

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
PUBLIC INTEREST LITIGATION NO.27 OF 2020
WITH CA/4359/2020 IN PIL/27/2020 WITH CA/4383/2020
IN PIL/27/2020

Kishore Ashokrao Tangade

..PETITIONER
VERSUS

1. The State of Maharashtra,
Through its Secretary,
Cooperation, Marketing and Textile
Department, Mantralaya, Mumbai 32.
2. The Commissioner of
Cooperation and Registrar of
Cooperative Societies
2nd floor, New Central Building,
Dr. Babasaheb Ambedkar, Road, Pune.
3. The Divisional Joint Registrar,
Cooperative Societies,
Aurangabad Divisions,
Anjuman Bungalow, Kranti Chowk,
Adalat Road, Aurangabad.
4. The District Deputy Registrar,
Cooperative Societies,
Aurangabad.
5. The Assistant Registrar,
Cooperative Societies
Tal. Paithan, Dist. Aurangabad.
6. The Aurangabad District Central
Cooperative Bank Ltd.
(Through its Chief Executive
Officer), Aurangabad.

..RESPONDENTS

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Mr. S. B. Talekar, Advocate for the Petitioner.
Mr. D. R. Kale, Govt. Pleader for Respondent Nos.1
to 5.
Mr. R. S. Deshmukh, Senior Advocate i/b Mr. Devang

Deshmukh, Advocate for the Respondent No.6.
Mr. V. H. Dighe, Advocate for the Applicant in C.A.
No.4383/2020.

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**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

Closed for Orders on : 14.09.2020.

Order Pronounced on : 09.10.2020.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The instant Public Interest Litigation is filed seeking direction against the Banks to effectively implement the Crop Loan Waiver Scheme promulgated by the Government under Government Resolution dated 27.12.2019.

2. Mr. Talekar, learned counsel for the petitioner strenuously contends that the beneficial scheme sanctioning the crop loan waiver was introduced by the Government considering the economic condition of the agriculturist in the State of Maharashtra. All the agriculturist availing the benefit of crop loan from 01.04.2015 to 31.03.2019 are entitled to the benefit of the crop loan waiver to the extent of Rs.2,00,000/-. Under the Government Resolution dated 17.01.2020, it is also directed by the State Government that from 01.10.2019 till the actual benefit of the loan waiver scheme is given, the Bank shall not levy interest. The Banks are not disbursing the loans on the ground that agriculturist have not paid interest from 01.10.2019 onwards. The same is not

in consonance with the Government Resolution dated 17.01.2020. The Government Resolution dated 17.01.2020 granting waiver of interest is issued under Section 79(A) of the Maharashtra Co-operative Societies Act, 1960, the same has a binding force upon the Co-operative Banks.

3. The learned counsel further contends that respondent no.6-Bank is not giving loans to the agriculturist who are entitled for the benefit of the loan waiver scheme under the Government Resolution dated 27.12.2019 on the ground that they have not paid interest since 01.10.2019, so also respondent no.6-Bank is demanding No Dues Certificate, if the loan is outstanding to be payable to other Banks. According to the learned counsel, the Bank cannot demand No Dues Certificate, it only has to ask for No Objection Certificate. The learned counsel placed his reliance upon the master circular issued by the Reserve Bank of India, more particularly Clause 4.2 thereof. The learned counsel submits that the respondent no.6-Bank has issued circular dated 11.05.2020 asking for No Dues Certificate, so also under Clause 7 has refused to grant benefit to the agriculturist who have been given benefit of loan waiver scheme 2008, 2009 and Shetkari Sanman Yojna 2017, the same is illegal.

4. The learned counsel submits that large number of agriculturists have been deprived of the

benefit of loan during the kharif season because of the adamant attitude and policy of respondent no.6-Bank. This Court on 09.07.2020 passed an interim order directing Banks to disburse crop loan immediately to the eligible agriculturists under the scheme namely Mahatma Jyotirao Fule Shetkari Debt Waiver Scheme 2019 without insisting for payment of interest. The interim order is not implemented by respondent no.6-Bank and thereby has committed contempt of an order of this Court. The action deserves to be taken against them. The learned counsel has placed reliance upon the figures and statistics to contend that large number of agriculturists are still deprived of the benefit of the crop loan for kharif season, though the kharif season is coming to an end.

5. Mr. Deshmukh, learned senior counsel for respondent no.6-Bank submits that it has started refunding the amount to the extent of Rs.5 crores recovered by it towards the interest. The learned senior counsel while making submissions on 09.07.2020 had contended that a conscious decision is taken by the Board of respondent no.6-Bank not to grant waiver of interest from 01.10.2019. The Bank is regulated by the Statute, Acts and Rules and the directions issued by the Reserve Bank of India and NABARD. He had made submissions that on the said date the Bank is intending to challenge the same.

6. The learned senior counsel further submits that he has instructed the respondent no.6-Bank not to insist for No Dues Certificate, but to ask for No Objection Certificate and necessary clarification is also issued to that effect under circular dated 05.06.2020. The learned senior counsel contends that chronic defaulters are not entitled for the benefit of the loan waiver scheme.

7. The learned senior counsel further submits that respondent no.6-Bank has already taken steps for disbursing the kharip crop loan to all eligible beneficiaries without insisting for payment of interest. The persons given benefits of the loan waiver scheme are increased from 89937 to 98820. Out of the beneficiaries, 26659 are such agriculturists who are not beneficiaries of the said scheme, 55184 agriculturists have actually been extended by the benefit of the loan waiver scheme and 20143 agriculturists are still remaining. They have not yet approached respondent no.6-Bank through the respective societies and if they approach in near future, the respondent no.6-Bank undertakes to disburse loan as per the said scheme without insisting for interest.

8. According to Mr. Talekar, learned counsel for the petitioner, 26659 agriculturist are illegally been denied the benefit, basically on the ground that they have not produced No Dues Certificate. Those agriculturists who have died

and sold the lands are hardly about 3000, rest 23,000 agriculturists are being deprived of their rights to get the loan.

9. We have considered the submissions canvassed by the learned counsel for the respective parties.

10. The State of Maharashtra has promulgated Mahatma Jyotirao Fule Shetkari Debt Waiver Scheme 2019 to ameliorate the precarious economic condition of 1,53,00,000 agriculturists in the State of Maharashtra. The State noticed that since 2015-2016 to 2018-2019 continuously drought like situation was prevailing through out the State and in some places witnessed unseasonal rains. Due to drought like situation for four continuous years and unseasonal rains the agriculturist faced losses. The State Government in fitness of things took a conscious decision to grant loan waiver to the extent of Rs.2,00,000/- to the agriculturists having obtained short term crop loan from 01.05.2015 to 31.03.2019 under the Government Resolution dated 27.12.2019.

11. The State Government issued Government Resolution dated 17.01.2020 after considering all the pros and cons directing the Bank not to charge interest from 30.09.2019 on their crop loans till the benefit of loan waiver is actually given. The Resolution dated 17.01.2020 was passed by the

Government exercising its powers under Section 79(A) of the Maharashtra Co-operative Societies Act. The Government has disbursed an amount of Rs.10,000 crores for giving benefit of loan waiver scheme. Thereafter, under Government Resolution dated 06.03.2020 sanctioned additional Rs.2000 crores for the said scheme.

12. On or about 22.05.2020, the Government issued another Resolution clarifying that about 19 lakh agriculturists have been granted benefit of the loan waiver scheme and for remaining also the process is in progress. It was noticed by the State that for remaining beneficiaries, the benefit could not be granted immediately and if their account is not made nil, they would not be given benefit of the crop loan for kharif season 2020. As such the Government directed the Co-operative Banks and other Banks that those beneficiaries whose names have been disclosed in the portal, but were not granted actual benefit should be given crop loan for kharif season 2020. It was directed that the Vividh Krayakari Seva Co-operative Society should show the amounts standing against the names of the agriculturists, as receivable from the Government and for kharif season 2020 loan should be disbursed.

13. The aforesaid Government Resolutions issued by the Government from time to time is clear indication that the Government was conscious of the

fact that the agriculturists are in precarious economic condition. They are required to be given benefit of waiver of crop loan to the extent of Rs.2,00,000/- and further these beneficiaries of crop loan are required to be given financial assistance for kharif season 2020 without insisting for payment of interest.

14. The year 2020 is a tumultuous year. The entire country is affected by pandemic of Covid-19. Fortunately, this year the State witnessed timely rains and it is necessary that the agriculturists get financial assistance for the kharif sowing season. Considering the urgency in the matter after hearing the parties we had passed interim order on 09.07.2020 directing the Banks to disburse the crop loan immediately to the eligible agriculturists under the Mahatma Jyotirao Fule Shetkari Debt Waiver Scheme 2019 without insisting for payment of interest from 01.10.2019 till the actual benefit is given to the agriculturists.

15. Respondent no.6-Bank and the petitioner have filed affidavit and additional affidavits from time to time accusing each other. It is the contention of the petitioner that, Bank is not giving crop loan for kharif season to the beneficiaries of the Mahatma Jyotirao Fule Shetkari Debt Waiver Scheme 2019 in its true letter and spirits. The large number of agriculturists are deprived of the benefit of crop loan.

16. After we have passed interim order dated 09.07.2020, respondent no.6-Bank has come with the stand that they are not insisting for payment of interest from 01.10.2019. The stand of the Bank is that the primary Co-operative Societies of whom the agriculturists are the members have not yet forwarded their proposals. We find that major hurdle would be Clause no.2 of the circular issued by the Bank dated 11.05.2020, wherein the Bank sought No Dues Certificate from the beneficiary agriculturists of the Banks from where they had earlier taken loans. The said Clause is certainly not in consonance with master circular of the Reserve Bank of India dated 01.07.2009, more particularly Clause 4.2. The said Clause reads that the primary (urban) co-operative banks should not finance a borrower already availing credit facility from another bank without obtaining a 'No Objection Certificate' from the existing financing bank.

17. Mr. Deshmukh, learned senior counsel was candid enough to concede that respondent no.6-Bank ought not to have asked for the No Dues Certificate, but for No Objection Certificate only. The learned senior counsel further was fair enough to submit that he has advised respondent no.6-Bank not to insist for No Dues Certificate, but only No Objection Certificate from the existing financial banks. We record and accept the said statement.

The Respondent no.6-Bank shall not insist for No dues Certificate from the eligible beneficiaries while sanctioning short term crop loan for kharif season 2020.

18. We had already passed interim order directing bank not to insist for payment interest from 01.10.2019 from the beneficiaries. It has been clarified that about Rs.5 crores are collected by the Banks towards payment of interest and the same is being refunded. If the Bank has recovered the amount towards the interest, the same shall be returned to the persons/parties from whom they have recovered the amount of interest. The disbursement of the amount of interest recovered shall be made by the Banks immediately.

19. It is averred that there are about 1 lakh beneficiaries. We do not have the benefit of the record of each and every beneficiary. In absence of the record of each and every agriculturists, it will not be possible for us to comment upon the entitlement of each beneficiaries.

20. We hasten to add that when the Government introduces a beneficial scheme such as the present loan waiver scheme of 2019, all the stakeholders are required to adhere and implement the said scheme in its true letter and spirit. The Banks shall take steps in implementing the scheme in its right perspective and should take steps to ensure

that it is implemented without delay and ought not be an impediment in effective implementation of the scheme. Imposing condition no.2 of circular dated 11.05.2020 was not warranted. Because of the said Clause also delay appears to have been caused in distributing the loans to the beneficiaries of loan waiver scheme.

21. We hope and trust that Banks would be alive to the problems of the agriculturists. The precarious condition of the agriculturists has been considered by the State Government and introduced loan waiver scheme 2019. Though, the loan is waived the agriculturists / beneficiaries of the said loan waiver scheme cannot be deprived of the crop loan for the kharif season 2020 on technical ground. The loan waiver scheme is unambiguous. The said scheme would apply to all the short term crop loans availed by the agriculturists from 01.04.2015 to 31.03.2019 or the crop loans rescheduled during the said period and the amount outstanding to the extent of Rs.2,00,000/- . The Banks are not authorized to impose other conditions not commensurate with the said scheme.

22. The other prayers in the Public Interest Litigation deal with the directions against respondent nos.1 to 5 to initiate proceeding for supersession of the Board of Directors of respondent no.6-Bank for its persistent default, negligence in performance of duty and commission of

acts prejudicial to the interest of respondent no.6-Bank and its members under Article 243-ZL read with Section 78 of the Maharashtra Co-operative Societies Act, 1960. The further directions are sought against respondent nos.1 to 5 to keep the Board of Directors of respondent no.6-Bank under suspension and to direct respondent nos.1 to 6 to take action against C.E.O. of respondent no.6-Bank for willful breach of the directions of Government of Maharashtra.

23. The members of Board of Director are not party in the writ petition. More over, the petitioner has contended that the petitioner has filed independent writ petition at the Principal Seat of this High Court challenging the extension granted to the Board of Directors of respondent no.6-Bank. The petitioner can agitate all these aspects while challenging the extension granted to the Board of Directors. The petitioner can also move D.D.R. or such competent authority for the reliefs sought under the prayer Clauses F, G and H. If the petitioner approaches such authority, the authority shall consider the application of the petitioner expeditiously.

24. The respondent no.6-Bank shall extend the benefits of crop loan to the agriculturists for Kharif Season 2020 in accordance with the mandate of the Government Resolutions dated 27.12.2019, 17.01.2020 and 22.05.2020 immediately.



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25. With the aforesaid observations and directions, the Public Interest Litigation stands disposed of.

26. In view of disposal of Public Interest Litigation, present Civil Applications stand disposed of.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/September-2020