IN THE PUNJAB AND HARYANA HIGH CORUT AT CHANDIGARH

205 **CWP-6276-2014 (O&M)**
Date of Decision: 01.12.2022

DISTRICT BAR ASSOCIATION SANGRUR

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. B.P.S. Virk, Advocate
for the petitioner.

Mr. Amanpal, Addl. A.G., Punjab.

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VINOD S. BHARDWAJ, J. (ORAL)

The petitioners seek issuance of a writ in the nature of Mandamus directing the respondents to release the matching grant of Rs.1 crore for construction of lawyers' chambers and Rs.5,00,000/- for Bar Library at District Court Complex, Sangrur as per the Notification No.10/30/2002.MA2(3)5739 dated 06.08.2009 (Annexure P-1), which was issued in continuance of the Notification No10/30/2022/-R.E.II(3)/7424-30 dated 11.11.2002 (Annexure P-2).

Briefly summarized, the facts of the present case are that the District Bar Association, Sangrur has filed the present petition for seeking release of matching grant of Rs.1 crore for construction of lawyers' chambers and Rs.5,00,000/- for Bar Library as per the policy notified by the State Government. The proposal for construction of additional chambers and bar library was sent to the High Court and was approved by the Building Committee of the High Court in its meeting held on 26.11.2012. The minutes of the said meeting were also sent to the petitioner-Bar Association alongwith the letter dated 12.12.2012. The map/site plan of the second lawyers' chambers (Second Phase) which were to be constructed within the Court complex Sangrur was prepared by the Chief Architect (Branch situated at Patiala) and the same was also approved by the Building Committee of the High Court. The structural design and construction was thereafter undertaken as per the approval granted by the competent authority in terms of the notification issued by the Government of Punjab. A request was thereafter submitted by the petitioner Bar Association to the Deputy Commissioner, Sangrur for providing the matching grant of Rs.1 crore for construction of chambers and Rs.5,00,000/- for Bar Library as per the notification above issued by the State of Punjab. Copy of the said representation dated 29.01.2013 is attached as Annexure P-4. The aforesaid representation was forwarded by the Deputy Commissioner, Sangrur alongwith his letter dated 27.02.2013 to the Financial Commissioner, Revenue, Punjab. Despite the efforts made by the District Bar Association, Sangrur at all levels with the officials, the matching grant was not released. The petitioner District Bar Association thus approached this Court. It has been further pointed out that the District Bar Association, Sangrur had to construct 204 chambers by way of four storey building for its members with an estimated project cost of Rs.381.60 lacs. At the time when the petition was filed, construction of chambers and library had already been started and due to non-releasing of matching grant the construction work was about to stop in-between.

Written statement on behalf of respondent No.4- Arshdeep Singh Thind- IAS, Deputy Commissioner, Sangrur had been filed by way of an affidavit dated 25.11.2014. The relevant extract of the said reply is reproduced hereinafter below:

"6. That in reply to Para No.6 of the Civil Writ Petition it is submitted that the site plan of 4th storey building of Lawyers Chamber Complex of 204 Chambers at District Court Complex, Sangrur was duly prepared by the Architect Department Patiala and was also approved by the Building Committee of Hon'ble Punjab and Haryana High Court. It is further submitted that rough estimate of Rs.381.60 Lac was received from Executive Engineer, PWD, B&R Sangrur was sent to Financial Commissioner (Revenue) Punjab Government Chandigarh vide letter No.1915/MC-3 Dated 27.02.2013 Annexure R-4/1)

7&8 XXX XXX XXX XXX

9. That in reply to Para No.9 of the Civil Writ Petition it is submitted that site plan of 4th story Building of Lawyers Chamber complex of 204 Chamber at District Court Complex Sangrur and rough estimates were duly approved by Executive Engineer, PWD, B&R Sangrur of Rs. 381.60 Lac. The same have since been sent to Financial Commissioner (Revenue) Punjab Government Chandigarh vide letter No.1915/MC-3 Date 27.02.2013 (Annexure R-4/1) by the answering respondent. Rest of the contents of this para are not related to the Answering respondent."

An additional affidavit dated 17.03.2015 of Arshdeep Singh Thind, IAS, Deputy Commissioner, Sangrur was also filed, wherein certain additional preliminary submission were taken. The relevant extract of the said affidavit is reproduced hereinafter below:

"3. It is further submitted that Rs.1.00 Crore (Rs. One Crore) was sanctioned by the Director and Special Secretary Small Savings, Finance, Chandigarh vide their no.9/3/2007-2ss/3682/4165 dated 09.08.2007 (Annexure-R-II) during the year 2007-08 from the award money quota of small saving of Chief Minister, Punjab for the construction of Lawyer Chamber at District Headquarter, Sangrur. It is also submitted that the grant

of Rs. 20.00 lakh (Twenty Lakhs) has also been granted for the construction of public toilets bathrooms for the earmarked and Bandhan Mukat funds of the Chief Minister, Punjab fund on 13.01.2009. That the detailed of the above-mentioned grant of Rs.1.2 Crores is given below:-

Sr. No.	***Expenditure***	***Amount***	***Cheque No. and date.***
1.	*Ist Instalment*	*Rs.21,00,000/-*	*209356 dated 23-11-07 in favour of District Bar Association Sangrur.*
2.	*2nd Instalment*	*Rs.27,00,000/-*	*209359 dated 10-01-08 in favour of District Bar Association Sangrur.*
3.	*3rd Instalment*	*Rs.27,00,000/-*	*209360 dated 05-02-08 in favour of District Bar Association Sangrur.*
4.	*4th Instalment*	*Rs.25,00,000/-*	*209361 dated 28-02-08 in favour of District Bar Association Sangrur.*
5.	*5th Instalment*	*Rs.20,00,000/-*	*209398 dated 05-02-09 in favour of District Bar Association Sangrur.*

The copy of receipt of the amount Annexure-1 to 5 attached hear with.

4. It is submitted that as explained in para no. 2 and 3 to the preliminary submissions, the requisite matching grant of Rs.1.00 Crore (Rs. One Crore) already and Rs. 20.00 (Twenty Lakh) has been sanctioned for the construction of Lawyers Chambers/Bar Room at Judicial Court Complex, Sangrur. As per the decision of the Government, the requisite grant for the construction of Lawyer Chambers/Bar Room at Sangrur has been sanctioned/released and utilization certificate, in this respect has been issued by the District Bar Association/ Executive Engineer (B&R) Sangrur. It is also submitted here that the reply in this respondents has also been filed in the pars No. 9 of the civil writ petition No. 5389 of 2009 which is also relates to allotment of Lawyer Chamber at Judicial Court Complex Sangrur.

5. That as para no. (e) of Notification no. 10/30/2002-RE-2(3)/5739 dated 06.08.2009 the matching grant can only be *granted once for the said purpose and the maximum limits for grant of matching grants have been mentioned in this para no. (e) of the above said notification dated 06.08.2009 and the maximum limits have been explained in para no. 1 above of the preliminary submissions. Thus, one time matching grant has already been granted to the District Bar Association Sangrur and now again for the same purpose no matching grant can be given and thus the writ petition filed by the petitioner in not maintainable and is liable to be dismissed."*

Learned State counsel further contends that the scheme in question was discontinued w.e.f. 18.07.2017.

Learned counsel for the petitioner has reiterated the averments noticed above to contend that the Govt. of Punjab had notified the policy for granting financial aid-matching grant for construction of chambers of lawyers. The notification was to be implemented from 2009-2010 and that the second phase of construction of the chambers and the Bar Library/bar Room was initiated after the coming into force of the said notification. The claim was duly forwarded by the Deputy Commissioner after accepting the same to be as per the parameters prescribed in the said notification. However, the due matching grant has not been released and that a period of nearly 09 years has elapsed since the submission of the claim for release of the matching grant on 29.01.2013. He contends that the respondents have denied the claim of the petitioner by relying on Clause "e" of the aforesaid notification, even though the said clause would not be applicable to the case of the petitioner. The grant referred to under Clause "e" has to be read only in reference of a grant actually released under the policy and not for any other prior grant/financial assistance released. Considering that the policy in question had come into force from 2009-2010, any prior money or grant released by the Government under any erstwhile policy/office order in force cannot be set off to deny the claim under the current policy, more so when no such Clause or exemption/exception has been carved out in the notification to disentitle a claim in case any prior grant had been released by the Government under any erstwhile scheme. By way of an interpretation, the respondent-State cannot introduce additional Clauses or conditions in the notified policy/scheme of the Government to deny an accrued claim.

Learned State Counsel, however, contends that the claim of the petitioner has been rightly rejected and that the details of the grants released in favour of the petitioner-District Bar Association, Sangrur for construction of lawyers' chambers in the year 2007-2008 mentioned in reply has been relied upon. He further contends that a sum of Rs.1.20 crore had already been released to the petitioner and an utilization certificate had been submitted by them for construction of lawyers' chambers and that any fresh demand could not have been made or granted under Clause "e" since it was only a one time measure. He further makes a reference to the policy of 2002 notified by the State Government to contend that under the said policy, only the land was to be allotted by the Government and that the construction of the lawyers' chambers was to be done by the District Bar Association at their own costs. He submits that the said policy had not been withdrawn and was in force. Since the land in question had been allotted under the policy of 2002, hence the District Bar Association was obligated to raise the construction at their own costs without raising any claim from the Government and no matching grant was admissible to the District Bar Association under the policy of 2009.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

In order to appreciate the controversy involved, reference is required to made to the notification dated 06.08.2009 (Annexure P-1) issued by the Revenue Branch of the Government of Punjab, whereby the policy had been framed for giving financial aid to the District Bar Associations for the construction of chambers of lawyers, bar rooms, bar libraries etc. at State level.

Some of the relevant clauses of the said notification are extracted as under:

"a) xxx xxx xxx xxx

b) The Bar Association would be of District Level or Sub Division Level. The scheme would cover only for construction of chamber, bar room and bar library and maintenance of the same will be done by the Bar Association.

c) For this purpose Bar Association will get prepare an estimate from an Engineer and after perusing the proposal shall sent the same to PWD for vetting. If the estimates will not be got prepared from an Engineer then these estimates will be got prepared from the PWD.

d) The Deputy Commissioner would send their recommendations to the Revenue department through the Finance Department for releasing of funds through Department of Planning.

e) The grant would be given for one time and for one purpose only and will be as per schedule given below:

Rupees in lacs

Purpose	*Corporation/ Town (District Headquarter*	*Others District Headquarters*	*Sub Division*
For Construction of chamber/Bar Room	*200.00*	*100.00*	*50.00*
Bar Library	*5.00*	*5.00*	*2.00*

f) This aid will be given on matching basis i.e. the Bar Association will pay 50% of the construction cost.

g) For the implementation of the scheme, other conditions would be as the notification No.10/30/2002/MA-2(3)/7424-7430 dated 11.11.2002 issued by Department of Revenue."

Besides, the relevant conditions of the notification dated 11.11.2002 are as under:

"vi) That once the Bar Association gets possession of land, it will frame rules for the allotment of individual chambers to its Members with the approval of the Deputy Commissioner clearly mentioning about the seniority of lawyers at the Bar and eligibility criteria and ensuring that no violation of rules is made and code of conduct prescribed for the lawyers is strictly implemented.

vii) That the site plan/architectural design would be prepared by the Department of Architecture in consultation with the concerned District & Sessions Judge who may consult the Bar Association. The site plan/architectural design will be got approved from the High Court. The PWD (B&R) Department would supervise the construction of Lawyers Chambers including the quality control of the material and the safety of the building. However, no supervision charges will be paid by the Bar Association to the PWE (B&R) Department and no charges will be paid to the Department of Architecture for preparing the architectural designs. If the Bar Association chooses to get the construction done at its own level, it would submit the structural designs prepared by a qualified structural Engineer(s) to the PWD (B&R) Department for prior approval.

viii) That the total expenses for the construction of lawyers Chambers will be borne by the Bar Association.

ix) xxx xxx xxx xxx

x) xxx xxx xxx xxx

xi) xxx xxx xxx xxx

xii) That after the allotment of land, the Bar Association will start construction of the complex within a period of six months after the execution of the agreement and shall complete the entire construction within two years. The Bar Association can get the construction done from any Agency but it shall be under the control and supervision of the PWD (B&R) Department."

The second policy is not in supersession of the policy of 2002 and is rather a supplementary policy. The scope of both the policies has to be understood in each context. The notification of 2002 provided for State assistance in the form of land. Construction of Chambers thereunder was to be carried out by the respective Bar Associations. Thus, the notification has to be seen in the context of the proposal then submitted to the respondents. It is not in dispute that constructions of Chambers as per the then proposal has not been undertaken. Rather the respondents have themselves acknowledged that construction had been undertaken by the respondents and even utilization certificates were furnished by the District Bar Association. There are inherent contradictions in the stand adopted and arguments raised by respondent-State. The same are noticed as below:

i) Assuming the submissions of the respondent to be correct, District Bar Associations were required to construct chambers from their owner resources. Yet, the respondents claim to have released a cash grant of near Rs.1.20 crores to the District Bar Association. Hence the prohibition in the notification of 2002 was not absolute and the respondents were themselves releasing grant under different orders/decisions.

ii) The condition in the notification of 2002 was hence restricted to the proposal submitted then and the constructions to be raised then. It is not the case of the respondents that no construction in terms of the said proposal had been raised. Hence, the said clause has to be given the interpretation in reference to the said contract.

iii) The policy of 2009 was notified after nearly 09 years of the earlier notification. The said policy only related to the construction. There is no impediment or restriction imposed in the said notification on release of grant. In the absence of any such ineligibility or the disqualification provided in the notification, the respondent cannot now read conditions into the notification by its interpretation, especially when respondents claim to have also released grants.

iv) The Deputy Commissioner himself proposed the release of the grant, which shows that there was no bar under the policy.

v) The constructions of 204 Chambers is an additional project – undertaken by the District Bar Association after the policy was notified – to cater to the additional requirement of Chambers. The same was thus a new project for which there was no fresh land allotment under the notification of 2002.

vi) All the procedures under the notification of 2009 were duly followed and project undertaken and executed on the assurance of release of grant as per the notification.

vii) The notification of 2009 also did not prohibit construction of additional Chambers and also did not prescribe that land must be purchased afresh.

viii) The notification of 2009 did not prescribe any disqualification or ineligibility. The State was surely aware of all its earlier notifications and could have prescribed the ineligibilities if it so intended.

The policies as notified by the respondents have to be read harmoniously and have been given a construction and interpretation by the respondents themselves, in a manner which would entitle the District Bar Association to the release of grant. They cannot be interpreted to give a retrospective effect and claim disbursement of dues under former decisions/ policies to be constructed as benefits under this notification, when such prohibition is not contained in the parent document.

Hence, both the policies were in force and in existence. The respective grant/aid and the benefits accrued in favour of the District Bar Association had to be dealt with in accordance with the appropriate policy. The policy of 2009-2010 was made applicable w.e.f. 2009-2010 and prescribed the procedure for seeking grant in favour of a District Bar Association. It is also not in dispute that construction of the second phase of the chambers was initiated by the District Bar Association, Sangrur after the coming into force of the aforesaid policy. The respondents have also not denied the fact that the approval of the building plan was sanctioned by the Building Committee of the High Court in the year 2013 and thereafter the claim was submitted by the District Bar Association, Sangrur. The affidavit of Arshdeep Singh Thind, IAS, Deputy Commissioner, Sangrur rather supports the case of the District Bar Association, Sangrur inasmuch as the site plan of the four storey building of the Lawyers' Chambers complex of 204 chambers was duly prepared by the Architecture Department, Patiala and was approved by the Building

Committee of the High Court within an estimated cost of Rs.381.60 lacs. The same was received by the Executive Engineer (PWD B&R) Sangrur and sent to the Financial Commissioner, (Revenue) Punjab on 27.02.2013. It was not the case set up by the Deputy Commissioner and/or the concerned Authorities of the Administration that the construction of the chambers had not commenced after coming into force of the new notification. So far as the submission of the respondents that the construction of Chambers had already been undertaken prior to notification issued by the Govt. of Punjab is concerned, the said stand is not born out from the perusal of the affidavit filed by the respondent-State. Rather documents on record prove to the contrary. The augmentation/addition of new chambers would also amount construction of Chambers and that no such classification/distinction to deny a claim has been carved out in the policy document itself. The document has to be read in its plain meaning and not in a meaning that is not the plain intent of the document.

Learned State Counsel has also argued that the Chambers have already been constructed and the scheme has been rescinded, there would thus be no purpose in directing the release of the matching grant. The said plea of the respondents/State is being noticed only to be rejected. The right in favour of the petitioner-District Bar Association accrued as per the policy then in force. Any subsequent development or completion of the project by the petitioners awaiting release of grant cannot be a circumstance to deny the accrued benefits to the petitioner-District Bar Association. The respondent-State cannot take advantage of its own lapse and to say that it has now perfected a right and is justified in denying a claim despite the delay attributable solely to the respondent-State itself. The stand adopted by the respondent-State is not only wholly contrary to the policy but is also based upon the deliberate misreading of the policy document as well.

The respondent-State is now stopped from denying the release of grant to the petitioner. It was held by the Hon'ble Supreme Court in the matter of ***'Kusuman Hotels (P) Ltd. Vs. Kerala State Electricity Board and others'*** bearing ***Civil Appeal No.101 of 2007 decided on 16.05.2008*** that even though the Government is entitled to review or change its decisions but not withdraw concessions retrospectively. The relevant extract of the said judgment read as under:

> *"16. There cannot be any doubt whatsoever that a policy decision can be reviewed from time to time. It is also beyond any doubt that the concessions granted can be withdrawn in public interest. Indisputably, the State is also entitled to change or alter the economic policies. Appellants do not have any vested right to enjoy the concessions granted to them forever, particularly when the Board is constituted and incorporated under the provisions of Electricity (Supply) Act, 1948. Any policy decision adopted by the State would not be binding on the Board, save and except provided for in the Act. The Board being an independent entity, the duties and functions of the Board vis-a-vis the State are enumerated in the Act. The Board, however, would be bound by any direction issued by the State Government on questions of policy. A dispute which may arise as to whether a question is or not a question of policy involving public interest, Central Government is the final arbiter. The policy decision adopted by the State on the basis whereof the Board felt obligated to grant electrical connection in favour of the appellants on the basis of industrial tariff must, therefore, be understood in the context of Section 78A of the 1948 Act. What is binding on the Board is the policy of the State. The direction of the State was to apply a particular category of tariff to the appellants. Such directions*

could have been withdrawn while making another tariff. The State indisputably has the power to grant subsidy from its own coffer instead of directing the Board to grant concession.

17. It is now a well settled principle of law that the doctrine of promissory estoppel applies to the State. It is also not in dispute that all administrative orders ordinarily are to be considered prospective in nature. When a policy decision is required to be given a retrospective operation, it must be stated so expressly or by necessary implication. The authority issuing such direction must have power to do so. The Board, having acted pursuant to the decision of the State, could not have taken a decision which would be violative of such statutory directions.

15.5.1999 was fixed as the cut off date by the Board. It, by itself, could not have done so. But the State for issuing the GO dated 26.9.2000 could have fixed the said cut off date on its own. We although do not agree that by granting retrospectivity to the said order, the entirety of the Government Order should be set aside the same or per se would be held to be unreasonable, but what we mean to say is that it could be given effect to only from the date of the order, i.e., prospectively and not from an anterior date, i.e., retrospectively.

18. XXX XXX XXX XXX

19. …………

It was further held:

"126. This Court distinguished its earlier decision in Kasinka Trading v. Union of India55 whereupon Mr Andhyarujina placed strong reliance, in the following terms:

> *"40. The case of Kasinka Trading v. Union of India cited by the appellant is an authority for the proposition that the mere issuance of an exemption notification under a provision in a fiscal statute such as Section 25 of the Customs Act, 1962, could not create any promissory estoppel because such an exemption by its very nature is susceptible to being revoked or modified or subjected to*

> *other conditions. In other words, there is no unequivocal representation. The seeds of equivocation are inherent in the power to grant exemption. Therefore, an exemption notification can be revoked without falling foul of the principle of promissory estoppel. It would not, in the circumstances, be necessary for the Government to establish an overriding equity in its favour to defeat the petitioner's plea of promissory estoppel. The Court also held that the Government of India had justified the withdrawal of exemption notification on relevant reasons in the public interest. Incidentally, the Court also noticed the lack of established prejudice to the promises when it said :*
>
> *`The burden of customs duty, etc. is passed on to the consumer and therefore the question of the appellants being put to a huge loss is not understandable.'*
>
> *(See also **Shrijee Sales Corpn. v. Union of India56 and STO v. Shree Durga Oil Mills)** We do not see the relevance of this decision to the facts of this case. Here the representations are clear and unequivocal"."*

***In LML Ltd. v. State of U.P. & Ors. [2007 (14) SCALE 469],** this Court opined :*

> *"38. Those suppliers, who keeping in view of their capacity to supply uninterrupted electrical energy had made a representation and pursuant thereto the consumers had altered their position, cannot be permitted to take a different stand as the doctrine of promissory estoppel would apply against them. The said doctrine is premised on the conduct of party making a representation to the other so as to enable him to arrange its affairs in such a manner as if the said representation would be acted upon. It provides for a cause of action. It need not necessarily be a defence."*

Yet again in ***U.P. Power Corporation Ltd & Anr. v. Sant Steel & Alloys (P) Ltd. & Ors. [2007 (14) SCALE 36]****, it was held :*

> *"In this background, in view of various decisions noticed above, it will appear that the Court's approach in the matter of invoking the principle of promissory estoppel depends on the facts of each case. But the general principle that emerges is that once a representation has been made by one party and the other party acts on that representation and makes investment and thereafter the other party resiles, such act cannot stated to be fair and reasonable. When the State Government makes a representation and invites the entrepreneurs by showing various benefits for encouraging to make investment by way of industrial development of the backward areas or the hill areas, and thereafter the entrepreneurs on the representations so made bona fidely make investment and thereafter if the State Government resile from such benefits, then it certainly is an act of unfairness and arbitrariness. Consideration of public interest and the fact that there cannot any estoppel against a Statute are exceptions."*

Hence, a concession cannot be denied or withdrawn once it has been accrued in favour of the claimant, who has also altered his position due to the above assurance.

The present petition is accordingly allowed. The respondent-State is directed to release the matching grant of Rs.1 crore within a period of two months from the date of receipt of certified copy of this order. Additionally, instead of awarding interest to petitioner-District Bar Association for the delayed release of grant, a costs of Rs.10,00,000/- is imposed upon the respondent-State to be deposited with the High Court Legal Services Committee, Chandigarh for unnecessary harassment and undue delay of more than 09 years to the District Bar Association, Sangrur and forcing it to come to this Court for seeking its rightful dues.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

01.12.2022.
rajender

Whether speaking/reasoned *: Yes/No*
Whether reportable *: Yes/No*