

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 CIVIL APPLICATION NO. 8829 OF 2024
IN WP/8714/2022

M/s Jaykumar Fulchand Ajmera
Through Its Authorized Person
Mr. Rajkumar Jaykumar Ajmera
Age : 57 years, Occu: Business,
R/o. Marwadi Galli, Dharashiv,
Taluka & Dist, Dharashiv

...Applicant

VERSUS

1. The State Of Maharashtra
Through Its Secretary
Food Supply department,
Mantralaya, Mumbai-32

2. The State of Maharashtra
Through The District Collector,
Collector Office, Dharashiv,
District Dharashiv

3. The State of Maharashtra,
Through The District Supply Officer,
Dharashiv, Taluka and
District Dharashiv

...Respondents

...
Mr. Naik Thigle Girish K, Advocate for Applicant
Mr. V. M. Chate, AGP for Respondents/State
...

CORAM : ROHIT W. JOSHI, J.
DATED : 17th JULY 2025

PER COURT :-

1. The present petitioner was working with the respondents as a foodgrain transporter for Osmanabad District. There was a dispute *inter se* between the petitioner and the respondents with respect to average incremental rate and increment in rates of diesel

2. The petitioner therefore invoked the arbitration clause under the foodgrain transportation agreement between the parties. The arbitrator who is Divisional Commissioner, Aurangabad, Division Aurangabad has vide award dated 30.01.2019 held that the petitioner is entitled to receive sum of Rs.26,46,88,636/- as per clause 27 of the Agreement towards average incremental rate of transportation and sum of Rs.6,15,60,104/- towards the increment in rates of diesel. It is ordered that the amount so awarded shall carry interest at the rate of 12% per annum. This award dated 30.01.2019 is challenged by the respondents by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996 which is registered as Civil Miscellaneous Application No. 217 of 2020 pending on the file of the learned District Judge-II, Aurangabad. The learned District Judge granted stay to the execution of the arbitral award on the condition that respondents shall deposit 60% of the amount as awarded under the contract and furnish bank guarantee for the balance 40% of the amount as awarded.

3. This condition of stay was impugned by the respondents by filing a petition before this Court being Writ Petition No.8266 of 2019. This Court was pleased to partly allow the said petition by relaxing the condition for furnishing bank guarantee for 40% of the amount while maintaining the direction for depositing 60% of the amount as

awarded along with interest at the rate of 6% per annum on the amount 60%.

4. The petitioner filed an application before the learned District Judge below 'Exhibit-44' seeking permission to withdraw the amount deposited by the respondents. Vide order dated 29.06.2022 the learned District Judge-2, Aurangabad was pleased to permit withdrawal of 50% of the amount as deposited by the respondents on furnishing an undertaking that in the event Section 34 application is allowed, the petitioner shall refund the amount along with accrued interest within a period of 60 days.

5. Order dated 29.06.2022 was subject to challenge by both the parties before this Court. The said petitions being Writ Petition No.8542 of 2022 preferred by the respondents and Writ Petition No.8714 of 2022 preferred by the petitioner came to be disposed of vide order dated 24.08.2022. The petitioner was permitted to withdraw 35% of the amount deposited on furnishing undertaking and balance 25% of the amount on furnishing bank guarantee, thereby permitting withdrawal of 60% of the amount as deposited, the total amount deposited being Rs.22,80,79,435/-. The petitioner has withdrawn the amount as permitted by this Court.

6. The learned Advocate for the petitioner submits that a similarly circumstanced foodgrain contractor namely, Pravin Kothari had filed a Civil Suit being Special Civil Suit No.859 of 2013 before the learned Civil Judge Senior Division, Pune for recovery of average incremental rate and charges towards escalation in prices of diesel in relation to foodgrains transportation contract executed at Pune and Daund. He draws attention to paragraph 39 of the Arbitral Award to point out that the learned Arbitrator has computed the amount payable to the petitioner applying yardsticks in the said judgment. He then draws attention to a Government Resolution dated 07.05.2024 whereby the Government has accepted the compensation awarded by the learned Civil Court in the matter of Pravin Kothari and has settled the matter finally with the said transporter by agreeing to pay interest on the decretal amount at the rate of 6% per annum instead of 12% per annum as was awarded by the learned Civil Court. The learned Advocate for the petitioner further draws attention to office note dated 23.02.2024 which refers to a meeting held by a committee headed by the Chief Secretary on 16.02.2024. The Government has proposed that talks should be initiated with the present petitioner to settle the issue with him on the lines on which the matter was settled with Pravin Kothari. It appears that all the concerned have concurred with the said proposal.

7. The respondents have filed affidavit in reply dated 30.06.2025 along with which communication dated 27.06.2025 issued by the Section Officer, State of Maharashtra to the District Supply Officer, Dharashiv is filed. Perusal of the said communication will demonstrate that the matter was not settled with the petitioner since the offer of the petitioner for settlement was not an unconditional offer but it was 'without prejudice'.

8. The principal amount of compensation awarded by the Arbitrator based on factors and calculations taken into consideration by the learned Civil Court in the matter of Pravin Kothari comes to Rs.32,62,48,730/-. As stated above, the respondents have deposited 60% of the said amount i.e. Rs.22,80,79,435/- with District Court, Aurangabad. Having regard to the further developments in the matter, namely, settlement of the claim of Mr. Pravin Kothari, which is computed on the same basis, coupled with the fact that the petitioner has also indicated his intention to settle the matter, it will be expedient in the interest of justice that the balance 40% amount out of the total 60% of the principal amount of compensation awarded by the arbitrator is permitted to be withdrawn by the petitioner. The petitioner shall be entitled to receive the said amount with interest if the amount is deposited with some bank.

9. Needless to mention that this amount shall also be permitted to be withdrawn on furnishing undertaking as was directed vide order dated 24.08.2022.

10. The learned Counsel for the petitioner also makes a request that the bank guarantee which is furnished for withdrawal of 25% of the amount deposited should be allowed to be withdrawn in view of the aforesaid subsequent development. Since the amount deposited with District Court is only 60% of the principal amount and the foundation on the basis of which principal amount is computed is in terms admitted by the respondents, the request made by the petitioner appears to be fair and reasonable. In that view of the matter, the condition of bank guarantee imposed vide order dated 24.08.2022 is withdrawn. The petitioner may withdraw the bank guarantee by following the prescribed procedure. However this will be subject to condition that petitioner furnishes undertaking as is given for withdrawal of 35% of the amount.

11. Civil application is disposed of accordingly.

[ROHIT W. JOSHI, J.]