IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 23447 of 2012

Reserved On : May 14, 2015

Pronounced On : 20.05.2015

Managing Committee, Guru Teg Bahadur
Khalsa College for Women, Dasuya .... Petitioner

vs.

University Grant Commission and
another .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Ms. Anu Chatrath, Senior Advocate
with Ms. Rumpa Ghorai Saha, Advocate
for the petitioner.

Mr. N. R. Dahiya, Advocate
for respondent no. 1.

Mr. Subhash Ahuja, Advocate
and Ms. Piya Anand, Advocate
for Mr. Amar Vivek, Advocate
for respondent no. 2.

* * *

<u>DEEPAK SIBAL, J.</u> :

Managing Committee, Guru Teg Bahadur Khalsa College for Women, Dasuya (hereinafter referred to as – the petitioner College) has filed the present petition seeking to set aside orders passed by the respondent University Grants Commission (hereinafter referred to as – the Commission) asking the petitioner College to refund the grant of ₹ 32,50,000/- and in the event that the refund is not granted, threatening to take coercive action including black-listing of the College, its disaffiliation by the University etc. The petitioner College has further sought a direction to the respondent Commission to release the balance grant, as approved and conveyed by the respondent Commission through letter dated 11.08.2010 (Annexure P-9).

The arguments raised at the bar and the record of the case reveal that the eligibility for receipt of grants from the respondent Commission is governed under Section 2 (f) and Section 12-B of the University Grants Commission Act, 1956 (hereinafter referred to as the Act) read with the University Grants Commission (Fitness of Institutions for Grants) Rules, 1975 (hereinafter referred to as – the Rules). The same are reproduced below :-

> ***"2. (f) "University"*** *means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the*

regulations made in this behalf under this Act.

xx xx xx

[12-B]. Prohibition regarding giving of any grant to a University not declared by the Commission fit to receive such grant – *No grant shall be given by the Central Government, the Commission, or any other organisation receiving any funds from the Central Government, to a University which is established after the commencement of the University Grants Commission (Amendment) Act, 1972, unless the Commission has, after satisfying itself as to such matters as may be prescribed, declared such University to be fit for receiving such grant.*

xx xx xx

The University Grants Commission (Fitness of Institutions for Grants) Rules, 1975 -

In exercise of the power conferred by section 25, read with section 12-B of the

University Grants Commission Act, 1956 (3 of 1956), the Central Government hereby makes the following rules, namely :-

1. Short title, application and commencement – (1) *These rules may be called the University Grants Commission (Fitness of Institutions for Grants) Rules, 1975.*

(2) *They shall apply to every institution recognised by the Commission under clause (f) of section 2 of the University Grants Commission Act, 1956 (3 of 1956) on or after the 17th day of June, 1972 the date on which the University Grants Commission (Amendment) Act, 1972 (33 of 1972) came into force.*

(3) *They shall come into force on the date of their publication in the Official Gazette.*

2. Fitness for grant - *No institution to which these rules apply shall be declared to be fit to receive grants from the Central Government, the Commission or any other organisation receiving any fund* *from the Central Government unless the Commission is satisfied that the institution :-*

(i) *Provides instruction upto a Bachelor's degree or upto a post-graduate degree only or provides instructions for a diploma course of duration of not less than one academic year and for which the minimum qualification for admission is a Bachelor's degree;*

(ii) *is registered as a society under the Societies Registration Act, 1860 (21 of 1860) or is a body corporate established or incorporated under a Central Act, a provincial Act or a State Act, for the time being in force or is a Trust with Trustees being appointed and vested with legal powers and duties; and*

(iii) *is permanently affiliated to a University which has been declared fit under section 12-B of the*

> *University Grants Commission Act, 1956 (3 of 1956) for receiving grants."*

As per Section 12-B of the Act, as reproduced above, an Institution becomes eligible for the receipt of grants from the respondent Commission after the Institution has been declared eligible and enlisted for receipt of such grants, as per the prescribed qualifications. Under Section 12-B read with Section 25 of the Act, the respondent Commission has promulgated the above reproduced Rules, laying down the eligibility for institutions to receive grants.

In the year 1995, the petitioner College, through proper channel, made an application to the respondent Commission for inclusion of the name of the petitioner College in the list of eligible colleges, as framed under Section 12-B of the Act. After considering the representation made by the petitioner College, through order dated 01.07.1996 (Annexure P-4), the petitioner College was duly enlisted under Section 12-B of the Act, as a college to be eligible for the receipt of grants under the Act from the respondent Commission.

In the year 2008, a Scheme of the respondent Commission, was circulated through letter dated 29.06.2009, which was to the effect that all colleges, which were eligible and enlisted under Section 12-B of the Act, for the receipt of grants from the respondent Commission, in case they would construct a women's hostel, would be given grants out of the development fund of the respondent Commission. As per the Scheme, the eligibility clause so as to which College would qualify for the receipt of grants, is reproduced below :-

> ***"3. ELIGIBILITY/TARGET***
>
> *Colleges which have been included under Section 2 (f) and declared fit to receive central assistance under Section 12-B of the UGC Act will be eligible to receive financial assistance under this scheme."*

A perusal of the above eligibility clause, as contained in the Scheme floated by the respondent Commission shows that all colleges declared fit to receive central assistance under Section 12-B of the Act, were eligible to receive financial assistance under this Scheme.

In pursuance to the above referred Scheme, the petitioner College, having been declared fit to receive financial assistance under Section 12-B of the Act and thus covered by the eligibility clause, as reproduced above, submitted a proposal, through application dated 19.09.2008, for the receipt of grants for the construction of a women's hostel. Going through proper channel, this proposal was submitted by the petitioner College to the respondent – Panjab University, Chandigarh (hereinafter referred to as – the University), with which the petitioner College was affiliated. The proposal was forwarded by the respondent

University to the respondent Commission and after considering the proposal, the respondent Commission, through letter dated 22.01.2009, asked the petitioner College to submit certain documents, which, through letter dated 21.07.2009 (Annexure P-8), were duly furnished. On receipt of the entire information, as required by the respondent Commission, the proposal of the petitioner College was favourably considered and through letter dated 11.08.2010, the respondent Commission, while according approval to the proposal submitted by the petitioner College, agreed to give grants to the petitioner College towards the construction of the women's hostel to the extent of ₹ 65,00,000/- or the actual expenditure, whichever was less. In pursuance to such agreement, 50% of the promised amount being ₹ 32,50,000/- was credited into the account of the petitioner College. On receipt of such amount, the petitioner College called for tenders for construction of the women's hostel, but before allocation of the work, the entire tendering process was brought to the knowledge of the respondent Commission. Having received `no objection' from the respondent Commission, the tender was allotted and the amount of ₹ 32,50,000/-, received by the petitioner College as grant from the respondent Commission, was utilized. A Utilization Certificate along with a statement of income and expenditure of ₹ 32,50,000/-, duly audited by a Chartered Accountant was then sent by the petitioner College to the respondent Commission. Having utilized the amount disbursed by the respondent Commission, a request was made by the petitioner College to the respondent Commission to release the balance of the already approved grant. The balance amount was not received. Instead through letter dated 18.03.2011, the respondent Commission asked the petitioner College to refund the already disbursed amount of ₹ 32,50,000/-, as according to the respondent Commission, the petitioner College was not eligible, as per the Scheme floated by it, on the ground that the petitioner College was a self-financed College. On objections raised by the petitioner College, the respondent Commission again asked the petitioner College for refund of ₹ 32,50,000/- and threatened coercive action, in case the refund was not made. It is in the above circumstances that the present writ petition has been filed by the petitioner College for the above referred reliefs.

I have heard learned counsel for the parties and with their able assistance, have also gone through the entire record of the case.

The respondent Commission seeks to justify its action of not releasing the already approved grant in favour of petitioner College, as also to seek refund of the already disbursed instalment of the approved grant on the basis of a decision taken by a Committee of its senior officers held on 28.08.2002, as also a decision dated 04.05.2010, through which decisions were taken not to disburse developmental grants to self-financing colleges. According to the respondent Commission, as and when it came to their knowledge that the petitioner College was a self-financing College, they decided not to release the already approved grant and further sought refund of the already disbursed instalment of the approved grant.

Is the above stand taken on behalf of the respondent Commission justified ?

It is the undisputed position that the petitioner College has been duly enlisted by the respondent Commission under Sections 2 (f) and 12-B of the Act, making it eligible for receipt of grants from the respondent Commission and that such enlistment has not been withdrawn till date. As per the Scheme in question floated by the Commission with regard to disbursing grants for construction of women's hostel, the following was the prescribed eligibility :-

> ***"3. ELIGIBILITY/TARGET***
>
> *Colleges which have been included under Section 2 (f) and declared fit to receive central assistance under Section 12-B of the UGC Act will be eligible to receive financial assistance under this scheme."*

The petitioner College, having been included in the list of colleges made under Section 2 (f) read with Section 12-B of the Act, was thus fully eligible for the receipt of grants under the Scheme in question, as per the prescribed eligibility.

Before proceeding further, it would be appropriate to refer to the Rules, which govern the eligibility of institutions for receiving grants from the respondent Commission, which are as under :-

"The University Grants Commission (Fitness of Institutions for Grants) Rules, 1975 -

In exercise of the power conferred by section 25, read with section 12-B of the University Grants Commission Act, 1956 (3 of 1956), the Central Government hereby makes the following rules, namely :-

1. Short title, application and commencement – (1) *These rules may be called the University Grants Commission (Fitness of Institutions for Grants) Rules, 1975.*

(2) *They shall apply to every institution recognised by the Commission under clause (f) of section 2 of the University Grants Commission Act, 1956 (3 of 1956) on or after the 17^{th} day of June, 1972 the date on which the University Grants Commission (Amendment) Act, 1972 (33 of 1972) came into force.*

(3) *They shall come into force on the date of their publication in the Official Gazette.*

*2. **Fitness for grant -** No institution to which these rules apply shall be declared to be fit to receive grants from the Central Government, the Commission or any other organisation receiving any fund from the Central Government unless the Commission is satisfied that the institution :-*

(i) *Provides instruction upto a Bachelor's degree or upto a post-graduate degree only or provides instructions for a diploma course of duration of not less than one academic year and for which the minimum qualification for admission is a Bachelor's degree;*

(ii) *is registered as a society under the Societies Registration Act, 1860 (21 of 1860) or is a body corporate established or incorporated under a Central Act, a provincial Act or a State Act, for the time being in force or is a Trust with Trustees being* *appointed and vested with legal powers and duties; and*

(iii) *is permanently affiliated to a University which has been declared fit under section 12-B of the University Grants Commission Act, 1956 (3 of 1956) for receiving grants."*

It is the admitted position between the parties that the petitioner College fulfills all the eligibility clauses as given in the above quoted Rules.

That being so, in view of the above position of law and facts, it is clear that the petitioner College being a listed College with the respondent Commission under Sections 2 (f) and 12-B of the Act, as also being fully qualified, as per the statutory Rules, was entitled to receive grants like the grant in the case in hand, from the respondent Commission.

The only justification put forth by the respondent Commission is their reliance on a decision of a Committee of senior officers, which, in the light of the eligibility given in the Scheme, which the petitioner College fulfills, has to be rejected, especially when the petitioner College does not entail any disqualification either under the Act or under the statutory Rules. The decision of the senior officers of the respondent Commission cannot be allowed to over-rule the eligibility clause so mentioned in the Scheme, as also in the Act or the applicable Rules.

Further, the petitioner College had been enlisted by the respondent Commission as an Institution eligible for the receipt of grants and on the basis of such eligibility, the respondent Commission had agreed to disburse grants of ₹ 65,00,000/-. In part-performance of such agreement, an amount of ₹ 32,50,000/- had also been released by the respondent Commission in favour of the petitioner College, which, in a highly transparent manner, had been utilized by the petitioner College, for construction of the women's hostel. After all of the above, the respondent Commission could not, at this stage, be allowed to back out of its promise, especially when, on the basis of such promise, the petitioner College had materially altered its position by incurring huge financial expenditure. After having promised the release of grant of ₹ 65,00,000/- and having disbursed half of it, which has transparently been utilized, the respondent Commission cannot be allowed to leave the petitioner College high and dry. In the facts of the case in hand, the principle of estoppel would come to the rescue of the petitioner College. In this regard, it would be useful to refer to following observations of the Apex Court in the case of **Gujarat State Financial Corporation Limited vs. Lotus Hotels Pvt. Ltd.** reported as **(1983) 3 SCC 379** :-

> ***"9.*** *It was next contended that the dispute between the parties is in the realm*

of contract and even if there was a concluded contract between the parties about grant and acceptance of loan, the failure of the Corporation to carry out its part of the obligation may amount to breach of contract for which a remedy lies elsewhere but a writ of mandamus cannot be issued compelling the Corporation to specifically perform the contract. It is too late in the day to contend that the instrumentality of the State which would be 'other authority' under Article 12 of the Constitution can commit breach of a solemn under-taking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract. It was not disputed and in fairness to Mr. Bhatt, it must be said that he did not dispute that the Corporation which is set up under Section 3 of the State Financial Corporation Act, 1955 is an instrumentality of the State and would be *'other authority' under Article 12 of the Constitution. By its letter of offer dated July 24, 1978 and the subsequent agreement dated Feb. 1, 1979 the appellant entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs. 30 lakhs to the respondent. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4-star Hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the afore-mentioned two documents, the respondent incurred expences, suffered liabilities to set-up a hotel. Presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further*

liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play. In Motilal Padampat Sugar Mills Co. (P) Ltd. v. State of U.P. and Ors. this Court observed as under:

The true principle of promissory estoppel, therefore seems to be that where one party has by his words of conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be

> *so irrespective whether there is any pre-existing relationship between the parties or not.*
>
> ***10.*** *Thus the principle of promissory estoppel would certainly estop the Corporation from backing out of its obligation arising from a solemn promise made by it to the respondent.”*

It is virtually the admitted position between the parties that the petitioner College, at no point of time, had played fraud or had ever misrepresented its case with the respondent Commission.

The approval given by the respondent Commission to the petitioner College with regard to release of grants to the tune of ₹ 65,00,000/- for the construction of a women's hostel has to be treated akin to an agreement, on which part-performance had already been done by the respondent Commission and the specific performance of which could be favourably prayed for by the petitioner College against the respondent Commission, which is admittedly `State' within the meaning of Article 12 of the Constitution of India.

The reliance of the respondent Commission on the decisions by a Committee of senior officers is not backed by any Statute. The Court has also not been apprised so as to why the decision of the Committee of senior officers dated 28.08.2002, of the respondent Commission, were taken and further so as to why it should be treated to be a decision of the respondent Commission itself and not a decision by a few of its senior officers.

So far as the decision dated 04.05.2010 is concerned, that decision is simply to the following effect :-

> **"**.....*Private colleges which are fully self-financing may be awarded 12 (B) status if they fulfil the eligibility criteria so that they become eligible to receive Central Government grants from other sources, even if they do not receive grants from UGC due to paucity of funds.***"**

A perusal of the above decision does not debar the self-financing institutions from receipt of grants from the respondent Commission. It simply says that due to paucity of funds, they may not receive grants from the respondent Commission. Nothing has been brought on the record of this Court to show any paucity of funds being faced by the respondent Commission, which led them to take decisions impugned in the present petition.

There is yet another feature of this case, which favours the petitioner College. The petitioner College has been sought to be denied the release of already granted benefit on the ground that it is a self-financing Institute. The respondent Commission has nowhere defined "self-financing Insitution". It is true that the petitioner College is an unaided College, but it is the unrebutted stand of the petitioner College that the fee being charged by the petitioner College is the fee, which is determined by the respondent University. It is further submitted that it being a non-aided Institution and charging fee as per the fee to be determined by the respondent University, the petitioner College cannot be termed to be a self-financing Institute in the sense that is charging and collecting fee as per its own will. It is thus submitted that strictly speaking, the petitioner College could not be classified as a self-financing Institute, on the basis of which it could be denied the benefit of grants from the respondent Commission.

In view of the above, the impugned orders dated 18.03.2011 (Annexure P-13), 30.06.2012 (Annexure P-21) and 27.09.2012 (Annexure P-23) are quashed. It is further directed that the respondent Commission would release the balance 50% of the approved grant of ₹ 32,50,000/- in favour of the petitioner College.

The necessary exercise be done within two months from the date of receipt of a certified copy of this order.

The writ petition stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 20.05.2015
monika