IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10540 OF 2023

VRS Foods Limited .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr. Kayval Shah for the Petitioner.

Ms. S. D. Vyas. Addl. GP a/w. M.s A. A. Purav, AGP for Respondent/State.

CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
RESERVED ON : 24 SEPTEMBER 2024
PRONOUNCED ON : 4th DECEMBER 2024

JUDGEMENT (Per Firdosh P. Pooniwalla J.) :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this Petition, what the Petitioner seeks is a direction to the respondents to pay to the Petitioner a sum of Rs.4,79,94,000/- towards Export Subsidy for export of Milk Powder as per the Government Resolution dated 31st July 2018. This relief is sought on the basis that the Petitioner, under the scheme of the GR dated 31st July

2018, exported 959.88 Metric Tons (MTs) of Milk Powder for which they were entitled to be paid Rs.50 per Kg of Milk Powder exported. According to the Petitioner, there is no dispute about the quantity of Milk Powder exported as well as the amount claimed by them because the correctness of the same have been determined by (i) a letter dated 11th June 2019 issued by the Dairy Development Officer, Nashik Division, and (ii) an Order dated 4th March 2022 passed by Respondent No.2 read with the report dated 26th May 2022 also given by Respondent No.2 in the Petitioner's case. Despite all this material, the Respondents have failed and neglected to pay the Export Subsidy to the Petitioner, and hence the present Petition.

3. Before we proceed to decide this controversy, it would be apposite to set out some brief facts. In 2018, there was a drastic fall in the prices of Milk Powder in the domestic as well as in the international market. Because of this, all manufacturers of Milk Powder were not even able to sell their Milk Powder at a price which would break even their costs. The prices had reduced drastically and did not cover the basic cost of milk, production cost, manufacturing cost, and other expenses etc. Due to the same, the stock of Milk Powder with each and every manufacturer in Maharashtra was increasing. As a consequence, the manufacturers, including the Petitioner, reduced the procurement of milk from the end milk farmers as the demand of Milk Powder had

reduced. Since the procurement of milk reduced, consequently, fresh production of milk was also reduced. The milk farmers were accordingly unable to sell their milk which resulted in additional milk in the State of Maharashtra.

4. To alleviate this hardship, Respondent No.1 floated a Scheme for grant of Export Subsidy to clear the existing stock of Milk Powder within the State and restart the manufacturing/production of Milk Powder. The intention behind such subsidy was that the manufacturers of Milk Powder would sell their existing stock in the international market, start manufacturing fresh Milk Powder and for the same would start procuring milk from the milk farmers.

5. One such Scheme was introduced by Respondent No.1 by issuing Government Resolution dated 20th July 2018. The said Government Resolution dated 20th July 2018 introduced two schemes, i.e., Scheme A and Scheme B. Scheme A provided for a subsidy for Rs.50 per kg. of Milk Powder and Rs.5 per litre of Milk for export of the same in three months, i.e., August, September and October 2018. Scheme B provided for subsidy of Rs. 5 per litre of milk supplied for conversion into Milk Powder, which would be payable either to the milk supplier or the milk producer. Further, Respondent No.1 introduced a clarification to that Scheme and an additional clause bearing No. B-3 was introduced whereby it was clarified that if the milk manufacturer

would take benefit under Scheme-B then it would not be entitled to the Export Subsidy as per Scheme-A.

6. Due to several reasons, the Scheme contemplated under the GR dated 20th July 2018 were not implemented. Therefore, Respondent No.1 issued an amended Government Resolution dated 31st July 2018 whereby a revised scheme was introduced in place of the earlier Scheme. The revised Scheme was applicable only to the stock of Milk Powder which existed as on 30th June 2018. Respondent No.1 had inspected the stock of Milk Powder in the Milk Dairies/manufacturing units all over the State of Maharashtra and the same was calculated at 30,183 Metric Tons (MTs) as on 30th June 2018. This revised Scheme was to come into effect from 1st August 2018. Further, Clause B-3, which was inserted in Government Resolution dated 20th July 2018, was consciously removed by Respondent No.1 in the Government Resolution dated 31st July 2018.

7. It is the case of the Petitioner that as on 30th June 2018, it had 1,418.60 Metric Tons of Milk Powder in stock which formed part of the aforesaid 30,183 Metric Tons of Milk Powder which was inspected and calculated by the Respondents pursuant to the Government Resolution dated 31st July 2018. Further, it is the case of the Petitioner that it admittedly exported 959.88 Metric Tons of Milk Powder between 1st

December 2018 and 5th January 2019. Therefore, according to the Petitioner, it became entitled to receive the Export Subsidy at Rs. 50/- per kg. of Milk Powder exported, and thus was entitled to Rs.4,79,94,000/- under the said Government Resolution dated 31st July 2018.

8. To avail of the Subsidy, certain clarifications were sought from the Petitioners by the Respondents, which according to the Petitioners, were provided by their letter dated 18th May 2019.

9. Thereafter, the Dairy Development Officer, Nashik Division, by his letter dated 11th June 2019, considered the information and corroborative documents provided by the Petitioner, and after verifying all the documents submitted by the Petitioner as required under the Scheme, came to the conclusion that the Petitioner had exported Milk Powder to the tune of 959.88 Metric Tons and was accordingly entitled to an Export Subsidy of Rs.4,79,94,000/-.

10. Thereafter, the Petitioner once again addressed a letter dated 23rd July 2019 to the Secretary, Ministry of Agriculture, Animal Husbandry, Dairy Development and Fisheries and pointed out that the amount of Export Subsidy was unpaid and requested him to release the same.

11. Since no amount was forthcoming, the Petitioner also filed a representation dated 20 August 2019 with the Chief Secretary of the State of Maharashtra wherein the Petitioner once again requested for payment of the said amount.

12. Thereafter, by a letter dated 2 January 2020 addressed to the Dairy Development Officer, the Petitioner submitted a detailed export statement and once again requested for release of the Export Subsidy.

13. In the meanwhile, entities similarly placed like the Petitioner approached this Court by filing a Writ Petition, being Writ Petition No.747 of 2021, seeking directions to the Respondents to pay to them the amount of Export Subsidy. By an Order dated 28th September 2021, this Court directed Respondent No.1 to take a fresh decision within a period of three months, after hearing all concerned.

14. Pursuant to the said Order dated 28th September 2021, Respondent No.2 called upon all the manufacturers of Milk Powder who had submitted their claim as per the Government Resolution dated 31st July 2018. Accordingly, the Petitioner was also sent a notice to attend a hearing on 7th October 2021. The representatives of the Petitioner attended the hearing on 7th October 2021 and put forth their case before

Respondent No.2. By an Order dated 4th March 2022, Respondent No.2 held that the Milk Powder manufacturers, including the Petitioner, were entitled to receive Export Subsidy as per the Government Resolution dated 31st July 2018. It was further observed that the Scheme implemented as per the Government Resolution dated 31st July 2018, was for export of the stock of Milk Powder which was in existence as on 30th June 2018. It was also observed that 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 30th 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 1st August 2018 and 19th January 2019.

15. After the order dated 4th March 2022, Respondent No.2 also conducted a detailed inquiry and submitted a report dated 26th May 2022 confirming that the Milk Powder exported by the Petitioner, i.e. 959.88 Metric Tons, was out of the stock which was in existence on 30th June 2018 and hence the Petitioner was entitled to receive the Export Subsidy under the Government Resolution dated 31st July 2018. It was expressly admitted that the Petitioner was entitled to an Export Subsidy of Rs. 4,79,94,000/-

16. After the Report dated 26th May 2022, the Petitioner made several requests to Respondent No.2 to release the Export Subsidy but the Respondents refused to abide by the Order dated 4th March 2022 and the said Report dated 26th May 2022.

17. In these circumstances, one of the similarly placed entities, namely Indapur Dairy Milk Products Ltd. (***"Indapur Dairy"***), approached this Court by filing a Writ Petition, being Writ Petition No.1819 of 2023. In the said Writ Petition, by an Order dated 20th March 2023, this Court directed the State Government to act on the Order dated 4th March 2022 without delay with respect to the principal amount stated in the said Order and left the question on interest pending. The Court also directed that the Order dated 4th March 2022 should be implemented and the amount be disbursed by 24th April 2023.

18. Despite the Order dated 20th March 2023 passed by this Court, the Respondents did not disburse the said amount and filed an Application seeking extension of two months to comply with the Order dated 20th March 2023. The said Application stated that the proposal was submitted to the finance department, that the file was now with the finance department for final approval, and that the finance department had requested to take some extension of time from this Court.

19. By an Order dated 26th April 2023, passed by this Court, the said Application for extension was rejected and it was held that there was no question of the finance department approving the file once an Order had been passed by this Court. The Respondents were directed to make payment in accordance with the Order dated 20th March 2023 no later than 10th May 2023. It was also held that if these directions were no complied with, the Court would proceed to enforce the order, if necessary, in contempt.

20. It is submitted by the Petitioner that despite the Orders of this Court, as well as repeated applications by the Petitioner, the Respondents have blatantly refused to release the payment without any valid or cogent reason. The Petitioner submits that the entitlement of the Petitioner was confirmed by the Order dated 4th March 2022 passed by Respondent No.2. Further, the Report dated 26th May 2022 prepared by Respondent No.2 confirmed the exact amount of entitlement of Export Subsidy as Rs.4,79,94,000/-. Despite the same, the said amount had not been disbursed to the Petitioner. The Petitioner submitted that the issue regarding the entitlement, eligibility, quantum of export and the exact amount of Export Subsidy had already been decided by Respondent No.2 vide Order dated 4th March 2022 and Report dated 26th May 2022. Further, this Court, in the case of ***Indapur Dairy*** [who is similarly placed as the Petitioner] had passed Orders on 20th March 2023 and 26th

April 2023 directing the Respondents to disburse the amount of Export Subsidy, but the Respondents had failed to do so without any valid and cogent reason.

21. The Petitioner further submits that relying upon the Government Resolution dated 31st July 2018, they had exported 959.88 Metric Tons of Milk Powder between 1st August 2018 and 19th January 2019, especially when the prices of Milk Powder in the international market were much lower. It was upon the assurances and promises by the State Government, pursuant to the Government Resolution dated 31st July 2018, that the Petitioner had exported a huge stock of Milk Powder at a lower price which would not even cover the production cost. The Petitioner submitted that it had relied upon the Government Resolution dated 31st July 2018 and hence the Respondents were now bound to abide by the assurances and promises given by them in the said Government Resolution by disbursing the Export Subsidy.

22. In these circumstances, the Petitioner has filed the present Petition seeking release of the Export Subsidy of Rs. 4,79,94,000/-.

23. In response to the arguments canvassed by the Petitioner, it was submitted on behalf of the Respondents that the Rules of Business made under Article 166(3) of the Constitution of India are mandatory. It was submitted that the Government

Resolution dated 31st July 2018 had been issued without the concurrence of the Finance Department and without a resolution of the Council of Ministers. The said Government Resolution dated 31st July 2018, if implemented, had substantial financial implications. Rule 9 of the Maharashtra Government Rules of Business mandates that, save in exceptional circumstances, under the directions of the Chief Minister, any case in which the Finance Department is required to be consulted under Rule 11, cannot even be discussed by the Council of Ministers unless the Finance Minister has had the opportunity for its consideration. It was further submitted that Rule 11 mandates that, without prior consultation with the Finance Department, no department shall authorize any order which will affect the finance of the State. Sub-Rule (2) of Rule 11 however empowers the Council of Ministers to approve the decision even if the Finance Department is not consulted. The Respondents submitted that, in these circumstances, the Government Resolution dated 31st July 2018 cannot be implemented and payment of Export Subsidy cannot be made to be Petitioner.

24. In support of these submissions the Respondents relied upon a judgement of the Hon'ble Supreme Court in **Haridwarsingh V/s. Bagun Sumbrui**[1], wherein Rules of Executive Business made under Article 166 (3) of the Constitution of India by the Governor of Bihar were considered. The Respondents relied upon paragraph 16 of the

1 (1973) 3 SCC 889

said judgement in which the Supreme Court held that Rule 10, which was similar to Rules 9 and 11 of the Maharashtra Business Rules, was mandatory. The Respondents also relied upon the judgment of the Hon'ble Supreme Court in **M.R.F. Limited Vs Manohar Parrikar**[2], wherein it was held that Rules 3, 6, and 7 of the Rules of Business of the Government of Goa regarding consultation of the Finance Department are mandatory and not directory.

25. Further, the Respondents submitted that since the Government Resolution dated 31st July 2018 did not have the concurrence of the Finance Department, nor was it supported by a Resolution of the Council of Ministers, the Petitioner cannot claim parity on the basis of the Orders dated 20th March 2023 and 26th April 2023 passed in Writ Petition No.1819 of 2023 in the case of ***Indapur Dairy (Supra)***. The Respondents submitted that the Court had proceeded on a misconception that the recommendation of the Principal Secretary (Ah and DD) dated 4th March 2022 was an Order, whereas it was a only a recommendation, clearly stating that there should be a scrutiny of record to find out whether there is any dual benefit taken under the Government Resolutions dated 28th July 2018 and 31st July 2018 and thereafter to submit a proposal to the Finance Department with the approval of the Minister of Dairy Development. The Respondents submitted that this was just a recommendation and not a decision. Further, the attention of this Court was not invited to the Rules of

2 (2010) 11 SCC 334

Business framed under Article 166(3) of the Constitution of India, their mandatory character and the absence of adherence to the Rules while issuing the Government Resolution dated 31st July 2018. The Respondents submitted that in these circumstances, the Petitioner could not claim parity with ***Indapur Dairy (supra)*** as the same would result in claiming negative equality, which is prohibited in law. In support of this submission, the Respondents placed reliance on the judgements of the Hon'ble Supreme Court in **Vishal Properties Private Limited V/s. State of Uttar Pradesh and Others**[3] and the **State of Odisha and another V/s. Anoop Kumar Senapati and another**[4].

26. Without prejudice to the aforesaid arguments, the Respondents then submitted that the stock of 30,183 Metric Tons of Milk Powder, which was available on 30th June 2018, also included Milk Powder produced by availing the subsidy of Rs.3/- per litre of Milk under Government Resolution dated 10th May 2018 which provided for subsidy of Rs.3/- per litre of Milk used for manufacturing 20% more Milk Powder than that produced in March 2018, within 30 days from the date of the said Government Resolution. The Respondents submitted that, in these circumstances, if the Petitioner is granted the Export Subsidy sought in this Petition, the same would amount to granting double benefit to the Petitioner. The Respondents submitted that

3 (2007) 11 SCC 172

4 (2019) SCC 626

for this reason also, the Petitioner should not be granted the Export Subsidy of Rs.4,79,94,000/-sought in the Petition.

27. We have heard the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. Before dealing with the submissions of the parties, it would be appropriate to refer to the Orders dated 20th March 2023 and 26th April 2023 passed by this Court. The Order dated 20th March 2023 reads as under:-

> 1. The issue in the Petition is narrow. The Petitioner seeks the release of an assured subsidy for the export of Milk Powder. Prayer (b) of the Petition at pages 17 and 18 read thus:
>
> > "b. 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 04.03.2022 (Exhibit K) read with report dated 26.05.2022 (Exhibit L) by paying to the Petitioner the amount of Rs.24,87,50,000/- to which the Petitioner is entitled to under Government Resolution dated 31.07.2018 as has been confirmed by order dated 04.03.2022 (Exhibit K), along with interest at the rate of 12% p.a. from the date it became due to the Petitioner till its actual realisation as demonstrated by the table annexed hereto and marked as Exhibit N:"
>
> 2. The reference is to a Government Resolution dated 31st July 2018. This has been confirmed by an order of 4th March 2022. We leave aside the question of interest for the present.
>
> 3. There is an Affidavit in Reply filed by the Commissioner, Dairy Development Mumbai on behalf of Respondents Nos. 1 and 2. In paragraph 4, the reference is to a previous order which directed the Principal Secretary, Dairy Development to hear the Petitioners and decide within three months the entitlement of the Petitioner to receive an export subsidy from the State Government. The Affidavit says that the Principal Secretary held the hearing and passed a detailed order on 4th March 2022. This is the order referred to in

prayer clause (b) at Exhibit 'K'. *But the Affidavit then says that the Finance Department has advised that the matter needs to be placed before the Cabinet for sanction and approval. The Affidavit says the process will take about six months.*

4. We understand paragraph 3 but do not follow why Cabinet approval is required since this is in the routine course following an order and which itself is based on a GR, neither of which is disputed.

5. For the present, we direct the State Government to act on the order of 4th March 2022 without delay in regard to the principal amount stated in that order. We leave the question of interest pending for the present. That order is to be implemented and the amount disbursed by 24th April 2023.

6. List the matter on 26th April 2023 for further orders.

(emphasis supplied)

28. By the said Order, the State Government has been directed to act on the Order dated 4th March 2022 by which it was held that the Milk Powder manufacturers, including the Petitioner, were entitled to receive the Export Subsidy as per the Government Resolution dated 31st July 2018. The argument, that any cabinet approval would be required, was rejected by the Court.

29. Thereafter, as stated hereinabove, an Order dated 26th April 2023 was passed by this Court on the Application filed by the State Government seeking extension of time of two months for implementation of the Order dated 20th March 2023. The said Order dated 26th April 2023 reads as under:-

1. We passed the following order on 20th March 2023. There is an Interim Application filed by the State Government seeking an extension of two

months to comply. It is to be finally numbered. The Interim Application is astonishing, not for what it says, but for what it does not say. Our order of 20th March 2023 is reproduced below:

> "1. The issue in the Petition is narrow. The Petitioner seeks the release of an assured subsidy for the export of Milk Powder. Prayer (b) of the Petition at pages 17 and 18 read thus:
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> > "b. 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 04.03.2022 (Exhibit K) read with report dated 26.05.2022 (Exhibit L) by paying to the Petitioner the amount of Rs.24,87,50,000/- to which the Petitioner is entitled to under Government Resolution dated 31.07.2018 as has been confirmed by order dated 04.03.2022 (Exhibit K), along with interest at the rate of 12% p.a. from the date it became due to the Petitioner till its actual realisation as demonstrated by the table annexed hereto and marked as Exhibit N:"
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> 4. We understand paragraph 3 but do not follow why Cabinet approval is required since this is in the routine course following an order and which itself is based on a GR, neither of which is disputed.
>
> 5. For the present, we direct the State Government to act on the order of 4th March 2022 without delay in regard to the principal

amount stated in that order. We leave the question of interest pending for the present. That order is to be implemented and the amount disbursed by 24th April 2023.

6. List the matter on 26th April 2023 for further orders.

2. Exhibit "K" to the Petition at page 67 is a detailed order of 13 pages by none other than the Principal Secretary, Dairy Department accepting the basis of the Petitioner's claim. This was an order of 4th March 2022 and we have referred to it in our order of 20th March 2023. On 24th March 2022, the Dairy Development Department, following the order of the Principal Secretary of 4th March 2022 computed exactly the amount that is payable.

3. The Interim Application is short and is worth reproducing in full. This is what it says:

"1. In the above matter, by Order dated 20.3.2023, this Hon'ble Court has directed the State Government to act on order of 4.3.2022 without delay and pay the principle amount before on or before 24.4.2023. The Hon'ble Court also leave the question of interest pending for the present. Copy of the Order dated 20.3.2023 is hereto annexed and marked as **Exhibit '1'**.

2. As per the direction given by Hon'ble Court necessary proposal had been moved to finance department. However finance department advised to examine and calculate admissible dues avoiding financial irregularities and duplicity of payment. Accordingly, reports were called from Commissioner, Dairy Department and submitted the proposal again to finance department on 20/4/2023. Therefore the file is now with finance department for final approval. Finance department has requested to take some extension of time from Hon'ble Court.

3. In the above facts, considering the finance department's abovementioned advice, State Government had requested by sending letter dated 5.4.2023 to Government Pleader, to request Hon'ble High Court, Mumbai to grant two months of time. Hereto annexed and marked **Exhibit '2'** is the copy of letter dated 5.4.2023.

4. If the finance department approve the file, two months of time will be required for disbursement of admissible amount as proposal also requires approval for re-appropriation of funds from one budget head to concern budget head.

5. Therefore, the State Government wants time of two months more for the implementation of order dated 20.3.2023 of this Hon'ble Court.

6. It is therefore, prayed that,

a. The time granted to the Applicant to comply the Order dated 20.3.2023 for disbursement the amount be extended by two months more from the date of Order in this Application.

b. Such further reliefs as may be necessary, be granted in favour of the Applicant.

c. Costs of this Application be provided for."

4. *We are fully unable to understand how the Finance Department can purport to sit in Appeal over Principal Secretary, Dairy Development. We trust that the Finance Department is not saying that it has the authority to sit in appeal over a Division Bench of this Court, or for that matter any Judge of this Court. Yet that is precisely what seems to be suggested because paragraph 4 of the Interim Applications says that if the Finance Department approves the file then two months is required for a disbursement. There is no if. There is no but. The Finance Department is not authorise to decide whether or not to approve the file, whatever that is supposed to mean. The Finance Department is supposed to clear a file within the time permitted by the Court and act in accordance with orders of this Court. The application for an extension of two months is rejected. Payment will be made in accordance with our 20th March 2023 order and in terms of the amounts at Exhibit "L" at page 81 of the Petition no later than by 10th May 2023. If that is not done, we will proceed to enforce our order if necessary in contempt."*

(emphasis supplied)

30. From the said Order dated 26th April 2023 it can be seen that the Application for extension was rejected and the Court held that once an Order had been passed by this Court, the finance department had no authority to decide whether to approve any file.

31. Thus, it is seen that by the said two Orders dated 20th March 2023 and 26th April 2023, what is now sought to be contended by the Respondents has been rejected

by this Court. These two Orders of this Court are valid and subsisting and hold the field. Moreover, Respondent No.1 has in fact implemented the said Order and has made payment of the entire amount of Export Subsidy to ***Indapur Dairy***.

32. In these circumstances, we are of the view that, if the same relief is not granted to the Petitioner, which is identically placed like ***Indapur Dairy***, on the basis of the contentions sought to be urged by the Respondents, firstly it would amount to doubting solemn Orders passed by this Court and implemented by the Respondents, which is not permissible in law. Secondly, once ***Indapur Dairy***, which is identically placed like the Petitioner, has been paid the Export Subsidy, it would be violative of Article 14 of the Constitution of India, if the Petitioner, being identically situated, is not paid the same subsidy, as it would amount to persons identically situated being treated differently, which goes against the very principles of Article 14 of the Constitution. We may observe that once a party like ***Indapur Dairy***, who was similarly placed like the Petitioner, was in receipt of such subsidy, which is certainly in the nature of a State largesse, all attributes of reasonableness and fairness emanating from Article 14 of the Constitution of India would stare at the Respondents in similar treatment to be meted out to a person like the Petitioner who was identically placed. A different treatment being meted to the Petitioner would result in breach of the basic rights of the Petitioner of non-discrimination guaranteed to the Petitioner under

Article 14 of the Constitution. The subsidy scheme in question is a welfare scheme and which was fully implemented and acted upon in the case of ***Indapur Dairy***. Thus, no technical argument would prevent this Court from recognizing such Constitutional rights as conferred on the Petitioner as also recognized by the Scheme.

33. So far as the judgements of the Hon'ble Supreme Court in the case of **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.

34. In our view, there can be no dispute about the proposition of law laid down in these judgements. However, these two judgements 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 31st 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 30th 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 1st 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.

38. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] [B. P. COLABAWALLA, J.]