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

WRIT PETITION NO.1753 OF 2014

1. Financial Planning Standards Board India,
(FPSB India), Mumbai.

2. Financial Planning Corporation (India)
Pvt.Ltd., Mumbai.

3. Ranjeet S. Mudholkar, Vice Chairman and
CEO of FPSB India, Mumbai. Petitioners

versus

1. National Institute of Securities Markets
(NISM), Mumbai.

2. Securities and Exchange Board of India
(SEBI), Mumbai. Respondents

Mr.Bimal Rajashekar for Petitioners.

Mr.Fredun Devitre, Senior Advocate, with Mr.Mihir Mody, Mr.Dhaval Patil, Mr.Parth Patel i/by K.Ashar & Co. for Respondent no.1.

Mr.Venkatesh Dhond, Senior Advocate, with Mr.Nishit Dhruva, Mr.Prakash Shinde, Ms.Ambreen Saheed, Mr.Chirag Bhavsar i/by MDP Partners for Respondent no.2.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 17 December 2015

PC :

This petition under Article 226 of the Constitution of India is directed against the Respondent nos.1 and 2. It seeks a writ of Mandamus or any other appropriate writ, order or direction directing them to reinstate Certified Personal Financial Adviser (`CPFA') certification jointly launched by the Petitioner no.2 and Respondent no.1. We need not refer to the prayers in further details and for appreciation of the essential controversy.

2. The petition proceeds on the footing that the Petitioner no.1 is a non-profit company registered under Section 25 of the Indian Companies Act, 1956 as an education institution. The Second Petitioner is established by Petitioner no.1 to undertake educational and related activities in financial planning segment. It is stated that these Petitioners focus on distribution, improvements, investment advisory and financial planning in securities and other financial products regulated by the second Respondent Securities and Exchange Board of India (`SEBI') - Respondent no.2.

3. The First Respondent is a society registered under the Societies Registration Act, 1860 and was established by SEBI with a primary object of adding to market quality through educational initiatives.

4. From what has been stated before us, it is apparent that there was a Memorandum of Understanding (`MOU') between the Petitioner no.2 and the Respondent no.1 executed on 10 November 2008 for the purpose of, inter alia, establishing and conducting two new certificate examinations and that would help professionalize the financial planning profession and promote financial education and financial literacy. Thereafter, an agreement was executed some time in April-2010 acknowledging the MOU of 10 November 2008 and further agreeing to develop an examination work book and question bank. In July-2010, the first joint certification namely Certified Personal Financial Adviser (`CPFA') Certification was launched. SEBI released the draft version of SEBI (Investment Advisers) Regulations. Thereafter, on 21 January 2013, SEBI notified SEBI Investment Advisers Regulations separately and it is the case of the Petitioners, that the First Respondent communicated to the Petitioner no.1 that it must apply for accreditation in terms of Regulation 7(2) of SEBI Investment Advisers Regulations. The First Petitioner is stated to have applied for such accreditation and thereafter what is being relied upon is the fact that the First Respondent launched its own certification examination under Regulation 7(2) of SEBI Investment Advisers Regulations w.e.f. 21 November 2013 and it was modeled on the joint certification between Petitioner no.2 and Respondent no.1. Yet, SEBI called for some opinion and then stated that the

certification in terms of the understanding between SEBI and Respondent no.1 would be the applicable one. The Petitioners state that the Respondent no.1 unilaterally withdrew from the joint certification and that is how the correspondence with regard to the similarities between the recently launched certification examination and the certification in terms of the agreement between the Petitioner no.2 and the First Respondent have been pointed out.

5. We need not refer to the further events and correspondence simply because the complaint of the Petitioners is that in view of the first Respondent's initiatives and taken unilaterally, accreditation is not forthcoming insofar as the course propounded by the Petitioners. Thus apart from similarity in the certification and breach of the agreement, what is urged is that there is a conflict of interest. Now, the accreditation has to be obtained from Respondent no.1 and that is what SEBI is insisting on. At the same time, SEBI intends to promote its own certification. This contradiction and conflict, has, therefore, compelled the Petitioners to approach this Court in its writ jurisdiction.

6. Mr.Rajshekar would submit that both the Respondents are discharging a public duty. They are performing a public function. These are not matters of contract but when the certification has to be accredited in terms of the Regulations

which have been framed by SEBI, then, it is mandated that SEBI should be fair, reasonable and just and ought not create a situation of conflict so as to favour its own entity. In these circumstances and by pointing out that there is a clear bias in favour of the first Respondent by SEBI, that it is alleged that the impugned order deserves to be interfered with.

7. It is based on this that in the lengthy petition running into 65 pages referring to several case laws, it is contended that this Court should direct corrective steps and in terms of the prayer clauses of the petition.

8. The petition has been resisted and it has been pointed out in the affidavit-in-reply by the First Respondent that there is no substance in any of these grievances. Though there is no denial of the execution of the agreements, what is urged is that under Regulations 7 and 8 of SEBI Regulations, the First Respondent is mandated to develop and conduct certification examinations and continuing professional educational programmes for professionals employed in various segments of the Indian securities markets. In terms of the policy, what has been asserted is that the First Respondent is established to enhance the levels of knowledge of security market among various constituents. The background of certification and continuous professional education is extensively set out with details of the courses initiated and what is then stated is that

the arrangement of CPFA Certification jointly launched under the MOU of 2008 is not now permissible because the MOU has lapsed in 2010. The Petitioner no.1 was not a party either to MOU or to the agreement dated 15 April 2010. It is stated that the Petitioners have approached the Court following the Notification of SEBI Investment Advisers Regulations on 21 January 2013. It is stated that the draft version of these Regulations was finalized and both were notified. All the allegations are denied and it is stated that there is a specific eligibility criteria. In terms of that eligibility criteria, the courses fulfilling the same have been accredited and it is stated that the first Petitioner offered a course called Certificate in Financial Planning (CFP). It was initiated in April-2004. It has been accredited. The Associate Financial Planning (AFP) course has also been similarly accredited. As far as present course namely Certificate Personnel Financial Adviser is concerned, it is stated that the eligibility criteria is not fulfilled. The Petitioners would have to establish that this course was initiated and was functional for three years prior to the application seeking accreditation. Now, in the affidavit, it is pointed out that if there was any bias or conflict of interest, the accreditation would not have been granted for other courses. The Respondent no.2 has also on similar lines denied the allegations.

9. We have also heard learned Senior Advocates appearing for Respondent nos 1 and 2.

10. After perusing the entire material, we are of the view that there is no substance in this writ petition. Firstly, in academic matters, judicial review is permitted only if the bodies like the Respondents act unfairly, unreasonably or arbitrarily or in biased manner. If their actions are vitiated by mala fides, then, judicial review is permissible. If in matters of certifications and accreditations there are experts who have evolved certain criteria, then, it is not for us to substitute our views. We are not experts in the field. In matters of making the players in security market conversant with all aspects of financial planning, if SEBI has taken steps and has established an agency so as to implement and execute its decisions, then, such policy regulations having not been questioned, all the more, we cannot entertain the present petition. We do not find any substance in the complaint that there is any bias in favour of the courses or certification of SEBI owned body namely Respondent no.1. If the joint step taken by the Petitioner no.2 and Respondent no.1 is claimed to have come to an end, then, whether it is correct or accurate understanding of the agreement, is something which we cannot decide in writ jurisdiction. A clear reference is made to the MOU and further contract. If that is breached or the actions are contrary to the contractual stipulations, then, the Petitioners are not remedy-

less. Under general law, they can proceed against the parties to the agreement and claim reliefs in that behalf from the competent Court or Tribunals. We do not think that contractual and factual disputes can be resolved in our limited jurisdiction. Secondly, whether any right is vested in terms of this agreement in the Petitioners, then, that is also something with which we are not concerned in the writ jurisdiction. There are remedies available under the general law insofar as this alleged claim is concerned. To our mind, the allegation of conflicting interests also does not appear to be of substance. It is pointed out in the affidavits as to how the First Petitioner and its certification was an issue insofar as Respondent no.1 and Respondent no.2 are concerned. That the applications seeking accreditation were considered for other courses and those were granted, would indicate as to how the authorities have acted fairly and reasonably. If they have found with regard to a distinct course that the eligibility criteria is not fulfilled by the Petitioners herein, then, their decision not to grant the relief or accreditation, cannot be questioned. All the more, when such criteria is evolved in educational matters and by expert bodies. We are, therefore, of the view that the situation which is taken care of in the judgment of Hon'ble Supreme Court of India in **Board of Control For Cricket in India Vs. Cricket Association of Bihar and others**[1], does not arise in the facts and circumstances of the present case.

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11. As a result of the above discussion, we do not find any merit in the petition. It is dismissed with no order as to costs.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

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