

Before Swatanter Kumar, J.

M/S STARLINKS (OVERSEAS) PVT. LTD.,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

CWP 71 of 1984

1st August, 1996

Constitution of India, 1950—Arts. 226/227—Punjab Co-operative Societies Act, 1961—Ss. 55 & 56—Petitioner appointed sole agent by respondent by virtue of agreement—Commission payable in terms of agreement—Certain control exercised by respondent but this control was not such as exist in master servant relationship—Petitioner to sell property of respondent as under agreement—The agreement between the parties is an agency—Disputes between parties can be referred to Arbitrator for adjudication.

Held, that the nature and scope of control to be exercised by the respondent upon the petitioner, the rights and the obligations arising out of the agreement and clear bifurcation of liabilities and responsibilities as provided in the agreement lead to only one conclusion that the basic ingredients constituting the relationship of agency between the parties, are fully satisfied. For determination of such relationship between the parties the entire agreement has to be looked into. The agreement clearly conveys the intention of the parties to create an agency in favour of the petitioner by appointing him as sole sale agent.

(Para 4)

Further held, that the word 'agent' has not been defined under section 55 of the Act. This expression being one of general connotation must receive popular meaning in a way. Liberal construction has to be given to word 'agent' and if other ingredients of Section 55 of the Act are satisfied. Turning over to the provisions of Section 182 of the Indian Contract Act, 1872, wherein word 'agent' is defined as a person employed to do any act for another, or to represent another in dealings with third person. In the present case, the petitioner had no right to sell goods as his own property, but had to sell the same as the property of respondent-Federation and was to be governed under the instructions and directions of the Federation. No ownership of good had absolutely vested in the petitioner.

(Para 4)

Further held, that there is some kind of permitted independence to carrying on the business. Within the terms of the agreement, the agent has some freedom but under commandments of restrictions provided under the agreement, the agreement read in its entirety and keeping in view the contentions of the parties, the relationship between the parties is mere business dealings, relationship may simpliciter, but has stronger bond arising out of the agreement which has to be termed as agency.

(Para 7)

Further held, that on the basis of agreement between the parties and the reasons stated, the petitioner is an agent within the meaning of Section 55 of the Act and was entitled to have his dispute referred and adjudicated upon in accordance with the provisions of Sections 55 and 56 of the Act.

(Para 8)

Constitution of India, 1950—Arts. 226/227 Difference between master and servant relationship explained.

Held, that the difference between the relations of master and servant and of principal and agent is that a principal had the right to direct what work the agent has to do but a master has the further right to direct how the work is to be done.

(Para 5)

D. S. Khoji Advocate, for the Petitioner.

Amar Vivek, AAG, Punjab, for the Respondent.

JUDGMENT

Swatanter Kumar, J.

(1) In the present petition under Articles 226/227 of the Constitution of India, the petitioner assails the validity of the orders passed by the Registrar, Co-operative Societies, Punjab dated 29th March, 1984 and that of the Secretary, Co-operative Department, Government of Punjab dated 24th July, 1984 on various grounds. The controversy in the present petition falls in a very narrow compass and there is hardly any dispute to the facts giving rise to the present petition. The petitioner had entered into an agreement dated 13th October, 1977 with respondent No. 3. Respondent No. 3 is Federation of Milk Producers and is a registered society. The petitioner-M/s Starlinks (Overseas) Pvt. Ltd. was appointed and given sole sale Distribution Agency on the terms and conditions

contained in the agreement. This agreement describes control that would be exercised by respondent No. 3 over the business of the petitioner and provided for other conditions like terms of payment of commission, sale, carrying on business and the facilities which were to be provided by the petitioner for carrying on the business under the agreement. It is the case of the petitioner that the area of operation provided to the petitioner under the agreement as sole sale agent extended to West Bengal, Bihar, Assam and North East Council Areas. In utter disregard to and in violation of the terms of the agreement dated 13th October, 1977, the Respondent-federation appointed M/s Ghosh and Company as Distributors for the areas which were under the operation of the petitioner-company on the basis of an agreement dated 4th July, 1980. though the agreement in question was not terminated, but by virtue of appointment of M/s Ghosh and Company as Agent, the petitioner's rights under the agreement were infringed and various disputes arose between the parties. The application of the petitioner for referring the dispute and its adjudication was dismissed by the Registrar, Co-operative Societies,—*vide* his order dated 29th March, 1984, mainly on the ground that there was no arbitration agreement between the parties that the Registrar should act as arbitrator and that Section 55 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act) will not cover the case of the petitioner. The revision under Section 69 of the Act was preferred, which was also dismissed by the Financial Commissioner, Development-cum-Secretary to Government Punjab on the same basis.

(2) The learned counsel for the petitioner has mainly argued that both the impugned orders are based upon erroneous construction of provisions of Section 55 of the Act and further submits that respondent authorities have misconstrued the terms of the agreement. The interpretation given by these authorities is alleged to be contrary to the settled principal of law. In reply the learned counsel appearing for the respondent while supporting the impugned orders has argued that the disputes do not fall within the purview of Sections 55 and 56 of the Act and consequently no application, lies to Registrar at all.

(3) Before discussing the respective contentions raised on behalf of the parties, it would be proper to reproduce Section 55 of the Punjab Co-operative Societies Act, 1961 which reads as under :—

“55. Disputes which may be referred to arbitration.—(1)
Notwithstanding anything contained in any law for the

time being in force, if any dispute touching business of a co-operative society arises :

- (a) among members, past member and persons claiming through members, past members and deceased member ; or
 - (b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer agent or employee of the society or liquidator, past or present ; or
 - (c) between the society or its committee and any past committee, any officer, agent or employee; or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society ; or
 - (d) between the society and any other co-operative society. between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society; such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.
- (2) for the purposes of sub-section (1) the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely :—
- (a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not ;
 - (b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor whether such debt or demand is admitted or not ;
 - (c) any dispute arising in connection with the election of any officer of the society.

- (3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court."

There can be no doubt that Section 55 of the Act restricts its application to the class of persons as stated in sub-clauses (a) to (d) of sub-section 1 of Section 55. This section also provides a bar that the disputes between the parties covered under these clauses would be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceedings in respect of such disputes. This bar to the jurisdiction of the Civil and revenue Court is reiterated in sub-clause (d) of sub-section 1 of Section 82 of the Act. Sub-section 3 of Section 55 empowers the Registrar to decide the question whether the dispute is or is not a dispute touching the constitution, management or the business of the co-operative society. Finality has been attached to the decision of the Registrar. Under this Section such a decision cannot be called in question in Civil Court. On complete analysis of these provisions read with section 56 of the Act, it is clear that once a person who is covered under any of the said clauses of sub-section 1 of Section 55 raises a referable dispute then the Registrar has to exercise the powers vested in him in conformity and in compliance with the provisions of Section 56 of the Act. Finality of the decision is resultant bar upon fulfilment of these conditions. Section 55 of the Act completely controls the nature of the society as well as the persons, the disputes between whom can be referred to the arbitration under this Act. Thus, paramount question for consideration is whether the petitioner falls under any of the category specified in Section 55(1) of the Act. The ancillary question to this main question is what relationship between the parties is created.—*vide* agreement dated 13th October, 1977. Annexure P-1 to the petition. On the basis of this agreement, respondent No. 3 had taken a decision and had appointed the petitioner as sole sale distributor agency. The commission was payable in terms of the agreement which was 2 per cent on Ex-factory price, namely, basic price and first party had the right to review the terms and conditions. The nature of the agreement between the parties clearly shows that respondent No. 3 had to exercise certain control over the petitioner but this control was not one which would exist in the relationship of the master and servant. The goods were to be transferred to

Calcutta by respondent No. 3 against payment and they were under the control of the petitioner who was to sell the products keeping in view the guidelines issued by respondent No. 3.

(4) The contention of the respondent that it was mere business relationship and there was no agreement of agency giving the status of agent to the petitioner, is entirely ill-founded. The nature and scope of control to be exercised by the respondent upon the petitioner, the rights and the obligations arising out of the agreement and clear bifurcation of liabilities and responsibilities as provided in the agreement lead to only conclusion that the basic ingredients constituting the relationship of agency between the parties are fully satisfied. For determination of such relationship between the parties the entire agreement has to be looked into. The agreement clearly conveys the intention of the parties to create an agency in favour of the petitioner by appointing him as sole sale agent. The sale targets were to be mutually settled. The goods were to be accepted irrespective of the fact that there was demand for such goods or not. The godowns were to be taken over by 1st Party (i.e. respondent No. 3 herein). The rights were regulated by 1st party. The petitioner was to be provided godowns facilities etc. Thus, there was control over the petitioner's business by the respondent, but just short of the control required to be exercised for establishing the relationship of 'master' and 'servant'. It is true that the word 'agent' has not been defined under Section 55 of the Act. This expression being one of general connotation must receive popular meaning in a way. Liberal construction has to be given to word 'agent' and if other ingredients of Section 55 of the Act are satisfied. Turning over to the provisions of Section 182 of the Indian Contract Act, 1872, wherein word 'agent' is defined as a person employed to do any act for another, or to represent another in dealing with third person. In the present case, the petitioner had no right to sell goods as his own property, but had to sell the same as the property of respondent-Federation and was to be governed under the instructions and directions of the Federation. No ownership of good had absolutely vested in the petitioner. Reference in this regard be made to the case reported as (1977)3 *Supreme Court Cases* 147.

(5) The Division Bench of Bombay High Court while dealing with identical situation in the case of *Lakhani Sahakari Shetki Kharedi Vikri Sanstha Ltd. at Lakhani v. Moreswar Bapu* (1), while interpreting section 91(1) of Maharashtra Co-operative

(1) A.I.R. 1978 Bombay 273.

Societies Act (24 of 1961), which provisions were para materia with Section 55 of this Act, held as under :—

“.....An officer, agent, servant or nominee of the society has obviously a fiduciary relationship with the society. To cover all possible disputes between such parties, the Legislature has used different words to make it all comprehensive. These words are used in a generic sense and, therefore, the meaning of the word ‘agent’ will have to be understood in the context of the object of the provision as well as its scope. As observed by the Privy Council in *Laurence Arthur Adamson v. Melbourne and Metropolitan Board of Works* (AIR 1929 PC 181) it is always unsatisfactory and generally unsafe to seek the meaning of words used in an Act in the definition clauses of another statute dealing with matters more or less cognate even when enacted by the same legislature and much more so when resort is had to the enactments of other ‘legislatures’. The word ‘agent’ is used in the present section in a comprehensive sense. Agency in itself is a comprehensive work which is used to describe the relationship that arises where one man is appointed to act as the representative of another. In our opinion, the word “agent” is used in Section 91(1)(a) in this comprehensive sense.....

.....A person who is engaged to manage a business may be a servant or an agent according to the nature of his service and the authority of his employment. Generally it may be possible to say that the greater the amount of direct control over the person employed, the stronger the conclusion in favour of his being a servant. Similarly the greater the degree of independence the greater the possibility of the services rendered being in the nature of principal and agent. It is not possible to lay down any precise rule of law to distinguish one kind of employment from the other. The nature of the particular business and the nature of the duties of the employee will require to be considered in each case in order to arrive at a conclusion as to whether the person employed is a servant or an agent. In each case the principle for ascertainment remains the same.”

.....In that case also, the Supreme Court had made a reference to the preamble of the agreement which indicated

the nature of the contract as well as the intention of the parties. In the case before us from the preamble of the agreement, it is quite clear that the respondent Moreshwar was appointed as a milling agent.

To cover all possible disputes between the parties which stand in fiduciary relationship *qua* the co-operative Society, the Legislature has used different words to make it all comprehensive. These words are used in a generic sense and, therefore, the meaning of the word 'agent' used in Section 91(1) will have to be understood in the context of the object of the provisions as well as its scope. Agency in itself is a comprehensive word which is used to describe the relationship that arises where one man is appointed to act as the representative of another. The word 'agent' is used in Section 91(1)(a) in this comprehensive sense.

The nature of the business and the nature of the duties will have to be considered in each case in order to arrive at a conclusion as to whether a person is an agent or not. *Prima facie*, the question whether a dispute is covered by Section 91 of the Act or not will have to be determined by reference to the averments in the plaint and not by reference to what the defendant says in his defence."

I find that the decision of the Divisional Bench of Bombay High Court squarely covers the present case. Hon'ble Supreme Court in the case of *Lakshminarayan Ram Gopal and Son, Ltd. v. Government of Hyderabad* (2), held that the difference between the relations of master and servant and of principal and agent is that a principal had the right to direct what work the agent has to do, but a master has the further right to direct how the work is to be done. After discussing the law at length, the Supreme Court held as under :—

".....An agent, though bound to exercise his authority in accordance with lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent, as such is not a servant, but a servant is generally for some purposes his master's implied agent

the extent of the agency depending upon the duties or position of the servant.

Considering the position of the Appellants in the light of the above principles it is no doubt true that the Appellants were to act as the agents of the Company and carry on the general management of the business of the Company subject to the control and supervision of the Directors. That does not however mean that they acted under the direct control and supervision of the Directors in regard to the manner or method of their work.....

(6) The learned counsel for the respondent has argued that finality has been attached to the order of the Registrar under Section 55(3) of the Act, as such, there was complete bar to the very maintainability of this petition under Articles 226/227 of the Constitution of India. This contention of the learned counsel for the respondent need not detain me any further as this contention has been repelled by various Courts including the Hon'ble Supreme Court of India. Reference can be made to the case of *Sri Krishna Rice Mills etc. v. Joint Director (food), Government of India, Vijaywada* (3), where the Court answered this question and held as under :—

“We may also refer to the last part of cl. (iv) of sub-section (3A) which says that “the average market rate so determined shall be final and shall not be called in question in any Court.” The intention of the Legislature by using these words was clearly that these a rates should not be open to question. It is true that these words do not take away the jurisdiction of the High Court under Article 226 to give relief in a proper case; but the High-Court must keep in view these words which certainly indicate that the rates fixed should not be lightly interferred with unless the High Court finds that there has been serious injustice in the fixation of rates due to the manner in which the officer concerned has acted without due regard to the provisions of clause (iv). In the present case we are not prepared to say that the officer concerned has acted without due regard to the provisions of Clause (iv), when he arrived at the conclusion that the prices at Tadepalagudem should be fixed a little lower than the prices at

Vijaywada. The contention that the prices fixed by the Deputy Director were not in accordance with the provisions of the law must therefore be rejected."

(7) In the present case, there is some kind of permitted independence to carrying on the business. Within the terms of the agreement, the agency has some freedom but under commandments of restrictions provided under the agreement, the agreement read in its entirety and keeping in view the contentions of the parties, the relationship between the parties is mere business dealings, relationship may simpliciter, but has stronger bond arising out of the agreement which has to be termed as agency.

(8) In view of the settled law discussed above, I hold that on the basis of the agreement between the parties and the reasons aforesaid, the petitioner is an agent within the meaning of Section 55 of the Act and was entitled to have his dispute referred and adjudicated upon in accordance with the provisions of Sections 55 and 56 of the Act. Thus, the finding of the authorities concerned that the petitioner was not covered under the provisions of Section 55(1) of the Act, is not sustainable in law and consequently, the impugned orders dated 29th March, 1984. Annexure P-2 and order dated 24th July, 1984 Annexure P-3 are hereby quashed and the matter is remanded back to the Registrar with the directions now to proceed in accordance with law. There shall be no order as to costs.

J.S.T.

Before Amarjeet Chaudhary & G. C. Garg, JJ.

I. D. KAUSHIK,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

C.W.P. No. 9108 of 94

October 12, 1994

Haryana Public Service Commission (Conditions of Service) Regulations, 1972—Regulation 5—Member of Service Commission appointed while in service of State—Effect of such appointment—Automatic retirement.