

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.29889 OF 2018 & 740 OF 2019

Date: 12.02.2019

WP No.29889 of 2018:

Between:

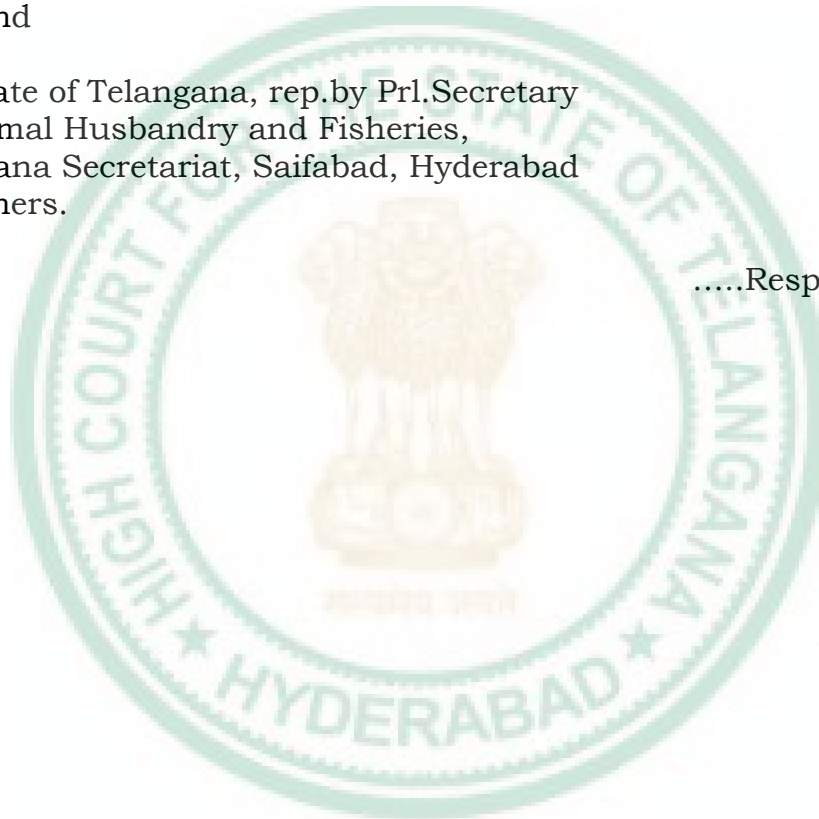
Smt Padmaja, w/o. T.Praful Ram Reddy,
Aged 38 years, occu: Milk Distributor,
R/o Dr.No.1-4-879/91/B, St.No.7,
New Bakaram, Gandhi Nagar,Hyderabad

.....Petitioner

and

The State of Telangana, rep.by Prl.Secretary
for Animal Husbandry and Fisheries,
Telangana Secretariat, Saifabad, Hyderabad
and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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COMMON ORDER:

In response to the notification issued on 09.05.2017 by Vijaya Dairy Milk for appointment as Dairy Distributors, petitioner participated in the said process and was awarded contract of distribution to Ward Nos.85 (Adikmet), 86 (Musheerabad), 87 (Ramnagar), and 89 (Gandhi Nagar). The agency is for two years, which commenced on 21.10.2017. Petitioner claims to have deposited 16.00 lakhs as security deposit and agreement was entered into between the petitioner and the respondent-federation. Alleging that authorities of federation blocked the petitioner distribution codes in e-Seva denying him to secure milk for distribution and causing hardship to her even though dealership is not cancelled, petitioner filed W.P.No.29889 of 2018 declaring the said action of blocking the distribution code as illegal and unconstitutional.

2. When W.P.No.29889 of 2018 was taken up for consideration, learned standing counsel representing the respondent-federation informed the Court that authorization granted to the petitioner was subsisting and petitioner would be permitted to make advance payment through online via NEFT/RTGS to the account of the 2nd respondent along with indent every day for supply of milk to the next day if made before 3.00 p.m. The same was recorded and notice was ordered on 23.08.2018. While so, on 09.01.2019, proceedings were issued terminating the distributorship of

petitioner by forfeiting the security deposit. Challenging the same, petitioner filed W.P.No.740 of 2019.

3. Heard learned counsel for petitioner, learned standing counsel for respondent-federation and learned Government Pleader.

4. It is the contention of learned counsel for petitioner that as the distributorship is valid till 30.10.2019, before expiry of term, it is not permissible for the respondent-federation to terminate the dealership and the same is *ex facie* illegal, contrary to the terms of agreement and would amount to arbitrary exercise of power and authority. She would submit that though target was fixed for distribution of milk per day and agreed by the petitioner, on account of subsequent decision of the respondent-federation supplying milk directly to vendors, bypassing distributors, petitioner could not achieve the target. She would submit that it cannot be said that there is violation of term of contract. She would submit that several aspects are invented only to harass petitioner and to coerce petitioner to give up distributorship and when petitioner was not obliging they resorted to terminate the distributorship. She forcibly contended that the termination of distributorship was not preceded by notice and opportunity.

5. When the matter was taken up for admission, as this Court noticed that in the affidavit filed in support of writ petition, there is no pleading with reference to non-service of notices prior to cancellation of distributorship, learned counsel for petitioner fairly submitted that there was no such averment, but insisted that no

prior notice was given. On the contrary, learned standing counsel informed the Court that notices were issued prior to resorting to termination and petitioner failed to respond to the notices. He also placed on record the final notice dated 05.11.2018 in support of his contention. The Court noticed that said notice was served on person, by name, Satish.

6. Having regard to the respective submissions, Court granted liberty to the respondent-federation to place on record the material in support of their claim that notices were served, while granting interim suspension for a limited period.

7. The respondent-federation filed counter-affidavit and along with the counter-affidavit correspondence is also enclosed. Placing reliance on the documents enclosed to the counter it is the assertion of learned standing counsel for respondent that several notices were issued and notices were acknowledged, but no explanation was offered. Having granted considerable time and as infirmities noticed were grave enough and the target fixed in the agreement was not achieved by the petitioner causing loss to the federation, the distributorship was cancelled. According to the learned standing counsel, unless the targets are achieved, as fixed, it would not be viable for the federation to meet the day to day requirements and would result in sustaining losses. Therefore, the distributors were asked to meet the targets. In spite of giving several oral instructions and written notices, petitioner failed to achieve the targets and failed to respond to the notices.

8. By notice dated 26.10.2018, petitioner was informed that from November, 2017 to September, 2018, as against committed quantity of 17500, the percentage of milk stock obtained was far less and, therefore, petitioner was called upon to explain. In the notice, it was alleged that petitioner was not placing the indent for supply of milk by 3.00 p.m. daily and failed to arrange own transport facility, but utilizing the federation delivery vehicles. The material placed on record by the respondent would show that Mr.Satish, who received the notice dated 05.11.2018, is looking after the accounts of petitioner. The material placed on record also disclose that correspondence was sent to the petitioner through e-mail furnished by the petitioner. It is also significant to note that in response to termination of distributorship, petitioner sent letter dated 17.01.2019 addressed to the Managing Director, wherein petitioner admitted receipt of notice dated 26.10.2018, and stated that due to unavoidable reasons petitioner could not respond to the notice. Thus, the material placed on record by the respondent-federation clearly show that prior to the termination of distributorship notice, several notices were issued, wherein the federation has expressed dis-satisfaction in the manner of functioning of petitioner in distribution of milk and milk products. But petitioner failed to avail opportunity afforded. Therefore, it cannot be said that termination notice was not preceded by due opportunity as sought to be contended.

9. Clause-16 of the agreement would make it clear that petitioner agreed to maintain a running average of 80% of the targeted quantity and if the achievement is below 80%

continuously for two months, the federation can initiate the process for cancellation of distributorship by giving 15 day notice. As seen from the notices issued as well as averments in the counter-affidavit, petitioner never achieved 80% of the target fixed and maximum percentage of target reached was 61% in April, 2018. Thus, the commitment given by the petitioner was not honoured and in terms of said clause, notices were issued before termination. Therefore, the order of termination is not vitiated and the decision cannot be said as arbitrarily made. Party to the contract has validly invoked the clause for termination on account of failure of the terms of contract.

10. Petitioner also failed to rebut the specific assertion of respondent federation that she did not place indents for supply of milk daily by 3 p.m. In fact, the commitment of federation to supply of milk, as reported to this Court in W.P.No.29889 of 2018 was that petitioner should deposit the requisite amount and place an indent before 3.00 p.m. In the notices issued, it was alleged that petitioner did not deposit the amount and no indent was placed for supply of milk by 3 p.m. It cannot be said that requirement to place of indent by 3 p.m., is unreasonable restriction warranting interference by this Court. Milk has to be supplied very early in the morning, so that milk can reach the consumer by 5 or 6 a.m., in the morning. Therefore, federation has to assess the demand to make all arrangements in the previous evening, regarding supply of milk to the distributors or the vendors on the next day. Thus, fixing time schedule has nexus to the business module and it is mandatory to the distributor to

adhere to the said requirement. Apparently, petitioner failed to honour the cut-off time prescribed.

11. Learned standing counsel asserted that the distribution of milk directly to the vendors was resorted to, where the distributors were not distributing milk/have withdrawn distributorship by taking back their deposits. This assertion in the counter-affidavit is not denied by the petitioner.

12. Therefore, the reasons assigned in the impugned notice of termination of distributorship cannot be said as illegal and decision made was arbitrary warranting interference by this Court. W.P.No.740 of 2019 merits no consideration and is accordingly dismissed.

13. On account of subsequent cancellation of distributorship, the grievance ventilated in W.P.No.29889 of 2018 does not survive and, therefore, W.P.No.29889 of 2018 is dismissed.

14. However, as seen from the averments in the counter-affidavit, though federation is competent to forfeit security deposit, the federation permitted distributors to withdraw from distributorship and returned/adjusted the security deposit. That being so, notwithstanding dismissal of writ petitions, petitioner is permitted to request the respondent-federation to refund the security deposit/adjust the security deposit by permitting him as milk vendor. On making such a request, the respondent-federation shall consider the same objectively and take appropriate decision within three weeks of making such a request.

Pending miscellaneous petitions in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 12.02.2019
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HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NOs.29889 of 2018 & 7409 OF 2019

Date: 12.02.2019

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