

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4066 OF 2018

The Agricultural Produce Market
Committee, Beed, through its
I/C Secretary
Shri Ashok Atmaram Waghire.

Petitioner.

Versus

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, District Beed.

Respondents.

Mr. S.S. Thombre, advocate holding for
Mr. S.B. Solanke, advocate for petitioner.
Mr. S.P. Sonpawale, A.G.P. for respondents no. 1 to 3.

**CORAM : SUNIL P. DESHMUKH &
ABHAY AHUJA, JJ.**

Date : 9th March 2021.

ORDER AND JUDGMENT : (PER ABHAY AHUJA, J.)

1. Rule. Rule is made returnable forthwith. With the consent of the counsel for the parties, the matter is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, petitioner is seeking a writ directing the respondents to release the *ex-gratia* amount of Rs.9,45,665/- to petitioner for the animal camp run at Gaulwadi, District Beed for a period from 09.01.2016 to 31.01.2016 and from 01.02.2016 to 16.02.2016.

3. Brief background is that petitioner being an Agricultural Produce Market Committee has its aims and objects to assist the agriculturists, *inter alia*, by providing fodder to the needy agriculturists to maintain their cattle, etc. Due to acute drought condition in the season of 2015-2016 in Beed, Latur and Osmanabad Districts, when the rainfall was less than average and the strength of animals being more in the three Districts and there being scarcity of fodder, the Government took a decision to form cattle camps which would receive *ex-gratia* financial assistance from the Government for maintaining the cattle in the said camp and issued Government Resolution dated 20.08.2015 to implement the said decision. As per condition no. 2 of the said Government Resolution, to avail the *ex-gratia* financial assistance, the minimum number of cattle was of 500 and maximum of 3000 cattle in a camp. However, the Collector was empowered to relax the condition of minimum cattle to the extent of 250.

The farmers were also required to take cattle home for 8 to 10 days; the Tahasildar and Deputy Collector were authorized to inspect the camps. As per condition no. 12 of the said Government Resolution against big cattle, payment to be received was Rs. 70/- per day and against small cattle payment to be received was Rs. 35/- per day. The responsibility of making the payment was on the Collector.

4. The said Government Resolution was widely advertised and pursuant to such advertisement, the petitioner applied for permission to open the camp at Gaulwadi in August 2015 as there were huge number of cattle, particularly milky cattle. The Collector approved the proposal and granted permission to the petitioner to open cattle camp by order dated 07.12.2015. It is submitted that due to drought condition, there was water as well as fodder scarcity and therefore both these necessities had to be purchased with own / borrowed funds, so that the cattle do not starve.

5. Petitioner submits that the camp was inspected by Tahasildar and Deputy Collector time to time. Talathi and Circle Inspector have given daily visits to the camp and maintained visit book. The officers have maintained daily report of the cattle available, which includes the period 01.01.2016 to 29.02.2016. It is submitted by the petitioner

that till 17.02.2016 there were 500 cattle, on 31.03.2016 the number was 548 and on 30.04.2016 it was 571. It is submitted that the visit book was maintained from 24.12.2015 to 08.06.2016 pursuant to the directives of the Collector.

6. During the period 01.01.2016 to 31.01.2016 and 01.02.2016 to 16.02.2016 the number was less than 500, but between 250 to 480. It is submitted that the Collector issued a letter dated 16.11.2015 and relaxed the strength of cattle upto 250. Petitioner submits that though from 09.01.2016 16.02.2016, the strength of the cattle was below 500, but more than 300 and again from 17.02.2016 it was above 500 upto 08.06.2016 and after that, it was reduced upto 09.02.2016 and camp was closed on 10.02.2016. It is submitted that *ex gratia* payment as per the report was paid by the respondents as and when there were more than 500 cattle. However, for the period of 38 days from 09.01.2016 to 31.01.2016 to 16.02.2016, no payment was made on the ground that the cattle maintained was less than 500.

7. Petitioner submits that even though it maintained more than 300 cattle during the period mentioned, no payment was made for the short period, and therefore, they approached the Collector, however, the said request was

turned down, after which the petitioner approached the Commissioner by way of representation on 07.02.2017. It is submitted that the Commissioner directed the Collector to relax the condition of minimum 250 cattle, however, the same was turned down by letter dated 23.03.2017 on the ground that even though vide order dated 07.12.2015 the permission was granted for a reduced minimum number to 250, however after taking stock of the ground situation, the Collector had vide order dated 08.01.2016 once again increased the minimum number to 500. Aggrieved by this rejection, petitioner has made representations dated 03.08.2017 and 12.10.2017 to the Collector and Tahasildar respectively requesting them to make the payment in accordance with the decision of this court in *Writ Petition No. 4756 of 2017 dated 14.06.2017* in the case of *Late Dr. Limbajirao Muktarao Pansambal Dudh Vyavasayik Shakari Dudh Sansthanacha, Dudhy Utpadak Vs Purvatha Sahakari Sangha Maryadit, Shirur, Taluka Shirur (Ka), District Beed vs The State of Maharashtra and others.*

8. Affidavit in reply dated 29.04.2019 has also been filed on behalf of respondent No. 3 admitting that the District Collector, Beed has vide order dated 16.11.2015 pursuant to the discretion given in Government Resolution dated

20.08.2015, relaxed minimum number of cattle upto 250 till 17.01.2016 and stating that bills of cattle camps having minimum 250 animals will be paid. However, since the District Collector, Beed has subsequently issued order dated 08.01.2016 increasing the minimum number of cattle upto 500 as per the terms and conditions of the Government Resolution dated 20.08.2015, the petitioner is not eligible for payment on the days on which cattle are less than 500. Learned A.G.P., therefore, submits that the payment to be made is *ex-gratia* financial assistance and there is no right created in the petitioner by law. He, therefore, submits that the petition deserves to be dismissed.

9. We have heard learned counsel for the petitioner Shri S.S. Thombre, holding for learned counsel Shri. S.B. Solanke and learned A.G.P. Shri S.P. Sonpawale for the respondents and with their assistance perused the papers and proceedings as well as the decision of this court in Writ Petition No. 4756 of 2017 (supra) wherein this Court has in almost similar circumstances dealing with the Government Resolution dated 20.08.2015, granted relief therein.

10. Just like in the case referred to above, in this case also the condition of minimum of 500 animals, on its own showing, was relaxed by the State to a minimum of 250

animals. That is clear from paragraph 8 of the affidavit-in-reply when it refers to an order dated 16.11.2015, which mentions that the condition of minimum 500 animals as per Government Resolution dated 20.08.2015 has been relaxed to 250 animals and that bills of the cattle camp having minimum 250 animals will be paid.

11. Similarly, though there is a subsequent order dated 08.01.2016, however, the order dated 16.11.2015, in our view, would be applicable to the present petitioner as the camp was functional from 07.12.2015 and this is admitted in the affidavit-in-reply. If indeed the camp was so functional, then, the subsequent variation or change in the scheme should not work to the detriment of petitioner. The number of cattle may go down below the requisite number, but the payment cannot be withheld as there are reasons for reduction. We are therefore of the view that the petitioner's case deserves to be considered for release of *ex-gratia* payment.

12. At this stage, we are reminded of Article 48 of the Constitution of India being the Directive principle of State policy which refers to the organisation of agriculture and animal husbandry. For the sake of convenience the said Article is reproduced as under :

“48. Organisation of agriculture and animal husbandry -

The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle”

It is in this context that the scheme for cattle camps has been envisaged to take steps for preservation of cattle.

13. It would also be worthwhile to quote paragraph 11 of the decision in Writ Petition No. 4756 of 2017 (supra) cited above, as under :

“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”.

Very true that it is important to appreciate that Petitioner herein has also participated in the same welfare measure initiated by the State pursuant to the exercise of executive power vested in the State and Article 162 of the Constitution of India was invoked and the public was invited to assist the State. We are also of the view, that there was a definite assurance or promise of reimbursement of expenses of the cattle camp albeit a conditional one. If they are fulfilled, then denial is definitely arbitrary and unjust. A right has accrued on account of the Government Resolution.

14. Once the petitioner has placed its case for a sympathetic consideration of the State, stating that the cattle camp was operational during the period, the cattle were being maintained at all times therein, they were 500 in number, but had to be intermittently and that too for some time taken away and brought again by the farmers, we do not think that the petitioner's claim for Rs. 9,45,665/- can be termed as illegal. In our view, the same should have been honoured. The claim is also backed up by the record of the statutory authorities. The cattle camp was set up from 07.12.2015 and satisfies all the requirements stipulated in the Government Resolution dated 20.08.2015. There is no denial by the authority on that front. The bill of the petitioner for a

substantial period has been cleared and it is only a period of 38 days for which the amount has to be realized.

15. In view of the above discussion, we allow the writ petition. Rule is made absolute in terms of prayer clause "B".

16. Rs. 9,45,665/- be released to petitioner as expeditiously as possible, preferably within a period of 2 months from the receipt of writ of this order, along with simple interest at the rate of Rs. 5 % per annum till realization of the amount.

17. It is made clear that we are not expressing any opinion 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 or order of the Collector and this order is passed only in the peculiar facts and circumstances of this case.

(ABHAY AHUJA, J.)

(SUNIL P. DESHMUKH, J.)

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