

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1818 OF 2025

Kolhapur Zilla Sahakari Dudh Utpadak Sangh Ltd. ...Petitioner
Versus
The State of Maharashtra
Through Principal Secretary & Ors. ...Respondents

Mr. Bhooshan R. Mandlik, for the Petitioner.
Ms. S.S. Bhende, AGP, for the Respondent - State.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 24 FEBRUARY 2025

JUDGMENT (Per Advait M. Sethna J.) :

1. Rule is made returnable forthwith. Respondent waives service. With the consent of the parties heard finally.
2. The substantive prayer in the petition which read thus:-

“B. [That this Hon'ble Court be pleased to issue writ of mandamus or any other appropriate writ, order or direction, directing respondent no. 1 to immediately act upon its order dated 4th of March 2022 (Exhibit I hereto) read with report dated 26th of May 2022 (Exhibit J hereto) and report dated 4th April 2019 (Exhibit C hereto) by paying the petitioner an amount of Rs. 4,22,70,000/- to which the petitioner is entitled to under the Government Resolution dated 31st of July 2018, as confirmed by order dated 4th of March 2022 and report dated 26th May 2022 and report dated 4th April 2019], along with interest at the rate of 12% per annum from the date it became due to the petitioner till its actual realization as demonstrated by the table annexed hereto and marked as Exhibit R.

3. The petitioner has approached this court to seek for relief, primarily for issuance of directions against the respondents for disbursement amount of export subsidy which the petitioner is entitled to receive for exporting milk powder under a scheme floated by the respondent state, by way of a Government Resolution (“GR” for short) dated 31 July 2018.

4. By way of a brief background, the following facts would be relevant to adjudicate the issues involved in this petition. To begin with, in the year 2018, there was a drastic fall in the price of milk, which resulted in piling up of stock of milk powder. In lieu thereof the respondent no. 1 floated a scheme for the grant of export subsidy to clear surplus stock within the State of Maharashtra, aiming to restart the milk storage chain with the objective of encouraging the milk producers/farmer. The respondents were conscious of the fact that since the procurement of milk was reduced consequently, fresh production of milk also came down. The producers were accordingly unable to sell their milk resulting in surplus of milk in the State of Maharashtra.

5. To alleviate such hardship caused to the milk producers/farmers, the respondent no. 1 floated a scheme for grant of export subsidy to clear the existing stock of milk powder within the State. The purpose of such subsidy was twofold, namely to enable the manufacturers of milk powder to sell their existing stock in the international market and restart the

manufacture of milk powder. It was in such backdrop on 20 July 2018, that the respondent no. 1 introduced two schemes namely scheme 'A' and scheme 'B' respectively. Scheme 'A' provided for a subsidy for Rs. 50 per metric tones of milk powder and Rs. 15 per liter of milk for export of the same in three months, namely, August September and October 2018. Scheme 'B' provided for subsidy of Rs. 5 per liter of milk supplied for conversion into milk powder to be payable either to the milk supplier or the milk producer. In this regard, respondent no. 1 introduced a clarification to the scheme to incorporate an additional clause to clarify that if the milk manufacturer would take benefit under scheme 'B', then it would not be entitled to export subsidy in terms of scheme 'A'.

6. Due to several reasons and factors, the schemes (supra) as contemplated under the GR dated 28 July 2018 were not implemented. In view thereof, respondent no. 1 amended and issued GR dated 31 July 2018, to release a scheme which was to be in place of the earlier scheme as noted above. The revised scheme was applicable only to the stock of milk powder which existed as on 30 June 2018. The respondent no.1 to ensure compliance of such requirement, inspected the stock of milk powder in milk dairies /manufacturing units over the state of Maharashtra, which was quantified at 30,183 metric tones ("**MT**" for short) on 13 June 2018. Such revised scheme floated by respondent no. 1 came into force, on 1 August 2018, which was to continue until 19 January 2019.

7. It is the case of the petitioner that between 1 August 2018 and 19 January 2019, it exported 845.400 MT for milk powder from the existing stock as on 13 June 2018. Accordingly, under the GR dated 31 July 2018, petitioner became entitled to receive an amount of Rs. 4,22,70,000 from respondent no. 1.

8. According to the petitioner, on 4 April 2019, a three member committee was appointed by respondent no. 1 to inspect the documents in respect of the export of 8.45.400 MT of milk powder by the petitioner. After verifying all documents submitted by the petitioner as contemplated under the scheme (supra) such committee did acknowledge that the petitioner exported milk powder to the extent of 845.400 MT, as a consequence of which the petitioner was entitled to an export subsidy from the respondent. In this view of the matter, the petitioner submitted his periodic claims with the respondent by way of letter /representation dated 1 June 2019, 9 July 2020 and 28 October 2020, respectively.

9. According to the petitioner, it was on 28 September 2021, that a similarly placed entity like the petitioner in the name of Parag Milk Foods Ltd. approached this Court by way of a writ petition seeking appropriate reliefs to direct the respondents for payment of export subsidy to the said petitioner. After examining the matter, the court directed the respondent no. 1 to take a fresh decision within three months after hearing all

concerned parties.

10. It was on 4 March 2022, that the milk powder manufacturers including the petitioner were entitled to receive the export subsidy for exports between 1 August 2018 to 19 January 2019. Accordingly, the respondent no.2 was directed to verify, as to whether the exports undertaken by the manufacturers/producers were from the stock that existed on 30 June 2018.

11. Then on 26 May 2022, the respondent no. 2 conducted a detailed survey and prepared a report confirming that the petitioner exported 845.400 MT of milk powder from the stock of milk powder available as on 30 June 2018. In view thereof the petitioner was entitled to receive exports subsidy under the GR dated 31 July 2018 quantified at Rs.4,22,70,000/-.

12. The petitioner on 12 December 2023 accordingly filed its claim/proposal for disbursement of the amount of export subsidy in terms of the above.

13. It was on 22 February 2024, that the respondent no. 2 acknowledged the entitlement of the petitioner for an amount of Rs. 4,22,70,000/- for export of 845.400 MT of milk powder under the said GR dated 20 July 2018, read with the GR of 31 July 2018, respectively. The petitioner was informed that the disbursement of such amount was

pending approval of respondent no. 1.

14. The petitioner received a letter dated 11 March 2024 from the office of respondent no. 2 asking for clarification/details of benefits availed by the petitioner for a subsidy of Rs. 3 per liter for converting milk into milk powder. In response to the above, the petitioner addressed a letter on the same day on 11 March 2024 to the respondent no. 2 clarifying that the petitioner did not receive any benefits of subsidy of Rs. 3 per liter for converting milk into milk powder. In this context, the petitioner once again reminded respondent no. 2 about the submission of its proposal dated 12 January 2023 with the office of the respondent. Being aggrieved by denial of the respondent-State to release the export subsidy of Rs. 4,22,70,000/- to the petitioner, this petition was filed on 22 January 2025.

15. In view of the factual matrix as noted above, we have heard learned counsel for the parties and with their assistance, perused the record.

16. The parties are at idem to the extent that challenge/issue raised in this petition is the same as that arose in the petitions filed by the Indapur Dairy and Milk Products Ltd vs. State of Maharashtra & Anr (**“Indapur Dairy”** for short), Parag Milk Foods Ltd., Pune vs. The State of Maharashtra (**“Parag Milk Foods”** for short), followed by VRS Foods Ltd vs. The State of Maharashtra & Ors (**“VRS Foods”** for short).

17. Mr. Bhooshan Mandlik, learned counsel for the petitioner at the very outset would submit that orders have been passed in petition from time to time by the court on 10 February 2025, 7 February 2025, and 24 February 2025. The order dated 24 February 2025 reads thus:-

“On the earlier occasion, we had adjourned the proceedings after hearing the learned counsel for the parties. The petitioners had contended that the prayers as made in the petition are squarely covered by the decision of this Court in Indapur Dairy and Milk Products Limited vs. State of Maharashtra and Anr., in Parag Milk Foods Ltd. vs. The State of Maharashtra and Anr. and also subsequent decision in VRS Foods Limited vs. The State of Maharashtra & Ors. The decisions were placed for our consideration.

However, as Ms. Bhende, learned AGP has informed us that the orders passed by this Court in Parag Milk Foods Limited have been challenged in the Supreme Court and there is a likelihood that some interim orders would be passed, we had adjourned the proceedings for today. However, Ms. Bhende has fairly stated that as on date, no interim orders were passed. She would also not dispute that the facts of the case are similar to the facts of the proceedings which stand adjudicated in the decisions in Indapur Dairy and Milk Products Limited, Parag Milk Foods Limited and VRS Foods Limited.

In this view of the matter, we now proceed to pass appropriate orders following the said decisions. Accordingly, list the proceedings ‘for passing orders’ on 26 February 2025.”

To place the matter in its proper perspective, the issues, challenges and grievances raised in the petition being similar to the case of other entities as noted above, we would gainfully refer to an order passed by a coordinate bench of this court in the case of **Indapur Dairy**, dated 20 March 2023¹. The court after noting the prayer in the said petition directed the respondent-State to act on the order dated 4 March 2022, that

1. writ petition no. 1819 of 2023

confirmed the applicability of GR dated 31 July 2018 without delay as far as the disbursement of the principal amount to the petitioner was concerned, leaving the question of interest pending, with a specific direction to implement the orders and disburse the subsidy amount by 24 April 2023.

18. Mr. Mandlik would draw our attention to another order dated 26 April 2023 passed in the Indapur Dairy case in writ petition no. 1819 of 2023 (supra), where on an application made by the respondent- State for extension of time to implement the order dated 4 March 2022 passed pursuant to the GR dated 31 July 2018 was rejected. However, the court directed the respondents to disburse the amount no later than 10 May 2023, failing which the court would initiate contempt action against the respondents for implementation/enforcement of its orders.

19. Mr. Mandlik, would then refer to the judgment passed by a coordinate bench of this court, where one of us (Justice G.S Kulkarni) was a member in **Parag Milk Foods**², where the court was confronted with an identical issue relating to the released of export subsidy to the petitioner. The court in the said case of Parag Milk Foods after considering the details of the facts and circumstances as well as the law on the subject matter, including various decisions cited before it, held thus :-

“30. So far as the judgments of the Supreme Court in the case of

2. writ petition no. 11719 of 2023.

Vishal Properties Private Limited (supra) and State of Odisha and another (supra) relied upon by the Respondents in the context of negative equality are concerned, they lay down the proposition that Article 14 is not meant to perpetuate an illegality. They further lay down that Article 14 provides for positive equality and not negative equality and the Courts are not bound to direct any authority to repeat any wrong action done by it earlier.

31. *In our view, there can be no dispute about the proposition of law laid down in these judgments. However, these two judgments are squarely distinguishable on facts in the present case. In the present case, on identical facts, this Court has directed release of payment of Export Subsidy to Indapur. This Court has done so on the basis that Indapur was legally entitled to the same and that there was no illegality involved in making payment of the said Export Subsidy to Indapur. Therefore, the question, of any illegality or negative equality, does not arise in the present case. Further, in these circumstances, till the said Orders of this Court hold the field, there is no question of directing any authority to repeat any wrong action done by it earlier. As held above, this Court has directed release of payment of export subsidy to Indapur on the basis that Indapur was legally entitled to the same.*
32. *In the light of the aforesaid discussion, and for the aforesaid reasons, we pass the following orders:*
 - (a) *The Respondents are directed to release in favour of the Petitioner the export subsidy amount of Rs.8,08,50,000/- within a period of six weeks from the date of this order.*
 - (b) *The Rule is made absolute in the aforesaid terms.*
 - (c) *In the facts and circumstances of the case, there shall be no order as to costs."*

20. Mr. Mandlik, would next rely on a decision in the case of **VRS Foods Limited**³ by a coordinate bench of this court on 4 December 2024, where the court was adjudicating the issue again related to the entitlement of export subsidy to the petitioner arising out of the GR dated 31 July 2018. The court was pleased to consider the factual aspect as well as

3. writ petition no. 10540 of 2023

various judgments and orders passed earlier. The operative part of the said judgment read thus:-

“34. In our view, there can be no dispute about the proposition of law laid down in these judgments. However, these two judgments are squarely distinguishable on facts in the present case. In the present case, on identical facts, this Court has directed release of payment of Export Subsidy to Indapur Dairy. This Court has done so on the basis that Indapur Dairy was legally entitled to the same and that there was no illegality involved in making payment of the said Export Subsidy to Indapur Dairy. Therefore, the question, of any illegality or negative equality, does not arise in the present case. Further, till the Orders of this Court dated 20th March 2023 and 26th April 2023 hold the field, there is no question of directing any authority to repeat any wrong action done by it earlier. As held above, this Court has directed release of payment of Export Subsidy to Indapur Dairy on the basis that it was legally entitled to the same. These orders [dated 20th March 2023 and 26th April 2023] passed by this Court haven't been challenged and have now attained finality.

35. The Respondent's submission that if the Petitioner is granted the Export Subsidy of Rs.4,79,94,000/-, then it would amount to the Petitioner getting a double benefit because the Petitioner has also availed of the subsidy of Rs.3/- per litre of Milk under Government Resolution dated 10th May 2018, cannot be accepted. Firstly, the scheme under the Government Resolution dated 10th May 2018 and the scheme under the Government Resolution dated 31st July 2018 are two separate, distinct and independent schemes, and, on this ground alone, the question, of the Petitioner getting any double benefit, does not arise at all. Secondly, the Government Resolution dated 31st July 2018 does not lay down any condition as sought to be submitted by the Respondents, and, therefore, for this reason also, the said argument of the Respondents regarding the Petitioner getting any double benefit does not arise at all. For these reasons we also reject the argument of the Respondents in respect of the Petitioner getting any double benefit. Further, Respondent No.2, by its order dated 4th March 2022 has also opined that the Scheme implemented as per the Government Resolution dated 31 July 2018, was for export of the stock of Milk Powder which was in existence as on 30th June 2018 and no benefit under any other scheme was given in respect of stock of Milk Powder as on 30th June 2018. It was observed that there was no question of giving

double benefit for the export of stock of Milk Powder which was in existence as on 30* June 2018 and therefore the Milk Powder manufacturers, including the Petitioner, were held to be entitled to receive the Export Subsidy for the stock exported between 1 August 2018 and 19th January 2019. For all these reasons we are unable to accept the submission of the Respondents that the Petitioner is receiving any double benefit as alleged.

36. In the light of the forgoing discussion, and for the reasons set out earlier, we pass the following order:

(a) The Respondents are directed to release in favour of the Petitioner the Export Subsidy amount of Rs.4,79,94,000/- within a period of six weeks from the date of this order.

(b) In so far as the claim of the Petitioner for interest is concerned, we keep open all contentions of the parties to be agitated in appropriate proceedings. Needless to observe that the Petitioner is free to make a representation to the appropriate authority with regard to the interest amount, which, if made, shall be appropriately considered in accordance with law.

37. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, in the facts and circumstances of the case, there shall be no order as to costs.”

21. Ms. Bhende, learned AGP for the respondent-State would fairly submit that the pivotal challenge in this petition is covered by the decisions of this court in the case of Indapur Dairy followed by Parag Milk Foods and VRS Foods, respectively. She would however urge that the decision in the case of Parag Milk Food is assailed by the respondent before the Supreme Court, where a SLP is pending as on date.

22. Mr. Mandlik, on the other hand strongly opposed the above submission of Ms. Bhende, learned AGP, for reasons more than one. Firstly, he would place reliance on the report of respondent no. 2 dated 26 May 2022, which clearly approved the sum of Rs. 4,22,70,000 as export subsidy for export of milk powder of 844.400 MT in favour of the

petitioner. He also pointed out similar amounts of export subsidy approved by the respondent in favour of similarly situated entities like Indapur Dairy and VRS Food. The said report dated 26 May 2022 of respondent no. 2, which read thus:-

“GOVERNMENT OF MAHARASHTRA,
Dairy Development Department.
Office of the Commissioner, Dairy Development Department,
Maharashtra State, Administrative Building,
Worli Sea Face, Worli, Mumbai – 400 018.
Tele. No. 022-24961552.
E-mail: dyddend@gmail.com.

Subject : Regarding Incentive Subsidy of Rs.50 /- per Kg. for export of milk powder.

Reference : 1) Government Resolution bearing No. MLK-2018 /M. No.08/A.D.F.-8, dated 20.07.2018.
2) Government Resolution bearing No. MLK-2018 /M. No.08/A.D.F.-8, dated 31.07.2018.
3) Government Resolution bearing No. MLK-2018 /M. No. 08/A.D.F.-8, dated 21.08.2018.
4) Government Letter bearing No. MLK-2019/M. No.41/A.D.F.-8, dated 29.03.2022.

As the rates for the milk-powder and the country made cooking butter collapsed in the International Market in the year 2018, the conversion got reduced resulting in even falling of the purchase price of milk. Therefore, in order to see that the farmers do not suffer any loss, the Government, by the Government Resolutions under reference at Sr. No.01 and 02 above, has implemented the scheme of giving incentive subsidy of Rs.50/- per Kg. for export of the milk powder and also the scheme of giving a subsidy of Rs.3/- and Rs.5/- per liter for purchase of milk. Under this Scheme, the proposals of the Milk Powder Manufacturing Projects situated within the purview of your divisions, seeking a subsidy for export of milk powder during the period from the date 01.08.2018 up to 19.01.2019, in view of the provisions of the Government Resolutions under reference at Sr. Nos. 1, 2 and 3, have been submitted to the Government through your divisions, as under:

<i>Sr. No.</i>	<i>Division</i>	<i>Name of the Project</i>		<i>Export of Milk Powder (in Metric Tonnes)</i>	<i>Proposed subsidy at the rate of Rs.50 per Kg.</i>
1	Pune	1)	<i>M/s. Indapur Dairy and Milk Products, Indapur.</i>	4975.00	24,87,50,000/-
		2)	<i>Kolhapur District Milk Production Federation Limited, Kolhapur (Gokul)</i>	845.40	4,22,70,000/-
		3)	<i>Schreiber Dynamix Dairies, Baramati, District – Pune</i>	541.50	2,70,75,000/-
		4)	<i>Govind Milk and Milk Production Private Limited, (Phaltan), District - Satara</i>	250.00	1,25,00,000/-
		5)	<i>M/s. Parag Milk Foods Limited, Manchar, District – Pune</i>	1,617.00	8,08,50,000/-
			Total.....	8,228.90	41,14,45,000/-
2)	Nashik	1)	<i>M/s. Sunfresh Agro Private Limited, Ranjankhor, Shrirampur</i>	150.00	75,00,000/-
		2)	<i>M/s. V.R.S. Foods, Nevasa, District – Ahmednagar</i>	959.88	4,79,94,000/-
		3)	<i>M/s. S. R. Thorat Milk and Milk Products, Sangamner, District – Ahmednagar</i>	314.488	1,57,24,400/-
			Total.....	1459.88	7,12,18,400/-
			Total (1 + 2)	9688.78	48,26,63,400/-

The proposals from Pune Division have been forwarded to the Government on the date 24.05.2022.

The proposals from Nashik Division have been forwarded to the Government on the date 25.05.2022.

An Undertaking on the Stamp Paper of the value of Rs.100/-

has been submitted to the effect that if any complaint of any nature is received then, it shall be the responsibility of the Project to resolve the same.

In the present matter, after verifying the documents/records submitted together with the clear proofs about the milk powder exported by the Projects during the period from the date 01.08.2018 to the date 19.01.2019 from out of the stock of milk powder which was in balance as on the date 30.06.2018 with the Projects and after the entire inspection/verification carried out by the Regional Dairy Development Officer, Pune, it is found that M/s. Indapur Dairy and Milk Product Ltd., Indapur, District Pune has exported the milk powder, as per the terms and conditions mentioned in Paragraph No. A of the Government Resolution dated 31.07.2018 and also as per the directions given on the date 29.03.2022 by the Principal Secretary (A.D.F.). (The Inspection /Verification report is enclosed herewith). Hence, as the issue to grant incentive subsidy is a policy decision, it is requested to take appropriate decision at the Government's level."

*Commissioner, Dairy Development
Maharashtra State, Mumbai."*

(emphasis supplied)

23. Ms. Bhende, would not controvert the above, neither the fact that the respondent-State has accepted the judgment in Indapur Dairy in totality, as a consequence of which the full payment of the export subsidy amounting to about Rs.24,87,50,000/- was made to Indapur Dairy. She would not dispute that the said decision in Indapur Dairy was followed by this Court in Parag Milk Foods and VRS Foods rendered by coordinate benches of this Court. We are therefore of the considered view that the respondent-State having fully accepted the judgment in Indapur Dairy and accordingly made payments of the export subsidy to it, which was then followed by the Court in Parag Milk Foods and VRS Foods of this Court, make it abundantly clear that these are all identically placed entities, who at all material times were treated at par and held entitled to

subsidies qua the amounts as set out in the reports and the Government Resolution as relied by us. Thus the petitioner in law ought to be treated on an equal footing as Indapur Dairy. Needless to state that in such similar facts and circumstances as in the case of Indapur Dairy, we are bound by the subsequent decisions in Parag Milk Foods and VRS Foods even as a matter of judicial prudence and discipline. There is no ground whatsoever on which the petitioner could be denied the benefit.

24. As noted by us above, the respondent-State having no quarrel with the decision of this Court in Indapur Dairy and on accepting it in entirety having paid export subsidy to it, to deny payment of such export subsidy to the petitioner who is identically situated would be discriminatory in the teeth of and contrary to Article 14 of the Constitution of India which cannot be accepted and/or countenanced. Under our constitutional scheme, the respondent State ought not to infringe the fundamental rights of the petitioner guaranteed under Article 14 which mandates just, fair and equal treatment especially to those who are similarly situated, sans discrimination. Thus, the respondent as a welfare state is obligated to act in accordance with the Directive Principles of State Policy envisaged under the Constitution of India.

25. Further, in our view, the submission of Ms. Bhende to oppose payment of interest to the petitioner, does not appeal to our judicial

conscience in the given facts and circumstances. However, in light of the forgoing discussion we pass the following order:-

A. The respondents are directed to release the export subsidy in favour of the petitioner to the extent of Rs. 4,22,70,000/-, within a period of six weeks from the date of this order is made available to the parties.

B. The petition is allowed and rule is made absolute in the above terms. No order as to costs.

C. Insofar as the claim of the petitioner for interest is concerned we keep open all contentions of the parties to be agitated in appropriate proceedings. Needless to observe that the petitioner is free to make a representation to the appropriate authority with regard to the interest amount, which if made, shall be appropriately considered in accordance with law.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]