(i) Whether the award of work for supply, installation, commissioning, operation and maintenance of cable IT network by the management of Anand Bhawan Club (respondent No.2) to Bains Cable IV network (respondent No.3) is vitiated by mala fides, arbitrariness and violation of the petitioner's fundamental right to equality?

(ii) Whether a writ in the nature of certiorari or mandamus can be issued under Article 226 of the Constitution of India against a private body like Anand Bhawan Club, National Fertilizers Limited, Naya Nangal?

2. The facts relevant to the decision of the above mentioned questions are that the petitioner submitted tender for supply, installation, commissioning, operation and maintenance of cable TV network in National Fertilizers Limited, Naya Nangal in pursuance of the notice dated 8.3.1999 issued by the President, Anand Bhawan Club. Respondent Nos.3 and 4 were among other tenderer. A committee

consisting of the officer-bearers of Anand Bhawan Club (respondent No.2) and the additional members nominated by the General Manager, National Fertilizers Limited examined the tenders submitted by the petitioner, respondent Nos.3 and 4 and others. On the recommendations of the Committee, respondent No.2 awarded contract to respondent No.3. The grievance of the petitioner is that without opening its tender and without considering the lowest rates offered by it, respondent No.2 awarded contract to respondent No.3 due to extraneous reasons. It has challenged the award of contract to respondent No.3 mainly on the ground, of violation of Articles 14 and 19(1)(g) of the Constitution of India and mala fide exercise of power by the authorities of National Fertilizers Limited.

Along with CM. No. 19641 of 1999, the petitioner has filed an affidavit of Shri R.D. Gherana, Manager (Personnel and Administration), National Fertilizers Limited, Nangal Township, who has stated that contract was awarded to respondent No.3 due to mala fides of Shri K.R. Singh, Manager (HRD), National Fertilizers Limited who happens to be a close relative of the proprietor of respondent No.3.

3. Respondent Nos.2 and 3 have questioned the maintainability of the writ petition by contending that respondent No.2 does not fall within the ambit of Article 12 of the Constitution of India. In their written statement, they have averred that respondent No.2 is merely a club formed with an object to provide facilities to its members for recreation, entertainment, sports, games and cultural activities and neither the State Government/Central Government nor the management of the National Fertilizers Limited has got any direct control over its functioning. They have further averred that the membership of the club is open not only to the employees of the National Fertilizers Limited but also to other residents of Naya Nangal and that families of the members of the clubs are also entitled to use the facilities provided by the club. In its written statement, respondent No.2 has challenged the locus standi of the petitioner by stating that it did not comply with the conditions of tender notice and, therefore, the tender submitted by it was not considered.

4. We shall first deal with the question relating to the maintainability of the writ petition because if answer to that question is in the negative, it will not be necessary to decide the first question.

5. Shri Sanjiv Sharma vehemently argued that respondent No.2 should be treated as an agency of the State. He has tried to support this argument by highlighting the following facts:-

- (i) six out of the twelve members of the managing committee of the club are to be nominated by the management of the National Fertilizers Limited;
- (ii) the management of National Fertilizers Limited has the right to amend, modify the rules framed by the club;
- (iii) accounts of the club are required to be audited by a nominee of the Manager

(F&A). National Fertilizers Limited; and

(iv) the decision of the management of the National Fertilizers Limited on the points of dispute arising out of the application or interpretation of the rules is final.

Learned counsel submitted that these facts are sufficient to prove that respondent No.2 is a unit of National Fertilizers Limited which is a Government of India Undertaking. As against this, S/Shri Gopal Mahajan, Vinod Sharma and Chetan Mittal argued that the writ petition should not be entertained because respondent No.2 is a private entity. They pointed out that membership of the club is open not only to the employees of the National Fertilizers Limited but also other residents of Naya Nangal. They submitted that none of the functions of the club are akin to the State/governmental functions and as neither the State Government nor the Central Government exercised any control over the functioning of respondent No.2, the latter can not be termed as agency/instrumentality of the State within the meaning of Article 12 of the Constitution of India.

6. We have thoughtfully considered the respective submissions and. are of the opinion that respondent No.2 cannot be treated as an agency or instrumentality of the State so as to fall within the ambit of expression "other authorities" appearing in Article 12 of the Constitution of India. The management and the functioning respondent No.2 does not satisfy majority of the tests laid down by the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, and *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other*[OVERRULED], because it has not been shown that the finances of the club are provided by the government or that the club functions under the control of the State Fertilizers Limited or that its activities have anything to do with the governmental functions. It has also not been shown that the club is engaged in any of the activities in furtherance of the Directive Principles of State Policy embodied in Part IV of the Constitution of India. The provision for nomination of 6 out of 12 members of the managing committee of respondent no.2 may have been incorporated in its Constitution because it is situated within the precincts of the colony of the National Fertilizers Limited. It may also be due to the fact that majority of its members are officers and employees of the National Fertilizers Limited. However, these factors cannot be treated as sufficient for holding that respondent No.2 is an instrumentality of the State for the purpose of Part III of the Constitution of India.

7. In view of the above conclusion, we do not consider it necessary to decide the plea of the petitioner that the award of contract to respondent No.3 is vitiated by arbitrariness, mala fides or violation of its fundamental right to equality or the right to carry on trade and business guaranteed under Article 19(1)(g) of the Constitution of India.

8. For the reasons mentioned above, the writ petition is dismissed.