

A RAJASTHAN CO-OPERATIVE DIARY FEDERATION LTD.

v.

SH. MAHA LAXMI MINGRATE MARKETING
SERVICE PVT. LTD. AND ORS.

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SEPTEMBER 17, 1996

[M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.]

C *Constitution of India, 1950 : Articles 226, 136—Writ Petition—Disputed questions of fact—Maintainability of—Government Contract—Letter of Intent issued in favour of contractor—Contractor did not fulfil conditions stipulated in Letter of Intent—Subsequently, Letter of Intent cancelled—Contractor incurred heavy expenses in anticipation of contract—Held: whether contractor incurred heavy expenses in anticipation of contract and was entitled to recover the same were disputed questions of fact—Such disputed questions of fact could neither be examined by High Court in writ petition nor by Supreme Court in appeal.*

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Administrative Law :

E *Natural justice—Pre-decisional hearing—Government Contract—Letter of Intent issued in favour of contractor—Letter of Intent specified submission of irrevocable bank guarantee of Rs. 15 lakhs within a stipulated date, execution of agreement within that date and submission of profit and loss account and balance sheet for the past year before execution of agreement—Contractor did not fulfil conditions but issued advertisement incorrectly describing itself as sole selling agent Letter of Intent cancelled without giving opportunity of hearing to contractor—Held : cancellation of letter of Intent not arbitrary—Reasons being germane to the decision to cancel Letter of Intent, extraneous circumstances could not be relied upon to hold decision mala fide—In the circumstances of the case, pre-decisional hearing was not required to be given.*

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A Letter of Intent was issued by the appellant in favour of respondent No. 1 for appointment as selling agent of appellant's products. The conditions stipulated in the Letter of Intent were submission of an irrevocable bank guarantee of Rs. 15 lakhs within a specified date, execution of an agreement within that date, submission of profit and loss account and balance sheet for the past year before execution of the agreement.

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However, respondent No. 1 did not fulfil the conditions of the Letter of Intent but issued an advertisement in which respondent No. 1 incorrectly described itself as the sole selling agent of the appellant. For these reasons the appellant cancelled the Letter of Intent.

Respondent No. 1 filed a writ petition before the High Court challenging the revocation of the Letter of Intent. The High Court allowed the petition on the ground that the appellant had acted arbitrarily with *mala fide* intention and had violated the principles of natural justice in not giving a hearing to respondent No. 1 before cancelling the Letter of Intent. Being aggrieved the appellant preferred the present appeal.

On behalf of respondent No. 1 it was contended that in anticipation of entering into a contract with the appellant, respondent No. 1 incurred heavy expenses and that respondent No. 1 was entitled to recover them from the appellant.

Allowing the appeal, this Court

HELD 1.1. 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 No. 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 No. 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 No. 1 or not. In these circumstances, if the letter of intent has been cancelled it cannot be considered as arbitrary action on the part of the appellant violative of any Fundamental Rights of respondent No. 1. [373-A-C]

1.2. 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 No.1, the extraneous circumstances relied on by respondent No. 1 cannot make the decision *mala fide*. [373-D]

1.3. The doctrine of *audi alteram partem* cannot also be imported in these circumstances. If the conduct of respondent No. 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 No. 1 as its

A 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 No.1, and if the conduct of respondent No.1 was otherwise not such as would generate confidence, the appellant was entitled to withdraw the Letter of Intent. There was no binding legal relationship between the appellant and respondent No. 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 No. 1 or not. [373-E-F-G]

2. The statement of respondent No. 1 that it incurred heavy expenses in anticipation of entering into a contract with the appellant 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. This Court would also not 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. [373-H; 374-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2679 of 1992.

From the Judgment and Order dated 7.8.91 of the Rajasthan High Court in D.V.C.S.A. No. 169 of 1991.

Sudhir Gupta, Shahil Rezvi and Aruneshwar Gupta for the Appellant.

H.N. Salve and S.V. Deshpande for Respondents.

The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. The appellant, Rajasthan Co-operative 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 19th of November, 1988. Seventy applications were received by the appellant. Ultimately, on 1st June, 1990, a letter of Intent was issued by the appellant in favour of respondent No. 1 for appointing respondent No. 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. A

(2)

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

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

This letter duly signed by you must reach GM(M&P) by 5th of June, 1990 and call on us for execution of the agreement on 12.6.1990 (sic).

You are also requested to take preparatory action for starting work within effect from 21st June, 1990 and also submit us immediately the market plan for taking further action at your end." D

Respondent No. 1, by its letter of 1st of June, 1990, acknowledged receipt of the Letter of Intent. The letter also noted that the agreement was to be signed on 12th of June, 1990 and that respondent No. 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 No.1 as the selling agent. The appellant, however, did not release any such advertisement. Respondent No. 1, however, issued an advertisement in which respondent No.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 statement in the advertisement. E F

The contract was not signed on 12th of June, 1990. The respondent did not attend on that date and asked for some time. The irrevocable bank guarantee for Rs. 15 lacs was also not submitted by respondent No. 1. The appellant, by its letter of 16th July, 1990, cancelled the Letter of Intent. In the letter, the appellant pointed out that the Letter of Intent issued to respondent No. 1 was conditional on his fulfilling certain obligation as a condition precedent to entering into a contract. The conditions, *inter alia*, H

- A were , (1) submission of an irrevocable bank guarantee of Rs. 15 lacs by 12th of June, 1990; and (2) execution of an agreement with the appellant by 12th of June, 1990. Beside these two conditions, respondent No. 1 had also promised to submit to the appellant its profit & loss account and balance-sheet for the past year before the execution of the agreement.
- B Respondent No. 1 had not done so. The letter also referred to the unauthorised advertisement issued by respondent No. 1 wrongly describing itself as the sole selling agent of the appellant and stated that in these circumstances, since respondent No. 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 No. 1.

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- Respondent No.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 No. 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 No. 1 as a selling agent of the appellant because respondent No. 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 No. 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.

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- F In its letter of 16th of July, 1990 cancelling the Letter of Intent issued in favour of respondent No. 1, the appellant had given several reasons for cancelling the Letter of Intent. Respondent No. 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 No. 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 No. 1 had to fulfil. One such condition was submitting an irrevocable bank guarantee for Rs. 15 lacs. This was also not done. Respondent No. 1 contends that it had informed the appellant that it would submit the bank guarantee within
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- H 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 No. 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 No. 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 No.1 or not. In these circumstances, if the contact has been cancelled it cannot be considered as arbitrary action on the part of the appellant violative of any Fundamental Rights of respondent No. 1.

Respondent No. 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 No. 1 we fail to see how thee extraneous circumstances can make the decision *mala fide*.

The High Court was also not right in importing the doctrine of *audi alteram partem* in these circumstances. If the conduct of respondent No. 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 No. 1 as its selling agent. The Letter of Intent merely expressed an intention to enter into a contact. If the conditions stipulated in the Latter of Intent were not fulfilled by respondent No. 1 and if the conduct of respondent No.1 was otherwise not such as would generate confidence, the appellant was entitled to withdraw the Letter of Intent. There was no binding legal relationship between the appellant and respondent No. 1 at this stage and the appellant was entitled to look at the totality of circumstance in deciding whether to enter into a binding contact with respondent No. 1 or not.

Respondent No. 1 contends that in anticipation of entering into a contract with the appellant, respondent No.1 incurred heavy expenses. This statement of respondent No.1 has to be established on evidence. A writ petition is not an appropriate proceeding if any claim for damages based

A 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.

B 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.

V.S.S.

Appeal allowed.