

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-1660-2023 (O&M).
Date of Decision: 29.08.2023.

GURVINDER KAUR

...Petitioner

Versus

THE DIRECTOR KHADI AND VILLAGE INDUSTRY
COMMISSION AND OTHERS

...Respondents

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

Present: Mr. Sanjeev Sharma, Advocate,
for the petitioner.

VINOD S. BHARDWAJ. J (ORAL).

CM-12040-CWP-2023

The instant application has been filed under Section 151 of the
Code of Civil Procedure, 1908 for placing on record the office
Memorandum dated 13.05.2022 as Annexure P-15.

The application is allowed subject to all just exceptions.

Annexure P-15 is taken on record.

The Registry is directed to tag the same at appropriate place.

Main case

Challenge in the present petition is to the communication dated 08.12.2022 (Annexure P-13) vide which the loan application of the petitioner was rejected by the respondents No.3 and 4-financial bank

Learned counsel for the petitioner contends that the Government of India had notified Prime Minister Employment Generation Program (PMEGP) and as per the eligibility conditions prescribed therein any person above the age of 18 years and being an unemployed could avail margin money subsidy to the extent of 25% of the project cost in the rural areas and 15% of the project cost in urban areas and for beneficiaries belonging to special category such as Schedule Tribe/ women, the margin money subsidy was increased by another 10% each. He contends that the petitioner had applied under the aforesaid PMEGP Scheme at erstwhile Oriental Bank of Commerce (OBC) Anandpur Sahib Branch which is now part of the Punjab National Bank (PNB) to avail a loan of Rs.15 Lakhs on 31.05.2019 under the PMEGP Scheme. The said application remained pending with the respondents-bank for nearly 09 months which is in violation of the PMEGP scheme document which mandates a decision to be taken within a period of 90 days from submission of the application for release of subsidy. The said application was rejected only on 01.12.2020.

The petitioner claims to have submitted a complaint against the said rejection whereupon a verbal agreement is stated to have been

entered into between the petitioner and the respondent bank as per which the application of the petitioner was to be re-submitted and the bank was to consider the same afresh as per the norms.

A fresh application was accordingly submitted on 12.08.2020 by reducing the claimed subsidy amount from Rs.15 lakhs to Rs.10 lakhs and the said forms along with documents were duly uploaded by the petitioner.

Notwithstanding that the agreement had already been executed between the petitioner and the respondent bank, they still rejected the application even for the second time, without any valid considerations and in an illegal and arbitrary manner.

It is contended that the petitioner had undergone a training of 15 days under the KVIC, which is the Nodal Agency prescribed under the PMEGP Scheme, and had also taken land on lease for setting up a Bee Keeping Project as per the requirements stipulated in the Scheme and had thus altered his position on the assurance of the respondents.

Reference was also made to the provisions of the PMEGP Scheme as approved and it was contended that the object of the Scheme was to generate employment opportunity within rural as well as urban areas of the country by setting up new self-employment ventures/projects/micro enterprises and to provide for continuous and sustainable employment to a large number of traditional and prospective artisans and rural and urban unemployed youth in the Country and to help arrest migration of rural youth to urban areas. Reference was also

made to the eligibility conditions as prescribed in clause No.4 of the Scheme which reads thus:-

4. Eligibility Conditions of Beneficiaries

4.1 For PMEGP new enterprises (Units)

- (i) Any individual, above 18 years of age*
- (ii) There will be no income ceiling for assistance for setting up projects under PMEGP*
- (iii) For setting up of project costing above Rs 10 lakh in the Manufacturing sector and above Rs. 5 lakh in the Business /Service sector, the beneficiaries should possess at least VIII standard pass educational qualification.*
- (iv) Assistance under the scheme is available only for new projects sanctioned specifically under the PMEGP.*
- (v) Existing Units (under PMRY, REGP or any other scheme of Government of India or State Government) and the units that have already availed Government Subsidy under any other scheme of Government of India or State Government are not eligible.”*

He also contends that clause 6 of the aforesaid scheme incorporates that financial institutions i.e. all public sector banks would be the other agencies as per Clause 5.2 of the Scheme which are involved in the implementation of the Scheme. It is contended that notwithstanding the timelines prescribed under the modalities of online process under the Scheme, the respondent bank had not taken any decision on the loan application preferred by the petitioner.

Learned counsel for the petitioner further refers to clause 11.11 of the above said Scheme which reads thus:-

“11.11 District Level Monitoring Committee (DLMC), consisting of the following members, will be set up in each district to monitor the performance of implementation of PMEGP in their respective district on quarterly basis and submit report to the Commissioner/Principal Secretary (Industries),

a. District Magistrate/Deputy Commissioner/Collector or his/her representative not below the rank of Deputy Collector- **Chairman**

b. PD-DRDA/EO- Zilla Panchayat. **Vice Chairman**

c. Lead Bank Manager- **Member**

d. Representative of KVIC/KVIB/DIC/Other IAS- **Member**

e. Representative of NYKS/SC/ST Corporation- **Special Invitee**

f. Representative of MSME-DI, ITI/Polytechnic- **Special Invitee**

g. Representative from Panchayat **3 members**

(To be nominated by Chairman/District Magistrate/ Deputy Commissioner/ Collector by rotation)

h. Director RSETI/RUDSETI. **Member**

h. General Manager, DIC of the District – **Member Convener”**

Referring to the aforesaid clause, it is argued that the District Monitoring Committee has been ordered to be constituted for evaluating the performance and implementation of the PMEGP Scheme in their respective Districts and submit report to the Commissioner/Principal Secretary of the Industries which makes them subject to State control. He further vehemently argues that the petitioner

being a marginalized unemployed youth, there is no reason as to why a self-employment generation opportunity be not extended to him and that denial of subsidy defeats the object and purpose of the Scheme.

I have heard the learned counsel for the petitioner and have gone through the documents available on record. The Scheme document has also been examined.

At the outset, a query had been raised to the petitioner as to how the Financial Institution is bound by any recommendations of the implementing Agency and is obligated as per the Scheme to extend the loan facility and as to whether the Financial Institution has the autonomy to take a decision with respect to the commercial viability of a project recommended by the implementing agency or not. He has been confronted with clause 11.13 and 11.14 of the aforesaid scheme document which reads thus:-

“11.13 The Bank will appraise the projects and take their own credit decision on the basis of viability of each project
No collateral security will be insisted upon by banks in line with the guidelines of RBI for projects involving loan up to Rs.10 lakh in respect of the projects forwarded to them by the agencies. However, they will appraise projects both technically and economically after ensuring that each project fulfills inter alia the criteria of

- i. Industry*
- ii. Per Capita Investment*
- iii. Own Contribution*
- iv. Rural Areas and*
- v. Negative List (Para 30 of the guidelines)*

11.14 The Banks will either sanction or reject the loan application within a stipulated period. Sanction will be issued online and copies of the sanction order will be sent to the applicant (by e-mail/hard copy) as well as to KVIC/ KVIB/ DIC/other IAS within 30 days from the receipt of application from the District Agencies The sanction letter will also be automatically forwarded to the online EDP portal and concerned RSETI, or other authorized training centre, for conduction of EDP training in case where the applicant has not undergone the training. The prescribed EDP training is mandatory before releasing of loan by the Banks. In case of delay in sanctioning of loan by Banks, applicants can file complaint on PMEGP grievance portal, which shall reach the concerned nodal officer within two working days. The nodal officers of the concerned implementing agency shall take immediate necessary action to resolve the issue in consultation with the lead bank manager.”

(Emphasis supplied)

It is evident from a perusal of the aforesaid clause of PMEGP Scheme document that after a recommendation is made by the implementing agency/other agencies for extending capital subsidy, the project is put up before the bank for their own evaluation and appraisal. The bank is thereafter required to take “**their own credit decision**” on the basis of viability of each project. Further clause 11.14 of the aforesaid Scheme document empowers the bank to take a decision as regards the sanction or rejection of the loan application. Any delay in the decision making process does not give rise to a binding obligation on the respondent-bank to sanction the loan application.

Capital Subsidy is only a part of the total project cost which is to be reimbursed by the Government and the balance amount is a risk which has to be appraised and evaluated by the financial institution itself and that the above said autonomy has been duly granted to the bank under the above said Scheme itself to enable it to take its own credit decision and as to whether the project is to be sanctioned or rejected. The criteria/guidelines for evaluation of the viability of the project submitted for loan have been provided, yet the final decision has been left to the commercial wisdom, appraisal and efficacy of the financial institution.

It is evident from a perusal of the rejection of credit proposal vide Communication dated 08.12.2022 (Annexure P-13) that following reasons for rejection had been recorded by the financing bank:

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“8. Reason for rejection: The reasons for rejecting the aforesaid proposal is as under-

1. The same proposal was submitted by B/o Anandpur Sahib in January 2021. During the due diligence the bank officials found that quotation was fake as the shop located as per address mentioned on Quotation (Shop no 40, New shopping Centre) is dealing in immigration and Visa business and not in bee keeping equipment and no stock of bee keeping unit is present there, as per visit report made by Ms. Astha Rani (Asstt. Manager Agri) & Mr. Harishupender Singh (Manager Agri) dt. 12.02.2021.

2. Further, it was found that Mrs. Gurvinder Kaur is currently working with Mr. Angrej Singh (Shop no 40, New shopping Centre) whose land is taken on lease by the applicant for bee keeping project and also the supplier of equipment. As such, In the present instance, Mr. Angrej Singh is the employer of applicant, lessor of land and the supplier of the equipment for bee keeping. However, as per visit report Mr. Angrej Singh is having a business of immigration and Visa.

3. Keeping in view the above facts submitted by PLP Mohali and recommendation of PLP Head Mohali for rejection of proposal on above grounds, the same was rejected by ZOCAC-1 dated 10.03.2021.

4. Mr. Om Prakash (Manager Agriculture) conducted the visit on 21-11-2022 and submitted that while inquiring from the neighborhood he found that applicant doesn't have satisfactory reputation.

As the customer has been tried to defraud with the bank in the past. Hence you are requested to accord permission to decline the proposal on grounds of unsatisfactory due diligence for rejection of proposal on above grounds of Rs.9.50 Lakhs in favour of Smt. Gurvinder Kaur.”

A perusal of the aforesaid shows that the respondent financial institution has specifically noticed that the same proposal had earlier been submitted by the Branch of Anandpur Sahib in January 2021 and it was found that the quotation was fake as the shop located at the address mentioned in the application was dealing with Immigration And

Visa business and that no Bee Keeping Equipment or stock of Bee Keeping was found there. A report in this regard was submitted by the Assistant Manager Agriculture and the Manager Agriculture. Further, the petitioner claimed to be working with one Angrez Singh in Shop No.40, New Shopping Centre and had claimed to have taken land on lease from said Angrej Singh. The claim thus made with respect to Angrej Singh was that he is not only the employer of the petitioner-applicant; lessor of land but also the supplier of equipment of Bee Keeping whereas on a factual verification Angrej Singh was found to be carrying on the business of Immigration and Visa. Hence, on the above said ground itself, the application was suspect. Other aspects as have been noticed in clause 3 and 4 also weighed upon the respondent financial institution for not approving the proposal as a bona fide proposal for conducting a business and sanction credit facility.

In so far as the contention of the petitioner that there was an oral agreement between the petitioner and financial institution is concerned, the same cannot be accepted at this stage as there is no supporting documentary evidence that might suggest existence of an oral agreement and to supersede the decision that has already been taken by the respondent financial institution. The reasons given by the respondent financial institution cannot also be said to be arbitrary, lacking objectivity or passed upon malice or ill-will against the petitioner.

In so far as reliance on clause 11.11 of the Scheme is concerned, the same is regarding monitoring with respect to the implementation of the project and said monitoring comes at different

stages i.e. at the stage of verifying about the status of the projects that were recommended by the implementing agency and the status of the said projects after the sanction and disbursement of loan. The said clause nowhere obligates a bank to disburse a financial credit.

In exercise of the powers of judicial review under Articles 226/227 of the Constitution of India, a High Court does not sit in financial discipline or exercises control over the business decisions taken by a financial institution and that the said decision is to be left best for evaluation by the concerned financial institution itself. Needless to mention that public sector banks deal with public money and the assessment of risk is the prerogative of such public sector banks.

High Court examines the decision making process and the decision for the reasons concerned. Unless the decision is unreasonable on a Wednesbury principle, it would not be appropriate for the High Court to sit over the autonomy of financial institutions and substitute its decision for theirs.

Taking into consideration that the loan application had been considered by the bank and for some objective reasons, the same was found to be unviable. The High Court does not determine validity on the number of reasons cited but on the ground as to whether the conclusion drawn flows from consideration of the same. Sufficiency of grounds and satisfaction are subjective to the decision making authority. It would be improper for the High Court to substitute its view for that of the authority when such view is a possible view merely because the High

Court has a view other than that of the competent Authority. In the absence of any binding obligation of the financial institution to advance loan against all projects, I find that there is no infirmity, illegality or impropriety in the decision taken by the respondent financial institution.

The instant petition is accordingly dismissed.

August 29 2023.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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