

REPORTED**IN THE HIGH COURT OF JUDICATURE AT****BOMBAY****BENCH AT AURANGABAD.****WRIT PETITION NO.8612 OF 2015.**

Girjamata Labour Cooperative Society
Ltd., Kannad, through its Chairman
Shaikh Pashu S/o Shaikh Yasin,
Age 40 years, Occ. Director of
Aurangabad District Labour Workers
Co-operative Societies Federation
Ltd., R/o Kannad, Tq.Kannad,
Dist.Aurangabad. ... Petitioner.

Versus

1. The State of Maharashtra,
through the Secretary to the
General Administration
Department, Mantralaya,
Mumbai-32.

2. The State of Maharashtra,
through the Secretary to
the Public Works Department,
Mantralaya, Mumbai-32.

3. The Superintending Engineer,
Public Works Circle,
Aurangabad, Dist.Aurangabad. ... Respondents.

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Mr.A.R.Devkate, advocate for the petitioner.
Mr.S.M.Ganachari, A.G.P. for the State.

...

**CORAM : S.V.GANGAPURWALA AND
K.K.SONAWANE, JJ.**

**Reserved on : 12.8.2016.
Pronounced on: 22.8.2016**

JUDGMENT (Per S.V.Gangapurwala, J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing.

2. The petitioner assails the Government Resolution dated 24.4.2015, stipulating e-tender process in allotment of contracts to the Labour Cooperative Societies above Rs.3,00,000/- (Rupees three lacs).

3. The petitioner is a Labour Cooperative Society consisting of labourers residing in vicinity of Kannad, District Aurangabad. The Labour Cooperative Societies are granted several concessions by the Government since 1948. The Government vide Resolution dated 30.3.1979, laid down the procedure while providing works to Labour Cooperative Societies. The concession granted by the Government

Resolution dated 30.3.1979 were modified subsequently by various Government Resolutions. The limit of granting the work was increased from time to time. The Labour Cooperative Societies were given work up to Rs.5,00,000/- (Rupees five lacs) without inviting tenders. Each Labour Cooperative Society was held entitled to have work of maximum 30,00,000/- (Rupees thirty lacs) in a year. The Government vide Resolution dated 31.3.2005, earmarked the allotment of work to the Labour Cooperative Societies to the extent of 33%, to the Educated Unemployed Engineers 33% and to eligible registered contractors 34%. It was decided to allot the work in these categories of persons without inviting tender. Up to Rs.5,00,000/- (Rupees five lacs) work was allotted to the Labour Cooperative Societies as per Government Resolution dated 16.11.2006. The tenders were not to be invited. The Respondent No.1 vide Government Resolution dated 6.8.2010, adopted a policy to resort to e-tender process for works more than Rs.50,00,000/- (Rupees fifty lacs). The said limit of Rs.50,00,000/- (Rupees fifty lacs) or more was reduced to Rs.10,00,000/-

(Rupees ten lacs) vide Government Resolution dated 16.1.2013. Thereafter, vide Government Resolution dated 26.11.2014, the Government took a policy decision to allot all works above Rs.3,00,000/- (Rupees three lacs) by e-tender process. The directions were given to all Government Departments, Corporations and the Boards. Keeping in tune with the said Government Resolution, Public Works Department issued a Government Resolution dated 24.4.2015, thereby stating that the PWD is also adopting policy of e-tendering process for work above Rs.3,00,000/- (Rupees three lacs) and the same is made applicable to the Labour Cooperative Societies and Educated Unemployed Engineers. The ratio of allotment of work was maintained. It is this condition of allotment of work to Labour Cooperative Societies above Rs.3,00,000/- (Rupees three lacs) by e-tendering process assailed in the present Writ Petition.

4. Mr.Devkate, learned counsel for the petitioner strenuously contends that the Labour Cooperative Societies consist of poor and

illiterate labourers as its members. These poor and illiterate labourers do not have enough knowledge of the computer and the internet, as such they will not be in a position to compete and fill in the tenders. These Labour Cooperative Societies are mostly situated in rural areas, where accessibility to computer and internet is not possible. The condition in the Government Resolution dated 31.3.2015, to call tenders for allotting works to Labour Cooperative Societies of more than Rs.3,00,000/- (Rupees three lacs) is arbitrary, illegal and unconstitutional. These Societies would be deprived of participating in the tender process because of the reason of their illiteracy and non-accessibility to the internet and the computers and the same is violative of the Article 14 of the Constitution of India. It is irrational and unreasonable and in such matters, the Court can certainly intervene. This Court in such cases would exercise the powers of judicial review. The learned counsel relies on the judgment of the Apex Court in a case of **"State of Madhya Pradesh and others Vs. Mala**

Banerjee” reported 2015 (7) Supreme Court Cases 698.

5. The learned counsel further submits that the condition of applicability of e-tendering process for allotment of works to Labour Cooperative Societies would be an embargo upon such Societies to get any work. According to the learned counsel, the withdrawal of benefit of allotment of work without tendering process permissible earlier up to Rs.15,00,000/- (Rupees fifteen lacs) is arbitrary and the same could not have been done without superseding the prevailing policy. The Government Resolution dated 24.4.2015, is based on the Government Resolution dated 26.11.2014, and the same is issued without considering its impact on the Labour Cooperative Societies formed of labourers who are uneducated or less educated. The same is contrary to the object of the labour welfare itself, hence arbitrary and unreasonable. The learned counsel submits that if such Societies are expected to participate in the e-tendering process from the computer centres available in the market, then

secrecy would not be maintained.. The bids would be communicated to the other competitors.

6. Mr.Devkate, learned counsel further submits that as per Government Resolution dated 16.11.2006, the Labour Cooperative Societies are entitled to get the work up to Rs.50,00,000/- (Rupees fifty lacs) per year and the work costing up to Rs.15,00,000/- (Rupees fifteen lacs) without tendering process. The social view to protect the interest of poor labourers was behind the said Resolution. In view of the impugned Government Resolution, the social point of view has got a set back. The said condition in the Government Resolution of resorting to e-tendering process for the work above Rs.3,00,000/- (Rupees three lacs) deserves to be quashed and set aside.

7. Mr.Ganachari, learned A.G.P. submits that as per the Government Resolution dated 30.3.1979, at least 50% of the Membership of the Labour Cooperative Societies shall be labourers who themselves work on site. The Chairman of the Labour Cooperative Societies is a person who does

all work of registration and office work of allotment of tendering. The Chairman is an educated person and he can do the job of e-tendering process by various modes, such as computers and internet connections or through private internet cafe. The policy is altered as per the current situation to improve the procedure of work and to reduce the malpractices that may take place in allotment of work of greater amount. The learned A.G.P. submits that the computers and internet connections are widely used in village areas also through satellites/mobile towers. There is no problem in getting computers and internet connections through broadband or dongles of private telecom operators which gives service in remote villages also. Secrecy can be maintained in computer centers also. According to learned A.G.P., the Central Government has started the mission digital India, Modern India, the internet facility is easily accessible. 33% of the work is reserved for Labour Societies even through e-tendering process. Hence, the work which comes in this quota are necessarily to be allotted to

and executed by Labour Societies. As such the Labour Cooperative Societies can not have the apprehension of not getting the work. It would also be clear from the letter placed on record that in the past also Labour Cooperative Societies have got more work than the allotted percentage through tender process.

8. Learned A.G.P. submits that the policy of the Government can change for the betterment of the Society and to combat the malpractices in allotting contracts of more value. The Government Resolution dated 24.4.2015, is the result of the policy decision of the Government. The same is constitutional. The Government Resolution dated 24.4.2015 itself states the reason for change in the policy and it is self-explanatory. The learned A.G.P. states that the said policy decision is the need of the hour. The same is reasonable and this Court may not invoke its power of judicial review when the policy is fair and reasonable. The learned A.G.P. relies on the judgment of the Apex Court in the case of **"Tata Cellular Vs. Union of India"**

reported in **1994 (6) Supreme Court Cases 651.**

9. We have considered the submissions canvassed by the learned counsel for respective parties so also perused the various Government Resolutions.

10. The Government Resolution dated 24.4.2015 is an executive action. The executive power can be exercised by issuing administrative Orders, Circulars, Instructions or Resolutions, so long the Legislature does not make any law on that subject. Purely administrative decision can be reviewed by the authority at any time provided no constitutional provision is violated thereby and one administrative order may be changed by another administrative order. The Administrative Rules or Orders may be relaxed, altered or revoked without any formality provided there is no legislation or statutory Rules to the contrary and no provision of the Constitution is violated by such change. There is no legislation or Rules governing grant of work and the manner to grant the work to the Labour Cooperative Societies.

Since 1979, the same was governed by the Government Resolutions and the clauses therein were modified from time to time by issuing Government Resolutions.

11. Framing a policy is within the competence of State in its executive authority. The policy decision is in the domain of the executive authority of the State. The efficacy or otherwise may not be questioned so long the same does not offend any provision of the Statute or the Constitution of India. It is not for the Courts to consider the relative merit of the different policies. The Court can not sit in judgment of the policy of the Legislature or the Executive. The Court can not strike down a policy decision taken by the Government, merely, because it feels that another decision would have been more logical or wiser. It is not the domain of the Courts to embark upon an inquiry as to whether a particular policy is acceptable or whether a better policy could be evolved. The Court can only interfere if the policy framed is irrational, arbitrary, unreasonable and thereby

offend Article 14 of the Constitution of India.

12. Earlier to the Government Resolution dated 24.4.2015, the work above Rs.15,00,000/- (Rupees fifteen lacs) were awarded by tender to the Cooperative Labour Society. A general policy is evolved under Government Resolution dated 26.11.2014, to allot the work above Rs.3,00,000/- (Rupees three lacs) by e-tender. The process to allot the works by e-tender is brought in vogue by Government Resolution dated 6.8.2010. At that time, the work above Rs.50,00,000/- (Rupees fifty lacs) was directed to be allotted by e-tender process. Thereafter under Government Resolution dated 16.1.2013, the limit was brought down to Rs.10,00,000/- (Rupees ten lacs) i.e. the work above Rs.10,00,000/- (Rupees ten lacs) was directed to be allotted by e-tender process and by Government Resolution dated 26.11.2014, the work above Rs.3,00,000/- (Rupees three lacs) is directed to be allotted by e-tender process. The Government Resolution dated 24.4.2015 is in tune with the Government Resolution dated 26.11.2014. By the impugned Government Resolution, the

directions are issued to allot the work to the Labour Cooperative Societies and Educated Unemployed Engineers above Rs.3,00,000/- (Rupees three lacs) by e-tender process. The impugned Government Resolution is in furtherance of the general policy as laid down in Government Resolution dated 26.11.2014.

13. The prelude to the impugned Government Resolution also lays down the reasons for issuing the said Resolution.

14. In this modern era the accessibility to the internet and computers is easily available. The policy may change with changing times and changing circumstances. 25 years back we may have entertained the argument of petitioner about non-accessibility to computers and internet but not now. The same is readily available and in this competitive world, the Labour Cooperative Societies also have to up-grade themselves and keep pace with the changing times. As it is, earlier even Labour Cooperative Societies were required to fill in tender for getting the work

above Rs.15,00,000/- (Rupees fifteen lacs). Even today for getting the work below Rs.3,00,000/- (Rupees three lacs) the Labour Cooperative Societies are not required to go through tender process.

15. The Labour Cooperative Societies are required to compete amongst themselves. It is not that by impugned Government Resolution they are required to compete with others. 33% of work is earmarked for Labour Cooperative Societies and it is only amongst themselves, the Labour Cooperative Societies are competing. As such all Members of Labour Cooperative Societies forming a class would compete amongst themselves. There is no discrimination or arbitrariness in the same. On the contrary, e-tender process would avoid the vice of malpractice and the allotment of work would be more transparent. The said policy is not against any statutory rule nor it violates the constitutional mandate.

16. Even the Government Resolution dated 11.1.2008, was assailed before this Court by

W.P.No.729/2009. Under the said Government Resolution dated 11.1.2008, the Government took a decision to allot the work above Rs.15,00,000/- (Rupees fifteen lacs) by tender. This Court by its judgment dated 1.7.2009, upheld the said Government Resolution.

17. Change in the policy of resorting to e-tender process for work above Rs.3,00,000/- (Rupees three lacs) is necessitated because of the changing times, administrative and other technical difficulties, so also to make the process of allotment of work more transparent.

18. Considering the aforesaid, there is no merit in the Writ Petition. The Writ Petition as such is dismissed. Rule discharged. However, there shall be no order as to costs.

Sd/-
(K.K.SONAWANE, J.)

Sd/-
(S.V.GANGAPURWALA, J.)

