



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2228 OF 2021

Akhil Bharat Krishi Go Seva Sangh

...Petitioner

Versus

The State of Maharashtra,
Through Revenue Department
Through The Principal Secretary & Ors.

...Respondents

Mr. Vaibhav Joglekar, Senior Advocate a/w. Ms. Siddh Vidya, Ms. Shalaka Karkar, Mr. Arjun Yadav i/b. M/s. Siddh Vidya & Associates for Petitioner.

Mr. A. I. Patel, Addl. G. P a/w. Ms. P. N. Diwan, AGP for Respondent-State.

CORAM : **M. S. SONAK &
JITENDRA JAIN, J.J.**

DATED : **10th OCTOBER 2024**

P.C.

1. Heard Mr. Joglekar, learned Senior Advocate for the Petitioner and Mr. Patel, learned Additional Government Pleader for the Respondent-State.

2. The Petitioner is a Registered Charitable Trust (NGO) that is involved, among other activities, in running Gaushalas, Panjrapole, etc., across the country.

3. By instituting this petition, the Petitioner seeks the following reliefs:-

“A-1) This Hon'ble Court be pleased to hold and declare that:-

- 1. the Petitioner had duly complied with all the requirements of the GR dated 25.1.2019 and Appendix B (Exhibits A and C to the Petition) and the orders dated 24.4.2019 and 9.7.2019 issued by the Collector, Nashik (Sr. Nos. 1 and 2 to COD) as regards the 4 fodder camps at villages Manjare, Zodge, Chikhalohol and Dongrale, Taluka Malegaon, District Nashik including maintenance of all the online / physical attendance records and submission of bills and supporting documents after obtaining signatures of all the concerned authorities;*
- II. the Petitioner is entitled to receive grant from the Government of Maharashtra in terms of the GR, Appendix B and orders @ Rs. 50/- per day per small animal and Rs.100/- per day per big animal, for all the animals admitted to regards the 2 fodder camps at villages Manjare and Zodge (period 1.6.2019 to 31.7.2019), 1 fodder camp at village Chikhalohol (period 4.6.2019 to 31.7.2019) and 1 fodder camp at village Dongrale (period 9.7.2019 to 31.7.2019) as per:*
 - i. the demand made in the letter dated 6.1.2020 (Exhibit K to the Petition) as per online record submitted by the Petitioner on the designated Cattle Camp Management System; or alternatively*
 - ii. the bills submitted as per physical records maintained at the said fodder camps; or alternatively*
 - iii. the report dated 22.8.2019 of the Tehsildar, Malegaon (Sr. No. 15 of COD);*

A-2) This Hon'ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate writ, order or direction thereby commanding the Respondents:

- I. to withdraw, rescind and cancel the letter dated 24.6.2021 (Exhibit M hereto);*
- II. to pay to the Petitioner grant @ Rs. 50/- per day per small animal and Rs.100/- per day per big animal, for all the animals admitted to regards the 2 fodder camps at villages Manjare and Zodge (period 1.6.2019 to 31.7.2019), 1 fodder camp at village Chikhalohol (period 4.6.2019 to 31.7.2019) and 1 fodder camp at village Dongrale (period 9.7.2019 to 31.7.2019) as per:*
 - i. an amount of Rs.1,19,35,750/- [i.e. Rs.2,46,93,350/- claimed vide letter dated 6.1.2020 (Exhibit K to the Petition) as per the reports uploaded by the Petitioner on the designated Cattle Camp Management System) less Rs.1,27,57,600/- (received from the Government of Maharashtra)] or alternatively.*
 - ii. an amount of Rs.75,20,950/- [i.e. Rs.2,02,78,550/- (claimed in the Petitioner in the bills submitted as per physical reports Sr. Nos. 11 to 14 of COD) less Rs. 1,27,57,600/- (received from the Government of Maharashtra)]; or alternatively;*

iii. *an amount of Rs.73,85,882/- [i.e. Rs.2,01,43,482/- (certified to be payable by the Tehsildar, Malegaon in the report dated 22.8.2019 Sr. No. 15 of COD) less Rs.1,27,57,600/- (received from the Government of Maharashtra)].*

A-3) This Hon'ble Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate writ, order or direction thereby calling for records and proceedings of the impugned letter dated 24.6.2021 (Exhibit M hereto) and after going through the legality, validity and propriety thereof, be pleased to quash and set aside the same;

B. Issue appropriate Writ, Order or Directions directing the Respondents to formulate a policy for time bound clearance of dues of organizations/NGO's like Petitioner and also to give financial assistance to such Organizations/NGO's for care and maintenance of the animals during difficult times like Covid-19 pandemic."

4. In effect, the Petitioner claims to have conducted fodder feeding camps at Manjare, Zodge, Chikhalohol and Dongrale, Taluka Malegaon, in terms of a scheme formulated by the State Government vide the G.R. dated 25 January 2019, read with the order dated 28 May 2019. The Petitioner claims that the Respondents owe the Petitioner Rs.1,19,35,750/- towards holding such fodder feeding camps through grants payable under the scheme. Despite the petitioner's repeated oral and written requests, these amounts have not been released. Accordingly, the Petitioner seeks a writ of mandamus directing the Respondents to pay the above amount.

5. Mr Joglekar learned Senior Advocate for the Petitioner, submits that under the scheme dated 25 January 2019, the grants are proportionate to the animal numbers at such camps. The numbers claimed by the camp promoter society are acceptable only after due

certification by the Tahsildar. He submitted that, in this case, the Tahsildar has duly certified the animal numbers at the fodder feeding camps conducted by the Petitioner. Based on the rates and the formulae prescribed under the scheme and the certification of the Tahsildar, the Respondents are due and payable a sum of Rs.1,19,35,750/- to the Petitioner.

6. Mr Joglekar submitted that the Respondents had raised some grievances about the compliance at a belated stage. He referred to certain communications filed along with the petition to submit that the Petitioners were given express directions to proceed with the fodder feeding camps and that the compliances could be made later. Mr Joglekar submitted that this was on account of the cattle facing severe hardships and the state machinery not being in a position to uphold proper assistance in remote villages.

7. Mr. Joglekar submits that the defence about non-compliance is arbitrary and unfair. He submits that once the Tahsildar has certified the animal numbers at the fodder feeding camps, the State must pay the grants, which have accumulated to Rs.1,19,35,750/-. Mr. Joglekar referred to the documents on pages Nos.36, 41, 46 and 51 to submit that the Petitioner was directed to conduct the fodder camps by these orders. He submits that the state cannot now turn around and contend that there was no authority to conduct such camps.

8. Mr. Joglekar submitted that the Respondents' entire approach in this case is grossly unfair. He relies on *Unitech Limited & Ors. Vs. Telangana State Industrial Infrastructure and Corporation (TSIIC) & Ors.*¹ and *ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India Ltd. & Ors.*² to submit that even in contractual matters, the State is bound to act fairly and reasonably and not arbitrarily or capriciously.

9. Based on the above contentions, Mr. Joglekar submitted that a Mandamus must be issued directing the Respondents to pay an amount of Rs.1,19,35,750/- with interest by way of grants under the scheme as soon as possible.

10. Mr. Patel, a learned Additional Government Pleader, referred to the reply filed by Vijayanand S. Sharma, Sub-Divisional Officer, Malegaon, on behalf of the Respondents. He submitted that there are seriously disputed questions involved in this matter. He submitted that the State was most fair in operating the scheme, and the undisputed amounts of Rs.1,27,89,493/- have already been paid to the Petitioner promptly.

11. Mr. Patel submitted that there is a serious dispute regarding the balance amount now claimed. He submitted that the Petitioner

1 2021 (16) SCC 35

2 2004 (3) SCC 553

conducted several fodder feeding camps as a part of their function as a Charitable Trust involved in the protection and welfare of cattle. However, later on, such activities were sought to be passed off as activities under the Government Scheme. He submitted that for such fodder-feeding camps, there was no question of making any payments or releasing grants. He submitted that there were no compliances in many instances and the claims were inflated. He referred to the Affidavit and the issues raised therein to submit that this petition is entirely misconceived and if the Petitioner had any grievance, then the Petitioner should have instituted a suit so that all parties would have had an opportunity to lead evidence and make good their respective versions.

12. The rival contentions now fall for our determination.

13. This petition has undergone extensive amendments. In addition to the extensively amended petition, the Petitioner has filed almost five Volumes of Compilation of documents based on which the claim of Rs.1,19,35,750/- is sought to be made good. On perusing the petition and the voluminous compilation of documents submitted along with it, we get the impression that this petition is either a civil suit or a claim statement in an arbitration matter.

14. In our judgment, several disputed questions of fact arise in

this matter. The Affidavit-in-reply filed by Vijayanand S. Sharma refers to several non-compliances and the absence of several documents that were pre-requisite under the scheme itself. There are allegations about fodder camps not being held in some instances or held earlier as a part of the petitioner's charitable functions but now being passed off as held under the scheme to obtain grants. There are disputes about proper certification. There are disputes about whether any officers could have waived compliances. All these matters cannot be adjudicated in our summary and extraordinary jurisdiction under Article 226 of the Constitution of India.

15. Though the Tahsildar certifies some camps, it is unclear whether this certification relates to the fodder feeding camps conducted by the Petitioner under the scheme for which the Petitioner now claims grants or earlier as part of its charitable functions. There are also serious disputes about compliances prescribed under the scheme. The Petitioner does not dispute the lack of compliance in some instances. However, the Petitioner claims that prior compliances were waived. The Respondents contest this. The voluminous compilation of documents (almost five spiral-bound volumes) indicates the correspondence between the parties on this money claim. Besides, it is quite premature to adjudge whether the compilations contain all the correspondence and documentation on the subject dispute. This does not appear to be a

matter that could be resolved only based on documents. There are factual aspects that would possibly require oral evidence and the examination of witnesses. All this exercise cannot conveniently be undertaken in a writ petition.

16. There are seriously disputed questions about the calculation of the grant, the number of animals involved in the fodder feeding camps, whether fodder feeding camps for which the grants are now claimed were undertaken under the scheme, and whether there was proper documentary compliance to illustrate a few. The State's reply lists out several issues that would have to be adjudicated before, we can conclude that the Petitioner is indeed liable to be paid the sum of Rs.1,19,35,750/- by way of grants under the scheme.

17. From the amended and original prayer clauses, the Petitioner seeks a declaration that it has complied with all the requirements of G.R. dated 25 January 2019 and its various appendices. The fact that the Petitioner thought or was advised of the necessity to seek such a declaration implies a serious dispute about the multiple compliances. Such a declaration, dependent on adjudication of disputed factual issues, cannot be typically issued in a Writ Petition. The Petitioner is yet to establish an unqualified right to receive the claimed amount and some corresponding duty of the Government to pay this claimed amount. Therefore, a writ of mandamus cannot typically be issued in

such circumstances.

18. On the aspect of alleged unfairness or arbitrariness, we must record that the Respondents have already paid the Petitioner an amount of Rs.1,27,89,493/- towards the fodder feeding camps conducted by them and about which there were no disputes of whatsoever nature. In regards to the balance amounts, the Affidavit and the documents accompanying the Affidavit show that there are serious disputes. Though this is not the occasion to decide whether there is merit in the disputes raised, at least *prima facie*, we cannot style such disputes as frivolous or raised only to avoid the payment of Rs.1,19,35,750/- to the Petitioner. From the documents to which our attention was particularly invited, at least *prima facie*, it is difficult to infer any arbitrariness or unfairness in the State's dealing with the claims under the scheme.

19. We have considered documents on pages 36, 41, 46, and 51 of the paper book to which Mr. Joglekar particularly drew our attention. First, it would be inappropriate to consider such documents in isolation. Second, it is not as if such documents are clinching and establishing the Petitioner's money claim even by the standards of preponderance of probabilities. Thirdly, in exercising our summary jurisdiction under Article 226 of the Constitution, we cannot be expected to wade through the five volumes of documents and decide on disputed money claims.

20. Again, as we have pointed out earlier, it is not as if the Petitioner has not been paid. It would not be appropriate to enter into the thicket of disputed questions of fact or to dissect the claims and conclude that there was no dispute about some portion of the claim. Such an exercise cannot be undertaken in our summary and extraordinary jurisdiction under Article 226 of the Constitution of India. There was not even any attempt to demonstrate why the ordinary remedy of a civil suit was not efficacious in the facts of the present case.

21. The decisions in *Unitech Limited (supra)* and *ABL International Ltd. (supra)* also hold that where there are serious disputes that cannot be effectively adjudicated under the summary jurisdiction under Article 226 of the Constitution of India, there is no obligation to entertain the Writ Petition. In paragraph 39.6 of *Unitech Limited*, the Hon'ble Supreme Court held that in determining whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly, eschew disputed questions of fact, which would depend on an evidentiary determination requiring a trial. At the same time, it is also well settled that the jurisdiction under Article 226 of the Constitution cannot be ousted only because the dispute pertains to the contractual arena.

22. In this case, we propose not to entertain this petition, not on the ground that it relates to the contractual arena alone. Still, we

propose not to entertain this petition because it involves seriously disputed questions of fact, which would depend upon an evidentiary determination requiring a full-fledged trial. Only in such a trial could the disputed questions be effectively adjudicated. Both parties would have full opportunity to establish their respective versions following the law. Besides, at least *prima facie*, this is not a case of some arbitrary or unfair exercise of powers by the State. At least *prima facie*, the defences raised on behalf of the State cannot be styled as frivolous. Ultimately, the merits of the rival claims can only and effectively be decided on a full fledged trial.

23. In prayer clause (b), the Petitioner seeks formulation of a policy for time-bound clearance of dues of organisations/NGOs like the Petitioner and also for financial assistance to such organisations/NGOs for care and maintenance of animals during difficult times like the COVID-19 pandemic. In *ABL International Ltd. (supra)*, the Hon'ble Supreme Court has held that the writ petition involving a consequential relief of monetary claim is also maintainable.

24. In the present case, the monetary claim is virtually the sole claim. Adjudication on the monetary claim would involve adjudication into seriously disputed questions. Merely because an additional relief requiring the Government to formulate a policy for time-bound clearance of dues of Organisations/NGOs like the Petitioner is applied

for is no ground to entertain this petition. Besides, since, in this case, a large amount has already been paid to the Petitioner. There is no material to suggest that the delays are commonplace, we do not think that any general directions are required to be issued and that, too, for the formulation of a policy which is basically within the realm of the State Government.

25. At this stage, Mr. Joglekar learned Senior Advocate for the Petitioner, states that the Petitioner will approach the Collector, Nashik, regarding the claim in this petition. He states that if the Collector does not settle the Petitioner's claim or decide in favour of the Petitioner, the Petitioner will then pursue the remedy of filing the suit. At his request, we are recording the statement of his having made the same. However, we clarify that such recording should not be construed as any sort of liberty or the creation of any alternate channel to redress the petitioner's grievances.

26. For all the above reasons, we dismiss this petition, leaving it open to the Petitioner to institute the suit or to resort to any other appropriate alternate remedy, if available, to the Petitioner for enforcing its claim of Rs.1,19,35,750/-. However, it is appropriate to clarify that this petition was instituted on December 9, 2020, and has remained pending in this Court to date. Accordingly, if the Petitioner does institute a suit within three months from today, then the Civil Court

must give due credence to the period during which this petition remained pending in this Court. We are satisfied that the Petitioner was bona fide prosecuting this petition before this Court.

27. Nothing in this order may be construed as indicating that we have decided or even commented upon the merits of the rival claims. Our observations are only in the context of determining whether a writ petition was the appropriate remedy in a matter of this nature. All parties' contentions are explicitly left open for determination by the Civil Court if approached or any other forum that the Petitioner may choose to approach for recovery in regard to its claim of Rs.1,19,35,750/-.

28. With the above observations and liberties, this petition is disposed of. There shall be no order for costs. All concerned are to act on an authenticated copy of this order.

(JITENDRA JAIN, J.)

(M. S. SONAK, J.)