



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2021

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. No. 18683 of 2021

and

WMP Nos.19936 and 19937 of 2021

1. R.Pushparaj
C&F Agent
C/o.Tamil Nadu Cooperative Milk Producers Federation Ltd.,
2. Balasubramanian Thangavel
C&F Agent
C/o.Tamil Nadu Cooperative Milk Producers Federation Ltd.,
3. T.Sakthivel
C&F Agent
C/o.Tamil Nadu Cooperative Milk Producers Federation Ltd.,
4. T.Balamurugan
C&F Agent
C/o.Tamil Nadu Cooperative Milk Producers Federation Ltd.,
5. Thangam
C&F Agent
C/o.Tamil Nadu Cooperative Milk Producers Federation Ltd.,
6. A.C.Thangadurai
C&F Agent
C/o.Tamil Nadu Cooperative Milk Producers Federation Ltd.,
7. Flora Agency
Rep.by its Proprietrix, Mrs.Mary Josephine.S
C&F Agent
C/o.Tamil Nadu Cooperative Milk Producers Federation Ltd.,
8. S.Nagamani
C&F Agent
C/o.Tamil Nadu Cooperative Milk Producers Federation Ltd.,
9. Samuel Gnanaraj
C&F Agent
C/o.Tamil Nadu Cooperative Milk Producers Federation Ltd.,



10.Palanisamy Thangavel
C&F Agent
C/o.Tamil Nadu Cooperative Milk Producers Federation Ltd.,

11.Geetha Rajkumar
C&F Agent
C/o.Tamil Nadu Cooperative Milk Producers Federation Ltd.,

.. Petitioners

Vs

Tamil Nadu Cooperative Milk Producers Federation Ltd.,
Rep. by its Managing Director
No.2 Pasumpon Muthuramalingam Salai
Nandanam
Chennai 600 035.

..Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent vide reference No.4267/WSD/2019 dated 18.08.2021 passed by the Managing Director, Tamil Nadu Milk Producers Cooperative Federation, Chennai, and to quash the same and further direct the respondent to continue with the C&F agreement dated 30.09.2021.

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

For Respondent : Mr.A.Edwin Prabakar

O R D E R

This writ petition has been filed challenging the impugned proceedings of the respondent dated 18.08.2021, wherein, the C&F agency of the petitioners was terminated.

2.The case of the petitioners is that they were appointed as C&F agents by the respondent through proceedings dated 09.09.2018 and pursuant to the same, the petitioners also entered into an agreement with the respondent, which clearly spelt out the terms and conditions of the agency. The respondent through proceedings dated 02.07.2021 terminated the agreement and the same became the subject matter of challenge before this Court in W.P.No.14337/2021.



3. The main ground on which the termination order was challenged was that the petitioners were not given an opportunity before their agency was terminated and therefore, a ground was taken that the order is vitiated due to violation of principles of natural justice.

4. The writ petition filed by the petitioners came to be allowed by an order dated 12.07.2021 and this Court interfered with the termination order mainly on the ground that it was passed without giving an opportunity to the petitioners. After interfering with the order, this Court issued the following directions at Paragraph No.12 of the order and the same is extracted hereunder:

"12. In view of the decisions of this Hon'ble Supreme Court cited supra and the submissions made by the learned counsel 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.

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."

5. Pursuant to the above order, a show cause notice came to be issued to the petitioners and the petitioners also gave their reply and after considering the same, the respondent has passed the impugned order dated 18.08.2021 terminating the



6. The learned counsel for the petitioners, apart from canvassing on the merits of the order passed by the respondent, also submitted that the respondent even without restoring the C&F agency of the petitioners has proceeded further to deal with the case with a preconceived mind and the same is apparent on the face of the record. The learned counsel submitted that immediately after the orders were passed by this Court, a legal notice was issued on 17.07.2021, wherein, the petitioners had called upon the respondent to restore the C&F agency of the petitioners since that will be the natural consequence of the earlier order passed in the writ petition. According to the learned counsel for the petitioners, this was not acted upon and a show cause notice dated 26.07.2021 came to be issued to the petitioners. Thereafter, the proceedings were back dated as if it was issued on 26.07.2021 restoring the C&F agency of the petitioners and whereas, this proceedings was actually received by the petitioners only on 05.08.2021. Therefore, the learned counsel submitted that the respondent has committed violation of the earlier orders passed by this Court and has also cited various facts, which are contrary to the records and hence, the impugned order of the respondent requires interference of this Court.

8. A careful reading of the agreement that has been entered into between the parties shows that in case of any dispute as among the parties, the same has to be referred for arbitration before a single Arbitrator to be nominated by the respondent. Clause 45 of the agreement makes this position very clear. This Court had interfered with the earlier order passed by the respondent mainly on the ground that the order was passed without affording an opportunity to the petitioners and therefore, it is violative of principles of natural justice. However, the present order has been passed by the respondent, after issuing notice to the petitioners and after the petitioners had given their reply. A careful reading of the order shows that various factual issues were considered by the respondent and thereafter, the respondent has proceeded to terminate the agency of the petitioners.

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Article 226 of the Constitution of India. However, such a course can be adopted only in cases where there is a serious violation of principles of natural justice. Yet another exception that can be considered is where the dispute is with regard to discharging the statutory liability, where this Court may not direct the parties to resort to arbitration. Admittedly, the present case is governed by the agreement between the parties and the agreement provides for a dispute resolution mechanism through arbitration. In such cases, the parties will have to necessarily resort to arbitration proceedings, since it involves going into the merits of the claim made by either of the parties. Such determination of disputed facts should never be entertained in a writ petition before this Court.

10. Insofar as the ground raised by the learned counsel for the petitioners to the effect that the respondent did not restore the C&F agency of the petitioners, in spite of the earlier orders passed by this Court interfering with the termination order of the respondent is concerned, that may be a cause of action for invoking the contempt jurisdiction of this Court, if really there was any violation of the earlier order passed by this Court and that by itself is not a ground to interfere with the order passed by the respondent on merits.

11. In view of the above, this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India and the petitioners are given liberty to work out their remedy by resorting to arbitration proceedings as provided under the agreement, which governs the parties. Except giving this liberty, no further orders can be passed in this writ petition.

12. This writ petition is disposed of accordingly. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

RR



To

The Managing Director
Tamil Nadu Cooperative Milk Producers Federation Ltd.,
No.2 Pasumpon Muthuramalingam Salai
Nandanam
Chennai 600 035.

+1cc to M/s.G.K.R.Pandian, Advocate, S.R.No.45107

+1cc to M/s.A.Edwin Prabakar, Advocate, S.R.No.45594

W.P.No.18683 of 2021

KSM(CO)
SU(24/09/2021)