

(1996) 11 AP CK 0018
In the Andhra Pradesh High Court
Case No : Writ Petition No. 23626 of 1996

Sri Nagarjuna Sagar Industrial Engineering Complex	APPELLANT
Vs	
Government of Andhra Pradesh and Others	RESPONDENT

Date of Decision : 11-11-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1997) 2 ALD 717 : (1996) 4 ALT 723 : (1997) 1 APLJ 143

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

Bench : Single Bench

Advocate : N. Shobha, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The petitioner claiming to be a Class I contractor has filed this writ petition praying for a writ in the nature of mandamus declaring the action of the respondents in reserving the Tender No. 29/96-97 dt. 10-10-1996 for excavating the earth from 4 K.M. to 5th K.M. Taliperu project left canal, Khammam District in favour of the members of the S.Cs., S.Ts., and Waddera Labour Contract Co-operative Societies and refusing to give the tender form, and refusing to receive 5 the same as arbitrary, illegal, and to set aside clause (7) of the notification to the extent it provides that S.Cs., S.Ts. and Waddera Labour Contract Co-operative Societies are only entitled to submit the tenders in respect of the work. In response to notice re-rule, the second respondent has filed a counter resisting the claim of the petitioner.

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Irrigation.

3. The learned Counsel for the petitioner would strenuously contend that the reservation made in favour of the members of the Scheduled Caste, Scheduled Tribes and Waddera Labour Contract Co-operative Societies by the Department, by virtue of the Government Orders issued from time to time, is applicable only

to Class III Contractors and, as such, reservation cannot be made applicable in respect of Class II or Class I Contractors. Alternatively, the learned counsel would maintain that the reservation made by the second respondent vide the impugned notification in favour of S.Cs., S.Ts. and Waddera Labour Contract Co-operative Societies is not only violative of the Government Orders issued by the Government from time to time, but also violative of equality clause in Article 14 of the Constitution. On the other hand, the learned Government Pleader would support the action.

4. The Government Order G.O.Ms. No. 398, dated 5-9-1990, among other things, provides for the following:

ORDER:

In the references 1st to 5th read above, orders were issued sanctioning certain concessions in awarding works to the members of S.Cs, S.Ts. and also persons belonging to S.Cs. and S.Ts. who happened to be unemployed or retrenched engineers and also to the Labour Co-operative Contract Societies formed of Waddera. On these orders, in the references 6th to 21st (except 20th reference) read above, the Chief Engineers as well as various Co-operative Contract Societies have sought for certain clarifications/ enhancement of existing concessions in the matter.

2. The matter has been placed before Board of Chief Engineers and basing on the Board of Chief Engineers. Recommendations furnished by the Engineer-in-Chief in his letter 20th read above and taking into consideration of the concessions sanctioned by other Departments in the matter, Government after careful examination of all the proposals and in supersession of all the earlier orders issued in the references 1st to 5th read above hereby issue the following consolidated orders.

xxxx xxxx xxxx (3) Exemption from collecting EMD upto Rs. 2.00 lakhs in the case of individuals, and Rs. 10.00 lakhs in the case of Societies maybe allowed,

xxxx xxxx xxxx (6) Atleast 15% of the works may be reserved for entrustment to the individuals or Societies of Weaker Sections.

xxxx xxxx xxxx

5. Clause (6) of the Government Order does not state that 15% of reservation of the works reserved for entrustment to the individuals or Societies of Weaker Sections is applicable only to Class III works and not to Class II or Class I works. On the other hand, a careful reading of the Government Order as a whole makes it very clear that 15% of reservation made in favour of the aforementioned Classes of citizens and the societies is equally applicable to all works. The impugned notification makes it very clear that the work in question is a Class I work, and the notification has invited applications only from the Class I Contractors belonging to S.Cs., S.Ts., and Waddera Labour Contract Co-operative Societies who have experience in excavation of earth. No doubt, that the

Government Orders issued from time to time and annexed to the writ petition and the counter have made classification in the matter of awarding work-contracts into (i) the members of Scheduled Castes, Scheduled Tribes and their associations and (ii) the others. Therefore, the basic question to be decided is whether the classification made by the State could be sustained on the touchstone of Article 14 of the Constitution. Equals should be treated alike is a Constitutional creed flowing from Article 14 of the Constitution. However, Article 14 does not debar the State from making reasonable classification. But, a classification made by the State in order to be a reasonable classification, it has to satisfy two tests, namely, (i) that the classification is founded on intelligible differentia which distinguishes the persons grouped together from the left out, and (ii) that that differentia must have a rational relation to the object sought to be achieved. I do not find any necessity to repeat or reiterate the well-established criteria and the principles governing reservations/discrimination in favour of the S.Cs. and S.Ts. Suffice it to state that it is well-settled that the persons belonging to the Scheduled Castes and Scheduled Tribes do constitute a different and distinct class having regard to their social, economic backwardness. It is not uncommon in our Constitutional scheme that these classes of persons are favoured constitutionally by making special provisions in their favour and the Constitutional Courts also have upheld the validity of the laws and the executive actions providing for reservations/discrimination in their favour. Therefore, it cannot be said that the classification made by the State into the persons belonging to Scheduled Castes and Scheduled Tribes and the others, left-out is not based on an intelligible differentia. The object of classification is also apparent. It seems, to my mind, that the State thought that by providing reservation in favour of the persons belonging to the Scheduled Castes, Scheduled Tribes and their associations, their economic lot would be improved and that would also enable these classes to participate in the economic activities of the State. Therefore, it should be held that both the tests are satisfied, and consequently the reservation made in favour of the persons belonging to the Scheduled Castes, Scheduled Tribes and their associations cannot be said to be unreasonable or arbitrary. No case made out for interference. The writ petition is dismissed. No costs.