
(1985) 12 P&H CK 0065
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 : 10-12-1985

Acts Referred:

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

Citation : (1986) 2 ILR (P&H) 295

Hon'ble Judges : S.S. Rang, J

Bench : Single Bench

Advocate : A.N. Mittal and Viney Mittal, for the Appellant; H.K. Mukhi, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Rang, J.—At issue in this writ petition under Articles 226 and 227 of the Constitution of India by Surinder Singh, Petitioner, is the validity and the constitutionality of the directions contained in notification, dated 12th April, 1982 (Annexure P-I) issued by the State of Haryana, stipulating that all unskilled works upto any value and skilled works upto the limit of Rs. 2 lacs for each work should be allotted to the Cooperative 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, Petitioner, is a registered Class IV contractor of the Public Works Department (Buildings and Roads) of the State 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 executing 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 a period of five years, that is, upto 31st December, 1986 inter alia that unskilled works upto any

value and skilled works upto 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 the 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 was contended by the Petitioner that by extending the above concessions, Respondent No. 1 has created a monopoly in favour of the Cooperative Labour and Construction Societies regarding all unskilled works and skilled works upto the limit of Rs. 2 lacs. This is not permissible in law. The State cannot resort to invidious discrimination between Cooperative 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 Cooperative Labour and construction Societies and individual contractors. In any case, if there is any differentia it has no nexus with the object to be achieved.

4. Separate written statements have been filed on behalf of the Secretary, Haryana Government, Department of Cooperation Respondent No. 2 and the Executive Engineer, Chandigarh Provincial Division, P.W.D. B. and R. Haryana, on behalf of Respondents Nos. 1, 3, 4 and 5. It has been averred therein that vide the impugned notification two concessions have been granted to the cooperative 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 fulfill cherished social goals enshrined in Article 39 of the Constitution of India and for promoting cooperative movement and in pursuance of the recommendations of the National Advisory Board on Labour Cooperatives set up by the Government of India. The concessions granted only provide for preference to be shown to the Cooperative 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 fail to tender or do not accept the work within the ceiling rates so fixed, the works may be executed by inviting open tenders from both the contractors and the Societies. The concessions have been granted to the Cooperative 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 Cooperative 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 has 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 and such decision is the maximum efficiency at minimum cost. 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-laws of the Cooperative 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 workers and for that 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 ancilliary professions. It is clear from a perusal of bye-law 4 that persons who are either manual labourers or are skilled workers become members of the cooperative labour and construction societies. They are imparted training in masonry, carpentry and other ancilliary professions. The cooperative labour and construction societies, therefore, are eminently suited and adequately equipped to undertake 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 cooperative labour and construction societies can surely be encouraged so that they may provide better services 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 been seriously contested and indeed could not be, by Shri Vinay Mittal, learned Counsel for the Petitioner, that the Cooperative Labour and Construction Societies and the private contractors formed distinct and separate classes. The individual contractors are interested to advance their personal and private interests, whereas the Societies are for the benefit of their members. The members of the Societies pool up their resources and endeavour 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 upto any value and skilled works upto 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 concessions 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 P-2, appended by the Petitioner with the writ petition, that tenders are invited from approved cooperative 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 Petitioner 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 had 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 food stuffs 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 Cooperative Societies (Consumer Cooperative 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 cooperative 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 food. 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 food-stuffs was in no way affected. They could carry on trade in food stuffs 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 could claim was a right to be considered to be appointed as an agent of the Government to run a fair price shop. If the Government took a policy decision to prefer cooperative 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 Government's conclusion that the distribution of foodstuffs through the cooperative societies would be the best method of distribution by which the rations could be supplied to the consumers,

could not be doubted. The cooperative societies are expected to play a positive and progressive role in the fair and assured supply of essential articles of food. 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 Petitioner 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 cooperative societies for execution of their works, it cannot possibly be held that there was 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 cooperative societies. It does not affect the right of the Petitioner to carry on the trade by private contractors. The classification between the cooperative 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.