

(1985) 02 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 172 of 1985

Surinder Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 39

Citation : AIR 1986 P&H 222

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Judgement

1. At issue in this writ petition under Arts. 226 and 227 of the Constitution of India by Surinder Singh,, Petitioners, is the validity and the constitutionality of the directions contained in notification, dated 12th April, 1982 (Annexure P1) issued by the Stat eof Haryana, stipulating that all unskilled works up to any value and skilled works up to the limit of Rs. 2 lacs for each work should be allotted to the Co-operative Labour and Construction Societies by way of tenders within the ceiling rates fixed by the competent authority.

2. It has been filed in the following Circumstances:--

Surinder Singh, Petitioners, is a registered Class IV contractor of the Public Works Department (building and Roads) of the Stat of Haryana since 1978. He is qualified to tender for works not exceeding Rs. 1 lac. After his enlistment in 1978, the petitioner has been execution works for the state of Haryana not exceeding the value of Rs. 1 lac.

3. On 12th of April, 1982 the Governor of Haryana granted concessions to the cooperative Labour and construction Societies in the State for period of five years, the is, up to 31 Dec. 1986 inter alia that unskilled works up to any value and skilled works up to the limit of Rs. 2 lacs for each work should be allotted to these societies only by way of tenders within the ceiling rates fixed by the respective Superintending Engineers of each Branch of Public Works Department.

In case, these Societies failed to tender or do not accept the work within the ceiling rate so fixed, the work may be executed by inviting open tenders from both the contractors and the societies. It (is) contended the petitioners that by extending the above concessions, respondent No. 1 has created a monopoly in favour of the co-operative Labour and Construction Societies regarding all unskilled works and skilled works up to the limit of Rs. 2 lacs. This is not permissible in law. The state Cannot resort to invidious discrimination between Co-operative Labour and Construction Societies, who are registered as contractors and individual registered contractors in the matter of entrusting works. Alternatively it was argued that there is no intelligible differentia for classifying the co-operative. Labour and construction societies and individual contractors. In any case, if there is any differential it has no nexus with the object to achieved.

4. Separate written statements have been filed on behalf of the Secretary, Haryana Government, Department of Co-operation, respondent No. 2 and the Executive Engineer, Chandigarh Provincial Division P.W. D. B. & R. Haryana, on behalf of respondent Nos. 1, 3 4 and 5. It has been averred therein that vide the impugned notification, two concessions have been granted to the co-operative labour and construction societies in the State for a period of five years. The Government had no intention to create monopoly in favour of the said societies. Being a welfare state, the Government stands committed to raise the standard of weaker sections of Society which have all along been exploited by the contractors-mediators. The concessions have been given in order to fulfil cherished social goal enshrined in Art. 39 of the constitution of India and for promoting co-operative movement and in pursuance of the recommendations of the Nation Advisory Board on Labour co-operative set up by the Government of India. The concessions granted only provide for preference to be shown to the Co-operative Societies. It does not create any monopoly in their favour and is not discriminatory. The notification does not exclude contractors of Class IV for the allotment of work altogether. In case, the societies. The concession have been granted to the co-operative Labour and construction societies, who cannot otherwise compete with well established contractors.

5. The Public Works Department has to implement and execute numerous works. They can execute these works themselves or can get them executed and implemented through agents like the contractors or the co-operative Labour and Construction Societies. India being a welfare State, democratic Governments, have to provide facilities to the citizens in the form of roads, buildings, bridges etc. The Government while executing these works had to ensure that they are executed expeditiously, efficiently and economically. With this end in view, it has to take various decisions. Keeping in view the requirements of each particular work the Government has to decide upon the medium and methodology of its execution. The idea underlying such decision is the maximum efficiency at minimum costs. In order to achieve that end, the Government can devise any reasonable policy for appointing its agents. No citizen has a fundamental right to

be appointed an agent of the Government for this purpose.

6. Shri H. K. Mukhi, learned counsel for the respondents, has produced before me a copy of the model Bye-law of the Co-operative Labour and construction Societies. According to bye-law 4 of the societies, the objects of these societies inter alia are to promote the economic interest of manual labourers, skilled works and for the purpose to find suitable and profitable employment for them by obtaining contracts for execution of public or private work: to improve the efficiency and skill of members by imparting training to the members in masonry, carpentry and other ancillary professions. It is clear from a perusal of bye-law 4 that person who are wither manual labourers or are skilled workers become members of the co-operative labour and construction societies. They are imparted training in masonry, carpentry and other ancillary professions. The co-operative labour and construction societies. They are imparted training in masonry, carpentry and other ancillary professions. The co-operative labour and construction societies, therefore, are eminently suited and adequately equipped to under take the Government works of particular nature. Such societies can prove to be efficient, reliable and frugal agents of the state for executing its development works for the general amelioration of the citizens of the country. In order to achieve this end, the co-operative labour and construction societies can surely be encouraged so that they may provide better service to the community and also help their members to eke out their livelihood. The grant of such concessions is directly conducive to the expeditious, efficient and economic completion of the Government works. It has a direct nexus with the object to be achieved.

7. It has not be seriously contested and, indeed could not be by Shri, Vinay Mittal, learned counsel for the petitioners that the Co-operative Labour and Construction Societies and the private contractors formed distinct and separate classes. The individual contractors are interested to advance their personal and private interest, whereas the Societies are for the behalf of their members. The members of the Societies pool up their resources and endeavor to improve the lot of each other.

8. The impugned notification does not create any monopoly in favour of the societies. It confers certain concessions on them. It posits that unskilled works up to any value and skilled works up to the limit of Rs. 2 lacs for each work should be allotted to the societies within the rates fixed by the respective Superintending Engineers. These concession are to be in vogue for a period of five years only. Even then no absolute monopoly is created in favour of the societies. If the societies fail to tender or do not accept the work within the ceiling rates, option is left with the authorities concerned to get them executed by inviting open tenders from both the contractors and the societies. All that the impugned notification provides is that the societies are given an opportunity to execute the work within the ceiling rates fixed by the authorities, but if they do not agree to do so, then the matter becomes open to all and the works can be

got executed by inviting open tenders from both the contractors and the societies. It is not that the private contractors are altogether excluded from consideration. It is manifest from tender notice, Annexure P2, appended by the petitioners with the writ petition, that tender are invited from approved co-operative labour and construction societies, but if they fail to tender or quote higher rates than the ceiling rates applicable on the date of the tender, the tenders could be received from the contractors or the societies. The invitation is simultaneously extended to the societies and the private contractors to tender for the works. They are not excluded from submitting tenders or quoting lower rates. The petitioners is wrong in contending that he has been debarred from working as registered contractors for the Government works, In somewhat analogous circumstances, in *Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others*, , the final court has an occasion to examine a similar argument. It was observed.

"Earlier, we have referred to the abuses which had grown up in the prevailing system of distribution of foodstuffs under the M. P. Food-stuffs (Distribution) Control Order, 1960. The system had deteriorated and become completely unworkable and rotten to a breaking point. An absolute and thorough overhaul of the system had become compulsive if the population of Madhya Pradesh were to receive a regular supply of their rations. It was in those circumstances that the Government came to the conclusion that distribution of foodstuffs through co-operative Societies (Consumer Co-operative Societies) would be the best method of distribution by which the goods could be delivered i.e., rations could be supplied to the consumers. No one can doubt the positive and progressive role which co-operative societies are expected to and do play in the economy of our country and most surely, in the fair and effective distribution of essential articles of foods. There certainly was a reasonable classification and a nexus with the object intended to be achieved, which was a fair and assured supply of rations to the consumers. The fundamental right of traders like the petitioners to carry on business in foodstuffs was in no way affected. They could carry on trade in foodstuffs without hindrance as dealers; only, they could not run fair price shops as agents of the Government. No one could claim a right to run a fair price shop as an agent of the government. All that he would claim was a right to be considered to be appointed as an agent if the Government took a policy decision to prefer co-operative societies for appointment as their agents to run fair price shops, in the light of the frustrating an unfortunate experience gathered in the last two decades we do not see how we can possibly hold that there was any discrimination"

Their Lordships thus observed that the Governments conclusion that the distribution of foods stuffs through the co-operative societies would be the best method of distribution by which the rations could be supplied to the consumers, could not be doubted. The co-operative societies are excepted to play a positive and progressive role in the fair and assured supply of essential articles of foods. The classification between the societies and the private grain dealers was

reasonable and had a nexus with the object intended to be achieved. So the fundamental right of the traders like the petitioners to carry on business in foodstuffs was, in no way affected. They could carry on the business of foodgrains as dealers without hindrance.

9. If the Haryana Government, in the light of their experience of dealing with the private contractors, took a policy decision to prefer the co-operative societies for execution of their works,. it cannot possibly be held that there way any discrimination.

10. In view of the clear mandate of the final court, the observations of this court in Lal Chand Jagan Nath Vs. The District Food and Supplies Controller and Others, and Ramanlal Nagardas and Others Vs. M.S. Palnitkar and Another, , are of no help to the petitioners, Consequently, I am of the considered view that notification, dated 12th April, 1982, Annexure P-1 does not create any monopoly in favour of the co-operative societies. It does not affect the right of the petitioners to carry on the trade by private contractors. The classification between the co-operative societies and the private contractors is reasonable one and has a direct nexus with the object intended to be achieved.

11. As a result, the writ petition fails and is dismissed, but with no order as to costs.

12. Petition dismissed.