IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

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WRIT PETITION Nos.9383 of 2015, 34843 of 2013, 5493, 5494, 5495, 5496, 5497, 5499, 5500, 10260, 10252, 10271, 10259 of 2014 and

WP.Nos.24703, 33744, 34844, 34825, 34841, 34839, 34821, 34845 of 2013 and

WP.Nos.15637, 15638, 15642, 15645, 15646, 15647, 16146, 16157, 16175, 16197, 16219, 16225, 19814, 23100, 23086, 23144, 28171, 28225, 29219, 34793, 34792, 34790, 32747, 35590, 4937, 35988, 6662, 39159 of 2014 and

WP.Nos.15623, 15919, 14659, 18878, 22963, 24902, 26467, 26649, and 8267 of 2015

BETWEEN

M/s. Vegesena Emu Farms and others.

... PETITIONERS

AND

The Union of India, Rep. by Joint Secretary, Ministry of Agriculture, Department of Animal Husbandry, Dairying and Fisheries, Krishi Bhavan, New Delhi and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 12.10.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

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COMMON ORDER:

All the petitioners in this batch of writ petitions are farmers, who had taken up EMU Bird farming and the nature of relief sought for by most of the petitioners in this batch of cases is for issuance of a Mandamus against non-consideration of their various representations for waiver of loans granted to them and seek to declare the consequential action of the respondent banks in insisting on repayment and recovery of loans from them as contrary to the recommendations of the State Level Bankers Committee dated 15.02.2014 and also arbitrary. Petitioners also seek direction against the respondent banks not to insist on repayment of loans and seek direction against the respondents for waiver of loans. Some of the other writ petitioners seek a declaration that the action of the Union of India as well as the State and the NABARD in failing to set up units for processing and marketing of by-products of EMU bird as arbitrary and seek a consequential direction to set up such units or alternatively to bail out the petitioners from the loans sanctioned by the respondent commercial banks for establishing EMU farm.

2. The common pleadings of the petitioners are that the Government of India allotted fund of Rs.10 crores for poultry sector including EMU farming in 2009 and 2010 with an object to improve and boost the unorgranized poultry sector and for EMU farming it was proposed that for every unit of 100 birds Rs.30 lakhs was estimated as the establishment cost of which the revolving funds share is 50% of total outlay – no interest and 40% bank share with interest rate as applicable to agricultural loans. The National Bank for Agriculture and Rural Development (NABARD), which is impleaded as third respondent in most of the writ petitions, was the implementing agency under the scheme, which had to coordinate with the commercial and cooperative banks etc. and scrutiny of the loans were to be approved by the State Level Bankers Committee. It is also stated that Sri Venkateswara Veterinary University in the then State of Andhra Pradesh conducted certificate course in EMU farming from 25 – 29 March 2008 and pursuant to the encouragement of the Central Government

and NABARD, the petitioners approached the respondent banks with their project reports and they were granted loans by the respondent commercial banks during 2010-2012 for setting up EMU farming.

3. It is stated that EMU bird is national bird of Australia and has an average life of 30 years and its products like meat, oil, leather, eggs and feathers have commercial value and it is stated to be a part of poultry and agricultural product in India as in other countries. Petitioners, therefore, contend that though they had taken up EMU farming by spending their resources on the feed and vaccine,
there were no processing or marketing units and consequently,
the EMU products could not be exported and therefore, EMU farming, where huge investments were made, was producing no return resulting in distress to the farmers. Hence, through the association of EMU farmers various representations were made to the State and Central Government seeking waiver of loans to rescue the farmers from the crisis of debts. The said request by the EMU farmers in the united State of Andhra Pradesh was made in view of waiver of loans said to have been granted by the Government of Maharashtra to EMU farmers. It is stated that the Central Government also introduced a further scheme on 26.04.2011 for the year 2011-2012 for poultry industry wherein for setting up of EMU processing unit, 25% of outlay is given as subsidy nominating the NABARD as the nodal agency.

4. Petitioners further state that while their representations to the State and Central Government were pending, due to cyclones Laila, Pylon and Hud Hud many of their birds died and the farmers,
being unable to maintain them, left the birds in the forest.
Petitioners state that on the repeated requests including to NABARD they were informed that NABARD has no information about the status or related information regarding marketing of EMU birds. It is also stated that the State Level Bankers Committee also considered the plight of the EMU farmers and on 14.02.2014 addressed a letter to NABARD requesting them to conduct a study and pointed out lack of processing and marketing units as the primary cause for the losses in the EMU farming and requested for waiver of loans. It is stated that there are 181 units of EMU farms in the then State of Andhra Pradesh and the loans sanctioned are to the tune of about Rs.50 crores but without taking into consideration the plight of the farmers, the commercial banks are insisting on recovery of

loans even by proceeding against the properties of the farmers.

5. It is stated that PIL.No.12 of 2014 was filed before the Bombay High Court by an activist on behalf of the farmers wherein the Bombay High Court passed an interim order dated 20.02.2015 directing the respondent banks to continue with their recovery proceedings, however, till the next date final recovery or possession of the properties of the farmers may not be taken. Similarly, this Court also in the present of batch of writ petitions issued interim direction to respondent banks that they may proceed with the recovery proceedings but shall not take possession of the properties from the petitioners until further orders. Separate interim order, as above,
is operating in almost all the writ petitions in this batch of cases.

6. In some of the writ petitions it is pleaded that the farmers were lured to invest in EMU bird farming by promising high returns and international demand was projected for the meat, oil, nails, eggs and feathers of the bird. Under a circular of the NABARD dated 16.02.2005 it was notified that the Government of India intends to create a Venture Capital Fund for Dairy/Poultry Sectors with a view to provide interest free loans/interest subsidy to farmers to undertake the activity promoted by the Government of India. Thus, the said loan scheme of the Government of India piloted through respondents 2 and 3 was introduced providing interest free loan to the extent of 50% of the project cost and interest subsidy on the remaining loan against regular repayment. Based on the projections, many farmers took up EMU farming by raising loans from the commercial banks in terms of the scheme of the Government as sponsored by NABARD. However,
the petitioners state that none of them was aware as to where to sell the products and who will purchase from them, as no processing or marketing unit was set up by the Government of India,
which ultimately resulted in the entire project cost falling on the farmers. Petitioners allege that the losses suffered by the farmers are solely attributable to the inaction of respondents 1 and 2 in establishing the processing and marketing units. It is stated that increase in cost of feed from Rs.8/- per kg to Rs.35/- per kg also imposed huge burden on the farmers and EMU farming generally had no returns for lack of marketing. Petitioners, therefore, state that their request for waiver of loans made in several representations has not received any consideration so far from the Union of Indian and as such, seek relief against the respondent commercial banks from threatened recoveries against them.

7. The aforesaid pleadings are countered by the Government of India by denying that the farmers were lured into taking up EMU farming. It is stated that the Government of India launched Venture Capital Fund Scheme during the 10th plan wherein 50% of the project cost is provided by the Government of India as interest free loan while 40% of the project cost is provided by the financing bank at the rates applicable to agricultural activities and 10% share of project cost is to be borne by the beneficiary. It is stated that the Government of India also subsidized the interest component applicable for agricultural activity to the extent of 50% in case of regular/timely repayment by the beneficiary. The said scheme was implemented through NABARD till 2008-2009. In the subsequent year 2009-2010 the aforesaid scheme was launched as a separate scheme in interest free loan mode and continued up to 2010-2011 and thereafter, from the year
2011-2012 the scheme is implemented on back-ended subsidy mode.

8. However, the contention of the petitioners that there was projection of demand regarding the by-products of EMU bird is denied and it is stated that the scheme merely gives an opportunity to any entrepreneur including diversifying farming in alternate poultry and the said venture capital fund scheme of establishing of poultry industry included establishing poultry breeding farms with low input technology and also for birds such as ducks/turkey/guinea fowl/Japanese Quail/emu/ Ostrich etc. apart from establishing feed godown, feed mill, feed analytical unit, marketing of poultry products (specialized transport vehicle, cool room storage facilities and retention shed for birds etc), egg grading, packing and storage for export capacity, retail poultry dressing unit (up to 300 birds per day), egg/broiler carts for sale of poultry products and central grower unit were envisaged. While the scheme was under implementation, initially a joint monitoring committee suggested improvements, which were incorporated in the scheme from 2011-2012 to ensure forward linkage. During this period, however, some ponzi scheme originating in the State of Tamil Nadu came to the notice of Government of India for which the Government of Tamil Nadu has initiated legal proceedings in August 2012 and Government of India sensitized the State Governments through an advisory in March 2013 to exercise caution against such ponzi schemes.

9. It is further stated that the allegation that the farmers had taken loans on a promise by the Government of India or NABARD is incorrect and it is stated that it is like any other business venture subject to risks and the scheme itself was voluntary for those farmers interested in EMU farming. The reasons given by the petitioners for debts are denied and it is stated that earlier scheme provided 50% of the project cost as interest free loan and for later years 2011-2012 back-ended subsidy to the tune of 25% is provided (33.3% for SC/ST farmers and North Eastern States including Sikkim). The commercial banks, therefore, were advised to disburse the loans as per their norms and there was no compulsion to take up any activity and there was no buy back arrangement as to marketability. The counter affidavit is also appended with a letter of NABARD addressed to the Joint Secretary, Department of Animal Husbandry, Dairying and Fishing, Ministry of Agriculture, Government of India dated 25.11.2009 requesting for certain clarifications of the scheme and a copy of the scheme of the Government of India under Poultry Venture Capital Fund 2013-2014 granting administrative sanction dated 29.04.2013 is also appended.

10. NABARD has also filed a separate counter affidavit denying that there is any violation of any statutory or Constitutional provision either by the Government of India or by the NABARD and it is stated that the petitioners have set up their farms with commercial interest for earning profits from the investment. It is stated that NABARD is only subsidy channeling agency for the scheme under the Government of India's venture capital fund scheme. It is stated that the Government of India's scheme as communicated under NABARD's circular dated 26.04.2011 also stipulates Government of India's operational guidelines for the poultry venture capital fund. It is stated that the petitioners have availed loans from the commercial banks, which now aggregate to about 7 ½ crores so far as some of the respondent commercial banks are concerned and it is stated that NABARD has only played a limited role as a nodal agency of Central Government and as such, the petitioners are not entitled to directions against respondents 1 and 2 to set up processing and marketing units. It is stated that NABARD had always advised the commercial banks to process the loans under the scheme as per their respective norms and all the beneficiaries were as well aware of the Government of India's venture capital fund scheme as well as the operational guidelines, which were also available on website. The counter affidavit, briefly, refers to various clauses in the said operational guidelines and it is stated that petitioners have set up EMU farming with commercial interest in mind with a view to earn profits. The allegation of the petitioners that the farmers were lured into the scheme by

projecting demand for the
by-products EMU birds was denied.

11. In WP.No.22963 of 2015, the petitioners filed an additional affidavit wherein it is stated that between the years 2009 -2013,
it is alleged that the loan schemes were not implemented by the commercial banks uniformly and loans were not disbursed uniformly. Petitioners gave various instances in para 3(a) to (g) of the said additional affidavit, which was extracted hereunder:

> “3 (a) Some loans were sanctioned with 50% interest free loan component of NABARD.
>
> b) Some loans were sanctioned with 25% direct subsidy as NABARD component.
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> c) Some banks released the bank loans (40%) along with NABARD component.
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> d) Some banks withheld the NABARD component i.e. IFL with the bank and collecting interest on this NABARD component.
>
> e) Some banks withheld the subsidy with the bank stating that the subsidy is back end subsidy. And Banks are collecting the interest on the subsidy amount also.
>
> f) Some banks are collecting interest on bank loan component as agricultural term loan.
>
> g) Some banks are collecting interest as other agricultural loans similar to commercial lending deflating the loan incentive scheme.”

12. I have heard the learned counsel for the petitioners and most of the contentions raised by them are common with respect to the plight of the farmers, primarily, on account of the Government of India not setting up processing and marketing units. Learned counsel submits that in the absence of such processing and marketing units,
EMU bird and its by-products have no market in India and thereby,
the entire project became unviable as it was without any returns apart from high cost of setting up of farms and maintaining birds. It is also stated that but for the promotion made in the scheme with regard to commercial demand for EMU by-products, petitioners would not have ventured into the scheme and submit that the distress to the EMU farmers is caused

on account of the Government of India's inaction in setting up processing and marketing units and as such, seek entitlement to the relief as sought for at least to the extent of waiver of loans by contending that the petitioners cannot be blamed.

13. Learned Assistant Solicitor General for Government of India,
Ms. Uma Devi, learned standing counsel for NABARD as well as standing counsel appearing for various commercial banks have opposed the writ petitions by contending that in the schemes,
referred to above, there was no promise or responsibility of any of the respondents for setting up of processing and marketing units and the petitioners as individuals having approached the commercial banks to take advantage of the venture capital fund scheme of the Government of India and having availed interest free loans and subsidies,
cannot now turn round and blame NABARD. It is contended that the commercial banks have advanced loans after assessing individual project report of each petitioner against security provided and that the said commercial venture was the responsibility of each individual entrepreneur and like any other business venture, the risks associated with the business were well within the knowledge of the petitioners and merely because they have run into losses cannot be a ground for seeking waiver of loans as various public sector banks have advanced loans at concessions rates but even then the petitioners have defaulted. Learned counsel, therefore, submits that none of the petitioners is entitled to any relief as the transaction itself was purely commercial.

14. In view of the above, the points that arise for consideration are as under:

1. Whether the Central Government as well as NABARD has given any assurance or promise to the petitioners with regard to setting up of processing and marketing units?

2. Whether the petitioners are entitled to claim waiver of loans or interest as a matter of right?

POINT No.1:

15. Various submissions, as noted above, when examined with reference to the schemes

of the Government of India, it would be evident that the schemes do not reflect upon profitability or otherwise of the schemes and it merely provides incentive to poultry farming and allied alternate farming. It, therefore, appears logical that like any other business venture, the business of alternate poultry was also subject to risks associated with any other business. It may be that there are no processing and marketing units established for EMU bird and its by-products and that may be the reason for losses to the EMU farming but the same cannot be blamed on either the Government of India or NABARD. Like any other business, EMU farming could have also made huge profits but, unfortunately, they have run into losses and the same is clearly to be blamed on market conditions and the blame cannot be placed at the doors of either the Government of Indian or NABARD. Petitioners have not been able to establish any promise on the part of either the Government of India or NABARD for ensuring processing and marketability of their products as is evident from the schemes of Government of India and circulars of NABARD. Consequently, therefore, the primary relief sought for by the petitioners in some of the writ petitions for a Mandamus to direct the Government of India and NABARD to set up processing and marketing units is misconceived.

Point No.1 is held accordingly against the petitioners.

POINT No.2:

16. So far as the request of the petitioners for waiver of loans on the ground that EMU farming is also an agricultural farming is concerned, it is contended that the poultry farmers are also receiving the benefits but the EMU farmers have been denied the same.

17. During the hearing, the respondents have placed before this Court the minutes of the meeting conducted by the Government of India, Ministry of Agriculture, Department of Animal Husbandry, Dairying and Fisheries on 16.07.2015. The meeting was stated to have been chaired by the Joint Secretary (ANLM) with participants from the Departments of Animal Husbandry, Government of Andhra Pradesh and Telangana as well as the Government of Maharashtra and General Manager, NABARD apart from the Director (MG), DFS. The meeting was clearly aimed at exploring the possibility of extending help to EMU farming affected due to reduced/non-off take of EMU products and thereby, enable

the farmers to pay loan liabilities. In the meeting,

it was also envisaged to suggest ways and means within the financial regulations in vogue and in terms of RBI guidelines. In the said meeting, it was unanimously agreed that there was no fault in incentivizing poultry activities including EMU farming through interest free loan or back-ended subsidy and there was no technical fault in the scheme from the production perspective. The committee was apprised of the status of the loans showing an aggregate amount of 4188.063 lakhs provided to 453 EMU farms from 2006-2007 till 2011-2012 and back-ended subsidy to the tune of 2755.712 lakhs has been released to 425 units of EMU Breeding Farms since 2011-2012 to 2014-2015. The Chairman of the committee, therefore, requested the participants to explore terms, which may reduce the burden on the farmers in similar lines as was done by the Ministry of Finance in case of poultry farmers.

18. Learned counsel for the petitioners, therefore, states that the minutes aforesaid show that the committee would send its proposals to the Ministry of Finance by requesting the Ministry of Finance to take necessary decision.

19. It is evident from the above that the Government of India is considering the relief to EMU farmers on line with the relief granted to poultry farmers under the scheme of the Ministry of Finance.

The minutes of the Ministry of Agriculture show that the Ministry has already taken note of the plight of the EMU farmers and appropriate scheme is under consideration of the Government of India. The prayer of the petitioners for grant of waiver of loans in this batch of writ petitions may be addressed by the Government of India in near future in view of the minutes of the meeting referred to above.

Point No.2 is answered accordingly.

20. Considering that the grievance of the petitioners is under active consideration of Government of India, in my opinion, it is appropriate to await the decision of the Government of India in that regard.

In all these writ petitions there is already an interim order in operation that the respondent banks may proceed with the recovery proceedings but shall not take possession of the property of the petitioners until further orders.

21. In my opinion, therefore, interest of justice would be served by further directing the first respondent/Union of India to take appropriate decision with regard to the relief, if any, to be granted to the petitioners in terms of the minutes of the meeting, referred to above, subject to concurrence by the Ministry of Finance, Government of India. Until such decision is taken and communicated to NABARD, the respondent commercial banks and the President of the Association of the petitioners, the interim order, referred to above, shall continue to operate. Since examination and consideration of the proposals by the Ministry of Finance, Government of India, necessarily requires adequate time, the first respondent is directed to take appropriate decision in the matter, preferably, before 31.01.2016 and communicate the same accordingly.

The writ petitions are accordingly disposed of with the above directions. As a sequel, the miscellaneous applications, if any,
shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

October 12, 2015

DSK