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**IN THE HIGH COURT OF BOMBAY AT GOA**

**Civil Application (Review) No.5 of 2021**

Goa State Co-op Milk Produces Union Ltd.

Petitioners

*Versus*

State of Goa, Through Chief Secretary and 2  
others

Respondents

**Mr. A. F. Diniz, Senior Advocate with Mr. Ryan Menezes,  
Ms. G. Almeida and Mr. Nigel Fernandes, Advocates for  
the Petitioners.**

**Mr. D. J. Pangam, Advocate General with Ms. Ankita  
Kamat, Additional Government Advocate for the  
Respondent nos. 1 and 2.**

**CORAM: M. S. SONAK &  
M. S. JAWALKAR, JJ**

**DATED: 29<sup>th</sup> July 2021**

**P.C.**

**1.** Heard Mr. Diniz, the learned Senior Advocate, who appears along with Mr. Ryan Menezes for the petitioner, and Mr. D. J. Pangam, the learned Advocate General along with Ms. A. Kamat, the learned Additional Government Advocate for the respondents.

**2.** This review petition is an attempt to re-argue the matter on merits.

3. Mr. Diniz contends that the petitioner's contention based on the decision of this Court in **Belgaum District Co-operative Milk Producers Union Ltd. & Others V. State of Goa & anr.** (Writ Petition No.210 of 2012) and **Karnataka Co-operative Milk Producers' Federation Ltd. and ors. Vs. State of Goa and ors.** (Writ Petition No.316 of 2002 ) has not been considered by the Division Bench, which dismissed Writ Petition No.105 2010 on 4/3/2021 (Coram T. V. Nalawade and Bharati Dangre, JJ).

4. Mr. Diniz submits that in terms of the said judgment, this Court had held that Rule 3 of the Goa Cess on Fluid Milk (Control) Rules, 2001 was discriminatory. Mr. Diniz submits that based on such declaration even the petitioners in the present case were entitled to refund of cess paid during the period from 2001 to 2003. He submits that this contention was not even considered by the Division Bench.

5. Mr. Diniz, in rejoinder contended that the State in this matter had pleaded that the cess was in fact tax but in the course of arguments urged that the same was a fee. Mr. Diniz submits that he had protested against this change of stance but such protest was not considered by the Division Bench. Mr. Diniz submits that the aforesaid are good grounds for review of the detailed Judgment and order dated 4/3/2021 dismissing the Writ Petition No.105 of 2010.

6. Mr. Pangam, learned Advocate General submits that in the Belgaum and Karnataka Judgments, this Court had not struck down Rule 3, but had only observed that the operation of this rule was discriminatory qua the petitioners in this Writ Petition.

He submits that the judgments have been considered by the Division Bench and there is no merit in the contention now sought to be raised by the review petitioners.

7. The learned Advocate General submitted that the nomenclature of the levy in such matters is quite irrelevant. He submitted that it is on this principle that the Division Bench, after duly considering the protest of the petitioners ruled that the cess was a fee, in lieu of several services rendered by the State.

8. Having considered the rival contentions, we agree with the learned Advocate General that no case has been made out for seeking a review, particularly, having regard to the restricted parameters of review jurisdiction.

9. The Judgments relied upon by Mr. Diniz were considered by the earlier Division Bench. Besides, there is no dispute that in the said Judgment, Rule 3 possibly before its amendment or even otherwise was admittedly not struck down as ultra vires. The observations regarding its discriminatory character were qua the petitioners in the said Petitions because they were supplying milk from outside the State of Goa and in that sense not availing any services in the State. Based on the said observations, therefore, the Petitioners in the present Petition were not entitled to any refunds.

10. That apart, if the prayer clauses in Writ Petition no.105 of 2010, in which, the Judgment and order of which review is applied for are perused, then, it is quite apparent that the petitioners had only sought for a declaration that Rules 3 and 4 are ultra vires and based thereon applied for refund of 1,09,19,313/-. There is not even any relief specific to the years

2001 and 2003 or any relief specific to the contention now sought to be raised in the review petition.

11. There is also no merit in the contention that the petitioners' contention of protest was not recorded or considered. The Judgment and order dated 4/3/2021 has considered all the aspects and having regard to the restricted parameters of review jurisdiction, we are not prepared to accept that there is an error apparent on the face of the record or that the Court has not considered any significant contention.

12. This petition is, therefore, liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

**M. S. JAWALKAR, J.**

**M. S. SONAK, J.**

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AURA  
PEREIRA

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