

M/s. Chandigarh Food & Services Ltd. v. Union of India and others
(M. M. Punchhi, J.)

(14) The result of the above discussion is that any nomination by the State Government, where it has subscribed to the share capital of a Co-operative Society or guaranteed the principal and interest in respect of debentures issued by the society or guaranteed the principal and interest in respect of loans and advances to the society or assisted the Society with loans and grants by less than one lakh rupees is violative of Section 29 of the Act and any such nomination was, therefore, wrong and illegal. Any co-option thus made by these nominated members, of the Harijan and a woman will thus stand quashed and fresh co-option will be made in accordance with law. All the petitions stand disposed of accordingly with no order as to costs.

P.C.G.

Before : M. M. Punchhi & A. L. Bahri, JJ.

M/S. CHANDIGARH FOOD & SERVICES LTD.,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents

Civil Writ Petition No. 9672 of 1989

7th September, 1989

Constitution of India, 1950—Arts. 226, 227—Government contract—Tenders not floated—Contract granted by negotiations—No discrimination—Executive flexibility—Whether can override contractual obligation.

Held, that all what we are required to see here is whether there has been any unfairness on the part of the respondents or any unfair discrimination vis-a-vis the petitioner in the matter of grant of contract.

(Para 2)

Held, that in the matter like this, some element of “executive flexibility” is to be left with the respondents. Everything is not that mechanical as in a contractual obligation.

(Para 3)

Civil Writ Petition under Article 226/227 of the Constitution of India praying that records of the case may be called for and after a perusal there of:—

- (i) *a writ of mandamus directing the respondents Nos. 1 to 4 to invite open tenders for the supply of meat dressed frozen to Ladakh Garrison be issued;*
- (ii) *a writ in the nature of certiorari be issued quashing the contract in case it has been granted in favour of respondent No. 5 or any other person;*
- (iii) *any other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the light of the facts and circumstances of this case, be issued granting the relief prayed for;*
- (iv) *filing of certified copies of Annexures P-1 to P-3 be dispensed with;*
- (v) *issue of advance notices to the respondents be dispensed with; and*
- (vi) *cost of the petition be awarded to the petitioner.*

It is further prayed that finalisation of the contract in favour of the respondent No. 5 be stayed during the pendency of this Civil Writ Petition.

Civil Misc. No. 13043 of 1989.

Application under section 151 C.P.C. praying that respondents No. 1 to 4 be restrained from sanctioning contract in favour of respondent No. 5 or any other person without publicity or inviting tenders from old suppliers and enabling to contest the tenders.

H. L. Sibal, Sr. Advocate with Ajay Lamba, Advocate, for the Petitioner.

H. S. Brar, Advocate with P. S. Teji, Advocate, for Respondents No. 1 to 4.

A. K. Chopra, Advocate, for Respondent No. 5.

JUDGMENT

M. M. Punchhi, J. (oral)

(1) Pithily put, the case of the petitioner is that it has been supplying meat to the Union of India through the Army Authorities of the Western Command for the last so many years. Somewhere in

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the year 1988, respondent Nos. 1 to 4 became pregnant with the idea that frozen meat be purchased in bulk quantities in order to send it to various stations governed under the Northern Command. The petitioner having come to know of it started correspondence with the respondents suggesting that it would be in a position to supply frozen meat, if asked to, at a competitive rate cheaper than others. The suggested case of the petitioner that the respondents were simultaneously negotiating with others also is factually not disputed but rather it is maintained by the respondents that three firms other than the petitioner were also in correspondence with it for the supply of frozen meat. And, as averred, as a matter of experiment, some frozen meat had been purchased in the year 1980 from M/s Viking India Limited, respondent No. 5. The situation seemed to be reopening towards entering into a regular contract with some party or the other. Since the petitioner was clamouring to have the contract, he sought clarity in regard thereof and offered to sell frozen meat at Rs. 28 per kilogram. The respondents conveyed to him that at the appropriate time a tender would be floated in which the petitioner could also offer a tender in terms of the advertisement. Since no such tender was floated and respondents Nos. 1 to 4 went on to accept the offer of respondent No. 5 in providing meat at the rate of Rs. 29 per kilogram as compared to Rs. 28 per kilogram offered by the petitioner, the petitioner raising grouse has approached this Court primarily relying on the rule laid down by the Supreme Court in *Haji T. M. Hassan Rawther v. Kerala Financial Corporation* (1).

(2) In the return, as hinted earlier, the respondents, instead of floating a tender, negotiated a contract with respondent No. 5 for obtaining supplies of meat at the rate of Rs. 29 per kilogram. This was a case of obtaining property on price and not of selling property. The aforesaid precedent of the Supreme Court is a case where property of the Government was to be sold and the rule laid down by the Supreme Court confines to that situation of facts. It cannot be said to be applicable here in the facts and circumstances of this case. All what we are required to see here is whether there has been any unfairness on the part of the respondents or any unfair discrimination *vis-a-vis* the petitioner in the matter of grant of contract.

(3) The desire of respondents to float a tender, though communicated to the petitioner, is not a statement which is binding in

(1) A.I.R. 1988 S.C. 157.

law or creating any promissory estoppel in favour of the petitioner. The contract has been negotiated with respondent No. 5 in the circumstances narrated in the return and more so in paragraph 11 thereof. It is cross-asserted that respondent No. 5 has the requisite infra-structure to provide frozen meat to the Army Authorities and the petitioner does not have, for the present, any such infra-structure. The petitioner disputes this and says that it has the infra-structure and given the time can provide the infra-structure if it is deficient in any manner. Whatever be the situation, the controversy between the parties is hardly one which need be determined in proceedings under Article 226 of the Constitution. As said before, we do not spell out any unfairness or unfair discrimination against the petitioner perpetrated by the respondents. In the matter like this, some element of "executive flexibility" is to be left with the respondents. Everything is not that mechanical as in a contractual obligation.

(4) With these observations, we dismiss the petition *in limine*. In the circumstances, however, there shall be no costs. Interim order stands automatically vacated.

P.C.G.

Before : J. V. Gupta, J.

PUNJAB STATE AGRICULTURAL MARKETING BOARD AND
ANOTHER,—Petitioners.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Amended Civil Writ Petition No. 3166 of 1987.

28th September, 1989.

Constitution of India, 1950—Art. 226—Punjab Agricultural Produce Market Act, 1961—S. 3—Suspension of board after giving show cause notice—Many changes related to period prior to constitution of board—Present Chairman was also the Chairman of earlier board—Charges not rectified by new board—Administrative orders—Subjective satisfaction—Scope of writ jurisdiction—High Court not sitting as Court of Appeal—Suspension held valid.