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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2677 OF 2023

Kherwadi Social Welfare Association,
Parishramalaya, Teen Bungalow Road,
Kherwadi, Bandra (E), Mumbai 400 051 **…Petitioner**

~ versus ~

1. **Ministry of Rural Development,**
The Union of India, Represented by Sanjay Kumar, Under-Secretary to Government of India

2. **Rural Development Department,**
Government of Maharashtra Represented by Anil Kale, Under Secretary to Government of Maharashtra

3. **National Institute of Rural Development & Panchayati Raj,**
NIRD Road, Police Quarters, Rajendra Nagar, Hyderabad 500 030, Telangana Through its Director General

4. **Maharashtra State Rural Livelihoods Mission,**
5th Floor, CIDCO Bhavan (South Wing) CBD Belapur, Navi Mumbai 400 614 Through its CEO **…Respondents**

APPEARANCES

FOR THE PETITIONER	**Ms Aneesa Cheema**, *with Sayali Diwadkar, i/b DSK Legal.*
FOR RESPONDENTS NOS.1 & 3-UOI	**Mr RV Govilkar, Senior Advocate**, *with Kedar Dighe.*
FOR RESPONDENT NO.2-STATE	**Mrs AA Purav, AGP**.
FOR RESPONDENT NO.4	**Mr Nitin Deshpande**.
OFFICER OF MSRCM PRESENT IN PERSON	**Mr Vishal Kisan Jadhav**, *Mission Manager, RCETI.*

CORAM : G.S.Patel & Neela Gokhale, JJ.

DATED : 30th March 2023

ORAL JUDGMENT (*Per GS Patel J*):-

1. **Rule.** Returnable forthwith.

2. The Petition seeks an order directing Respondents Nos. 2 and 4 to release the second and final (to be understood as the second and third) instalments of Rs 88,17,650/- duly certified to be payable to the Petitioner for its successful completion of a project. This project, details of which we will set out briefly immediately next, was undertaken by the Petitioner, a social welfare association under a Memorandum of Understanding with the National Institute of Rural Development and Panchayati Raj ('**NIRD**'). The project was to be funded by both the Centre and the State. The Centre was to pay 60% and the State was to pay 40%. The Centre's share of 60% has been paid. The State's payment was to be routed by the 2nd Respondent, the State's Rural Development Department, through the 4th Respondent, apparently a State Government trust or entity called the Maharashtra State Rural Livelihood Mission ("**MSRLM**"). It appears that the State Government's share of 40% in the last tranche (the second and third instalments) is actually now parked with the 4th Respondent, and has been for some time.

3. For the last one hour we have been asked for an adjournment on behalf of MSRLM to file an Affidavit in Reply. For the last one hour, we are not able to discern what possible affidavit can be filed saying what, since project completion has been fully certified by the other party to the contract namely the Central Agency, NIRD. Apparently, MSRLM has received a letter from the State Government asking it to "verify" and pay. We fail to understand how anyone can be expected to verify that which has already been certified. NIRD, the nodal agency, and the only other party to the contract, certified completion and the amounts due. Now MSLRM wants to 'verify' that certification — that is, to sit in judgment or appeal over the NIRD, though MSRLM is not a contracting party, is not mentioned in the contract, has been given no such authority and conferred no such power. We are left to wonder what might happen if MSRLM arrives at a conclusion that the NIRD certification is for some reason wanting — especially since the Central Government has fully paid out based on that very certification, and even the State Government has paid the first tranche. Even today, MSRLM, in funds since 2020 or 2021, cannot tell us what are the alleged failings of the Petitioner in executing the contract. All that we are told is that MSRLM "called for documents". Then it called for a report. But what is not shown to us is what authority MSRLM has to do any of this in the first place. It is simply a fund-routing agency, a creature of administrative convenience, and nothing more.

4. The Petitioner is registered under the Societies Registration Act, 1860 and the Maharashtra Public Trusts Act, 1950. It provides skill-oriented social development strategies and solutions. It is an authorised Vocational Training Provider under the Ministry of Labour and Employment's Modular Employability Scheme. It has operations in almost 18 States in India. It trains several lakh youth in various villages and urban slums equipping them with skills to earn a livelihood. It also provides guidance and counselling.

5. The 1st Respondent is the Union of India's Ministry of Rural Development. The 2nd Respondent is the State Government's Rural Development Department.

6. In 2013, the Petitioner was selected as a Project Implementing Agency (or '**PIA**', an expression used throughout these papers), to execute a project under the "Aajeevika Scheme Development Programme for placement-linked vocational training to Below Poverty Line ("**BPL**") youth from the Thane District of the Maharashtra". This had a placement target of 1500 out of 2000 rural BPL youth, to be done in three years between 30th March 2013 and 29th March 2016. The total project cost was Rs 3,81,63,000/-.

7. The Union Government's Ministry of Rural Development or MORD issued a sanction order on 30th March 2013. That said that the project would be funded in the ratio of 75:25 (at that time) by the Central Government and the State Government. In rupees this meant that the Central Government's share would be Rs 2,86,23,000 and the State Government's share would be Rs 95,40,000/-. NIRD was the project coordinating agency on behalf of the Union Government. The Central Government funds had to be disbursed in three instalments of 25%, 50% and remaining 25% through NIRD which was to make payment on behalf of the Respondent No. 1. On 20th August 2013, the State Government's Rural Development Department sent a letter of commitment to NIRD saying it had pre-committed to a contribution of Rs 95,40,000/- towards the project cost and would create a budget head. This project cost would be disbursed through NIRD to the Petitioner. NIRD was to sign an MOU with the Petitioner. On 6th September 2013. the Petitioner and NIRD executed the MOU in question. A copy of this is at Exhibit 'E' to the Petition from page 65. The only parties to this MOU are NIRD and the Petitioner. The recitals set out the common objectives, i.e., those by NIRD and the Petitioner. The obligations of the parties are set out in Article 1. Clause 1.2(b) says that within two weeks of funds being received by NIRD from the MORD, these would be released to the Petitioner as per the MORD letter of 30th March 2013. There are provisions for monitoring Quarterly Progress Reports and the Project Monitoring Committee, all to be done by NIRD. Article 3 from pages 74 and 75 deals with disbursement/ share procedures. Clause 3.1 speaks of the three instalments. Clause 3.3 gave NIRD the right to stop disbursement or to suspend it in certain conditions. NIRD has never invoked that suspension or stoppage clause.

8. What is important about Article 3 is not what it says but what it does not say. It does not give any right to MSRLM to stop disbursement or to stop payment. It does not give MSRLM the right to call for any report or raise any queries.

9. It is not in dispute that, on 17th September 2013, in terms of the sanction order and the MOU, a first instalment of Rs 69,06,721/- came to be disbursed by MORD from its share through NIRD after the applicable deductions. The Petitioner awaited payment of the State Government share of the first instalment. It wrote to the State Government and to MSRLM through which payments were being channelled, asking for the first instalment's State Government's share, then computed at Rs 23,85,188/-. Copies of this correspondence between September 2014 and April 2015 are at Exhibit 'G' to the Petition. Despite payments from the State Government being pending, the Petitioner began the project. According to Ms Cheema for the Petitioner, it was orally requested to continue the project without waiting for the State Government contribution. The Petition says that there were monthly progress reports and project officers of NIRD, four of whom are named at page 11, periodically visited the project site and monitor its progress. Nobody from MSRLM was involved.

10. It was not until 20th July 2015 that the State Government, (Respondent No.2) released its share of Rs 23,02,240/- (after deducting withholding taxes). The payment came through MSRLM. There was no question of 'verification'. MSRLM did not say that it needed to verify or call or nor did it call for any reports or ask for any documents or justifications.

11. In November 2015, NIRD conducted a financial audit of the project. A copy of that email is annexed to the Petition. By November 2015, the project was reaching a close and NIRD insisted on an adherence to deadlines. We will pass over the actual Placement Verification Report and Project Completion Report which are annexed at Exhibits 'L' and 'M' to the Petition. We are not required to consider these in great detail for the reason that will next be obvious. The Petitioner says that the project was successfully completed by March 2016. The target was training of 2000 candidates. The Petitioner trained 2110. The target was to achieve a placement of 75% of the trained candidates. The Petitioner achieved a placement of 75.45% by placing 1509 candidates.

12. On 30th May 2016, NIRD recommended that the Central Government share for the second instalment be released. On 19th September 2016, the Petitioner asked NIRD to release the second instalment. Then on 22nd September 2016 there was a review rating by the MORD which agreed to recommend the release of the second instalment. This does not say that only the Central Government 60% or 75% share would be released. The State Government had agreed to the terms of the joint project and there was no question then of the State Government, let alone MSRLM, withholding payment.

13. On 15th February 2017, the MORD wrote to NIRD saying that Project Completion Report was necessary. Therefore, in April 2017, NIRD conducted a physical audit of candidates placed in a final batch. Even that Placement Verification Report is annexed to the Petition.

14. We come now to 3rd July 2017 when NIRD submitted the Project Closure Report. A copy of that report is at Exhibit 'S' from page 189. It notes the facts that we have noted above. It then says that in view of the physical achievement and financial utilisation by the Project Implementing Agency, NIRD recommends project closure with a grant of Rs 2,23,12,329/- as the second and final instalment (obviously the second and third instalments being telescoped). Of this Rs 1,32,56,098/- was the Central Government share and Rs 1,31,299/- was interest earned on that and was due from NIRD. Rs 89,24,932/- was clearly stated then to be due from the State Government.

15. Again, MSRLM had no role to play in this at all. It did not ask for an audit. It could not ask for an audit. It could not ask for a verification and it could not sit in appeal or judgment over the verification and the report given by the Central Government. Yet, again and again we are told that that is precisely what it seeks to do today.

16. Thereafter, the Petitioner wrote to the MORD and the State Government for release of the second and final instalment. That did not happen. Aggrieved by this inaction, the Petitioner posted a grievance on the Prime Minister's Public Grievance Portal. To this the Petitioner received response on 21st May 2018 saying that the file was under consideration. A further representation to the Prime Minister's office followed on 28th June 2018. Then the Petitioner learnt that its complaint had been closed but there were no closure details. On 7th July 2018, in response to a fresh plea on the grievance portal, the Petitioner received a reply stating that the representation had been sent to the Department of Rural Development for appropriate action. Even then the Petitioner was told that the proposal was under consideration. The Petitioner made further representations but was still told that the matter was under consideration. Ultimately, aggrieved by this continued inaction, the Petitioner filed Writ Petition No. 1372 of 2019 in this Court for a release of the second and final instalment by the Union Government and the State Government of their respective shares. On 8th March 2019, this Court issued notice. While that Petition was pending, the Petitioner received a letter dated 9th July 2020 from the NIRD for release of the second and final instalment of the Union Government share. NIRD referred to Clause 4 of the sanction letter and said that the Writ Petition ought to be withdrawn before the Central Government's share could be released. This letter was brought to the notice of the Court. The Court directed the Union Government to release the funds without waiting for an order of withdrawal. A copy of the order of 22nd July 2022 is annexed at Exhibit "CC" to the Petition.

17. After this, the Petitioner did receive the Central Government's share of payment as per the sanction order. The Petitioner also learnt of a letter dated 3rd August 2022 sent by the

MSRLM to the NIRD saying that as per the directions received from the MORD, MSRLM was submitting its file for approval for release of the State Government's share. A copy of that letter is at Exhibit 'DD' to the Petition.

18. Notably, even at this point, MSRLM was not saying that it needed to verify anything about the performance of the contract.

19. Ultimately, the first Writ Petition was withdrawn under an order of 7th August 2020 with specific liberty to file afresh.

20. There were still no funds being received from the State Government and so the Petitioner filed an application under the Right to Information Act 2005. It is then, in response to that query, that the Petitioner learnt that the 2nd Respondent, the State Government's Department of Rural Development had already, on 23rd March 2021, sent to MSRLM the entire sum of Rs 88,17,650/-, the State Government's share of the second and final instalment payable to the Petitioner. The Petitioner followed up by several letters between March and August 2021. Despite this, there was no response and the 4th Respondent, though in funds, simply failed to release the outstanding payment.

21. It was only thereafter that the 4th Respondent suddenly, and without any preceding context or correspondence or documentation, alleged by its letters dated 8th December 2021, that the project was 'not satisfactorily completed' by the Petitioner and asked for documents. Nobody had ever said this before. The principal agency, NIRD, did not say this. The Central Government did not say this. Even the State Government's own department did not say this. The Petitioner supplied the documents sought by its letter of 27th December 2021. The answer from MSRLM Respondent was that the documents were not legible. It sought clear copies. These were furnished on 18th January 2022. Copies of these letters are also annexed. Despite this, on 10th February 2022, MSRLM now alleged that the Petitioner had not successfully completed the project. A copy of this letter is at Exhibit 'II' to the Petition at page 224. A perusal of this letter makes it clear that it is completely without any particulars whatsoever. There is no reference or examination of the Project Closure Report. There is no reference to the NIRD closure letter to which we have referred. Instead, on 10th February 2022, MSRLM again objected to the documents submitted by the Petitioner and asked that these be submitted all over again. The Petitioner reiterated its stand and gave a narrative of the entire history of the matter.

22. This is the background in which the present Petition comes to be filed.

23. On behalf of MSRLM, Mr Deshpande's instructions unfortunately are simply to ask for time. We do not know what is proposed to be said in an Affidavit in Reply other than reiterating the correspondence to which we have already briefly referred. The substance of this can only be that the project 'was not satisfactorily completed'. But this raises more questions against MSRLM than it answers. MSRLM *assumes* that it had the responsibility of the authority in law or under the sanction letter or the MOU to undertake such an audit in the first place. It did not. It was not a party to that contract. It was vested with no authority. Mr Deshpande cannot point out any contractual provision. He also cannot deny that the funds due to the Petitioner were released to the MSRLM by the State Government. In itself, this is extraordinary, because the State Government would never release funds — already much delayed — without an obligation to do so.

24. Mr Deshpande says that the State Government has asked it to "verify and then make payments". Even if there was such an instruction, it could not be a lawful or legitimate instruction to sit in appeal or judgment over the NIRD project closure report. The State Government itself had no such authority. It is far more likely that this was a routine statement attendant on all payments and mistaken by MSRLM as a license to demonstrate that it is more loyal than the king. The only verification required was the one that NIRD had itself given and about which factually there is no contestation and there cannot be. MSRLM cannot point to it having any role under the contract, to having taken any steps whatsoever towards the implementation of the project, any engagement in the project's supervision, its monitoring, performance audit, financial audit, checking of funds utilisations and so forth. It is simply now, once the liability has been ascertained by the agency entrusted with the project, namely NIRD that MSRLM is trying to find ways and means to refuse to pay the Petitioner.

25. What is also not explained is how MSRLM can retain the funds in its hands because these are not funds of MSRLM at all. On any conceptualisation of it, MSRLM is merely a fund channelling agency and nothing more. This could be for administrative purposes. If it was to be otherwise, at least *prima facie* Mr Deshpande should have been able to show either today or from the prior correspondence that at some point before the Project Closure Report, that MSRLM was conferred some authority or power, or that it had acted during the contract in the performance of some entitlement or obligation. At no time prior to the onset of the disputes, i.e., the demand for 'verification' had MSRLM raised queries or had engaged in some process of what it now calls 'verification'. It should have also explained how it did not engage in such a process before the release of the first instalment and about which there is no complaint. Even that release was channelled through MSRLM.

26. It is now patently evident that MSRLM has absolutely no basis on which it can say that the project was 'not successfully completed'. Perhaps the officer instructing Mr Deshpande does not quite realise the consequences of his instructions. If what Mr Deshpande is instructed to say is correct, then it means that the letter dated 3rd July 2017 by the Project Director of NIRD is false from beginning to end. That document says that the Petitioner has achieved a 75.45% placement target. According to the officer instructing Mr Deshpande, this statement is false. Of course, the officer has nothing to show it but perhaps it is simple to make these allegations and then hope for the best. That letter of the NIRD also states that utilisation certificates of 99.6% have been received. Again, we are asked to believe on the mere *ipse dixit* of this officer that this statement is also incorrect. What Mr Deshpande is not instructed to show us is how, in what manner and to what extent, despite having received all these documents from the Petitioner not once but at least twice, MSRLM can now say "the project was not completed successfully".

27. We do agree with Mr Deshpande that it was not completed successfully but not for the reason he imagines. It was not completed successfully because the last payment due to the Petitioner was not made. There is not a single justification that we can find for this continued intransigence on the part of 4th respondent. Its reach clearly exceeds its grasp. It has absolutely no role to play in auditing the project. Indeed, it does not answer the one question that is staring everyone in the face, namely, if the project was not completed, the State Government would not have acted on the NIRD recommendations and would not have released the funds to MSRLM for onward payment to the Petitioner.

28. The opposition to the Petition from MSRLM is entirely without substance. It is for this reason that we have refused to grant MSRLM the slightest latitude in filing an Affidavit in Reply. Had this officer instructing Mr Deshpande produced one single piece of paper with some material justification we might have even considered a short adjournment. There is nothing apart from bold assertions which this gentleman cannot justify.

29. We are equally dismayed that MSRLM has not bothered to send a responsible officer to Court but has sent someone who claims to be something called a Mission Manager but who is incapable of filing an affidavit in his own name. The contract itself is dated 2013. We are now in 2023. The NIRD certification was of 2017. In 2020, the NIRD wrote to the Petitioner confirming the amount that had to be paid by the State Government.

30. Mr Deshpande's offer to deposit the amount in court is rejected. We might have considered it had MSRLM been able to show from a single document pertaining to the project and its contract how it had or has any role of verification to play, or been able to show that the NIRD project completion report was dependent on some 'verification' by MSRLM. Even in its replies, MSRLM does not show how or in what manner the project was 'not successfully completed'. MSRLM cannot explain how it can sit in appeal over Central Government project completion certifications. MSRLM cannot explain how the State Government can get the benefits of a project, the completion of which has been certified, verified and tested by the Central Government, fully paid for by the Central Government to the extent of its obligation, without contributing its own share.

31. Enough is enough.

32. Rule is made absolute in terms of prayer clause (a). The entire amount is to be released to the Petitioner by 6th April 2023. We do not propose to extend the time even for one day. If the amount is not paid by that date, it will carry further interest at the rate of 9% p.a. This order for both principal and interest is executable as the decree of the Court.

33. In any case, while the Petition is disposed of in these terms, list the matter on 10th April 2023 for ensuring compliance.

(Neela Gokhale, J) **(G. S. Patel, J)**