IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22532 of 2020 (O&M)
Date of Decision: 04.07.2022

G.C.S. Computers Tech. Pvt. Ltd. Patiala
......Petitioner

Vs

Union of India and others
.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. S.D. Sharma, Senior Advocate with
Mr. K.R. Sharma, Advocate
for the petitioner.

Mr. Sudhir Nar, Senior Panel Counsel
for respondents No.1 and 2.

Mr. C.L. Pawar, Sr. D.A.G., Punjab
for respondent No.3.

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RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of mandamus, directing the respondents to reimburse cost of training imparted by the petitioner (vocational training providers and its associated centres) under Skill Development Initiative Scheme floated by the respondents along with interest. Petitioner has also prayed for grant of compensation for unwarranted *sham* exercise done by the respondents causing irreparable loss of reputation to the

petitioner.

[2]. Petitioner claims itself to be a reputed organization registered under the Companies Act and has brilliant track record of outstanding contribution in the filed of training, skill development and education of the school drop outs, unemployed youths and the existing work and labour force. In the year 2010, the Ministry of Labour and Employment, Govt. of India launched Skill Development Initiative Scheme (SDIS) to provide vocational training to target population and implement the skill development initiative scheme. Under the scheme, grant-in-aid was to be received by the respective States and training cost was to be reimbursed to the vocational training providers. Petitioner applied for getting authorization as Vocational Training Provider (for short 'the VTP) over 150 locations under the aforesaid scheme. The approval was granted vide independent registration numbers in the year 2013.

[3]. Under the aforesaid scheme, the training is provided to various Vocational Training Providers (VTPs) registered under the Central Government, State Government, Public and Private Sectors and Industrial establishments/Institutes etc. The VTPs provide counselling and vocational guidance, training facilities as per norms, impart quality training, post training support to trainees in getting employment. The VTPs are reimbursed

training cost at the rate prescribed by DGE&T i.e. Respondents No.1 and 2 and the same is revised on yearly basis. Reimbursement of training cost has to be paid to VTPs within 30 days of receipt of bills and supporting documents. All reimbursement claims are to be settled within 30 days of receipt of bills.

[4]. After independent inspection of each training centre by the respondent-Department, more than 90 VTPs and associate centres were approved. Recognition was conferred upon the petitioner organization by the competent authority only after scrutiny of inspection of the centres and after assessing the credibility to undertake the obligation under the Skill Development Initiative Scheme. As per guidelines, each and every VTP Centre is an individual entity and separate registration number has been allocated to every VTP Centre.

[5]. On 15.06.2014, one of the assessing body i.e. AKG Skills wrote an E-mail to the Director, RDAT, Faridabad and the same was also marked to respondent No.2 alleging non-cooperation by various VTP Centres and the candidates were not even aware for which tests they were appearing during viva-voice and some of the students were registered for distance learning programme by the Institute. Non-incriminating findings were given against the petitioner-organization in the

assessment report which was shown in the reference of the assessment conducted four months back from the date of report. Same assessing body also conducted assessment of VTP Centres registered with CH Kansi Ram Swami Educational Society and observed in the report that in all the assessment, the assessor was pressurized telephonically to make all the candidates present. Other allegations were also raised. It was also alleged in the same E-mail by the assessing body in respect of communication gap with the petitioner and also asked for the compensation for its avoidable travelling expenses.

[6]. On 24.06.2014, respondent No.2 by ignoring the guidelines provided under the scheme, suspended the registration of the petitioner, CH Kansi Ram Swami Educational Society and VTP Centres without looking into the allegations which were never made against the petitioner. No inspection was done in this regard as per operating manual. As per para 1.7 of the guidelines for selection of vocational training providers under Skill Development Initiative Scheme (SDIS), suspension of registration of VTPs and forfeiture of bank guarantee can only be made on receipt of complaints of misrepresentation, violation of norms/standards and malpractices etc. After conducting inspection and only after finding the same to be correct, it has to be reported to the concerned State to cancel or suspend the

registration of VTP. Suspension of registration lies under the jurisdiction of the concerned State. With the suspension of registration, everything came to a halt.

[7]. On 15.07.2014, a show cause notice was issued to the petitioner by stating cancellation of registration of all the VTP Centres registered under the petitioner organization. Show cause was issued for seeking an explanation of the petitioner for cancellation of registration.

[8]. Petitioner filed its reply to the Director, Department of Technical Education and Industrial Training, Punjab on 22.07.2014, highlighting that in the complaint dated 16.06.2014 made by M/s AKG Skills (the assessing body), the allegations were not made against the petitioner and its GCS Associate Centres. Two allegations were highlighted in the complaint dated 16.06.2014 i.e. (1) The representative of these societies have put unethical pressure on assessing body to pass those candidates who were absent on that date; and (2) Qualification and experience of the instructional staff and space did not commensurate with the modules. On being pointed out that the allegations do not relate to the petitioner and its associate centres, the assessing body AKG Skills wrote to the petitioner and DTE, Punjab, stating that the allegations against the petitioner were raised due to some communication gap. In fact

the assessment was done at 16 Centres of the petitioner organization and there was no complaint against them.

[9]. On 19.08.2014, the Chief Executive Officer-cum-Director, Technical Education and Industrial Training Punjab, Punjab State Skill Development Agency recommended to drop the charges and proceedings including revocation of suspension of VTPs against the petitioner with a direction to all the assessing body to bring in future any problem faced by them during assessment to the notice of the Directorate. Vide letter dated 12.09.2014, similar request was made by the Chief Executive Officer-cum-Director Technical Education and Industrial Training, Punjab to the Director (SDI) Director General of Employment & Training, Ministry of Labour & Employment Govt. of India to drop the charges and take necessary action regarding conduct of assessment of 88 batches of various VTPs of GCS Group in the interest of trainees.

[10]. On 19.12.2014, the Chief Executive-cum-Director Technical Education & Industrial Training Punjab issued another show cause notice to the petitioner, highlighting that vide letter dated 19.08.2014, it was recommended to revoke the suspension and take other necessary actions. The reference was made to the letter dated 13.11.2014 issued by the DGET, Government of India to cancel registration of the Centres

registered in the name of GCS Computer Tech. Pvt. Ltd. Patiala, stop reimbursement to GCS Computer Tech. Pvt. Ltd. Patiala for the bills submitted, file criminal cases against GCS Computer Tech. Pvt. Ltd. Patiala and recover payment made to them earlier under SDI Scheme. Accordingly reimbursement to GCS Computer Tech. Pvt. Ltd. were stopped.

[11]. Petitioner replied to the DGE&T, Delhi directly on 26.12.2014, clarifying that wrong allegations have been made against the petitioner organization. On 18.02.2015, representations were made by the petitioner and DGE&T wrote to the State Government for its view on the representations filed by the GCS Computer Tech Pvt. Ltd. The State Government replied back to the DGE&T, stating that the State Government is unable to offer any further view on the request of the GCS Computer Tech. Pvt. Ltd. as it was not the part of the inspection committee. In the month of September, 2016, petitioner filed CWP No.18773 of 2016 challenging the suspension/ cancellation of registration its VTP Centres. The said writ petition was disposed of as withdrawn on 20.02.2017 with a liberty to file fresh petition along with other important annexures. On 21.12.2017, the respondents revoked the suspension/ cancellation of the centres of petitioner organization.

[12]. On 01.01.2018, petitioner wrote to respondent No.2 for

release of pending dues. Petitioner organization submitted bills for payment of Rs.2,03,38,100.00 for 187 batches whose training was complete, assessed and certified in all respects, but payments have not been made till date. Additionally, there were 30 batches in which 605 students had completed their training with the petitioner and its associate centres, but their assessment was pending and training cost of 605 students amounting to Rs.26,16,750.00 could not be released due to sudden suspension/cancellation of VTPs of the petitioner organization. In addition to the aforesaid, there were 115 batches in which 2304 students were at the verge of completing their training with the petitioner organization and its associate centres, but due to sudden suspension followed by cancellation of registration of VTPs, the petitioner and its associate centres had suffered a loss of Rs.1,72,53,675.00.

[13]. Petitioner organization has represented to the respondents time and again vide letters dated 01.01.2018, 09.04.2018 and 23.09.2019 for reimbursement of payments under the bills for the training provided by the petitioner organization and its associate centres. Respondent No.1 has already advised respondent No.3 to follow the guidelines issued by SDI Scheme for reimbursement of training cost raised by the petitioner organization after noticing the fact that suspension of

registration of the Centres of GCS Computer Technology Pvt. Ltd. has been revoked. Despite the aforesaid communication dated 14.03.2018, nothing has been done by respondent No.3. In the meanwhile Vigilance Bureau has also submitted its report without any finding against the petitioner. According to the petitioner, release of payment has been recommended by respondent No.2 and the petitioner had also again submitted its claim, but despite that nothing has been done by respondent No.3 till date.

With these averments, the present writ petition has been filed by highlighting that besides the representations dated 05.07.2019, 21.07.2020, a legal notice dated 31.10.2020 has also been issued to the respondents, but all in vain.

[14]. Per contra, learned State counsel has objected to the claim of the petitioner on the ground that the payment of the petitioner was not only stopped for the reasons as shown vide letter dated 24.06.2014, but also on many counts that VTP cannot enroll same candidate in another batch being run at the same point of time. In the event of finding that any VTP has enrolled the same candidate in more than one batches running at the same point of time, the registration of such VTP shall be cancelled immediately. In the case of the petitioner, numerous overlapping of batches were found trained by the VTP as

checked on the basis of course start and course end dates. Petitioner did not give any evidence of tracking trainees successfully for at least 12 months period after the completion of training nor has entered the details like status of placement, salaries/incomes in the portal. 20% of the payment of training related to reimbursement to the VTPs would have to be held back till completion of tracking of passed out trainees by VTP for one year.

[15]. In order to clarify placement data, correspondence was made with DGT (respondents No.1 and 2) vide letters dated 08.02.2018, 26.02.2018 and 14.03.2018. The DGT had reiterated vide letter dated 14.03.2018 that servers of SDI portal on which data had been uploaded by VTPs are not in working condition and data from server is proposed to be migrated in cloud server. Petitioner did not submit any documents like site plan/map of the building which was demanded from all the VTPs by respondent No.3 vide letter dated 07.12.2015.

[16]. Learned State counsel further submitted that a complaint No.156/17 was registered with the Vigilance Bureau and in the report submitted by the Vigilance Bureau, it was mentioned that approval of 08 out of 90 VTPs of the petitioner and associated VTP Centres of the petitioner were registered without the approval of the competent authority. Audit objection

was raised as per the aforesaid report and it was found that payment of Rs.22,12,27,000/- was wrongly made to the VTPs. In the report of Vigilance Bureau, it was pointed out that about the discrepancies in data of the petitioner. There was overlapping in the date of starting of course and ending thereof. Trainees had same data with respect of name, father's name, mother's name and date of birth etc. and in this way same trainees were shown as admitted in various batches, given training and accordingly training cost was claimed.

[17]. In order to counter the averments made in the written statement, the petitioner has filed replication reiterating the claim of the petitioner. Petitioner has claimed that there was no complaint made against the petitioner. In the event of filing such complaint, the same ought to have been reported to the concerned State for cancellation, however vide order dated 15.07.2014, a show cause notice was illegally issued to the petitioner which was without jurisdiction. Petitioner has not enrolled same candidate in another batch run at the same time. If any such candidate was enrolled by the petitioner, inspection as per guidelines should have been done and complaint should have been made to Punjab State Skill Development Society. In the event of filing such a complaint, a reply ought to have been asked from the petitioner by issuing show cause notice to the

petitioner, but nothing has been done in the instant case. Since there was no complaint against the petitioner, therefore, suspension of VTPs was revoked by the competent authority. All the batches of the petitioner were approved by the State after verifying eligibility of the candidates. As per operation manual all the batches were verified, approved and registered by the State. As per guidelines of SDIS dated 11.09.2013, a training batch can only be approved after an official of the State clears the batch after going through the various documents related to trainees etc. All the batches of the petitioner were duly verified before commencement of classes and the students were also allowed to appear in the examination for clearing the same.

[18]. Petitioner has denied that there was any overlapping in any of the batch trained by the VTPs. No complaint whatsoever was made in respect of allegation of overlapping. In the event of such happening, a show cause notice ought to have been given to the petitioner and after appreciating reply of the petitioner, the cancellation could have been done, but no such thing happened in the instant case. Petitioner has further submitted that guidelines dated 13.05.2014 are not applicable to the instant case, whereas guidelines dated 11.09.2013 are applicable to the petitioner wherein it has been mentioned that if any

candidate does not get the job, then 10% could be deducted on the basis of guidelines dated 11.09.2013. Petitioner has not claimed 10% because it could not get the job as per guidelines dated 11.09.2013 under which the petitioner is entitled for 90%. The guidelines dated 13.05.2014 are not applicable as the same are prospective in nature. These guidelines are applicable to those batches which were started w.e.f. 01.06.2014. The batches of petitioner started before 01.06.2014 and the applicable guidelines were the guidelines dated 11.09.2013.

[19]. The site plan and map of building etc. were already given to respondent No.3 at the time of approval of registration of 90 VTPs. In the letter dated 07.12.2015 attached as Annexure R-8 of the reply of respondent No.3, it has been mentioned that those VTPs, who had already sent the site plan and map of the building were not required to send them again. Since the VTPs had already given the site plan etc., therefore, the allegation is far from reality. All the 90 centres of the petitioner were duly approved and registered. Petitioner was never informed that 8 centres were not approved. Before approval and registration, each and every formality (like scrutiny of all applications of the VTPs) in respect of infrastructure were made and it was only thereafter all the 90 VTPs were registered and approved. There was no complaint made in respect of non-

approval of 8 centres at any point of time. Petitioner was never asked to explain any lapse allegedly found by the audit department. The amount of Rs.22,12,27,000/- was not given to the petitioner alone, but the same was the total payment of the VTPs registered under the concerned States which are 100 in numbers to whom such payments would have been released. There was no overlapping date of starting of course and ending thereof, viz-a-viz. name, father's name, mother's name and date of birth etc., because no complaint was ever received against the petitioner, nor was any show cause notice issued to the petitioner. Petitioner has denied all these allegations.

[20]. Learned Senior counsel for the petitioner submitted that in the vigilance report, no fault of the petitioner was found. It was stated against the officials. Learned Senior counsel on the strength of ***M/s Hindustan Sugar Mills vs. State of Rajasthan and others, 1981 AIR (SC) 1681***; ***Sanjeev Kumar Dwivedi vs. State of Bihar and others, 2006(7) R.C.R. (Civil) 765***; ***ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Limited & Ors. 2004(3) SCC 553***; ***CWP No.9744 of 2001 titled 'Vijay Kumar and another vs. Punjab Financial Corporation and another', decided on 07.01.2002***; ***M/s Janta Land Promoters Limited vs. State of Punjab and others; 2010(20) R.C.R. (Civil) 198***; ***Civil Appeal No.6383 of***

<u>2012 titled 'M/s Real Estate Agencies vs. Govt. of Goa and Ors.', decided on 10.09.2012</u> and ***<u>Civil Appeal Nos.3956-3957 of 2017 titled 'Vide Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra Ltd. & Anr. vs. Shishir Realty Private Limited & Ors. Etc. decided on 29.11.2021</u>*** submitted that when an instrumentality of State acts contrary to the public good/ interest, unfairly and unreasonably, then it really acts contrary to the constitutional guarantee under Article 14 of the Constitution of India. It is the duty of the Central Government to honour its legal obligation arising out of contract and not to drive the citizen to file a suit for recovery of the amount. The State cannot seek to defeat the legitimate claim of the citizen by adopting an illegal attitude, but should do what fairness of justice demands. In the contractual matters relating money claim, the State cannot act arbitrarily and the actions of the State are amenable to writ jurisdiction. The service rendered by the petitioner is not gratuitous, rather the petitioner has done work for the public good and the State cannot take the plea of depriving the petitioner of its payment for the work done.

[21]. Perusal of record would show that the petitioner has sought writ of mandamus on the basis of pleaded case. In the written statement filed by respondent No.3, a stand has been

taken in respect of denial/rejection of claim of the petitioner in terms of grounds taken in para No.4 of the written statement. In my considered view, the petitioner needs to be given an opportunity to highlight all these grounds by way of detailed representation before respondent No.3. The parties cannot be allowed to plead in piecemeal and to reiterate by means of replication without setting forth a concrete demand in respect of establishing its monetary claim.

[22]. In the light of facts and circumstances of the case, even if I find that a writ is maintainable on the strength of aforesaid precedents, still I deem it appropriate to allow the petitioner to file a comprehensive representation including the pleadings of the written statement as well replication and thereafter respondent No.3 would be obligated to pass a detailed order. The applicability of the guidelines dated 13.05.2014 or 11.09.2013 is to be decided by respondent No.3. Similarly the findings recorded in the report of vigilance inquiry have to be put to the parties whether the same are recorded against the petitioner or against the officials. The cloud/clog created on the entitlement of the petitioner in the written statement has to be spelt out by respondent No.3 with reference to the contents of replication filed by the petitioner, reiterating the stand with additional grounds. Similarly, respondent No.3

would be under legal obligation to highlight whether any complaint was made against the petitioner in respect of allegation of overlapping timings at any point of time. Whether such allegations are required to be proved by issuance of show cause notice to the petitioner and after establishing the misconduct on receipt of reply by the petitioner. Respondent No.3 shall also be obligated to verify whether the petitioner was exempted from filing site plan or map of the building on the basis of letter dated 07.12.2015, wherein it was observed that those VTPs, who had already sent the site plan, map etc. were not required to send these documents again. Respondent No.3 shall also form an opinion whether the misconduct was related to CH Kansi Ram Swami Educational Society alone and the petitioner was lawfully exonerated by dropping the charges vide order/letter dated 21.12.2017. Respondent No.3 shall also advert to the genuineness/letter dated 01.01.2018 written by petitioner to respondent No.3 and findings in the report submitted by the Vigilance Bureau, if any, endorsing the claim of the petitioner towards release of payments.

[23]. In the light of aforesaid facts, it would be just and appropriate to relegate the petitioner to file a comprehensive representation before respondent No.3. In the event of filing such representation, respondent No.3 would be obligated to

decide the same in accordance with law preferably within a period of one month from the receipt of such representation. If the claim of the petitioner is established, then the needful in the context of releasing the payment be done forthwith. If the claim of the petitioner is found to be not sustainable in law, then a copy of order be supplied to the petitioner within reasonable time so as to enable the petitioner to avail legal remedy in accordance with law.

[24]. With the aforesaid observations, this writ petition is disposed of.

(RAJ MOHAN SINGH)
JUDGE

July 04, 2022
Atik

Whether speaking/reasoned Yes/No

Whether reportable Yes/No