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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.07.2021

CORAM

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

W.P.No. 14337 of 2021

and

WMP.Nos. 15226 & 15227 of 2021

1. R.Pushparaj
 2. Balasubramanian Thangavel
 3. Sakthivel T
 4. T.Balamurugan
 5. Thangam
 6. A.C.Thangaduri
 7. Flora Agency
rep by its Proprietrix
Mrs. Mary Josephine S
C&F Agent,
C/o. Tamil Nadu Co-operative Milk Producers Federation Ltd.,
W/o. Felix Bosco,
Plot No. 345, 7th Cross Street,
Mangala Nagar, Porur, Porur Ambattur,
Tiruvallur - 600 116.
 8. Nagamani S
 9. Samuel Gnanaraj
 10. Palanisamy Thangavel
 11. Geetha Rajkumar
- ..Petitioners

Vs

Tamil Nadu Co-operative Milk Producers Federation Ltd.,
Rep. By its Managing Director,
No.2, Pasumpon Muthuramalingam Salai,
Nandanam,
Chennai -600035.

...Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India for writ of Certiorarified Mandamus, calling for the records of the Respondent vide reference No.4267/WSD/2019 dated 02.07.2021 passed by the Managing Director Tamil Nadu Milk Producers Co-operative Federation Chennai and to quash the same and further direct the Respondent to supply milk to the petitioners.



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For Petitioner : Mr.G.K.R.Pandian

For Respondent : Mr.Edwin Prabakar, GA

O R D E R

With the consent of both the parties, the writ petition is taken up for final disposal at the admission stage itself.

2. This Writ petition is filed to direct the respondents to call for the records of the Respondent vide reference No.4267/WSD/2019 dated 02.07.2021 passed by the Managing Director Tamil Nadu Milk Producers Co-operative Federation Chennai and to quash the same and further direct the Respondent to supply milk to the petitioners.

3. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent and perused the records.

4. The case of the petitioner is that the petitioners were appointed as C&F Agents on 09.09.2019 in Tamil Nadu Co-operative Milk Producers Federation Limited for improvement of sales. An agreement was entered into between the writ petitioners and the respondent Federation on 30.09.2019. Due to pandemic lock down and closure of educational institutions and huge migration of population from urban area to rural area, the petitioners were not in position to increase the sale of milk from 4 lakhs liters per day to 5.3 lakhs liters per day, but they increase to 5.75 lakhs liters per day in the month of June 2021. Without considering the same, the respondent has passed an order, terminating the writ petitioners from their services as C & F Agents without any notice or enquiry, which is impugned in the writ petition. Challenging the same, the present writ petition is filed.

5. The main ground raised by the learned counsel appearing for the petitioners is that the petitioners were not granted any opportunity to put forth their objections/explanation before passing order of termination by the respondent federation.

6. Though the learned counsel for the petitioners have raised several grounds in the writ petition, the main ground raised by the learned counsel for the petitioners is that the petitioners were not granted any opportunity to put forth their objections/explanation before passing the impugned order of



termination by the respondent federation, hence the respondent violates the principles of natural justice. Therefore, on this ground the impugned order is liable to be quashed.

7. Mr. Edwin Prabhakar learned Government Advocate appearing for the respondent denied the averments and grounds raised in the writ petition and submitted that the impugned order itself is clear that if the petitioner is aggrieved by the aforesaid decision of the respondent, they can make representation and the same shall be considered and orders will be passed on merits. The learned Government Advocate appearing for the respondent strongly contended that the petitioners have violated/breached the conditions of agreement as entered between the parties.

8. On perusal of the impugned order dated 02.07.2021, there is no reference that the respondent had served show cause notice on the petitioners asking any explanation or objections from the petitioners. Thus, it is clear that the respondent has not granted opportunity to the petitioners to submit their explanation/objections before terminating their services as C&F Agents. On this short ground the impugned order is liable to be quashed.

9. At this juncture, it is relevant to rely upon the decision of the Hon'ble Apex Court reported in (2010) 3 SCC 321 in the case of M/s. Hindustan Petroleum Corporation Ltd & Others Vs. M/s. Super Highway Services & Another. The relevant portion is extracted below;

"17. The cancellation of dealership agreement of a party is a serious business and cannot be taken lightly. In order to justify the action taken to terminate such an agreement, the concerned authority has to act fairly and in complete adherence to the rules/guidelines framed for the said purpose. The non-service of notice to the aggrieved person before termination of his dealership agreement also offends the well-established principle that no person should be condemned unheard. It was the duty of the petitioner to ensure that the Respondent No.1 was given a hearing or at least serious attempts were made to serve him with notice of the proceedings before terminating his agreement."

10. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court reported IN 2021 SCC ONLINE SC 383 in the case of Uttar Pradesh Power Transmission Corporation Ltd and Another Vs. CG Power and Industrial Solutions Limited and another. The relevant portion of the judgment is extracted hereunder;



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67. It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly (i) where the writ petition seeks enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge. Reference may be made to Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. reported in AIR 1999 SC 22 and Pimpri Chinchwad Municipal Corporation and Ors. V. Gayatri Construction Company and Ors, reported in (2008) 8 SCC 172, cited on behalf of Respondent No.1.

11. In the instant case also, the petitioners were not served any notice by the respondent before terminating their services as C&F Agents. No reasonable opportunity granted to the petitioners before taking decision of termination is one of the grounds violates the principles of natural justice. Therefore it is clear that the impugned order passed by the respondent/Federation is liable to be quashed on the ground of violation of principles of natural justice.

12. In view of the decisions of the Hon'ble Supreme Court cited supra and the submissions made by the learned counsels appearing for the parties on either side, this Court is inclined to pass the following directions;

- i. The respondent shall serve show cause notice to the petitioners by stating all the reasons for cancellation/termination of services of petitioners, within a period of one week from the date of receipt of a copy of this order.
- ii. On receipt of show cause notice, the petitioners shall submit their explanations/objections to the respondent within one week thereafter.
- iii. On receipt of such explanation/objections from the petitioners, the respondent shall consider the same and pass orders on merits, in accordance with law, within a period of two weeks thereafter.



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iv. With the above directions, the writ petition is allowed. Consequently, the impugned order passed by the respondent in No.4267/WSD/2019 dated 02.07.2021 is set aside. No costs.

v. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Managing Director,
Tamil Nadu Co-operative Milk Producers Federation Ltd.,
No.2, Pasumpon Muthuramalingam Salai,
Nandanam, Chennai -600035.

+2 CC to Mr.G.K.R.Pandian, Advocate, Sr.No.32510/21

+1 CC to Mr.A.Edwin Prabakar, Advocate, Sr.No.33168/21

W.P.No. 14337 of 2021
and

WMP.Nos. 15226 & 15227 of 2021

JPL (CO)

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