

Rajasthan Cooperative Dairy Federation Ltd.

Vs

Maha Laxmi Mingrate Marketing Service Pvt. Ltd. and Others

Civil Appeal No. 2679 of 1992

(M. M. Punchhi, Sujata V. Manohar JJ)

17.09.1996

JUDGMENT

SUJATA V. MANOHAR, J. –

1. The appellant, Rajasthan Cooperative Dairy Federation Ltd., issued an advertisement inviting applications for selling agents for its various products for the territories of Rajasthan, Punjab, Haryana, Himachal Pradesh and Delhi, on or about 19-11-1988. Seventy applications were received by the appellant. Ultimately, on 1-6-1990, a Letter of Intent was issued by the appellant in favour of Respondent 1 for appointing Respondent 1 as the selling agent of the appellant for marketing of Saras Brand Dairy Products, inter alia, on the following terms :

"(1) that you will sign an agreement on non-judicial stamp paper of Rs 5 with RCDF and this arrangement will be enforceable from the date legally executed contract has come into being.

#(2) * * *##

(3)... The goods will be issued to you against irrevocable bank guarantee on furnishing from scheduled bank on 15 days' credit basis... (sic).

You are requested to submit irrevocable bank guarantee for an amount of Rs 15 lakhs in favour of RCDF, Jaipur.

This letter duly signed by you must reach GM(M&P) by 5-6-1990 and call on us for execution of the agreement of 12-6-1990 (sic).

You are also requested to take preparatory action for starting work with effect from 21-6-1990 and also submit us immediately the market plan for taking further action at your end."

2. Respondent 1, by its letter of 1-6-1990, acknowledged receipt of the Letter of Intent. The letter also noted that the agreement was to be signed on 12-6-1990 and that Respondent 1 was going ahead, inter alia, with arranging an irrevocable bank guarantee from a scheduled bank. The letter contained a request to the appellant to release an advertisement announcing the appointment of Respondent 1 as the selling agent. The appellant, however, did not release any such advertisement. Respondent 1, however, issued an advertisement in which Respondent 1 incorrectly described itself as the sole selling agent and further wrongly indicated that it was also the sole selling agent for

polypack milk. The appellant protested against wrong statements in the advertisement.

3. The contract was not signed on 12-6-1990. The respondent did not attend on that date and asked for some time. The irrevocable bank guarantee for Rs 15 lakhs was also not submitted by Respondent 1. The appellant, by its letter of 16-7-1990, cancelled the Letter of Intent. In the letter, the appellant pointed out that the Letter of Intent issued to Respondent 1 was conditional on his fulfilling certain obligations as a condition precedent to entering into a contract. The conditions, inter alia, were, (1) submission of an irrevocable bank guarantee of Rs 15 lakhs by 12-6-1990; and (2) execution of an agreement with the appellant by 12-6-1990. Besides these two conditions, Respondent 1 had also promised to submit to the appellant its profit and loss account and balance-sheet for the past year before the execution of the agreement. Respondent 1 had not done so. The letter also referred to the unauthorised advertisement issued by Respondent 1 wrongly describing itself as the sole selling agent of the appellant and stated that in these circumstances, since Respondent 1 had failed to fulfil its obligations within the stipulated period, the Letter of Intent was revoked. A telegram of the same date to the same effect was also sent to Respondent 1.

4. Respondent 1 filed a writ petition challenging the revocation of the Letter of Intent. The writ petition was allowed. The High Court upheld the contention of Respondent 1 that the reasons given by the appellant for cancellation of the Letter of Intent were not valid. The cancellation of the Letter of Intent was mala fide inasmuch as there were questions asked in the Legislative Assembly about the appointment of Respondent 1 as a selling agent of the appellant because Respondent 1 was the brother-in-law of the then Chief Minister. The High Court further said that the appellant had acted arbitrarily in cancelling the Letter of Intent and had violated the principles of natural justice in not giving a hearing to Respondent 1 before cancelling the Letter of Intent. An appeal filed by the appellant before the Division Bench of the High Court also failed. Hence the appellant has come before this Court by way of present appeal.

5. In its letter of 16-7-1990 cancelling the Letter of Intent issued in favour of Respondent 1, the appellant had given several reasons for cancelling the Letter of Intent. Respondent 1 had not submitted to the appellant its profit and loss account and balance-sheet for the previous year as requested by the appellant. Respondent 1 had wrongly held itself out as the sole selling agent of the appellant. These are clearly circumstances which are relevant to the cancellation of the Letter of Intent. Also the Letter of Intent clearly set out the conditions which Respondent 1 had to fulfil. One such condition was submitting an irrevocable bank guarantee for Rs 15 lakhs. This was also not done. Respondent 1 contends that it had informed the appellant that it would submit the bank guarantee within three days of the signing of the contract. The appellant, however, is within its rights in insisting that the bank guarantee should be submitted before the contract is signed. The appellant, as a prudent businessman is entitled to satisfy itself about the financial position of the party whom the appellant is appointing as its selling agent. If Respondent 1 has not submitted the requisite documents in this connection and has held itself out as the sole selling agent when to its knowledge, there was no intention of appointing Respondent 1 as the sole selling agent, these are valid circumstances which the appellant can take into account in deciding whether to enter into a contract and bind itself legally with Respondent 1 or not. In these circumstances, if the contract has been cancelled it cannot be considered as arbitrary action on the part of the appellant violative of any fundamental rights of Respondent 1.

6. Respondent 1 has tried to rely upon certain extraneous circumstances to allege mala fides on the part of the appellant in cancelling the Letter of Intent. When the reasons for cancellation are clearly set out in the cancellation letter and are germane to the decision not to enter into a contract with

Respondent 1, we fail to see how these extraneous circumstances can make the decision mala fide.

7. The High Court was also not right in importing the doctrine of audi alteram partem in these circumstances. If the conduct of Respondent 1 was such that it did not inspire any confidence in the appellant, the appellant was entitled to decline entering into any legal relationship with Respondent 1 as its selling agent. The Letter of Intent merely expressed an intention to enter into a contract. If the conditions stipulated in the Letter of Intent were not fulfilled by Respondent 1, and if the conduct of Respondent 1 was entitled to withdraw the Letter of Intent. There was no binding legal relationship between the appellant and Respondent 1 at this stage and the appellant was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with Respondent 1 or not.

8. Respondent 1 contends that in anticipation of entering into a contract with the appellant, Respondent 1 incurred heavy expenses. This statement of Respondent 1 has to be established on evidence. A writ petition is not an appropriate proceeding if any claim for damages based on disputed facts is required to be established. We do not wish to pronounce on the question whether, in anticipation of entering into a contract, a party which incurs expenses, can recover them from the other party if that other party ultimately, rightly declines to enter into a contract.

9. The appeal is, therefore, allowed. The judgment and order of the High Court is set aside and the writ petition is dismissed. In the circumstances, there will be no order as to costs.