

(2017) 07 BOM CK 0104
In the Bombay High Court
Case No : 8827 of 2017

Sanjaykumar Bhalchandra Patil

APPELLANT

Vs

The State of Maharashtra Through the Secretary, Co-operative, Marketing and Cotton Industry Department, & Ors.

RESPONDENT

Date of Decision : 25-07-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 226 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomou

Citation : (2017) 07 BOM CK 0104

Hon'ble Judges : S.C.Dharmadhikari, Mangesh S.Patil

Bench : DIVISON BENCH

Advocate : B.R. Waramaa, D.R. Kale, S.B. Deshpande

Final Decision : Dismissed

Judgement

1. Rule. Rule is made returnable forthwith, with the consent of the parties.
2. Heard the learned Advocates for the petitioner and the respondents.
3. In this petition under Article 226 of the Constitution of India, the petitioner is impugning the Loan Waiver Scheme for agriculturists formulated by the State of Maharashtra on 28.06.2017, on the ground that it is arbitrary and unconstitutional, for it demarcates an unreasonable distinction between the farmers, who have availed smaller loans visavis those whose loan liability is more.
4. According to the petitioner, considering the plight of the agriculturists in the State on account of either a drought or excessive rains over the last few years and in pursuance of the observations of the Hon'ble Supreme Court in the case of Swaraj Abhiyan Vs Union of India, Writ Petition No. 857/2015, in the order dated 11.05.2016 and in the light of the provisions of the Disaster Management Act, 2005, the State Government has formulated the impugned Loan Waiver

Scheme, 2017 as per the notification dated 28.06.2017. After elucidating the object, the decision taken is as under :

"(1) Particulars of Scheme :

(i) The Scheme may be called Chhatrapati Shivaji Majaraj Shetkari Sanman Yojna, 2017.

(2) While determining the eligibility for loan waiver under the Scheme, without making any distinction between the small agriculturists and marginal agriculturists and the extent of their lands, the agriculturists who have taken crop loan or a medium term loan on or after 01.04.2012 and those who are in arrears of loan on 30.06.2016, would be entitled to the waiver and some other incentives subject to certain conditions:

(a) The loan to the tune of Rs. 1,50,000/including the principal and interest due as on 30.06.2016 will be waived;

(b) To extend one time settlement scheme to the agriculturists whose loan amount exceeds Rs.1,50,000/including the principal and interest as on 30.06.2016 to the extent of Rs. 1,50,000/. Those agriculturists who deposit their share in the loan account in the bank, would be entitled to receive an amount of Rs. 1,50,000/from the State;

(c) In respect of those agriculturists who had obtained crop loan in the year 2015-2016 and have repaid the entire loan amount by 30.06.2016 and those who have repaid the entire loan obtained in the year 20162017 by 30.06.2017, would be entitled to get 25 % of the loan repaid in the year 2015-2016 or Rs. 25,000/whichever is less. However, this amount shall be minimum of Rs. 15,000/. Those agriculturists who have repaid the amount which is less than Rs. 15,000/will be entitled to receive the actual amount paid by them;

(d) Those agriculturists in respect of whose loan raised in the years 2012-2013 to 2015-2016 about which there has been restructuring and those who are in arrears as on 30.06.2016, will be entitled to receive the benefit of the scheme. However, those, who are not in such arrears, would be paid Rs. 25,000/".

5. According to the petitioner and as per the submission of his learned Advocate, under Clause 2 (a), going by the condition imposed, the Loan Waiver Scheme is formulated in a manner which would only help the small land holders albeit it declares that irrespective of the extent of holding of an agriculturist. As far as Clause 2 (b) is concerned, again a discrimination has been made between the agriculturists who have raised more loan than ones who have raised less loans. The logic being, whenever disaster strikes in the form of natural calamity, the agriculturists holding more land would suffer more loss as compared to the agriculturists who have less land. According to the learned Advocate for the petitioner, even the benefit is sought to be extended only to the farmers who have taken loan between the years 2012-2013 to 2015-2016. Thus, in sum and substance, the entire Loan Waiver Scheme, 2017 (hereinafter referred to as

"Scheme") formulated by the State Government is violative of the provisions of Article 14 and 21 of the Constitution of India. The petitioner has, therefore, sought a declaration that the Scheme is arbitrary, irrational and discriminatory as well as in breach of the directions issued by the Hon"ble Supreme Court in the case of Swaraj Abhiyan (supra) and also to the provisions of the Disaster Management Act, 2005. He has also sought a direction that the benefit of the Scheme may be extended to them ignoring Clause 2 (a). In addition, the petitioner has sought a direction to respondent Nos. 3 and 4 to release the disaster response fund under the norms framed under the Disaster Management Act. Lastly, he has sought a strict action against respondent No. 6 bank for noncompliance with the direction issued by this Court in P.I.L. No. 5/2016 on 20.06.2016 for restructuring of the crop loan availed by him from it.

6. Since the learned Advocate for the petitioner has harped upon decision of the Supreme Court in the case of Swaraj Abhiyan, it would be just and proper to reproduce the actual directions issued by the Supreme Court in paragraph 101 of the Judgment, which are as under :

" Keeping all the factors in mind we issue the following directions:

1. As mandated by Section 44 of the Disaster Management Act, 2005 a National Disaster Response Force with its own regular specialist cadre is required to be constituted. Unfortunately, no such force has been constituted till date. Accordingly, we direct the Union of India to constitute a National Disaster Response Force within a period of six months from today with an appropriate and regular cadre strength.

2. As mandated by Section 47 of the Disaster Management Act, 2005 a National Disaster Mitigation Fund is required to be established. Unfortunately, no such Fund has been constituted till date. Accordingly, we direct the Union of India to establish a National Disaster Mitigation Fund within a period of three months from today.

3. Section 11 of the Disaster Management Act, 2005 requires the formulation of a National Plan relating to risk assessment, risk management and crisis management in respect of a disaster. Such a National Plan has not been formulated over the last ten years, although a policy document has been prepared. We can appreciate that the formulation of a National Plan will take some time but surely ten years is far too long for such an exercise. Accordingly we direct the Union of India to formulate a National Plan in terms of Section 11 of the Disaster Management Act, 2005 at the very earliest and with immediate concern.

4. The Drought Management Manual is undoubtedly a meaningful and wellresearched document. However, in view of the submissions made before us by learned counsel for the parties, we are of the opinion that since the Manual was published in 2009 several new developments have taken place and there is a need to revise the contents of the Manual. We direct that the Manual be revised

and updated on or before 31st December, 2016. While revising and updating the Manual, the Ministry of Agriculture in the Union of India should take into consideration the following factors apart from others:

(i) Weightage to be given to each of the four key indicators should be determined to the extent possible. Although the Manual states that rainfall deficit is the most important indicator, State Governments seem to be giving greater weightage to the area of crop sown out of the cultivable area and not to rainfall deficit. For this reason, necessary weightage is required to be given to each key indicator.

(ii) The time limit for declaring a drought should be mandated in the Manual. Although it is stated in the Manual that the best time to declare a drought, if necessary, is October, we find that some States have declared a drought in November and December and in the case of Gujarat in April of the following year. Obviously this is far too late. The impact and effect of a late declaration of drought has already been mentioned in the Manual and it is not necessary to repeat it. Hence the necessity of a timely declaration.

(iii) The revised and updated Manual should liberally delineate the possible factors to be taken into consideration for declaration of a drought and their respective weightage. Haryana has added several factors as has been mentioned above. Similarly, Bihar has added some other factors such as perennial rivers while Gujarat has added factors such as the nature of the soil etc. While we appreciate that it may be difficult to lay down specific parameters and mathematical formulate, the elbow room available to each State enabling it to decline declaring a drought (even though it exists) should be minimized. This would certainly be in the interest of the people who face distress because of a drought or a droughtlike situation.

(iv) The nomenclature should be standardized as also the methodology to be taken into consideration for declaring a drought or not declaring a drought. The Gujarat Relief Manual, for example, apparently refers to "scarcity" and "semiscarcity". The State Government appears to be hesitant to use the word "drought" even though a drought or a droughtlike situation exists. Similarly, due to a lack of standardization in the annewari system of crop assessment, Gujarat takes 4 annas out of 12 annas as a base for determining if there is a droughtlike situation. In areas where the crop cutting is between 4 annas and 6 annas, there is discretion in the State Government to declare or not to declare a drought. On the other hand, Maharashtra uses 50 paise as the standard the annewari system for declaring a drought. There ought to be some standardization so that each State does follow its own methodology in declaring or not declaring a drought.

5. In the proposed revised and updated Manual as well as in the National Plan, the Union of India must provide for the future in terms of prevention, preparedness and mitigation. Innovative methods of water conservation, saving and utilization (including ground water) should be seriously considered and the experts in the field should be associated in the exercise. Illustratively, dry land

farming, water harvesting, drip irrigation etc. could be considered amongst other techniques.

6. The Government of India must insist on the use of modern technology to make an early determination of a drought or a droughtlike situation. There is no need to continue with colonial methods and manuals that follow a colonial legacy. It is high time that State Governments realize the vast potential of technology and the Government of India should insist on the use of such technology in preparing uniform State Management Plans for a disaster.

7. The Secretary in the Department of Agriculture, Cooperation and Farmers Welfare, Ministry of Agriculture in the Government of India is directed to urgently hold a meeting within a week with the Chief Secretary of Bihar, Gujarat and Haryana to review the apparent drought situation with all the available data and if so advised persuade the State Government to declare a drought in whichever district, taluka, tehsil or block is necessary. It should be emphasized that there is no loss of face or prestige or dignity in the State Government declaring a drought if it is warranted, although succour to the distressed might be too late in the day. The Secretary in the Department of Agriculture, Cooperation and Farmers Welfare in the Union of India might also consider convening a meeting of the National Executive Committee and issue directions, if necessary, to the States of Bihar, Gujarat and Haryana and their Authorities in response to any threatening disaster situation or disaster.

8. Humanitarian factors such as migrations from affected areas, suicides, extreme distress, the plight of women and children are some of the factors that ought to be kept in mind by State Governments in matters pertaining to drought and the Government of India in updating and revising the Manual. Availability of adequate food grains and water is certainly of utmost importance but they are not the only factors required to be taken note of".

Apparently several directions have been given for implementing the provisions of the Disaster Management Act, 2005, to make the Act more meaningful. Obviously, a concern has been expressed about the plight of agriculturists which they have to suffer either due to deficit rainfall or its excess. Some observations and directions also concern about standardization in the Annewari system of crop assessment while ascertaining the actual loss. It has also been expressly made clear that humanitarian factors such as migrations, suicides, distress and plights of women and children are some of the factors to be borne in mind by the State Governments while revising the manual to be drafted in compliance with the direction. In substance, none of the averments in the petition or the submission of the learned Advocate for the petitioner precisely make out as to how the Scheme formulated by the State Government is in breach of which of the directions laid down by the Supreme Court in *Swaraj Abhiyan*'s case. The pleadings are clearly vague in this respect and so are the arguments.

7. Similar is the case of implementation of the provisions of Disaster

Management Act, 2005. The petitioners and their learned Advocate could not demonstrate on the basis of the pleadings and the arguments as to how and which provisions of the Act are being violated by the impugned Scheme.

8. A careful reading of the Scheme and particularly the object behind formulating the Scheme as has been expressly mentioned is to the effect that there are about 136 Lakh agriculturists in the State. They are wholly dependent upon crop loan and other loans for agricultural purposes from the District Central Cooperative Banks and Commercial Banks. Subsidies extended by the Central and State Governments help them in repaying the loans. Due to scarcity of rains in the last 4 years i.e. from the years 2012-13 to 2015-16 the yield was reduced by 50%. Similarly, there were unseasonal rains and hailstorms in the year 2013-14 and 2014-15 in some parts of the State causing loss to the agriculturists. The agriculturists were unable to repay the loans due to such natural calamities which has resulted in their deprivation from getting further loans. A statement was made by the Hon'ble Chief Minister spelling out the stand of the State Government to ease out the burden on the agriculturists in the State of repaying loan and in pursuance of such assurance, a Committee was constituted under the Chairmanship of the Hon'ble Minister for Revenue. The Committee consulted various organisations representing agriculturists as well as the political parties and on the basis of such discussion the Scheme was being framed.

9. Considering this object spelt out from the Preface to the Scheme, it is apparent that the benefit has been sought to be extended to all the agriculturists irrespective of the extent of their holding. Though the benefit is sought to be extended to the agriculturists independent of the extent of their holding, it has been tagged to the amount of loan availed by them. A careful reading of the Scheme reveals that the eligibility conditions are also tagged to the period during which the loan was availed of. Thus, it is not a fact that any discrimination is being made between the agriculturists depending upon the extent or type of their holding, as sought to be argued on behalf of the petitioner. As far as class of agriculturist is concerned, no unreasonable rather no distinction at all has been made.

10. Thus, the only distinction that has been made while extending the benefit of the Scheme only to the agriculturists who have availed loan in the year 2015-16 and 2016-17 and who have repaid it during those respective years, in which case they have been made entitled to receive 25 % of the loan amount repaid or Rs. 25,000/whichever is less. Obviously, even if the loan amount is repaid by such agriculturist is more than Rs. 1,50,000/, he will get only Rs. 25,000/. However, the very fact that such agriculturists are able to repay the amount of loan availed by them during the crucial years when the rest of their brothers were facing losses due to severe drought or excessive rains, would suggest that they must not have suffered similar loss or else they could not have been able to sustain it. Bearing in mind the very purpose of the Scheme to help the agriculturists who

have suffered loss and thereby could not repay the loan, it cannot be said by any stretch of imagination that the distinction between such agriculturists on the one hand and the agriculturists who are able to sustain such natural calamities and still repay the loans on the other hand, is either arbitrary or unreasonable and is violative of Article 14 of the Constitution of India.

11. Reliance was placed by the learned Advocate for the petitioner in the Judgment of Division Bench of Madras High Court in the matter of National South Indian River Interlinking Agriculturist Association Vs The Government of Tamil Nadu and another, Writ Petition (MD) No. 19118 of 2016 and other writ petitions, dated 04.04.2017. We have carefully gone through the judgment of the Madras High Court, however, with utmost respect, the decision rendered therein was in the peculiar facts and circumstances of the case and cannot be pressed into service in the matter before hand. In that matter, a clear distinction was made while extending the benefit of a similar scheme, between marginal farmers and small farmers who did not fit in that class and consequently it was held that there was discrimination between agriculturists depending upon extent of their holding.

12. As is demonstrated herein before, the impugned Scheme in the matter before hand, does not make any such distinction between the agriculturists depending upon the extent/type of their holding and rather makes distinction between the agriculturists who are unable to repay the loan due to drought or excessive rains and the agriculturists who are apparently well off inspite of the natural calamity and are able to repay the loans.

13. The learned Advocate for the petitioner also sought to persuade us to look into the observations of this Court in the matter of P.I.L. No. 5/2016 in its order dated 01/07/2016. But again, this does not lead the case of petitioner any further. Though several directions were issued to the State Government and the banks while implementing policies for extending loan to the agriculturists, the observations were made and expressed with a hope that those would benefit the agriculturists the end beneficiary. On the contrary, by referring to the decisions of the Supreme Court in the matter of Essar Steels Ltd Vs Union of India (2016 (4) SCLE 267), a reservation was expressed as to the powers of this Court in causing interference in the policy matters of the Government.

14. Suffice for the purpose to add that the extensive loan waiver would certainly add to the fiscal burden on the State Government. Obviously a lot of research and thought process must have gone into in formulating the Scheme and for want of equal and able assistance to us while sitting on the judicial side, we have several limitations in scrutinizing those aspects. For this reason, therefore, we sincerely feel restricted by a judicial power to examine the economical aspects of the Scheme. We therefore do not propose to venture into it. For this reason alone, we are not able to persuade ourselves to the submission of the learned Advocate for the petitioner when he laboured to comment upon the aspects of banking procedure in extending the loans to agriculturists and its recovery. All

these aspects, to our mind, are beyond the purview of judicial power which we are exercising.

15. In the result, we do not see that any unreasonable or arbitrary discrimination is made while extending the benefit of the Scheme as is sought to be made out by the petitioner.

16. The Writ Petition, therefore, fails and is dismissed.

17. The Rule is discharged.