

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4756 OF 2017

Late Dr. Limbajirao Muktarao Pansambal
Dudh Yavasayik Saha. Dudh Sansthancha,
Dudh Utpadak Va Purvatha Sahakari Sangha
Maryadit, Shirur (Ka), Tq. Shirur (Ka),
Dist. Beed Through its Chairman
Shri Dnyanesh Rameshrao Pansambal .. Petitioner

VS.

- 1] The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32
- 2] The Divisional Commissioner,
Aurangabad Division, Aurangabad
- 3] The Collector,
Beed, Dist. Beed .. Respondents

Mr. V.D. Salunke, Advocate for the petitioner
Mrs. A.V. Gondhalekar, A.G.P. for the respondent/State

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.
DATE : 14-06-2017**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. The petitioner participated in a welfare project.

3. The case of the petitioner is that it is a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960. In-fact, it is a milk co-operative society registered and functional at taluka level. One of the objects of the petitioner society is to encourage and assist agriculturists in purchasing animals and thereafter raise them and collect milk and provide it to the apex society. The agriculturists are also provided with fodder so that they can maintain their cattle.

4. The petitioner refers to the acute drought situation and virtually a famine in Beed, Latur and Osmanabad districts of the Marathwada region. This was the situation in 2015-2016. In the circumstances, it became very difficult for the agriculturists to maintain and look after the cattle. They were brought to the cattle camp and which the petitioner organized with the assistance of the State. One of the conditions, based on which the petitioner and a society like it are eligible to draw financial aid and support from the State, is that they maintain at this camp, minimum 500 and maximum 3000 cattle. The Collector of the district is empowered to relax this condition to the extent of 250. The petitioner submits that having responded and duly participated in the scheme and maintained the required number of cattle, it was expected that the ex-gratia payment / financial assistance would be duly disbursed.

5. The petitioner has annexed to the petition the relevant documents including report of inspection of the camp held by the petitioner. The petitioner started the camp from November – 2015 and maintained it from its own funds. The petitioner submits that on the date of impugned order, there were indeed 500 cattle and the minimum requirement was satisfied. There was some reduction in number of cattle because of untimely rainfall. Secondly, the cattle suffered from a disease. Therefore, the number of cattle went below 500. The preventive measures were started. The farmers took their cattle to their homes for treatment and again brought them back. Therefore, for this period, the strength of cattle was reduced below 500 but never went below 250. It remained at more than 400.

6. The Collector was approached by the petitioner and by inviting his attention to all the documents, he was requested to favourably consider the proposal for financial assistance / ex-gratia payment. The petitioner also approached the Divisional Commissioner and who has accepted the request of the petitioner and recommended to the State to release the amounts.

7. It is in these circumstances, that Mr. Salunke, leaned counsel appearing for the petitioner would rely upon the terms and conditions of the Government Resolution. He would submit that during certain period,

the number of cattle went below 500 but it was nobody's case that the camp was not held or not functional or the cattle were not maintained by the petitioner at all. This is not a case of any fraud or a deliberate and intentional act of the petitioner in trying to extort money from the State but this is a legitimate claim.

8. Learned A.G.P on the other hand relies upon the affidavit-in-reply in which a categorical statement is made that there is a communication / order of the Collector dated 08/01/2016 intimating all the cattle camp owners that if the number of animals is found to be less than 500, payment of that day will not be disbursed.

9. She therefore submits that factually, the payment to be made is ex-gratia. There is no right created in the petitioner by law. In these circumstances, she would submit that the Petition be dismissed.

10. After having heard both sides and perusing with their assistance, the Petition, the reply affidavit as also the rejoinder / counter reply, we are of the opinion that the petitioner's case deserves to be considered for release of the ex-gratia payment. The condition of minimum number of 500 animals on the own showing of the State was relaxed and upto 250 animals. In that regard, paragraph no.7 of the

affidavit-in-reply is clear. There was indeed an order dated 16/11/2015 which mentions that this condition of minimum number of animals has been relaxed upto 250 and bills of the cattle camp having maintained this number of cattle / animals would be paid in terms of the amount mentioned therein.

11. True it is that there is a subsequent order on 08/01/2106. However, the Government may say so, but the order dated 16/11/2015 is applicable to the present petitioner. In the affidavit-in-reply, there is no denial of a factual statement by the petitioner that its camp was functional from November – 2015. If indeed it was so functional, then, the subsequent variation or change in the Scheme should not work to the detriment of the petitioner. The number of cattle may go down below the requisite number but the entire payment cannot be withheld. Secondly, there are reasons assigned for the reduction. Thirdly, the petitioner participated in a welfare measure initiated pursuant to the exercise of the executive power vesting in the State. Article 162 of the Constitution was invoked and the public was invited to assist the State. Hence, there was a definite assurance or promise of reimbursement of the expenses of the cattle camp albeit a conditional one. If they are fulfilled then the denial is definitely arbitrary and unjust. A right has accrued on account of the Government Resolution.

12. The petitioner's case could have been considered sympathetically, particularly, after a positive recommendation from the Divisional Commissioner. We are not therefore expressing any opinion and in general terms on the entitlement of those cattle camp owners in whose case, the condition of minimum number of cattle was held to be not satisfied because of the subsequent Government resolution.

13. Once the petitioner has placed its case and for sympathetic consideration of the State, namely, that the cattle were always maintained at the camp, they were 500 in number, but at one stage, firstly on account of untimely rainfall and secondly on account of a epidemic or a serious disease, temporarily, the cattle were taken away and again brought back, then, we have no hesitation in concluding that the petitioner's claim of payment of Rs.18,63,610/- cannot be termed as illegal. That claim should have been honoured. It is also backed by the records and endorsed by the statutory authorities. The petitioner has therefore rightly relied upon the communication from the Commissioner dated 20/05/2016 annexure "G" to the Petition. In that communication at page 60 of the paperbook, the Commissioner has informed the District Collector, Beed that the petitioner's cattle camp had been set up. This cattle camp was set up from 20/01/2016. This cattle camp satisfies all the requirements stipulated in the Government Resolution dated

20/08/2015. The Commissioner confirms that the minimum number was reduced but only because of the disease and it was contagious. For the treatment of that disease, the cattle were taken away for certain period. It is in these circumstances and when the payments of the petitioner's bills for substantial period have been cleared, then the Commissioner was of the opinion that rest of the amount be also released.

14. We do not see any denial of this factual position and emerging from the communication of the Commissioner.

15. As a result of the above discussion, this Writ Petition succeeds. Rule is made absolute in terms of prayer clause (B).

16. The sum of Rs.18,63,610/- shall be released as expeditiously as possible and within a period of two (2) months from the date of receipt of a copy of this order, failing which it will carry simple interest at the rate of 6% per annum, which shall be till the date of disbursement of the amount.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/