IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2015

Date of Reserving the aOrder	Date of Pronouncing the Order
18.08.2015	28.08.2015

Coram

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.A.Nos.525 to 532 of 2015

Adapala Dayakara Reddy
Sole Proprietor, Vijaya Cotton
Traders. ... Appellant in W.A.No.525/15

Annapurna Cotton Merchants,
rep. by its Managing Partner,
Neerumalla Subba Rao. ... Appellant in W.A.No.526/15

Sri Satya Sai Cotton Ginning
Industries, rep. by its Managing
Partner Neerukonda Geevika Rani ... Appellant in W.A.No.527/15

Modugula Siva Manikyamma,
Sole Proprietor,
Parameswari Cotton Industries. ... Appellant in W.A.No.528/15

Manam Srinivas
Sole Proprietor,
M.S.Cotton Traders. ... Appellant in W.A.No.529/15

Sri Chandra Cotton Corporation
rep. by its Managing Partner,
Kakkumani Chandra Mohan. ... Appellant in W.A.No.530/15

Modugula Gopala Krishna Reddy,
Sole Proprietor,
Maheswari Cotton Industries. ... Appellant in W.A.No.531/15

Muppalla Roja Rani
Sole Proprietor
Gowthami Cotton Traders. ... Appellant in W.A.No.532/15

Vs.

1. The Principal Secretary to
   Government, Handlooms,
   Handicrafts, Textiles and
   Khadi (C1) Department,
   Government of Tamil Nadu,
   Fort St. George, Chennai - 600 009.

2. The Government of Tamil Nadu,
   rep. by the Secretary, Finance Department,
   Fort St. George, Chennai - 600 009.

3. The Director, Handlooms
   and Textiles, Kuralagam,
   Chennai- 600 001. ... Respondents 1 to 3 in all W.As

Vellore District Co-operative
Spinning Mills Ltd., rep. by its Liquidator.
Vellore, TamilNadu. ... 4th Respondent in W.A.Nos. 525,529 & 532/2015

Villupuram District Co-operative
Spinning Mills rep. by its Liquidator.
Saram Village, Tindivanam Taluk,
Villupuram District. ... 4th Respondent in W.A.Nos. 526,527,528,531/2015

Pudukottai District Co-operative
Spinning Mills Ltd.,
rep. by its Director
Aranthangi, TamilNadu. ... 4th Respondent in W.A.No.530/2015

Prayer :-Writ Appeal filed under Section 15 of the Letters patent against the order dated 09.12.2014 passed by learned single Judge in W.P. No.6261 to 6268 of 2014.

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Mandamus

(i) W.P.No.6261/2014: directing the respondents to consider the case of the petitioner and effect payment of the amounts due to the petitioner in the sum of Rs.29,56,972/-, together with further interest at 14% per annum, as requested under the letter of the petitioner dated 31.12.2013 to the fourth respondent in terms of payment effected to similarly placed suppliers pursuant to G.O.Ms.No.169-Handlooms, Handicrafts, Textiles and Khadi (C1) Department, dated 25.7.2013 issued by the first respondent.

(ii) W.P.No.6262/2014: directing the respondents to consider the case of the petitioner and effect payment of the amounts due to the petitioner in the sum of Rs.21,28,250/-, together with further interest at 14% per annum, as requested under the letter of the petitioner dated 31.12.2013 to the fourth respondent in terms of payment effected to similarly placed suppliers pursuant to G.O.Ms.No.169-Handlooms, Handicrafts, Textiles and Khadi (C1) Department, dated 25.7.2013 issued by the first respondent.

(iii) W.P.No.6263/2014: directing the respondents to consider the case of the petitioner and effect payment of the amounts due to the petitioner in the sum of Rs.67,51,880/-, together with further interest at 14% per annum, as requested under the letter of the petitioner dated 31.12.2013 to the fourth respondent in terms of payment effected to similarly placed suppliers pursuant to G.O.Ms.No.169-Handlooms, Handicrafts, Textiles and Khadi (C1) Department, dated 25.7.2013 issued by the first respondent.

(iv) W.P.No.6264/2014: directing the respondents to consider the case of the petitioner and effect payment of the amounts due to the petitioner in the sum of Rs.20,37,442/-, together with further interest at 14% per annum, as requested under the letter of the petitioner dated 31.12.2013 to the fourth respondent in terms of payment effected to similarly placed suppliers pursuant to G.O.Ms.No.169-Handlooms, Handicrafts, Textiles and Khadi (C1) Department, dated 25.7.2013 issued by the first respondent.

(v) W.P.No.6265/2014: directing the respondents to consider the case of the petitioner and effect payment of the amounts due to the petitioner in the sum of Rs.27,60,213/-, together with further interest at 14% per annum, as requested under the letter of the petitioner dated 31.12.2013 to the fourth respondent in terms of payment effected to similarly placed suppliers pursuant to G.O.Ms.No.169-Handlooms, Handicrafts, Textiles and Khadi (C1) Department, dated 25.7.2013 issued by the first respondent.

(vi) W.P.No.6266/2014: directing the respondents to consider the case of the petitioner and effect payment of the amounts due to the petitioner in the sum of Rs.51,07,653/-, together with further interest at 14% per annum, as requested under the letter of the petitioner dated 31.12.2013 to the fourth respondent in terms of payment effected to similarly placed suppliers pursuant to G.O.Ms.No.169-Handlooms, Handicrafts, Textiles and Khadi (C1) Department, dated 25.7.2013 issued by the first respondent.

(vii) W.P.No.6267/2014: directing the respondents to consider the case of the petitioner and effect payment of the amounts due to the petitioner in the sum of Rs.19,22,53/-, together with further interest at 14% per annum, as requested under the letter of the petitioner dated 31.12.2013 to the fourth respondent in terms of payment effected to similarly placed suppliers pursuant to

G.O.Ms.No.169-Handlooms, Handicrafts, Textiles and Khadi (C1) Department, dated 25.7.2013 issued by the first respondent.

(viii) W.P.No.6268/2014: directing the respondents to consider the case of the petitioner and effect payment of the amounts due to the petitioner in the sum of Rs.34,46,154/-, together with further interest at 14% per annum, as requested under the letter of the petitioner dated 31.12.2013 to the fourth respondent in terms of payment effected to similarly placed suppliers pursuant to G.O.Ms.No.169-Handlooms, Handicrafts, Textiles and Khadi (C1) Department, dated 25.7.2013 issued by the first respondent.

For petitioner : Mr.P.Krishnan

For Respondents : Mr.P.H.Arvind Pandian AAG
Assisted by
Mr.S.T.S.Moorthy G.P., for RR1 to R3

Mr.A.S.Thambuswamy for R4

C O M M O N J U D G M E N T

These Appeals are directed against the common order dated 09.12.2014 in W.P.Nos.6261 to 6268 of 2014.

2. The appellants as Writ Petitioners sought for direction upon the respondents to consider their case and effect payment of amounts together with interest for the Cotton supplied by them to the respondent Spinning Mills by treating them on par with the similarly placed persons, who were granted payments pursuant to G.O.Ms.no.169, Handloom handicrafts, Textiles and Khadi Department, dated 25.07.2013.

3. The undisputed facts are that the appellants supplied Cotton to the respondent Spinning Mills namely, the Vellore Co-operative Spinning Mills Limited, Vilupuram District Co-operative Spinning Mills and Pudukottai District Co-operative Spinning Mills. The said Spinning Mills became sick units and were declared as "Relief Undertakings" by the State Government under Section 3 of the Tamil Nadu Relief Undertakings (Special Provisions) Act, 1969. Three schemes were propounded to settle the suppliers, first being that the Cotton suppliers will accept 60% of the dues as full and final settlement payable in three equal monthly instalments on or before 31.03.1999; the second, the suppliers will continue to supply fresh cotton against full payment with 10% to be adjusted against the old dues prior to 01.07.1999; and the third to wait till the respondent Spinning Mills become financially sound so that the entire due could be paid.

4. The appellants opted the first scheme wherein they were entitled to 60% of the total dues payable in three monthly instalments to be paid on or before 31.03.1999. However, the time schedule was not adhered to and initially 20% of the amount was paid and the remaining 40% was paid belatedly. While so, a Public Interest Litigation was filed before this Court in W.P.No.12316 of 1999 and an interim order was granted in the said Writ Petition. In the mean time one of the suppliers filed a Writ Petition in W.P.No.6898 of 2001 in which the Government produced a set of guidelines formulated for payment and based on such guidelines, the said Writ Petition was dismissed. As against which an appeal was filed before the Division Bench in W.A.No.1642 of 2001. The said Writ Appeal was tagged along with W.P.No.12316 of 1999 and the Division Bench appointed an Arbitrator to decide how much is due, to whom and by whom. The Arbitrator passed an award on 02.05.2005 and the operative portion of the award reads as follows:-

> 6.(a)..... The cotton suppliers have accordingly intimated the government as well as the mills their choice among the options available to them and the government cannot pretend to wash off its hands of all liabilities as a mere mediator or rescuer as claimed by the respondents. The government as well as the other two respondents as the executive authorities implementing the schemes of the government are bound as guarantors, sureties and co-obligants to fulfill the obligations undertaken by the purchasers of cotton from the cotton suppliers including the Claimant. It is a mere case of claim for goods sold and delivered the receipt of which is not disputed by the purchaser.
>
> b)...... No party in breach can say that I will not fulfill my obligations in the manner contemplated by the contract, but you should. This will be contrary to all principles of law and equity and cannot be permitted.
>
> Therefore, the contentions raised by the respondents are rejected as they are neither founded on fact nor legally tenable and are against all known principles of equity. The claim for the principal payment and the interest is therefore allowed.
>
> 7. The respondents shall be jointly and severally liable to pay the award amount within 30 days from this date as per the directions of the Hon'ble High Court. Any failure thereof, would entitle the claimant to further interest at the rate of 18% under Sec.31(7) of the Arbitration and Conciliation Act, 1996 till the actual date of payment. The respondents are liable to pay the fees to the arbitrator, which has been agreed at Rs.30,000/- per hearing. Since the respondents are already in default in payment of their share of the arbitration fees, they are directed to pay the fees and Rs.5,000 towards secretarial and other expenses forthwith. The respondents are also directed to pay the costs of the claimants incurred in

arbitration proceedings, which is qualified at Rs.25,000.

8. Total sum awarded to the Claimant is Rs.2,31,27,382.48 together with pendentelite interest at 18% p.a., from the date of the claim till the date of the award".

5. The Government of Tamil Nadu challenged the award in O.P.No.532 of 2005 filed under Section 34 of the Arbitration and Conciliation Act, 1996. The said petition was dismissed on 27.01.2006. The challenge to the award by the Spinning Mill in O.P.No.533 of 2005, was also rejected by separate order dated 05.01.2007. As against the rejection of the petition filed under Section 34 of the Act, the State and one of the respondent Spinning Mills filed an appeal in O.S.A.No.56 of 2006, which was taken along with W.A.No.1642 of 2001 and the Division Bench by judgment dated 27.04.2007, set aside the award in Arbitration Case No.1 of 2005, insofar as it makes the Government liable and confirmed the award as against the Spinning Mill. In the light of the order passed in O.S.A.No.56 of 2006, W.A.No.1642 of 2001, was disposed of as having become infructuous. One of the four appellants in O.S.A.No.56 of 2006 namely, Kamachi Amman Co-operative Spinning Mills represented by its Administrator filed a Review Application to review the judgment in the said appeal. The said Review Application which was in the S.R., stage along with other connected appeals were dismissed by judgment dated 12.04.2013. The operative portion of the judgment reads as follows:-

11.4. Further more, we do not find any ground to review the order passed by this Court earlier. It is settled principle of law that a review cannot be a re-hearing. The alleged payment made by the petitioner was also taken into consideration by the learned Arbitrator. We do not find any error apparent in the order passed by this Court in the earlier occasion. An attempt has been made by the learned Additional Advocate General regarding the payment of interest, after the order passed by this Court on an earlier occasion in O.S.A.No.56 of 2006 till the matter was withdrawn by the private respondent before the Honourable Apex Court. We are afraid that it cannot be a ground to review the order of the learned single Judge. Further more, there is no bar for the petitioner to make the payment. It is the private respondent, who filed the petition, that too, against the Government. In other words, the award passed against the petitioner was not an issue before the Honourable Apex Court. When the award is confirmed, the duty is imposed on the petitioner to make the payment. This we hold so even though it is not necessary to go into the review application after dismissal of the application for condonation of delay, as we find absolutely no merit in the review application itself and in view of the further fact that arguments were also made on both the condonation of delay application and review application. The question of interest was also raised earlier and rejected. The learned Arbitrator awarded the interest as per Section 31(7) of the Arbitration and Conciliation Act, 1996. Therefore, when the arbitration is conducted under the provisions of the Act, it cannot be said that awarding of the interest is not correct.

11.5. Now coming to the other appeals filed, we do not find any merits in them as well. It is settled principle of law that a party cannot be allowed to raise new grounds in the appeal emanating from an order dismissing the application under Section 34 of the Act. The question of limitation and the competency of one person to represent others were considered by the learned Arbitrator. The awards have been passed in favour of the individuals. They have been identified as per the payments made by way of cheques earlier by the appellants. The award amounts have paid based upon the records of the appellants. Hence it is not as if, the learned Arbitrator has awarded the amount as sought for by the private respondents. Similarly, the question of limitation was also discussed at length. A scheme was framed and it was not complied with by the appellants. Partial payments have also been made. The learned Arbitrator has correctly held that the provisions of Tamil Nadu Relief Undertaking Act and the Arbitration and Conciliation Act, 1996, would govern the parties.

11.6. The further submission regarding the scope of directions issued by the Honourable Division Bench of this Court also cannot be countenanced. As discussed earlier, the judgment of the Honourable Division Bench is very clear. It has been clearly held that the disputes are referred to the arbitration over the payments due, the question regarding the actual amount due, the person to whom it is payable and the authority is liable to pay, are specifically directed to be decided by the learned Arbitrator. When a liability to pay the principal amount had arisen, then consequently the interest would follow. It is not as if, the learned Arbitrator has awarded interest contrary to the Scheme of the Arbitration and Conciliation Act, 1996. Therefore, we do not find any illegality in awarding interest as well.

11.7. It has been contended by the learned Additional Advocate General that the list furnished in the Public Interest Litigation filed would contend only about 122 cotton merchants alone, whereas, the claim petition includes 203 persons. The learned Arbitrator has considered the said issue and rejected the same on the ground that the appellants made the partial payments earlier to 203 persons and therefore, there is no dispute regarding the identity of the persons. Further, it is not as if those persons are not entitled to receive the award amount. In other words, while there was transaction between the parties, the orders passed by this Court earlier cannot be confined to 122 persons alone. If it is restricted to only 122 persons alone, then it would not be a Public Interest Litigation. All the private respondents are suppliers of cotton and identically placed. They also came under the Scheme. Hence, the submissions made by the learned Additional Advocate General on this score is also rejected.

6. After the above order, the Government by G.O.Ms.No.169, dated 25.07.2013, sanctioned a sum of Rs.2055.11 lakhs for settlement of the dues payable to the Cotton suppliers and payments were released to various suppliers through the Spinning Mills. The appellants on coming to know that the Government have sanctioned funds and payments were made to the Cotton suppliers like them, they submitted representations for payment of their dues. Since the representations were not considered, they have approached this Court by filing Writ Petitions being W.P.Nos.6261 to 6268 of 2014. The said batch of Writ Petitions were dismissed by the impugned order dated 09.12.2014. In the said order, it was held that both the Public Interest Litigation as well as the Arbitration Proceedings covered only the cases on 122 suppliers, but later the Government took into account 92 suppliers in addition to 101 in whose favour the award was passed and totally 193 supplies, who were entitled to the payments. After noting the facts and the observations of the Division Bench, the Writ Court rejected the appellants' prayer on the only ground that the period of supply was about 20 years ago and the appellants have allowed the matter to drift away for all these years and cannot jump into the bandwagon after finding that an additional list of 92 persons are getting relief under the said Government order. The above appeals have been filed challenging the said common order, dated 09.12.2014.

7. The learned counsel appearing for the appellants submitted that the Division Bench while appointing an Arbitrator to adjudicate the claims did not restrict the number of suppliers as mentioned in the Public Interest Litigation and the intention of the Court was to extend the relief to all those suppliers who had effected supplies of cotton to various Co-operative Spinning Mills and therefore, the appellants should not have been singled out and they should have been granted the benefit. Further, it is submitted that the persons similarly placed cannot be differently treated and the action of the respondents is violative of Article 14 of the Constitution. It is further submitted that the learned Single Judge though took note of the fact that the 60% amount to be paid as per the scheme formulated by the Government was not done within the time framed, yet the Court dismissed the Writ Petitions. Further, it is submitted that inspite of the Court taking note of the fact that the Public Interest Litigation covered only 122 suppliers but the Government while sanctioning funds to settle the dues took note of the claims of additional 92 suppliers and extend the same benefit as granted to the suppliers, who were covered in the Arbitration award, yet dismissed the Writ Petitions when there was no valid reason to treat the

appellants differently when admittedly they had also supplied Cotton.

8. The learned Additional Advocate General submitted that the cases of the appellants were not covered by the Arbitration award and the Claim Petition covered only cases on 122 suppliers and by virtue of the order passed by the Division Bench payment was sanctioned to 193 suppliers and the appellants were not parties to any of the previous proceedings and therefore, they cannot claim any amount. It is further submitted that there is a gross delay on the part of the appellants in claiming the amount and the claims made after 20 years cannot be countenanced. In support of such contention reliance was placed on the decision of the Hon'ble Supreme Court in the case of S.S.Balu vs. State of Kerala reported in (2009) 2 SCC 479.

9. We have heard the learned counsels appearing for the parties and perused the materials placed on record.

10. The short issue which falls for consideration is whether the claim made by the Appellants could have been rejected solely on the ground of delay and latches. In the preceding paragraphs, the factual averments have been set out which clearly demonstrate that there has been a chequered history to the case. The appellants are all Cotton suppliers, who have supplied cotton to various Spinning Mills which are registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and at the relevant time under the full control of the Government and manned by officers appointed by the Government. There was several persons like the appellants who had supplied Cotton to the various Co-operative Spinning Mills of the State and all of them were left high and dry as no payments were effected.

11. One Mr.K.Kanniah Raj filed a Public Interest Litigation in W.P.No.12316 of 1999, to direct the State Government and the Spinning Mills to take immediate steps to make payments to the various parties shown in the annexures to the Writ Petition with interest at 18% per annum. In the said Writ Petition, an interim direction was issued on 21.11.2001 giving a schedule within which the remaining 40% of the dues payable should be cleared. When the matter was heard by the First Bench on 04.06.2002, the Government sought time to comply with the orders passed in W.P.No.12316 of 1999 and 3066 of 2000, dated 21.11.2001 and time was granted peremptorily till 30.06.2002. The Government did not comply with the directions and the First Bench by order dated 04.01.2005 appointed Mr.Vedantham Srinivasan, Advocate as Arbitrator to decide the controversy expeditiously. It was pointed out in the said order that farmers in Andhra Pradesh and Tamil Nadu had supplied cotton to the Co-operative Spinning Mills, but have not received payments for the same and since the controversy cannot be properly decided under Article 226 of the Constitution and though ordinarily the claimants should be directed to file a Civil Suit, but since the matter has been pending for a very long time and large number of farmers of Andhra Pradesh and Tamil Nadu are affected, the

controversy as to how much is due, to whom and by whom, should be decided by an Arbitrator.

12. Thus while appointing an Arbitrator, the Court took note of the plight of a larger number of farmers in Andhra Pradesh and Tamil Nadu who had supplied cotton to the Spinning Mills and were waiting for a long time for full settlement of their dues. Thus, the Division Bench did not restrict the reference to the Arbitrator to a given number of claimants and therefore, the reference to the Arbitrator should not be restricted to a few claimants alone, as the appointment of an Arbitrator itself arose in a Public Interest Litigation.

13. The other factual aspects regarding passing of the award and that the award was confirmed when the applications filed by the Government and the Spinning Mills under Section 34 of the Arbitration and Conciliation Act, 1996, were dismissed, are matters of record and not disputed. In the appeal filed as against the dismissal of the petition under Section 34 of the Act, the Division Bench did not interfere with the award but only set aside the same insofar as it makes the Government liable and made the respective Spinning Mills liable to comply with the award. When a Review Application was filed by the Spinning Mills which was tagged along with other appeals, contention was raised that the order passed by this Court covered only 122 cotton suppliers and therefore, the question of increasing the number of claimants does not arise. This contention was rejected by the Division Bench when the Review Application as well as connected appeals were dismissed by judgment dated 12.04.2013. Thus the Spinning Mills having lost before all the forums had to comply with the award and effect payments. In order to settle the dues to the Cotton suppliers, the Government issued G.O.Ms.No.169 and sanctioned a sum of Rs.2055.11 lakhs and payments were effected by the Co-operative Spinning Mills from the advance amount sanctioned by the Government.

14. It is not in dispute that in the Public Interest Litigation the claims of only 122 suppliers were mentioned. But the Claim Petitions were not restricted to 122 suppliers and the award was passed in favour of more than the claimants whose claims were focused in the Public Interest Litigation. When this was put to challenge before the Division Bench both initially in the appeal and subsequently in the Review Application the plea raised by the Co-operative Spinning Mills was rejected and it was pointed out that partial payments were made to all those persons and there is no dispute regarding the identity of the persons and it is not as if, those persons are not entitled to receive the award amount. It was further pointed out that while there were transactions between the parties, orders passed by this Court earlier cannot be confined to 122 persons alone and if it is restricted only to 122 persons, then it would not be a Public Interest Litigation and all the suppliers of cotton are identically placed and they came under the same scheme.

15. In the background of these facts, it has to be seen as to whether the petitioners can be non-suited on the sole ground that, they have belatedly approached for settlement of their dues. After the award of the Arbitrator become final, the respondent Spinning Mills were bound to effect payment to the suppliers. As the Spinning Mills were already sick units had no money to pay the dues, they approached the Government for advancing monies to settle the dues to the Cotton suppliers. The Government after taking note of the orders passed by this Court confirming the award of the Arbitrator, sanctioned a sum of Rs.2055.11 lakhs by way of advance to settle the dues to the cotton suppliers which not only included the suppliers who are covered by the award, but 92 other suppliers as well. This fact is not in dispute. The 92 persons who got benefit pursuant to the Government Order, were not covered in the Public Interest Litigation, but got the benefit only by virtue of the Government Order. In the impugned order this fact was taken note of, yet the Writ Petitions were dismissed stating that after about 20 years, the appellants cannot jump into the bandwagon after finding that 92 persons have been added by the Government who were not covered in the Arbitration award.

16. Admittedly, when the First Bench by order dated 04.01.2005 referred the matter for arbitration was conscious of the fact that large number of farmers of Andhra Pradesh and Tamil Nadu had been affected on account of the non payment of the dues for the cotton supplied to the respondent Co-operative Spinning Mills. The Court took into consideration the plight of the farmers that they have been languishing without payment and since the matter pertains to a money claim and there were controversies, though the claimants could have been relegated to the Civil Court to file suits for recovery of their money, with a view to resolve the controversy thought fit to refer the matter to Arbitration. In such circumstances, when the Government extended the benefit and settled the dues to persons, who were not covered in the Arbitration award, there was no valid reason by which the appellants could have been singled out, when admittedly they were also similarly placed as other suppliers whose dues were settled inspite of not being parties to the Arbitration award.

17. Furthermore, we wish to point out that the appellants could not have been non-suited on the ground of delay, as the claimants were able to realise the fruits of the award only after the Government advanced monies to the respondent Co-operative Spinning Mills pursuant to Government Order, dated 25.07.2013. Only at that juncture, the appellants came to know that apart from the persons covered in the award 92 other similarly placed persons like them were granted benefit. This one reason is sufficient to hold that the appellants could not have been singled out and owing to such fact, the claim of the appellants cannot be thrown out as being a belated claim. Had the Government restricted the payment to the persons, who were covered by the Arbitration award i.e., claimants before the

Arbitrator, it would be a different matter, but the Government thought fit to extend the benefit to an additional 92 suppliers and there is no reason assigned by the respondents as to why the appellants alone who are 8 in number should have been excluded.

18. The learned Additional Advocate General does not dispute the fact that the appellants were suppliers and received payments and to non-suit them by stating that the claim is belated, is unreasonable and offends Article 14 of the Constitution of India. The learned Additional Advocate General placed reliance on the decision of the Hon'ble Supreme Court in the case of S.S.Balu vs. State of Kerala (supra), to drive home the point that “delay defeats equity”. By referring to the paragraph 17 of the judgment, it is submitted that the Writ Court was justified in dismissing the Writ Petitions as they have been filed after a long delay. Irrespective of the fact that they are similarly situated to the other candidates, who obtained the benefit of the judgment. The said decision of the Hon'ble Supreme Court arose out of a service matter relating to filling up of Lower Primary/Upper Primary School Assistants in the State of Kerala. Taking note of the facts therein, it was pointed out that the rank list was valid only for a period of three years. Its validity expired on 5.6.2000 and thereafter, another Select List was published for the period from 2002 to 2005 and vacancies in terms of the said Select List have also been filled up. Thus, the considering the said facts the Court held that delay and latches are relevant facts for exercise of equitable jurisdiction. In the case on hand, the equity is in favour of the appellants. It is not in dispute that they are similarly placed as that of the other suppliers and were not aware of the fact that the Government would extend the benefit to 92 other persons who were not the claimants before the Arbitrator. Hence, on the peculiar facts and circumstances of this case, the appellants claim cannot be rejected on the ground of delay and latches and the decision relied on by the respondent is clearly distinguishable on facts.

19. As pointed out earlier the plight of the farmers was taken note of by the Division Bench while referring the matter for arbitration. It appears that the appellants as suppliers had with the bonafide belief effected supplies to the respondent Co-operative Spinning Mills with a fond hope that the payments would be promptly settled, since all the Mills were managed by the Government by appointing Special Officers. All their hopes were shattered when the respondent Mills breached their promises, miserably failed in settlement of their dues. Thus in the peculiar facts and circumstances and more importantly taking note of the fact that the Government extended the benefit to 92 other similarly placed suppliers like the appellants, we are of the firm view that the appellants are also entitled to the same benefit as that of the other suppliers who were granted the benefit under G.O.Ms.No.169, dated 25.07.2013.

20. In the result, the Writ Appeals are allowed and the impugned order passed in the Writ Petitions are set aside and the respondents are directed to settle the claims of the appellants, as has been done to the other suppliers pursuant to the Government Order, dated 25.07.2013 on the same terms, within a period of three months from the date of receipt of a copy of this Order. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pbn

To

1. The Principal Secretary to Government,
   Handlooms, Handicrafts, Textiles and Khadi
   (C1) Department,
   Government of Tamil Nadu,
   Fort St., George,
   Chennai - 600 009.

2. The Government of Tamil Nadu,
   Rep., by the Secretary,
   Finance Department,
   Fort St., George,
   Chennai - 600 009.

3. The Director,
   Handlooms and Textiles,
   Kuralagam,
   Chennai - 600 001.

4. Vellore District Co-operative Spinning Mills Ltd.,
   Rep., by its Liquidator,
   Vellore,
   Tamil Nadu.

+2cc's to Mr.P.Krishnan, Advocate, S.R.No.46008
+3cc's to Mr.A.S.Thambuswamy, Advocate, S.R.No.46307
+1cc to the Government Pleader, S.R.No.46263

W.A.Nos.525 to 532 of 2015

CNR(CO)
CA(11/09/2015)