
(1991) 03 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 19471 of 1984

Academy of Music

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 14-03-1991

Acts Referred:

Constitution of India, 1950 — Article 203, 204, 205

Citation : (1991) ILR (Kar) 3111 : (1991) 2 KarLJ 91

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : K.R.D. Karanth and K. Gopal Hedge, for the Appellant; C. Shivappa, General, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna, J.—Academy of Music has questioned the order of the Government dated 29-11-1984 rescinding an earlier order dated 7-1-1981 under which the State Government had converted the loan of Rs. 20.20 lakhs to the petitioner into a grant.

2. The facts leading to the impugned order and consequently the Writ Petition may be stated briefly:-

Academy of Music, which is a body registered under the provisions of the Karnataka Societies Registration Act, 1960, obtained a site on lease from the Bangalore City Corporation in 1970, An edifice as a befitting memorial to late Sri Chowdiah, the internationally reputed violinist of Karnataka, was decided to be put up by the petitioner at an estimated cost of Rs. 61 lakhs. The monumental construction is now come to be known as "Chowdiah Memorial Hall" situate in Vyalikaval, Bangalore. Funds were collected from various sources from among the members of the public and loans were raised from Banks with an initial grant of loan by the State Government also. The loan granted by the State Government to the extent of Rs. 5 lakhs was on 27-10-1977 and the loan was

enhanced to Rs. 5.20 lakhs by another order of the State Government dated 7-12-1977. Again on 31-5-1978 a further loan of Rs. 5 lakhs was sanctioned by the Government. Later on 15-3-1980, the State Government sanctioned another loan of Rs. 10 lakhs. Thus a total amount of Rs. 20.20 lakhs was granted by the State Government for the construction of Chowdiah Memorial Hall and these loans were to be repaid together with interest stipulated thereon.

3. It is stated that the Chowdiah Memorial Hall was inaugurated on 15-11-1980 by the erstwhile Chief Minister of Karnataka who, in the course of his speech, announced that the loan of Rs. 20.20 lakhs would be converted into a grant and thus the loan advanced would be waived. It is also stated that when the announcement was made by the then Chief Minister converting the loan into an outright grant, no conditions preceding such a conversion were contemplated.

4. Following the announcement made by the Chief Minister, the Government passed an order dated 7-1-1981 vide Annexure-G and it reads thus:-

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA Subject: Chowdiah Memorial Hall, Bangalore, conversion of loan into grant - sanctioned. GOVERNMENT ORDER NO. ED 6 MAV 80, BANGALORE, DATED 7TH JANUARY 1981

READ:

- i) Government Order No. ED 104 MAV 76 dated 27-10-1977;
- ii) Government Order No. ED 104 MAV 76 dated 7-12-1977;
- iii) Government Order No. ED 104 MAV 76 dated 31-5-1978;
- iv) Government Order No. ED 104 MAV 76 dated 15-3-1980;
- v) Letter No. ADM/418/24/80 dated 26-11-1980 from the President, Academy of Music, Bangalore.

PREAMBLE:

In Government Order dated 27-10-1977 read at (i) above sanction was accorded to the grant of loan of Rs. 5.00 lakhs to the Academy of Music, Bangalore, as interest bearing loan towards construction of the "Chowdiah Memorial Hall" at Vyalikaval, Bangalore subject to certain conditions.

In Government Order dated 7-12-1977 read at (ii) above in modification of Government Order dated 27-10-1977 read at (i) above, sanction was accorded to the grant of a loan of Rs. 5.20 lakhs to the Academy of Music, Bangalore as interest bearing loan towards construction of the "Chowdiah Memorial Hall" at Bangalore subject to the same conditions stipulated in Government Order dated 27-10-1977 read at (i) above.

In Government Order dated 31-5-1978 read at (iii) above, sanction was accorded to the grant of a further loan of Rs. 5.00 lakhs to the Academy of Music,

Bangalore, as interest bearing loan towards construction of the Chowdiah Memorial Hall at Bangalore, subject to the same conditions stipulated in Government Order dated 27-10-1977 read at (i) above.

In Government Order dated 15-3-1980 read at (iv) above, sanction was accorded to the grant of a further loan of Rs. 10.00 lakhs to the Academy of Music, Bangalore, as interest bearing loan towards construction of the Chowdiah Memorial Hall, Bangalore subject to certain conditions stipulated in the order.

In letter dated 26-11-1980 read at (v) above, the President, Academy of Music, Bangalore has requested that the loan of Rs. 20.20 lakhs given to the Academy towards construction of "Chowdiah Memorial Hall" be converted as grant in the circumstances stated in his letter.

After considering all the aspects the Government have decided that the loan of Rs. 20.20 lakhs given to the Academy towards construction of the Chowdiah Memorial Hall should be converted into grant subject to certain conditions.

ORDER

In supersession of Government Orders read above, sanction is accorded to waive the recovery of the loan of Rs. 20.20 (twenty lakhs and twenty thousand only) given earlier to the Academy of Music, Bangalore-80 towards construction of "Chowdiah Memorial Hall", Bangalore subject to following conditions:

- a) The recovery of the loan of Rs. 20.20 lakhs from the Academy of Music, Bangalore-560 080 is waived. Any change in the nature or character of the registered body should have the prior approval of Government hereafter;
- b) All financial transactions and accounts pertaining to Chowdiah Memorial Hall as well as the Academy of Music will be liable for maintenance in the manner prescribed by Government from time to time and will be subject to annual or other types of audit as the Government may decide from time to time;
- c) The Chowdiah Memorial Hall will not be liable or permitted to be sold, leased, mortgaged or disposed of in any way without the express approval of Government;
- d) The Governing body shall consist of a Chairman and five members, three elected by the Members of the Academy of Music, two nominated by the Government of Karnataka. The Chairman, Academy of Music shall be nominated by the Government of Karnataka and shall hold office for such period as Government may determine. During his tenure, the Chairman/President would not receive any honorarium or allowance or any other financial benefits;
- e) The Government of Karnataka would be entitled to use the Chowdiah Memorial Hall for up to 30 days during the year and assign the use of the hall to organisations or nominees of Government on such terms as may be deemed fit by Government and the proceeds from such use shall be credited to the account of the Academy of Music. In consideration thereof, the recurring expenditure for

use by Government would be borne by the Academy of Music in entirety;

f) The surplus income which would accrue to the Academy of Music from the Chowdiah Memorial Hall, after providing for maintenance and improvements to the building and discharge of the other financial liabilities with the banks, would be utilised towards such cultural activities as may be deemed equitable by the Academy of Music and approved by the State Government;

g) The day to day affairs of the Academy shall be managed by a full time Manager appointed by the Academy of Music;

h) The Governing Body will ensure that proper standards of public morality would be maintained, and law and order fostered by the users of the Hall from time to time;

i) Insensate criticism of any particular community, caste or creed or the staging of objectionable performance, are liable to be prohibited during the use of the Hall;

j) In the event any difference of opinion arising in the course of the administration of the Chowdiah Memorial Hall, among the members of the governing body, the decision of the Chairman in the context of such difference of opinion shall prevail subject to such directions as Government may issue;

k) If any of the conditions imposed by Government are called in question or require clarification or interpretation, the decision of Government shall be final.

2. The Accountant General is authorised to adjust the loan outstanding by debit to the Head of Account "278 Art and Culture - 3. Promotion of Art and Culture - XVI Academy of Music - 1 Grant-in-aid." Necessary provision will be made in the supplementary estimates.

3. This order issues with the concurrence of Finance Department vide their U.O. Note No. FD 3982 dated 31-12-1980.

By Order and in the name of the Governor of Karnataka, Sd/- (R. SHANKAR)
Under Secretary to Government, Education & Youth Services Department. To
XX XX "

5. By order dated 9-1-1981, the State Government nominated Dr. P.S. Ramanujam as Chairman of the Academy of Music with immediate effect and nominated two Government Officers also with immediate effect as Members of the Governing Body. It is stated that this order was not acted upon by the State Government and that the Managing Committee of the Academy of Music which was duly elected in September 1980 continued to function as before. On 23-1-1981 vide Annexure-J, it was pointed out on behalf of the petitioner that certain clauses which constituted the conditions for conversion of the loan into a grant vide Annexure-G were unworkable. In his reply dated 29-1-1981, the Chief Secretary to the Government stated that he would be looking into the points raised by the petitioner in Annexure-J. It is also stated that the Managing

Committee of the Academy of Music passed a resolution in January 1980 to create an office of the Chairman inviting the Chief Minister to be the Chairman and in March 1980 the Bye-laws were suitably amended. It is averred that the Government was unwilling to have the Chief Minister as the Chairman and hence the clause was again deleted. Thereafter, the Chief Minister was nominated as an additional Member of the petitioner in May 1980 and he was made the Chairman by the Managing Committee of Academy of Music even though the elected President continued as the President in accordance with the Rules and Regulations of the petitioner Society. It is pointed out that the Chief Minister did not function as the Chairman at all either actually or actively and subsequently resigned from the post. It is also stressed that except for an auditing done by the Government during 1981-82, the State Government did not interfere with the functioning of the Academy of Music.

6. In order to bring the conversion of loan into an out-right grant within the requirements of law, on 16-3-1981 "Supplementary Estimates" were presented before the State Legislature in which Demand No. 12 related to the subject - "Literary, Cultural Affairs and Development of Kannada". The intention was to secure the sanction of the Legislature for the grant-in-aid made to the petitioner in a sum of Rs. 20.20 lakhs. While doing so, it was mentioned that it did not involve outgo of cash, but it was only waiver of the recovery of the loan. These Supplementary Demands were placed before the Legislature under Article 205 of the Constitution involving a procedure applicable to main budgetary demands. Under Article 203 of the Constitution, the demands are to be satisfied by the Legislature and, according to Article 204 of the Constitution, the grant so made by the Legislature is followed by an "Appropriation Bill, 1981" which became the law governing the grant and which ultimately became an Appropriation Act, 1981 (Karnataka Act 3 of 1981). On 19-3-1981, the Supplementary Demand for Grants for the period 1980-81 was voted by the State Legislature including the aforesaid Demand No. 12. It is stated that the waiver of the recovery of the loan and its conversion into a grant-in-aid became part of the law by virtue of the legislative sanction aforesaid. It is emphasised that the grant sanctioned by law was not subject to any conditions and that the grant became absolute on the passing of Appropriation Act, 1981 wiping out the loan automatically by operation of law. It is further pointed out that the auditing was done by the Accountant General of Karnataka during July and August 1981 and a report sent on 14-9-1981 wherein it is stated that the recovery of the loan has been waived and that the grant has become absolute. The said Authority, it is stated, directed the petitioner to take back all loan documents duly discharged thus leaving the Academy of Music at peace. However, contrary to the expectations of the petitioner, a disconcerting letter dated 14-6-1984 from the Government altered the sound of music. This letter raised the hornet's nest. It was a letter calling upon the petitioner to show cause as to why action should not be taken to cancel or withdraw the order dated 7-1-1981 since the petitioner allegedly failed to comply with the conditions stipulated in the said order vide Annexure-P. On

23-10-1984, the petitioner responded to the show cause notice. By another letter dated 28-11-1984, the petitioner pointed out that the earlier letter of the petitioner did not contain any legal and constitutional ground against the proposed action and made it clear that the petitioner did not accept the Government's position that the grant in question has not become absolute. This reply was followed by the impugned order dated 29-11-1984 vide Annexure-U from the Government purporting to rescind its earlier order dated 7-1-1981 for the reason that the petitioner had failed to abide by all the conditions set forth in the said order. In the impugned order dated 29-11-1984 it is stated that "the Government, after carefully examining all aspects, is of the opinion that for a proper and efficient management of the Academy and the Chowdiah Memorial Hall built with the assistance of the Government It is not proper to give up or relax any of the conditions stipulated in the said Government Order." Aggrieved by the said order, the petitioner has approached this Court for quashing the entire proceedings culminated with the order dated 29-11-1984 vide Annexure-U and also for a declaration that the debts amounting to Rs. 20.20 lakhs covered by the loans granted by the respondent on 27-10-1977 read with the order dated 7-12-1977 and 31-5-1978 as well as the order dated 15-3-1980 stand extinguished by the passing of the Appropriation Act, 1981 (Karnataka Act No. 3 of 1981).

7. In the statement of objections filed on behalf of the respondent, it is stated that, since the petitioner failed to comply with the terms and conditions stipulated in the Government Order dated 7-1-1981 and, on the other hand, requested the Government to omit certain conditions in the said order, a show cause notice dated 14-6-1984 was served on the President of the Academy of Music which was replied to. After carefully examining the aspects, it is stated that the Government formed the opinion that for a proper and efficient management of the Academy built with the assistance of the Government it is not proper to give up or relax any of the conditions stipulated in the Government Order and since the petitioner had clearly expressed its disinclination to agree to all the conditions of the grant, the Government decided to rescind the earlier order dated 7-1-1981 and, therefore, passed the order dated 29-11-1984.

8. It is stated that it is incorrect for the petitioner to assert that the conversion of loan into grant became absolute on the passing of Appropriation Act because passing of Appropriation Act is only a formality for regularisation of the grant amount. It is stated that the Act does not in any way supersede the conditions laid down in the Government Order dated 7-1-1981 and that the said conditions are obligatory. It is further stated that since the petitioner failed to take positive steps to comply with the conditions incorporated in the order, the petitioner cannot contend to the contrary and that the Government Order dated 7-1-1981 remains in force even after the Appropriation Act was passed. It is maintained that the Government is entitled to initiate action at any time against the petitioner for failure to comply with the conditions of the said Government Order. It is also contended that the grant cannot become absolute unless the petitioner

fulfilled the conditions of the grant. Another objection is that the conversion of grant into a loan is subject to the conditions stipulated in the Government Order dated 7-1-1981 and unless the petitioner complied with the same, the petitioner is not entitled to any of the reliefs sought in this Writ Petition, nor even competent to contend to the contrary. It is stated that the executive power vested in the Government can be operated only prospectively is not at all relevant because no new orders were passed by the Government and the impugned order is only a continuation of the Government Order of 1981 and that the order of 1984 was passed only because the petitioner failed to comply with the requirements of the Government Order of 1981. Lastly it is contended that the passing of the Appropriation Act has nothing to do with the impugned order and that the petitioner is estopped from contending to the contrary having understood the circumstances and conditions subject to which the Government converted the loan into a grant.

9. The question is whether the impugned order dated 29-11-1984 rescinding its earlier order dated 7-1-1981 deserves to be struck down on the facts and circumstances of the case and whether the amount of Rs. 20.20 lakhs originally granted as loan by the respondent stands extinguished as a debt with the passing of the Appropriation Act, 1981 (Karnataka Act No. 3 of 1981).

10. On 18-12-1990, a Memo was filed on behalf of the respondent appending the documents stated therein. Apparent on the face of the record is the incontrovertible fact that loans were granted by the Government subject to payment of interest and subject to the conditions incorporated in the related Government Orders sanctioning the loan from time to time to the petitioner. When the figure reached Rs. 20.20 lakhs, the petitioner owed a debt of Rs. 20.20 lakhs to the Government and the relationship between the State Government and the petitioner was of lender and borrower. The factual and legal position at that point of time was that the petitioner was legally bound to clear debts and to comply with the conditions attached to the loans such as payment of interest and satisfaction of the stipulated conditions. The relationship underwent a transformation when the State Government passed an order dated 7-1-1981 converting the loan of Rs. 20,20 lakhs into a grant. This order of 7-1-1981 brought about a new relationship between the petitioner and the State Government with the petitioner being the grantee and the Government being the grantor. In this order of 7-1-1981 vide Annexure-G what is of relevance and material consequence is the following recital mentioned in the order:-

"In supersession of Government Orders read above, sanction is accorded to waive the recovery of the loan of Rs. 20.20 (twenty lakhs and twenty thousand only) given earlier to the Academy of Music, Bangalore-80 towards construction of "Chowdiah Memorial Hall", Bangalore subject to following conditions:

xxx xxx xxx"

Paragraphs 2 and 3 are of equal relevance and they read as follows:-

"2. The Accountant General is authorised to adjust the loan outstanding by debit to the Head of Account "278 Art and Culture - 3. Promotion of Art and Culture - XVI Academy of Music - 1 Grant-in-aid." Necessary provision will be made in the supplementary estimates.

3. This order issues with the concurrence of Finance Department vide their U.O. Note No. FD 3982 dated 31-12-1980."

11. The effect of the order passed by the State Government under Annexure-G originally granting loans to the petitioner stood superseded, in the first place. Secondly, sanction was accorded by the Government to waive the recovery of the loan of Rs. 20.20 lakhs given earlier to the Academy of Music for the construction of Chowdiah Memorial Hall subject to the conditions (a) to (k).

12. According to condition (a), the recovery of loan of Rs. 20.20 lakhs from the Academy of Music is waived and any change in the nature or character of the registered body should have the prior approval of Government thereafter. The words "The recovery of the loan of Rs. 20.20 lakhs from the Academy of Music, Bangalore-560 080 is waived" clearly connote the meaning that what was waived and is a fait accompli is, the recovery of the loan of Rs. 20.20 lakhs. There are other conditions which have been imposed on the petitioner in lieu of the waiver. The order dated 7-1-1981 not only liberated the petitioner from the debts, but also brought into existence a new relationship between an ex-borrower and a lender. The conditions imposed under the said order are the obligations imposed on the petitioner after being liberated from the debt. The conditions imposed under the order may appropriately be characterised as conditions subsequent and not conditions precedent. The waiver was not subject to the fulfilment of any condition precedent. It is thus seen that the Government which waived the loan of Rs. 20.20 lakhs did not reserve any right of control over the petitioner in the event of non fulfillment of any of the conditions subsequent. This anomalous situation would not have arisen had the Government imposed conditions precedent on the petitioner before waiver of the loan of Rs. 20.20 lakhs. Added to this, the Government did not reserve the right of control over the petitioner by imposing necessary conditions under the order dated 7-1-1981. I have looked into conditions (a) to (k) in the said order. None of the conditions refer to any breach of obligation on the part of the petitioner and as to the consequence of the same. On the other hand, there is only one condition under Clause (j) which refers to difference of opinion and not breach of condition. Even this clause has absolutely no reference to infraction of any of the conditions contained in the said order. In other words, it may be said that no safeguard was provided under the order dated 7-1-1981 to the Government against infringement of any of the conditions embodied in the Government Order vide Annexure-G. In short, no condition was incorporated in the said order empowering the Government to withdraw the waiver of the loan of Rs. 20.20 lakhs if the Academy of Music committed breach of any of the terms and conditions embodied in Annexure-G. Even a default clause is conspicuous by its absence in the said order. De facto

and de jure waiver became an accomplished fact the moment the order emerged on 7-1-1981 from the State Government which hardly admits any dispute. In para 2 of the said order, the Government went to the extent of authorising the Accountant General to adjust the loan outstanding by debit to the Head of Account "278 Art and Culture - 3. Promotion of Art and Culture - XVI Academy of Music - 1 Grant-in-aid." The Government further assured that necessary provision will be made in the supplementary estimates. This order was issued with the concurrence of the Finance Department as is made evident in para 3 of the said order. What emerges by an over-all picture is that the State Government superseded all its earlier orders sanctioning loans to the petitioner and went on to waive the recovery of loan of Rs. 20.20 lakhs and favoured the petitioner with a gift of on a silver platter without reserving any hold on the petitioner. 13. This act of the State Government was followed up by the presentation before the State Legislature on 16-3-1981 of the supplementary estimates with Demand No. 12 pertaining to the subject "Literary, Cultural Affairs and Development of Kannada" whereunder sanction of the State Legislature was sought for grant-in-aid of Rs. 20.20 lakhs to the Academy of Music, at the same time clarifying that this did not involve any outgo of cash since it was only waiver of the recovery of the loan. Three days later i.e., on 19-3-1981, the supplementary demand for grants for the period 1980-81 was voted by the State Legislature and it included the aforesaid Demand No. 12 also. Constitutional procedure was faithfully followed in giving the benefit to the petitioner. The supplementary demands were placed before the Legislature under Article 205 and the demands have to be granted by the Legislature under Article 203 and after such grant an Appropriation Bill is to be passed under Article 204 which was done by passing Appropriation Bill, 1981 which ultimately culminated in the promulgation of the Appropriation Act, 1981 (Karnataka Act No. 3 of 1981) which is the law governing the grant in question also among others. The Appropriation Bill was followed by the Appropriation Act, 1981. It is to be noticed that the Act is passed every year by the State Legislature for the purpose of applying sums of money out of the consolidated fund of the State for the service of the year and also for appropriating the supplies granted by the State Legislature. The waiver of recovery of the loan of Rs. 20.20 lakhs ordered by the Government vide Annexure-G became legitimised with the passing of the Appropriation Act, 1981. The constitutional formality on completion put the waiver of loan beyond the pale of controversy and made the waiver absolute. The end result was that the borrower ceased to be a borrower and the lender became a grantor and the petitioner was elevated to the status of a grantee. In these circumstances, the order passed by the State Government almost three years later became abortive. The show cause notice dated 14-6-1984 vide Annexure-P threatening action to cancel or withdraw the Government Order dated 7-1-1981, was only an attempt to lock the stable after the horse had bolted away. The belated effort of the Government in a bid to reverse the process by undoing whatever had already been done was attempted at a juncture when the point of no return had already been reached. The impugned order dated 29-11-1984 vide Annexure-U

rescinding with immediate effect the order dated 7-1-1981 came too late in the day to annul the earlier order passed by the Government which had already been given effect to because the waiver had already taken place without outgo of cash and appropriation had already been legalised through constitutional means with the Government having reserved no right to rescind the earlier order for breach of any condition contained in its earlier order dated 7-1-1981. Even otherwise the conditions imposed in the order dated 7-1-1981 the contravention of which resulted in the impugned order of 29-11-1984 according to the Government, contained no conditions precedent for enforcement. In any case, no right was reserved by the Government to rescind the waiver order dated 7-1-1981 for non-compliance of any of the conditions. Even assuming that the petitioner had failed to perform the conditions stipulated in the order dated 7-1-1981, in my considered opinion, the Government had no power to rescind its own order dated 7-1-1981 by passing the impugned order dated 29-11-1984. The conditions imposed were never intended to be conditions precedent.

14. The Government was aware of the conditions as well as nonfulfilment of the conditions when the loan was waived. In the circumstances, it is possible to hold that the conditions were never intended to be conditions precedent and, therefore, noncompliance with any of the conditions was not destructive of the waiver. The very fact that the loan was waived even before the conditions were fulfilled, shows that nonfulfilment of the conditions was inconsequential for the purpose of waiver of the loan.

15. There is no escape from the fact that the order dated 7-1-1981 making a grant of Rs. 20.20 lakhs became final and absolute on the passing of the Appropriation Act, 1981. Once the appropriation has taken place in accordance with law, reconversion of grant into a loan is impermissible. As rightly contended, in the absence of reservation of power to revive the loan, the Government cannot derive any authority of law to rescind the waiver of loan, particularly with retrospective effect. The debt which was wiped out by the order dated 7-1-1981 cannot be brought back to file. Even the report of the Accountant General vide Annexures "N" and "O" establish beyond doubt that the grant made became absolute and the loans stood waived in totality. It is significant to note that the State Government did not prescribe the manner in which the financial transactions and accounts have to be maintained in terms of Clause (b) of the order dated 7-1-1981. The conduct of the Government lends support to the contention that the grant become absolute on 7-1-1981 itself. To say that the grant was conditional is one thing and to say that the grant was subject to conditions precedent is another. In the instant case, the loan was waived and converted into a grant in favour of the petitioner without insisting upon the fulfilment of the conditions mentioned in the Government Order dated 7-1-1981. Therefore, I am of the opinion that the loan ceased to exist and it was too late in the day for the Government to pass the impugned order dated 29-11-1984 in order to resurrect the loan. The impugned order is not only irrational, but also without the authority of law. The legal right which has accrued in favour of the

petitioner as the grantee, cannot be frustrated by an executive order passed nearly three years after the waiver of the loan. In the absence of conditions precedent, the respondent is not justified in attempting to defeat its own order passed on 7-1-1981 and further by its own conduct the respondent is estopped from going behind the order dated 7-1-1981 in view of the applicability of the principle of promissory estoppel.

16. It was contended on behalf of the respondent that the Writ Petition should not be entertained on the ground that the issues arising for determination emanate from ordinary contract and the impugned order is passed in an executive capacity. It was further contended that the right being contractual, the remedy if any is only before a Civil Court.

The fallacy of the stand becomes obvious from the fact that the power to rescind an earlier order passed by the State Government does not stem from any contractual right whatever, reserved to rescind, in the event of breach of the terms and conditions of the grant or of the waiver of loan. There is not even an extra-contractual right which comes to the aid of the State to support its action. The failure of the State in not protecting its interest by not having provided an adequate safe-guard at the time of passing the order dated 7-1-1981 cannot be made up by raising the dubious plea of action taken in executive capacity. The impugned action is not supportable either *ex contractu* or *ex delicto*, and clearly falls outside the pale of contract. The action taken to rescind is not anchored in any legal right and is therefore arbitrary and devoid of legal authority. That is the view which I have already taken. The state action is amenable to writ jurisdiction and vulnerable to judicial review for the above reasons. There is no substance in the contention that the Writ Petition is not maintainable and should not be entertained. The decisions relied upon by the respondent *vide* LIFE INSURANCE CORPORATION OF INDIA *v.* ESCORTS LTD. and BAREILLY DEVELOPMENT AUTHORITY *v.* AJAY PAL SINGH, are inapplicable for want of analogy both on facts and law.

The principle cannot be better stated than in the words of Cardozo:-

"The controversy turns not upon the Rule of Law, but upon its application to facts. "Judicial process in such cases is a process of search and comparison and little else."

The Rule of Law is certain. However its application alone may be doubtful."

17. In the light of the above discussion, I answer the questions formulated above in the affirmative and hold that the petitioner should succeed in this Writ Petition.

18. In the result, the Writ Petition is allowed and the impugned order dated 29-11-1984 passed by the respondent in No. ITY 66 KJV 33 *vide* Annexure-U, is quashed and the waiver of loan under order dated 7-1-1981 stands confirmed. In the circumstances of the case, there will be no order as to costs.