IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2633 of 2006
Date of decision : 31.8.2006.

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Parties Name

Vaishnavi Enterprises

..... Appellant

vs.

The Ropar District Co-operative Milk Producers Union Ltd. and others.

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Puneet Bali, Advocate and
Sh. Amit Aggarwal, Advocate for the appellant.

Sh. Arun Jain, Advocate and
Sh. Sachin Sood, Advocate for the respondents.

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S.N. Aggarwal, J.

The appellant filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (in short 'the AC Act, 1996') seeking interim injunction for restraining the respondents from cancelling the agreement dated 17.7.2001 and for permission to allow the appellant to continue operating as the sole distributor of sale of Verka milk and fresh milk products in Chandigarh, Mohali, Panchkula and surrounding areas. It was dismissed by the learned Additional District Judge, Roopnagar, vide order dated 15.6.2006.

Hence the present appeal.

The facts of the case are that the Ropar District Co-operative Milk Producers Union Limited, Mohali-respondent No.1 (hereinafter to be referred as 'respondent-Union') through its Managing Director, had appointed the appellant M/s. Vaishnavi Enterprises, Chandigarh as their sole distributor for the sale of Verka milk and fresh milk products like curd, paneer, lassi and other Verka brand products for Chandigarh, Mohali, Panchkula and its surrounding areas. This agreement was valid for a period of three years from 1.8.2001. The appellant was also to furnish bank guarantee for an amount of Rs.30 lacs as per condition No.7 of the agreement. There were other terms and conditions also. The matter went on although with some problems in between but the period of three years expired on 31.7.2004.

The appellant wrote letters to the respondent-Union for continuing with the business, while the respondent-Union permitted the appellant to continue on temporary basis although their agreement ceased to exist with effect from 1.8.2004. Finally, the respondent-Union informed the appellant that they were at liberty to discontinue the distribution job if they so liked vide their letter dated 19.10.2004 (Annexure A-21).

The appellant made reference to the Registrar, Cooperative Societies, Punjab, Chandigarh on 22.11.2004 (Annexure A-25) that there was a dispute between the parties and he was to arbitrate under Section 23 of the AC Act 1996, read with clause 49 of the agreement dated 17.7.2001. The said application was dismissed in limine by the

Registrar, Cooperative Societies, Punjab, Chandigarh vide its order dated 21.12.2004 (Annexure A-27). The appellant filed CWP No. 1437 of 2005 in this Court. The said writ petition was disposed of by this Court vide order dated 30.4.2005 by which the Registrar was directed to examine the matter afresh on all the issues available to the parties and to pass an appropriate speaking order in accordance with law. The parties again appeared before the Registrar, Cooperative Societies, Punjab, Chandigarh but the reference made by the appellant was rejected again by the Registrar, Cooperative Societies, Punjab, Chandigarh on 10.8.2005 (Annexure A-28). Thereafter, the appellant filed an application under Section 11 (6) of the AC Act 1996 for appointment of an arbitrator (Arbitration case No. 149 of 2006), which has not been listed so far, for hearing.

Thereafter, respondent No.2 issued letter dated 8.6.2006 informing the appellant that the Board of Directors in their meeting held on 6.6.2006 resolved to take over the supplies of milk and fresh milk products at plant level through its own arrangement with effect from 15.6.2006 and directed the appellant-firm to withdraw all kind of deployment/activities regarding supply of liquid milk and fresh milk products etc. in Chandigarh, Panchkula, Mohali and nearby surrounding areas with effect from 15.6.2006. On this the appellant filed a petition under Section 9 of the AC Act 1996. As stated above the said petition has been dismissed by the Court of learned Additional District Judge, Roopnagar vide order dated 15.6.2006.

The submission of the learned counsel for the appellant-firm was that interim relief can be granted by the Civil Court under

Section 9 of the AC Act, 1996 even prior to the initiation of arbitration proceedings. In support of this submission, reliance was placed on the judgment of the Hon'ble Supreme Court reported as **Sundaram Finance Ltd. vs. NEPC India Ltd**. (1999) 2 Supreme Court Cases 479. There is no dispute about this legal preposition but the agreement and the arbitration clause in the agreement, must exist before the provision of Section 9 of the AC Act, 1996 is invoked. If there is no existing agreement between the parties or if there is no arbitration clause in the agreement, Section 9 of the AC Act, 1996 is not available to the parties to seek interim relief.

The next submission of the learned counsel for the appellant was that although the agreement dated 17.7.2001 had ceased to exist with effect from 31.7.2004, but still respondent-Union had permitted the appellant to continue with its business as it was carried out earlier during the life time of the agreement dated 17.7.2001. Therefore, impliedly the said business was going on in the terms and conditions of the said agreement. Therefore, it could not have been brought to an end abruptly. Reliance was placed on the judgment of the Hon'ble Supreme Court reported as **Hyderabad Municipal Corporation vs. M. Krishnaswami Mudaliar and Mudaliar and another** (1985) 2 Supreme Court Cases 9, in which the Hon'ble Supreme Court had settled the law that where the parties had agreed to the extension of the contract and the Government does not communicate its acceptance to the contractor and continues to maintain silence in spite of reminders, it will be presumed that the Government has consented to it.

However, the facts of the present case are entirely different. The agreement dated 17.7.2001 expired on 1.8.2004 and on 30.7.2004 i.e. before the expiry of that agreement, the respondent-Union had informed the appellant that the agreement has ceased to exist. The Revised Marketing Policy has been framed. The appellant was permitted to continue to supply packed milk and fresh milk products in the area allotted to it till new arrangements were not made operational. The appellant was allowed to continue with the job only temporarily.

The appellant vide its letter dated 30.7.2004 (Annexure A-13) addressed to the respondent-Union, acknowledged that the agreement was going to expire on 31.7.2004 but requested that the arrangement should continue for atleast one year more and that the margin of commission may be increased by minimum 15 paise per litre and if the respondent-Union wanted to discontinue the distribution of supply, then notice of minimum four months be given to the appellant. In continuation, thereof, the appellant sent another letter dated 3.8.2004 (Annexure A-15) and 5.8.2004 (Annexure A-16). In response to the letter dated 30.7.2004 received from the respondent-Union, the appellant vide its letter dated 7.8.2004 (Annexure A-17), informed the respondent-Union that it (appellant) was still continuing to provide distribution facilities subject to the same terms and conditions which were incorporated in the agreement dated 17.7.2001, and in case of any dispute etc, which may occur during the period after 1.8.2004, the terms and conditions as incorporated in the agreement dated 17.7.2001 shall be applicable.

On this, the respondent-Union wrote letter dated 19.10.2004 (Annexure A-21) to the appellant that the Milkfed Punjab has framed a Revised Marketing Policy and the plant (respondent No.1) was under obligation to implement the Revised Marketing Policy under which it was to appoint multiple selling agents, transporters in the cities of Punjab. It was also observed by the respondent-Union as under :-

> "This plant has not requested you nor allowed you to make arrangements as suggested by you in your letter in reference and as such we are not bound by the arrangements made by you for distribution of our products. You are at liberty to discontinue the distribution job if you so like. You are fully aware that your agreement has come to an end on 1.8.2004 and as such we are not under any obligation to extend time for your sole distribution nor we are inclined to do it. We do not admit, the contents of your letter under reference as correct.
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> In the last it is made clear to you that we are in the process of implementing the revised marketing policy and as such we can not come up to your expectation of giving you four months notice as desired by you nor we can increase your margins by 0.15 paisa per litre as desired by you because of very competitive marketing atmosphere and high production cost. You are at liberty to discontinue your sole distributorship forthwith as Milk

> Plant, Mohali is fully equipped for implementing the new revised marketing policy framed by Milkfed. Please take notice that we are unable to accept your demands mentioned in the letter under reference as we are in the process of implementing the revised marketing policy immediately. It is however added that we will give 10 days notice before terminating your temporary arrangements which you are carrying on after 1.8.2004."

Through this letter,therefore, the respondent-Union removed all the doubts and clearly informed the appellant that the agreement dated 17.7.2001 had ceased to exist with effect from 1.8.2004. There was no further agreement between the parties. The appellant was at freedom to discontinue the supply/distribution of milk. The other demands made by the appellant-firm in its letter dated 30.7.2004 for continuing the agreement for another one year or to increase the margin of commission by 15 paise per litre or for giving the appellant four months notice before termination of job, were rejected specifically. The demand made in letter dated 7.8.2004 about the extension of the agreement dated 17.7.2001 and about referring the matter to the arbitrator etc. were also rejected specifically or implidely.

This clearly shows that the respondent-Union never kept the things in abeyance nor it remained silent. Therefore, the judgment in M. Krishnaswami Mudaliar's case (supra) relied upon by the learned counsel for the appellant-firm does not apply to the facts of the present case. The respondent-Union responded categorically to the

demands raised by the appellant-firm and rejected all the demands. It reminded the appellant-firm that the agreement dated 17.7.2001 has ceased to exist and the appellant-firm was given the liberty to discontinue the business forthwith.

The next submission of the learned counsel for the appellant was that even as per the agreement dated 17.7.2001, it was liable to be extended. Since the appellant-firm was permitted to carry on the business after the expiry of the agreement dated 17.7.2001, i.e. after 1.8.2004, therefore, automatically the contract stood renewed and the same terms and conditions as contained in the agreement dated 17.7.2001 became applicable. This submission has no force at all because, even as per clause 1 of the agreement dated 17.7.2001, the contract could be extended further on mutual understanding. In the present case, there was no mutual consent or mutual understanding about the extension of the agreement dated 17.7.2001. The respondent-Union had only permitted the appellant-firm to continue the business on temporary basis till further orders and when the appellant-firm started raising demands about the extension of time, increase in margin of commission, arbitration clause etc., then the respondent-Union specifically warned the appellant-firm vide letter dated 19.10.2004 that the appellant-firm was at liberty to discontinue the business. Therefore, the question of renewal of the agreement dated 17.7.2001 did not arise.

From the above discussion, therefore, it also becomes apparent that the agreement dated 17.7.2001 had come to an end with effect from 1.8.2004 and whatever transaction took place thereafter, it

was only a temporary arrangement. It cannot be presumed that the terms and conditions laid down in the agreement dated 17.7.2001 came into force once again after 1.8.2004 as is alleged by the appellant, since there was no agreement after 1.8.2004. It is apparent from the conduct of the appellant-firm itself. Under the agreement dated 17.7.2001, the appellant-firm was required to furnish bank guarantee to the tune of Rs.30 lacs, which it had furnished. That said bank guarantee was valid only upto 31.7.2004. Admittedly, no bank guarantee was given by the appellant thereafter in favour of the respondent-Union. If the agreement dated 17.7.2001 had become enforceable after 1.8.2004, then the appellant would have deposited the bank guarantee to the tune of Rs.30 lacs, as per clause 7 of the agreement dated 17.7.2001. Admittedly, the said bank guarantee has not been furnished by the appellant-firm till today. Therefore, it appears to be an imaginary argument on behalf of the appellant-firm that the said agreement dated 17.7.2001 was enforceable against the respondent-Union but its terms and conditions were not applicable to the appellant-firm

Since, there was no agreement, therefore, the question of existence of an arbitration clause did not arise. Since there was no agreement between the parties, there was no arbitration clause and since there was no arbitration clause, the provisions of Section 9 of the AC Act 1996 could not be invoked and no such application was maintainable, which has been rightly dismissed by the learned trial Court vide impugned order dated 15.6.2006.

The next submission of the learned counsel for the appellant

was that very existence of the agreement clause or the existence of any dispute between the parties was to be decided by the arbitrator. This submission made by the appellant cannot be accepted. The Civil Courts cannot function mechanically without applying its mind. The relief can be granted under Section 9 of the AC Act, 1996 only after the existence of the agreement is proved between the parties and the said agreement contains an arbitration clause and the parties express their intention to resort to the arbitration clause and refer the matter to the arbitrator. When there is no legal and enforceable agreement between the parties, from where does the arbitration clause emerges and how the question of existence of any dispute arises. When there is no agreement, no arbitration clause can come into existence and when there is no arbitration clause, the question of referring the matter to the arbitrator does not arise. Merely because the appellant-firm has filed an application in this Court for appointment of an arbitrator, it cannot be taken as granted that there is an agreement between the parties and it contains an arbitration clause.

The next submission made by the learned counsel for the appellant was that as per the letter dated 19.10.2004 (Annexure A-21), the respondent-Union had undertaken to give 10 days notice before terminating the alleged temporary arrangement. However, the said respondent vide their letter dated 8.6.2006 (Annexure A-29) terminated the arrangement with effect from 15.6.2006. Therefore, not even 10 days notice was given to the appellant-firm before terminating the arrangement.

This submission has been considered. It has no merits at all.

There was no written agreement between the parties. The letter dated 19.10.2004 (Annexure A-21) was just a rebuttal letter to the conditions raised by the appellant-firm in its earlier letters dated 30.7.2004, 3.8.2004, 5.8.2004 and 7.8.2004. No doubt, it was mentioned by the respondent-Union in its letter that 10 days notice would be given to the appellant but the respondent-Union was not legally bound to give 10 days notice to the appellant. No such rule or law or any statutory provision required the respondent-Union to serve 10 days notice to the appellant after the agreement dated 17.7.2001 had expired on 1.8.2004. Thereafter, it was a temporary arrangement liable to be terminated at any time. Even, through their letter dated 30.7.2004 (Annexure A-14), the respondent-Union had informed the appellant that the appellant may continue to supply packed milk and fresh milk products etc. after 1.8.2004 on temporary basis and **till further orders**. It means, therefore, that this arrangement was only temporary, which was liable to be terminated at any time. Even in their subsequent letter dated 19.10.2004 (Annexure A-21) the respondent-Union had made it clear to the appellant that they were at liberty to discontinue their sole distributorship at any time. Since the agreement between the parties had ceased to exist with effect from 31.7.2004, thereafter, therefore, there was no legal obligation between the parties to serve any notice. It is, therefore, held that 10 days notice was not a legal requirement and even if 10 days notice has not been given, it has not infringed any legal right vested in the appellant-firm.

It was further submitted that the order dated 10.8.2005 passed by the Registrar, Cooperative Societies, Punjab, Chandigarh

was not challenged by the respondent-Union and therefore, it means that the respondent-union had admitted the existence of the agreement between the parties. This submission has no merits at all. Reference made by the appellant-firm to the Registrar, Cooperative Societies, Punjab Chandigarh, was rejected by him vide order dated 10.8.2005. Therefore, this order did not affect the rights of the respondent-Union and therefore, they had no occasion to file an appeal against that order.

It was further submitted by the learned counsel for the appellant that 6 members of the respondent-Union had withdrawn the resolution dated 6.6.2006 passed by the respondent-Union by which the arrangement with the appellant-firm has been terminated. This submission is without any basis. This letter has been placed on the file by the appellant-firm vide application dated 29.8.2006, while this letter was allegedly submitted by six members of the respondent-Union on 23.8.2006. This letter is of no consequence because no resolution was passed by the respondent-Union for cancelling the resolution dated 6.6.2006. Therefore, no legal consequences flow from the letter dated 23.8.2006.

It was further submitted that only the Managing Director was authorised to pass the order for cancelling the temporary arrangement because the agreement dated 17.7.2001 was executed by the Managing Director. This submission also has no legs to stand. The resolution dated 6.6.2006 communicated by the General Manager vide letter dated 8.6.2006 was passed by the Board of Directors in their meeting held on 6.6.2006 by which it was resolved to take over

the supplies of milk and fresh milk products at plant level through its own arrangement with effect from 15.6.2006. The Board of Directors includes the Managing Director. Therefore, there is no fault in the resolution dated 6.6.2006 passed by the respondent-Union and communicated vide their letter dated 8.6.2006.

After the respondents had informed the appellant that the agreement dated 17.7.2001 had ceased to exist with effect from 1.8.2004, only the temporary arrangement was continued for a while. Although the appellant-firm vide its letter dated 30.7.2004 only prayed for permitting them to continue the business for another one year but they are running the business after 1.8.2004 till today i.e. for more than two years after the expiry of the agreement on 1.8.2004. This has been done by the appellant by taking the support of the orders of various Courts by misusing the process of law. Since there was no agreement between the parties after 31.7.2004 and there was no arbitration clause, therefore, the appellant had no right to invoke the jurisdiction of the Civil Court by filing an application under Section 9 of the AC Act 1996. The application filed by the appellant has been rightly dismissed by the learned trial Court.

There is no merit in the present appeal and the same is dismissed.

(S.N.Aggarwal)
Judge

31.8.2006.
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