**(1991) 10 RAJ CK 0021**

**In the Rajasthan High Court**

**Case No :** Special Appeal (Writ) No. 118 of 1991

Union of India (UOI) and Others — APPELLANT

Vs

Ram Das Goko Mal and Another — RESPONDENT

**Date of Decision :** 30-10-1991

**Acts Referred:**

Constitution of India, 1950 — Article 14
Financial Regulations — Regulation 233

**Citation :** AIR 1992 Raj 168 : (1991) 2 RLW 134 : (1991) 2 WLN 344

**Hon'ble Judges :** R.S. Kejriwal, J;Mohini Kapur, J

**Bench :** Division Bench

**Advocate :** Praveen Balwada, for the Appellant; K.K. Sharma, for the Respondent

**Final Decision :** Allowed

## Judgement

Kapur, J.—The question which arises in this appeal is whether a contract for supply of milk to Military Units can be entered into by negotiation without inviting open tenders. For the supply of milk to five Military ''Centres in Rajasthan, a negotiated contract was entered into between the appellant and the respondent No. 4, Rajasthan Co-operative Dairy Federation. This was done by entering into negotiations and no tender was invited. The respondent No. 1 is the writ petitioner and registered Military Contractor and he filed a writ petition to seek the relief that the contract granted to respondent No. 4 for supply of milk for the period 1-10-1990 to 31-3-1991, should be set aside and the other respondents should be directed to invite open tenders for grant of contract for supply of liquid milk and only thereafter a contract should be entered into.

2. The learned single Judge considered the contentions raised on behalf of both the sides and held that granting contract to respondent No. 4 by negotiation is arbitrary and unreasonable and, therefore, violative of Article 14 of the Constitution. It was also held that it has resulted in substantial financial loss to the public revenue. However, the contract for supply of liquid milk and milk products from 1-10-1990 to 31-3-1991, for five areas of Rajasthan was not

quashed but it was directed that in future the authorities should invite open tender for supply of milk and milk products.

3. Feeling aggrieved against this decision, respondents Nos. 1 to 3 have preferred this appeal. Notice was issued to respondent No. 1, who is the contractor, who has strongly opposed this appeal. The learned single Judge at page 20 of the certified copy of the judgment has held that as there is no policy decision in favour of the Co-operative Societies as such, and only a circular has been issued from time to time and no policy decision has been taken, hence favour cannot be shown to Co-operative Societies. This observation of the learned single Judge is not correct, as from various circulars which we shall presently see, there is a policy decision taken by the Military Authorities by which negotiated contracts can be entered into with Co-operative Societies and State Government and some others.

4. Learned counsel for the appellant has brought to our notice Financial Regulations Part I Volume I. Regulation No. 233 reads as under:--

233. No contract will be concluded without calling for tenders, except with the previous sanction of the Government of India, but where the Jail or Forest Department can supply articles equal in quality and at not more than the local market rate, it should be invited to undertake the supply and further tenders need not be called for.

Negotiated contracts will be concluded, without calling for tenders from ASC/ Military Farm Contractors, with a Central/State Government undertaking or a State sponsored Co-operative Society, i.e., a Growers/Producers Co-operative Society which might have been recommended by the State Government/ Registrar of Co-operative Societies or a State Level Appex. Marketing Society or Federation of Growers and/or Producers'' Co-operative Societies for supply of fresh vegetables, including potatoes, onions, fruits fresh, poultry fish, eggs, milk fresh, cream, butter fresh, meat, frozen poultry, ice machine-made, bread, firewood, charcoal, lime quick and green grass in the case of A.S.C. contracts, and fresh milk, cream and butter to Military Farms, provided the rates offered by the State agencies/Co-operative Societies are considered competitive and reasonable by the competent financial authority in consultation with the Controller of Defence Accounts, the collector and the formation commander/ DDMF Command concerned and Ministry of Finance (Defence) where necessary.

5. Relying upon this regulation, it has been contended that without calling for tenders from ASC/Military Farm Contractors, with the authorities, have been permitted to enter into negotiated contracts with a Central/State Government undertaking or a State sponsored Co-operative Society and others in respect of the supply of fresh vegetables, milk and other items on the condition that the rates by the State Agencies/Cooperative Societies are considered competitive and reasonable by the competent financial authority in consultation with the controller of Defence Accounts, the collector and the formation commander/

DDMF Command concerned and Ministry of Finance (Defence). It is contended that the commodity in the present case is milk and negotiated contract has been entered into with Rajasthan Co-operative Dairy Federation and this is permissible under the policy decision which has been seen above.

6. The case of Sarkari Sasta Anaj Vikreta Sangh Tahsil Bemetra and Others Vs. State of Madhya Pradesh and Others, was cited before the learned single Judge and in this case it has been held that the scheme giving preference to consumers'' co-operative societies in the matter of allotment of fair price shops is not discriminatory and the learned single Judge did not find this decision to be applicable to the present case, only on the ground that there was not a similar policy decision in the matter of supply of milk to Military Centres. As we have seen above there is a policy decision to enter into a negotiated contracts with State/Co-operative Society, without inviting tender and this cannot be said to be arbitrary or unreasonable so as to say that it is violative of the principles of the Constitution of India.

7. Our attention has been invited to Annexure R-4/1, filed in the writ petition which conveys the sanction of the President to the Chief of the Army Staff for the continuance of the provisions relating to the conclusion of negotiated contracts with Government Milk Schemes/Co-operative Federations at stations where Army authorities require this produce and Government Milk Schemes/Cooperative Federations can supply milk and milk products. This sanction of the President is also a policy decision which provides for showing favour to the Government Milk Schemes or the Co-operative Federations and it even provides for giving of discount of some amount while calculating the price offered by these bodies and by other contractors. This also goes to show that the decision to show favour to State or Central Government undertakings or Co-operative Federations is, as a matter of policy decision.

8. The learned counsel for the respondent No. 1 has first of all contended that there are several complaints against the supply of milk by the respondent Dairy Federation and even Controller of Accounts reported that the Supply of milk by the dairy federation would not be economical and would result in heavy burden on the finances of the Military. It is contended that in view of the complaints and in view of the report of the Controller of Accounts, such a contract should not be negotiated with the dairy federation. It may be stated here that the period for which the contract was given has already expired and now as we have seen in Regulation 233, it can be said that there is provision for entering into negotiated contracts from ASC/ Military Contractors but this negotiated contract can be entered into under certain conditions only. The first condition is that the contract can be given only to the bodies which have been mentioned in this regulation and they are Central/State Government undertakings or a State Sponsored Co-operative Society, i.e., a Growers/Producers Co-operative Society, recommended by the State Government of the Registrar of Co-operative Societies etc. Further it may be said that such a negotiated contract can be in respect of the items which

 

have been mentioned in this Regulation. The third condition is that the rates offered by the State agencies/Co-operative Societies are considered to be competitive and reasonable by the competent financial authority and this decision is to be taken in consultation with the Controller of Defence Accounts, the collector and the formation commander/DDMF Command concerned and Ministry of Finance (Defence) where necessary. This condition provides for consultation with these authorities and the competent financial authority is the authority which can enter into the negotiated contract. It is expected that the competent, financial authority who has to enter into a contract, would consider the aspect of competitive and reasonable rates. Regulation 233 provides sufficient safeguards so that the competent financial authority does not overlook the aspect of competitive and reasonable prices. In the Writ Petition at page 14, the petitioner has quoted that the milk of the dairy federation would be expensive by 0.64 paise per litre to Rs. 1.05 paise at different places and this has been quoted from the report of high level meeting consisting pf several military authorities. However, this Court would not enter into this aspect because this is for the competent financial authority and other military authorities which are to be consulted to take into consideration. It is only expected that the authority competent to enter into contracts, would take into consideration the financial interest of the Defence Ministry and the Finance Ministry before resorting to enter into a contract without inviting tender as is provided in Regulation 233 and in view of second part of Regulation 233, it cannot be said that the competent financial authority has no right to enter into a negotiated contract without inviting tenders from ASC or Military Contracts. The direction of the learned single Judge that in future the Military Authorities should always invite open tender for grant of contract of liquid milk and milk products is against the Regulation as well as the Policy Decision of the Military Authorities and deserves to be set aside.

9. With these observations, this appeal is allowed and the direction given by the learned single Judge in the Judgment dated March 15, 1991, is set aside. In the circumstances, parties are left to bear their own costs.