

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

WP (C) 1216/2020
CM No.3055/2020 c/w
WP(C) 379/2020
CM 745/2020

Reserved on : 12.01.2021
Pronounced on: 19 .01.2021

Mubashir Ashraf Bhat

...Petitioner(s)

Through:- Mr. M. Ayoub Bhat, Advocate.

V/s

Union Territory of Jammu and Kashmir and others

..Respondent(s)

Through:- Mr. Sheikh Feroz, Dy.AG

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1 By this common judgment, the above noted two writ petitions are proposed to be disposed of.

2 Through the medium of writ petition bearing WP(C) No.379/2020, the petitioner has sought a direction against the respondents for release of all the installments of fee in her favour and transfer the same to M/S Khwaja Younus Ali Medical College, Bangladesh, so that she is able to pursue her MBBS course. Further, a Writ of Certiorari for quashing of order/letter/communication dated 31.01.2020 has also been sought.

3 During the pendency of aforesaid writ petition, a writ petition bearing WP(C) No. 1216/2020 came to be filed seeking a direction to the respondents to release the instalments of education loan as per the breakup given in the letter of sanction dated 24.12.2018 with a further direction to release the instalments of loan to M/S Khwaja Younus Ali Medical College, Bangladesh.

4 The controversy involved in both the aforesaid writ petitions is with regard to release of education loan stated to have been sanctioned in favour of the petitioner by respondent Nos.3 and 4. In fact, the relief sought in both the writ petitions is identical in nature, therefore, this Court is of the opinion that there was no necessity for the petitioner to file the second writ petition for the relief which was already subject matter of the first writ petition.

5 Be that as it may, the facts giving rise to filing of aforesaid writ petitions are that the petitioner had approached the Jammu and Kashmir Women's Development Corporation (hereinafter referred to as the 'Corporation') under the Scheme floated by National Minorities Development and Finance Corporation (hereinafter referred to as 'NMDFC') for pursuing MBBS course in the Community Based Medical College, Bangladesh. The aforesaid College issued admission offer letter dt.03.09.2018 in favour of the petitioner, on the basis of which education loan in the amount of Rs.30.00 lac was sanctioned by the respondent-Corporation in favour of petitioner for pursuing MBBS course in the aforesaid College. In this regard, sanction letter dated 24.12.2018 was issued by the respondent-Corporation after verifying the antecedents of the

petitioner and upon execution of a Mortgage Deed by the father of petitioner in favour of the respondent-Corporation.

6 According to the petitioner, there was delay on the part of the respondent-Corporation to sanction the loan, as such, the first installment of loan could not be released in favour of the aforesaid College by 20.11.2018, the last date stipulated for deposition of the fee. It is the case of the petitioner that the first installment of loan was released by the respondent-Corporation only on 24.02.2019, but the College authorities refused to admit her, as a consequence whereof, the petitioner approached M/S Khwaja Younus Ali Medical College, Bangladesh through her consultancy service and secured her admission in the said College. Thereafter the first installment of fee, that had been transferred by the respondent-Corporation to the Community Based Medical College, Bangladesh was, in turn, transferred to M/S Khwaja Younus Ali Medical College, Bangladesh.

7 It is contended by the petitioner that the information regarding the change in College was conveyed by her to the respondent-Corporation, but without going into reasons therefor, the Corporation issued letter dated 31.01.2020 directing the petitioner to repay the amount of loan which had been released in her favour. This prompted the petitioner to file Writ petition bearing WP(C)No. 379/2020.

8 It is the further case of petitioner that she has completed her first year of MBBS course in M/S Khwaja Younus Ali Medical College, Bangladesh and she is now pursuing her second year of MBSS Course in the said College. According to the petitioner, the College authorities have issued a notice to her for depositing the second-year fee before appearing in

the examination and when she approached the respondent-Corporation for release of second installment, the respondent-Corporation refused to do so. According to the petitioner, the action of the respondent-Corporation in this regard is unreasonable and without any justification and that the said action of the Corporation has put her career at risk, which has compelled her to file the second writ petition bearing WP(C) No.1216/2020.

9 The respondent-Corporation has resisted both the writ petitions by filing objections thereto. In their objections, the respondent-Corporation has contended that the petitioner has raised disputed questions of fact which cannot be gone into and determined in the writ jurisdiction. On merits, the respondent-Corporation has submitted that on 30.12.2019, the father of the petitioner approached the Corporation stating that the first installment of loan, that was released by the Corporation in favour of Community Based Medical College, Bangladesh, has been transferred to Khwaja Younus Ali Medical College, Bangladesh as the petitioner could not secure a seat for herself in the Community Based Medical College. It was further requested by father of the petitioner that the second installment of loan be released in favour of Khwaja Younis Ali Medical College. According to the respondent-Corporation, the transfer of amount was made without information to it and, as such, the request of the petitioner could not be accepted. It is the case of respondent-Corporation that the loan was sanctioned by the Corporation in favour of petitioner for her admission to five years MBBS course at Community Based Medical College, Bangladesh and not for her admission to M/S Khwaja Younus Ali Medical College, as such, the Corporation cannot release the loan in favour of petitioner, the same being against the terms and conditions of the sanction.

It is contended that the application form for grant of education loan filled up by the petitioner was duly authenticated by the Community Based Medical College, Bangladesh and structure and schedule of fee payable to the said college was also forwarded by the college. It is further contended that the act of petitioner to get back the first installment of fee from the aforesaid College and transfer the same, on her own, to Khwaja Younus Ali Medical College, Bangladesh virtually amounts to a fraud as the same has been done without the consent of the Corporation. On the basis of these assertions, the respondent-Corporation has sought dismissal of both the writ petitions.

10 I have heard learned counsel for the parties and perused the record of both the writ petitions.

11 The short question involved in this case is whether in these proceedings the petitioner can seek a direction upon the respondent-Corporation to release the loan amount sanctioned in her favour to a College different from the one mentioned in the sanction letter. Before determining this question, it has to be borne in mind that the sanction and release of loan amount by a Financial Institution in favour of a borrower is purely a contractual matter governed by the terms and conditions of the loan agreement. Thus in the instant case transaction pertaining to release of loan amount by the Corporation in favour of petitioner is governed by the terms and conditions of the sanction letter and the Mortgage Deed executed by the father of petitioner in favour of the Corporation. Therefore, this Court has to approach the matter by keeping in mind the principles governing the scope of writ jurisdiction in contractual matters.

12 In **Noble Resources Limited vs. State of Orissa and another, 2006 (10) SCC 236**, the question as to whether a writ petition was maintainable in contractual matters and if so, what is the scope of jurisdiction of the Court in such matters, the Supreme Court observed as under:

“It is trite that if an action on the part of the State is violative of the equality clause contained in [Article 14](#) of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny would be more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of [Article 14](#) of the Constitution. While exercising contractual powers also, the government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on its part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter.

This dicta of law was laid down by this Court as far back in 1977, wherein this Court in [Radhakrishna Agarwal and Others v. State of Bihar and Others \[\(1977\) 3 SCC 457\]](#) accepted the division of types of cases made by the Patna High Court in which breaches of alleged obligation by the State or its agents could be set up. It reads as under :

“(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of [Article 299](#) of the Constitution;

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State; and

(iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State."

It was further observed :

"In the cases before us, allegations on which a violation of [Article 14](#) could be based are neither properly made nor established. Before any adjudication on the question whether [Article 14](#) of the Constitution could possibly be said to have been violated, as between persons governed by similar contracts, they must be properly put in issue and established. Even if the appellants could be said to have raised any aspect of [Article 14](#) of the Constitution and this Article could at all be held to operate within the contractual field whenever the State enters into such contracts, which we gravely doubt, such questions of fact do not appear to have been argued before the High Court. And, in any event, they are of such a nature that they cannot be satisfactorily decided without a detailed adduction of evidence, which is only possible in ordinary civil suits, to establish that the State, acting in its executive capacity through its officers, has discriminated between parties identically situated. On the allegations and affidavit evidence before us we cannot reach such a conclusion. Moreover, as we have already indicated earlier, the correct view is that it is the contract and not the executive power, regulated by the Constitution, which governs the relations of the parties on facts apparent in the cases before us."

It may, however, be true that where serious disputed questions of fact are raised requiring appreciation of evidence, and, thus, for determination thereof, examination of witnesses would be necessary; it may not be convenient to decide the dispute in a proceeding under Article 226 of the Constitution of India”.

13 It is pertinent to mention here the Supreme Court in **Radhakrishna Aggarwal’s case (supra)**, while dealing with cases of type (iii) mentioned above, categorically observed that no writ or order can be issued under Article 226 of the Constitution in such cases to compel the authorities to remedy a breach of contract pure and simple.

14 Similarly, in **Kisan Sehkar Chini Mills Ltd vs. Vardan Linkers, (2008) 12 SCC 500**, the Supreme Court held as follows:

“If the dispute was considered as purely one relating to existence of an agreement, that is, whether there was a concluded contract and whether the cancellation and consequential non-supply amounted to breach of such contract, the first respondent ought to have approached the Civil Court for damages. On the other hand, when a writ petition was filed in regard to the said contractual dispute, the issue was whether the Secretary (Sugar), had acted arbitrarily or unreasonably, in staying the operation of the allotment letter dated 26.3.2004 or subsequently cancelling the allotment letter. In a civil suit, the emphasis is on the contractual right. In a writ petition, the focus shifts to the exercise of power by the authority, that is whether the order of cancellation dated 24.4.2004 passed by the Secretary (Sugar), was arbitrary or unreasonable. The issue whether there was a concluded contract and breach thereof becomes secondary. In exercising writ jurisdiction, if the High Court found that the exercise of power in passing an order of cancellation was not arbitrary and unreasonable, it should normally desist from

giving any finding on disputed or complicated questions of fact as to whether there was a contract and relegate the petitioner to the remedy of a civil suit.”

The Court further went on to observe as under:

Even in cases where the High Court finds that there is a valid contract, if the impugned administrative action by which the contract is cancelled, is not unreasonable or arbitrary, it should still refuse to interfere with the same, leaving the aggrieved party to work out his remedies in a Civil Court. In other words, when there is a contractual dispute with a public law element, and a party chooses the public law remedy by way of a writ petition instead of a private law remedy of a suit, he will not get a full fledged adjudication of his contractual rights, but only a judicial review of the administrative action. The question whether there was a contract and whether there was a breach may, however, be examined incidentally while considering the reasonableness of the administrative action. But where the question whether there was a contract, is seriously disputed, the High Court cannot assume that there was a valid contract and on that basis, examine the validity of the administrative action”.

15 The Supreme Court in **Rishi Kiran Logistics Private Limited vs. Board of Trustees of Kandla Port Trust and ors, (2015) 13 SCC 233**

has further observed as under:

“Ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages. He would be entitled to the relief of specific performance, if the contract was capable of being specifically enforced in law. The remedies for a breach of contract being purely in the realm of contract are dealt with by civil courts. The public law remedy, by way of a writ petition under [Article 226](#) of the Constitution, is not available to seek damages for breach of

contract or specific performance of contract. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 may be invoked.”

The Court further went on to conclude as under:

“It thus stands crystalised that by way of writ petition under Article 226 of the Constitution, only public law remedy can be invoked. As far as contractual dispute is concerned that is outside the power of judicial review under Article 226 with the sole exception in those cases where such a contractual dispute has a public law element”.

16 From the foregoing discussion of law on the subject, it is clear that Writ Court has a limited jurisdiction in contractual matters. Ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages or for enforcing specific performance of terms of the contract in a Civil Court. It is only in cases where a Public Authority has acted arbitrarily or unreasonably or with *malafide* intention that the Writ Court would step in.

17 With the aforesaid legal position in mind, let us now advert to the facts of the instant case. It is not in dispute that the education loan was sanctioned by the respondent-Corporation in favour of the petitioner for getting her admission in the Community Based Medical College, Bangladesh. The same is clearly spelt out in the sanction letter dated 24.12.2018. Even the Mortgage Deed executed by father of the petitioner in favour of respondent-Corporation provides that the loan of Rs.30.00 lac has been sanctioned for completion of five years MBBS course at the Community Based Medical College, Bangladesh.

18 A perusal of proforma of loan application for education loan which is uploaded on the website of Jammu and Kashmir Women’s Development

Corporation shows that while processing the said application, a certificate from the Principal/Head of the Institute has to be obtained by a student certifying that the student has been selected for a course in the said Institute with a further certificate that the said Institute or Organization is a Government/Government recognized Institute. This means that it is only upon the issuance of a certificate by the institute authenticating the fact that the loanee has been admitted to a particular course in the said institute and that the said institute is a government recognized institute that the loan is sanctioned by the Corporation. It appears from the terms of the sanction letter and the mortgage deed that the identity and credentials of the institution where the petitioner/loanee proposed to undergo studies was an essential component of the transaction relating to the education loan. Obviously, in the instant case, the loan was sanctioned by the respondent-Corporation on the condition that the petitioner had got admission in the Community Based Medical College, Bangladesh. M/S Khwaja Younus Ali Medical College, Bangladesh was not in picture at all at the time of sanction of education loan in favour of the petitioner, as such, admittedly the loan was not sanctioned by the Corporation in favour of the petitioner for undergoing the course in the said College. That being the case, the action of the respondent-Corporation in not releasing the second installment of loan in favour of the petitioner appears to be justified and the same cannot be termed either arbitrary or *malafide*. In fact, there are no allegations of malafides in the writ petitions against the respondent-Corporation.

19 So far as the action of the respondent-Corporation directing the petitioner to refund the first installment of loan amount is concerned, the

same also appears to be justified because the petitioner admittedly had, on her own, transferred the first installment of loan from the Community Based Medical College, Bangladesh to M/S Khwaja Younis Ali Medical College, Bangladesh without informing the respondent-Corporation which is a breach of terms and conditions of the sanction letter.

20 For the foregoing reasons, I do not find any scope for this court, particularly in exercise of its writ jurisdiction, to interfere into the action of respondent Corporation in not releasing the instalments of loan in favour of the petitioner, the same being purely a matter relating to contractual obligations of the parties. The issue whether there was any delay on the part of the respondent-Corporation in sanctioning of loan in favour of petitioner, which according to her resulted in cancellation of her admission in the Community Based Medical College, Bangladesh, is a disputed question of fact which cannot be gone into in these proceedings. It would be open for the petitioner to approach the Civil Court and agitate this aspect of the matter for obtaining appropriate relief against the respondent-Corporation.

21 In view of the aforesaid discussion, both the writ petitions are dismissed.

22 Before parting, this Court would like to deprecate the practice of filing successive writ petitions for the same relief after failing to get the interim relief in the earlier writ petition(s). The present case is a classic example of the same. The petitioner, after having failed to get an interim order for release of loan instalment in earlier writ petition W.P (C) No.379/2020, filed a second writ petition W.P.(C) No.1216/2020 for a similar relief. Ordinarily, this Court would have imposed heavy costs upon

the petitioner for resorting to this unhealthy practice, but, having regard to the fact that the petitioner is a student, a lenient view of the matter is taken and the petitioner is warned to be careful in future in such matters.

(SANJAY DHAR)
JUDGE

Jammu
19.01.2021
Sanjeev PS

This judgment is pronounced by me in terms of Rule 138 (3) of J&K High Court Rules, 1999.

(PUNEET GUPTA)
JUDGE

Whether the order is speaking : Yes
Whether the order is reportable : Yes