

(2015) 05 UK CK 0040

In the Uttarakhand High Court

Case No : Special Appeal Nos. 49, 139, 135, 137, 140, 136, 134, 133, 132, 141 and 131 of 2014

State of Uttar Pradesh and Others

APPELLANT

Vs

Beehive College of Engineering and Technology and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Citation : (2015) 05 UK CK 0040

Hon'ble Judges : K.M. Joseph, C.J. and V.K. Bist, J.

Bench : Division Bench

Advocate : Anuj Kudesia, Advocate assisted by Beena Pande, Standing Counsel, for the Appellant; Arvind Vashisth, Senior Advocate assisted by Monika Pant, Advocate and H.M. Bhatia, Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.M. Joseph, C.J.

1. Appeals, eleven in number, raise common issues. Appellants in each of these cases are the State of Uttar Pradesh and others. In the writ petition (No. 2172 (M/S) of 2012), which is treated as the leading case, following prayers were made:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned notification/policy dated 26.09.2012 as the same is Arbitrary and unconstitutional (Annexure No. 2 to the writ petition).

(ii) Issue a writ, order or direction in the nature of mandamus commanding the Respondents not to force upon the college to pay the University fee until and unless the same is disbursed to the student and refunded to the College;

(iii) Issue a writ, order or direction in the nature of mandamus commanding the Respondents to release/clear the dues towards the (i) Registration Fee (ii) Books and Stationary expenses (iii) Scholarship (iv) Tuition Fee (v) University Fee or

any other amount due and payable towards the Education of the Schedule caste and Schedule Tribe Students Education quota under the old scheme as the admissions have been completed under the old scheme for all those students who have been admitted upto 15.09.2012;

(iv) Issue a writ, order or direction in the nature of mandamus directing the respondents to ensure timely and smooth flow of Education Funds of the Schedule caste and Schedule Tribe Student's under the Education quota for the forthcoming sessions starting from 2012 and all the sessions thereafter;"

The Government of India has brought out a Scheme for the benefit of Scheduled Caste students for their education at the post-matric level. Apparently, this Scheme was in force for a fairly long period of time. It is originally revised w.e.f. 01.04.2003. It came to be modified w.e.f. 01.07.2010. Clauses IX & X of the Scheme read as follows:

"IX MODE OF DISBURSAL OF SCHOLARSHIP

In order to ensure timely payment of scholarship amount to the beneficiaries, the State Government/UT administrations are requested to avoid cash payment of scholarship amount and are required to issue instructions to all concerned that payment of scholarship should be made to beneficiaries through their accounts in post offices/banks with phased transition to Smart Cards.

X. Other Conditions for the Award

i. The scholarship is dependent on the satisfactory progress and conduct of the scholar. If it is reported by the Head of the Institution at any time that a scholar has by reasons of his/her own act of default failed to make satisfactory progress or has been guilty of misconduct such as resorting to or participating in strikes, irregularity in attendance without the permission of the authorities concerned etc., the authority sanctioning the scholarship may either cancel the scholarships or stop or withhold further payment for such period as it may think fit.

ii. If a student is found to have obtained a scholarship by false statements, his/her scholarship will be cancelled forthwith and the amount of the scholarship paid will be recovered, at the discretion of the concerned State Government. The student concerned will be blacklisted and debarred for scholarship in any scheme forever.

iii. A scholarship awarded may be cancelled if the scholar changes the subject of the course of study for which the scholarship was originally awarded or changes the Institution of study, without prior approval of the State Government. The amount already paid may also be recovered at the discretion of the State Government.

iv. A scholar is liable to refund the scholarship amount at the discretion of the State Government, if during the course of the year, the studies for which the scholarship has been awarded, is discontinued by him/her.

v. The provisions of this scheme can be changed at anytime at the discretion of the Government of India."

2. The case of the appellants, in short, is that the amount of the post-matric scholarships has to be disbursed into the accounts of the students. The amount, it appears, there is not much dispute, representing the reimbursement of fee that was being paid by the State of Uttar Pradesh in respect of the students belonging to the Scheduled Caste community belonging to the State of Uttar Pradesh studying in other States was being paid to the Institutions prior to year 2012-13. At this juncture, it is also necessary to notice what is the value of the post-matric scholarship; it consists of maintenance allowance, reimbursement of compulsory nonrefundable fees, study tour charges, thesis typing/printing charges for Research Scholars, book allowance for students pursuing correspondence courses, book bank facility for specified courses and lastly additional allowance for disabled students. There were complaints and, in order to make the system transparent and fair and to see that there is no misuse or misappropriation of precious public funds and that it goes into the accounts of the students, the Government of U.P./the appellants came out with the impugned Rules on 26.09.2012. They, inter alia, provided for payment of the amounts into the accounts of the students. In other words, in keeping with Clauses IX and X of the Central Government Notification dated 01.07.2010, the amounts were to be paid directly into the accounts of the students; no payment could be made directly into the accounts of the Institutions. Still further, in this order, they provided for a different method of ascertaining the genuineness of the students, inasmuch as, a Committee of the district level with the District Social Welfare Officer as Secretary was to sanction the scholarship. More importantly, the order purported to put in place a system of priorities. The priorities are provided for in Clause 11 (iv) (e). The same reads as under:--

3. According to the appellants, the writ petitioners fall in the last category in terms of priority.

4. It is also necessary as we have noticed, Clause 12 provides for procedure of maintenance allowance and fee disbursement. It provides as follows:--

5. In short as it is evident from the said Clause, verification is to be done by the Committee with District Social Welfare Officer as Secretary and the amounts have to be paid to those, who are eligible. Under the Head "Scope and Area of operation", it is provided that the Rules shall be applicable upon the permanent residents/ordinary residents of the State of Uttarakhand studying in the entire country of India. Under the definition clause, "student" is defined as follows:

6. Various other definitions are provided. Value of Scholarship is virtually as we have already referred to. Clause 6 relates to the eligibility of the students. Clause 9 deals with master data base and the registration of the Institution in the post master degree. It, inter alia, provides that the scholarship shall be permissible only in case the name and the details of the Institution and the courses

conducted finds place in the master data base within a prescribed period of time. The writ petitions, out of which the present Special Appeals arise, have been filed by the Institutions in the State of Uttarakhand, which, according to them, have admitted students belonging to the Scheduled Caste community and domiciled in the State of U.P. The case of the writ petitioners was that they have been receiving payments directly from the State of U.P.; students have been granted admission free and the Rules, which we have adverted to, framed by the State of U.P. in September, 2012 are cumbersome as they involve a cumbersome procedure in comparison to the former procedure among other grounds. It is, inter alia, contended that there has been past practice for the last 40 years of making payments directly into the accounts of the Institutions and now that they have been called upon to await the report of inquiry and, that too, of the officers in the Districts; whereas under the former regime, the inquiry was to be conducted by the Director, Social Welfare. The same, according to them, was unfair. The learned Single Judge initially passed the order dated 15.10.2012, which reads as under:

"6. The petitioners before this Court are the institutes recognized by All India Council for Technical Education, Delhi and Uttarakhand Technical University for imparting technical courses including B. Tech. courses. For Scheduled Caste and Scheduled Tribe candidates the Central Government has framed a scheme under which once a student gains admission for gaining any post matric qualifications, his tuition fee is borne by the Central Government. Under the scheme many students hailing from the State of Uttar Pradesh has gained admission in the petitioner institutes. Earlier the mechanism and the procedure for getting the tuition fee was different and the institutes were sure that sooner or later they would get the fee but in the present scheme which have now been implemented by G.O. dated 26.9.2012 (Annexure No. 2 to the writ petition) this procedure for reimbursement of the tuition fee has been changed. Earlier the amount of tuition fee was transferred by the District Social Welfare Department to the institutes directly but now it will be transferred to the bank account of the students directly. Under this new mechanism, the petitioner institutes have an apprehension that they may not get their fee amount or if at all not the entire amount in time.

7. Respondents may file counter affidavit within three weeks.

8. Rejoinder affidavit be filed within two weeks thereafter.

9. List this matter on 29.11.2012 in the daily cause list.

10. Till the next date of listing, so far as the present petitioners are concerned, the earlier method of transferring the amount from the Director, Social Welfare shall continue as per the Government Order dated 1.4.2011 (Annexure No. 1 to the writ petition)."

7. The said order was extended from time to time. The learned Single Judge heard the writ petitions and allowed the writ petitions and, in the course of the

said judgment, held as follows:

"7. The Scheme under which students belonging to the Scheduled Caste and Scheduled Tribes Community are doing their study in the State of Uttarakhand is a beneficial scheme. It is absolutely necessary that the State Government must ensure that the funds which are being given by the State Government (or by Central Government) are being utilized by only such students of these communities alone and they must ensure that the Scheme is not being abused. However, at the same time, the mechanism which has been introduced for verification of these students wherein the Institutes have to get the verification from the District Social Welfare Officer is of a great inconvenience to the Institute. This Court has also been informed that earlier the verification was to be done by these Institutions through the Director Social Welfare of the State of Uttar Pradesh. Under these circumstances, this Court thinks it proper that instead of verification to be done by these Institutions through District Social Welfare Officer it shall be done through the Nodal Officer which is the Director, Social Welfare Officer, Government of U.P. for which a reasonable time of three months may be given. Since a long time has already elapsed in the matter, the Director, Social Welfare, State of Uttar Pradesh, who is a party in the writ petition as respondent No. 3 is directed to complete the verification within the aforesaid period of three months. After the requisition is being made by the Institutions, respondent No. 3 Director, Social Welfare, State of U.P., he shall get the verification done of each student through District Social Welfare Officer to which the student belong or where the student permanently reside. Moreover, since before this system i.e. the time when the students were admitted in the Institutes the fee was being transferred to the account of the Institute, the same system will continue for those students who have been admitted for the Academic Session 2012-13. But for the students who got admission after Academic Session 2012-13, this order will not be applicable, nor is the case of the petitioners for such students. Moreover, on the face of it, this Court does not find anything improper in this system, since all these Institutes are private institutes and they can always refuse to grant admission to these students in case their fee is not being deposited. Yet since the change itself has come in September, 2012, after these students were admitted in July, 2012, the learned counsel for the petitioners would argue that had they known that there is a change in the system of payment they would not have admitted these students and it seems to be a valid argument. Here the Rules of the game have changed after the game has started. To that extent alone it is not proper and for that reason alone interference is not made for the academic session 2012-13 and the previous sessions. This writ petition is being disposed of on these limited issues.

8. It is made clear that the students who got admission for the Academic Session 2012-13 belonging to Scheduled Caste and Scheduled Tribes and whose verification has been done, the funds shall be released within one month, therefore, from the date of production of certified copy of this order."

8. It is feeling aggrieved by the same that the Appeals are filed.

9. We heard the learned counsel for the appellants Sri Anuj Kudesi, learned senior counsel Sri Arvind Vashisth and Sri H.M. Bhatia, Advocate also.

10. The learned counsel for the appellants would submit as follows:

"He emphasized that under Clauses IX and X of the Government of India directions, which came into force w.e.f. 01.07.2010, the method of payment can only be by making payment directly into the bank accounts of the students belonging to the Scheduled Cast, community. He would submit that the State of U.P. has only made that mandatory. He would submit that actually the State has also taken care while introducing the Scheme from September, 2012 to ensure that the students can apply within an extended period and avail the benefit of the Scheme. According to him, the admissions would close only on 15 September, 2012. It is noteworthy that the impugned Rules came into force on 26.09.2012 and the applications could have been maintained in the proper proforma and their case could have been considered under the Rules. It is pointed out that the case of the petitioners fell in the last priority group. It is submitted that no demand was generated under the system in accordance with the proforma, which has been provided. Insofar as no demand was generated, it is submitted that the case of the students cannot be considered and entire amount has already been spent. In this connection, he drew our attention to the fact that the State has spent more than its committed liability. More about the committed liability will follow in our judgment."

11. Therefore, he would submit that there is also an issue of the Court not normally issuing a writ, which cannot be obeyed in terms of the financial stringencies and lack of funds. In this connection, he would point out that Rule 18 provides for the mode of distribution of funds. He would further complain that here is a case where students were admitted in the petitioner Institutions far in excess of the intake capacity. He would, therefore, submit that the learned Single Judge has not quashed the Rules. On the other hand, he would submit that the learned Single Judge has held that there is nothing wrong in the Rules and yet has proceeded to give the direction, which is impugned before us. He would submit that, therefore, the judgment cannot be sustained.

12. Per contra, the learned Senior Counsel Shri Arvind Vashisth appearing for some of the writ petitioners would submit as follows:

"He would submit that there are two components of the maintenance grant. As far as fee disbursement is concerned, it was always being paid to the Institutions directly and all that the writ petitioners are demanding is that the said practice be continued at least in respect of the students admitted in 2012-13 and also in respect of students, who have already been admitted. He would submit that there is a past practice. He also drew our attention to the Press Note dated 30.08.2011. He would complain that the admissions were closed on 15.09.2012 and the Rules came into effect only thereafter. He would point out that the

admissions are to be made free and the past practice was that after making the admissions free on the basis of the proforma to be filled up under the earlier regime, the inquiry would be held by the Director, Social Welfare and it is only with reference to those students, who are found to be genuine claimants, the amounts were to be paid directly into the accounts of the Institutions. He poses a question that if the amounts are being paid directly into the accounts of the students, and the students do not make the payments to the Institutions, what is the mechanism available for ensuring that the Colleges, which give admissions free of charges to the students, recover the cost from the students? In this regard, he would point out that the College has to make payments to the University and if the Rules are accepted and if there is no mechanism for ensuring that the students do make payments, the result will be acting on the practice which amounts to a promise, the students would be admitted free of cost and the Institutions would not be in a position to recover the same from the students. This cannot be a proper understanding of the factual and legal position. In this connection, he would submit that the principle of promissory estoppel would stand in the way of the appellants from taking a grossly unfair and inequitable stand. He also pressed into service the principle of legitimate expectation. He would submit that the Rules of the game cannot be changed as the students had already been admitted free of charge. He would complain that though an argument is raised by the appellants that no demands were raised, there is no pleading in support of the said contention. He would further point out that some of the students had approached the Hon'ble Apex Court and the State of U.P. was a party in the same, and in the said proceedings, the Hon'ble Apex Court in fact directed the payments to be made. He would invoke the principle of res judicata. He would then point out the interim order that was passed on 15.10.2012. [At that juncture, the learned counsel for the appellants would point out that the interim order was that the amount should be paid in accordance with the order dated 01.04.2011 and that the said order actually is the order of the Government of India, as per which, the amounts are to be paid directly into the accounts of the students.] He would, however, submit that the Court may take a just view of what transpired under the terms of the interim order. It is necessary at this juncture to set out the relevant portion of the interim order that has been passed on 15.10.2012:

"6. The petitioners before this Court are the institutes recognized by All India Council for Technical Education, Delhi and Uttarakhand Technical University for imparting technical courses including B.Tech. courses. For scheduled Caste and Scheduled Tribe candidates the Central Government has framed a scheme under which once a student gains admission for gaining any post matric qualifications, his tuition fee is borne by the Central Government. Under the scheme many students hailing from the State of Uttar Pradesh has gained admission in the petitioner institutes. Earlier the mechanism and the procedure for getting the tuition fee was different and the institutes were sure that sooner or later they would get the fee but I the present scheme which have been implemented by

G.O. dated 26.9.2012 (Annexure No. 2 to the writ petition) this procedure for reimbursement of the tuition fee has been changed. Earlier the amount of tuition fee was transferred by the District Social Welfare Department to the institutes directly but now it will be transferred to the bank account of the students directly. Under this new mechanism, the petitioner institutes have an apprehension that they may not get their fee amount or if at all not the entire amount in time.

7. Respondents may file counter affidavit within three weeks.

8. Rejoinder affidavit be filed within two weeks thereafter.

9. List this matter on 29.11.2012 in the daily cause list.

10. Till the next date of listing, so far as the present petitioners are concerned, the earlier method of transferring the amount from the Director, Social Welfare shall continue as per the Government Order dated 1.4.2011 (Annexure No. 1 to the writ petition)."

13. As already noted, the interim order dated 15.10.2012 was extended by order dated 14.12.2012 and 01.03.2013. On 31.12.2012, apparently, a complaint was lodged that the order dated 15.10.2012 was not being observed. The learned Single Judge passed the following order on 31.12.2012:

"1. For the Scheduled Caste, Scheduled Tribes and Other Backward Class students, under the Central Government Scheme the amount of expenditure incurred by an institute for any post-matric qualification of the students is to be reimbursed by the Central Government. The money in the present case is being channelized through the State Government i.e. Stat of Uttar Pradesh. The grievance of the petitioner is that whereas under the old scheme the money was to be transferred directly in the account of institute, under the new scheme the money shall go the account of the students directly through District Social Welfare Department.

2. Earlier by an interim order dated 15.10.2012 this Court had directed that till the next date of listing earlier scheme shall continue as far as present petitioners are concerned.

3. Counsel for the petitioners made a statement before this Court that this order has not been complied with as yet. She has filed an application bearing No. Nil/2012 in the Court in which certain averments have been made against the Principal Secretary, Social Welfare, Government of Uttar Pradesh that he has deliberately and wilfully violated the order of this Court dated 15.10.2012. Let a copy of the said application be also served on the Principal Secretary, Social Welfare, Government of Uttar Pradesh for his response.

4. Although there is no counter affidavit on record, counsel for the petitioners submits that she has received counter affidavit of State of Uttar Pradesh in which it has been stated that the money is being transferred to the account of the

students directly. This again, counsel for the petitioners says is wrong inasmuch as she has an information to this effect that no money has been transferred on this account.

5. In view of the above, Principal Secretary shall file an affidavit before this Court giving the details of such amount which has been transferred to the account of students directly.

6. In case, the Chairman and the Secretary of the Institute gives an undertaking to the technical university that due to the reason they have not received the funds from the State of Uttar Pradesh and they are not able to deposit the examination fee of the University, in that event subject to the payment of the fee later, the University shall not cause any hindrance as far as appearance of the students in the examination is concerned.

7. List this matter on 26.2.2013 in the daily cause list."

14. Thereafter, order dated 09.04.2013 was passed by a learned Single Judge, who is, in fact, party to this Bench, wherein the Court directed that if in similar circumstances, the amount has been paid to the Institutions in the State of U.P., amounts will be paid to the Institutions in the State of Uttarakhand. On 01.05.2013, an attempt to get the interim order vacated turned futile and the learned Single Judge directed that the matter itself has to be heard. Thereafter, we notice order dated 31.7.2013 again passed by one of us (Sri V.K. Bist, J.) and the said order reads as under:--

"Supplementary affidavits filed on behalf of respondent Nos. 2 & 3 in the Court today. Same are accepted on record.

Mrs. Beena Pande, Standing Counsel for the State of Uttar Pradesh/respondent Nos. 2 to 4 submits that she may be granted further time for filing affidavit, as directed by this Court on 18.07.2013.

As prayed, three weeks" further time is granted to the learned Standing Counsel for the State of Uttar Pradesh/respondent Nos. 2 to 4 for filing the affidavit.

Mrs. Beena Pande, Standing Counsel for the State of Uttar Pradesh also submitted that upto the year 2010, each and every amount has been paid to the petitioner institution. In respect of 2011-12, only some payment has yet to be paid to the petitioner institution for which the respondent No. 2 has made a detailed enquiry about the genuineness of the students. She submitted that the respondents have received information in respect of some students and the enquiry report of other students is likely to be received within a period of one week.

Considering the statement of Standing Counsel for the State of Uttar Pradesh/respondent Nos. 2 to 4, I direct the respondent Nos. 2 to 3 to complete the enquiry and to make payment to the petitioner institution in respect of the students in which respondents have already received the enquiry report and also

in respect of those students in which the respondent Nos. 2 & 3 are likely to get report within one week, if such payment was made to the petitioner's institution in respect of other students for the same year i.e. 2011-12. In case, after one week, some students are not found genuine, the respondent Nos. 2 & 3 are directed to inform the petitioner institution immediately about the same and the petitioner institution will submit reply to the said communication.

List this matter on 17.08.2013.

Let a certified copy of this order be supplied to the learned counsel for the parties, within 24 hours, on payment of usual charges."

15. Thereafter, it is on 24.10.2013 that the learned Single Judge disposed of the writ petitions by the final judgment, which is impugned before us. It is in the light of these interim orders, therefore, learned counsel for the appellants would submit that the Court may bear in mind that on an understanding of the interim order, the Institutions did not make an Application in terms of the impugned Rules. In this connection, learned senior counsel Sri Arvind Vashisth would also submit that substantially there is not much difference between the earlier proforma and the proforma under the Rules. In this connection, he sought to draw support from the following portion of the letter written by the Director, Social Welfare, U.P. to the Chief Secretary, Government of U.P. dated 21.12.2013 letter:

"Scholarship applications of the students of the Petitioner Institutes in question are not received on the software specified for the year 2012-13 but have been received on the software specified for the year 2011-12. Therefore, in compliance with the orders of the Hon'ble High Court of Uttarakhand, Nainital dated 24.10.2013, the decision on this subject is required to be taken at first that the applications of the students studying in the Petitioner Institutes received on the Software different than the specified software should be accepted in which form and the scholarship/fee reimbursement amount be released to the students on that. Applications of the students of Petitioner Institutes received on the Software specified for the year 2011-12 can be allowed only in that situation, when the Software of the Year 2011-12, Date feeding of the same is allowed by the Government or an additional opportunity be given to the Institutes/Students for receiving application of the students on the Software for the Year 2012-13. Decision on the above-mentioned guiding principle (procedure) can be taken from the government level itself."

16. He would further submit that the Court may bear in mind that now to contend that the Applications were not made under the proforma and thus demands were not generated may not be possible as the parties proceeded on the basis of the interim orders that the previous regime prevailing prior to the impugned Rules would be allowed to continue and this is a case, where finally the matter culminated in the writ petitions being allowed. So the interim order dated 15.10.2012 must be read in conjunction with the final judgment. As far as

the question relating to the exhaustion of the funds is concerned, learned senior counsel Sri Arvind Vashisth would point out that the State, in terms of the directions of the Union of India, is expected to spend the amount in terms of committed liability. According to him, the committed liability, according to the figures provided, would be Rs. 1023 crores. This figure is arrived at as the amount spent by the State of U.P. towards the scholarship disbursement in the final year of the last five year plan, which was the year 2011-12. But, he points out that in the year 2012-2013, despite the tall claim that the committed liability has already been exceeded by the State of U.P., actually an amount of Rs. 267 crores alone has been spent. He further drew our attention to the statement in communication by the Government of India, which provides inter alia that the committed liability for the years will be provided by the Government of India in the year 2017. Therefore, it is not open to the State of U.P. to provide that there are no funds available. It is also the case of the writ petitioners that it is not open to the State to throw up its hands and plead lack of funds when it is called upon to comply with its liability of the nature involved in this case. Learned senior counsel for the writ petitioners would further point out that actually in terms of the order dated 01.04.2011 and 10.04.2012, what is actually contemplated is only providing preference to those States, in the matter of reimbursement, which have introduced the system of direct payment of the scholarship amount into the accounts of the students.

17. Therefore, he would challenge the very fundamental premise of the appellants' argument that under the Rules read with the Government of India order, it is mandatory for the disbursement of the scholarship amount that the bank account must be opened by the students and the payments can only be made to the students. In other words, even if the amounts were paid into the accounts of the Institutions, this would not occasion a fundamental flaw or violation of the Government of India's directions. All that it would occasion is, it would lower the priority of the concerned State in the matter of reimbursement of the funds by the Government of India. He would also submit that the Court may consider the equity involved in this case. He would submit that free admissions were given to the students, large amounts were due from the students, amounts were paid by the Institutions to the University, students sat for the examination, they have passed through the courses, and recovery steps have been taken by the University for the amounts, which were paid. This Court directed that the students be permitted to sit in the examination without payment of the full fees and upon payment of some part amount by the Institutions. The resultant position is that, the students have sat and they have already undergone the course. He would submit that, in such circumstances, the Institutions are faced with recovery of large sums of money and this fact may be borne in mind. He drew our attention to the judgment of the Hon'ble Apex Court in *Monnet Ispat and Energy Ltd. Vs. Union of India (UOI) and Others*, Page 1 in connection with his plea of promissory estoppel and legitimate expectation. He also sought support from the judgment of the Hon. The Apex Court in *Sethi Auto*

Service Station and Another Vs. Delhi Development Authority and Others, . He would finally submit that the court may consider that pursuant to the order of this Court, in respect of 819 students out of 1600 students, the appellants have themselves conducted a verification and it is found that they were genuine students and, in respect of those students at least, the Court may direct payment of the funds into the accounts of the Institutions.

18. Sri H.M. Bhatia, appearing on behalf of some of the writ petitioners would submit that at least the amounts may be directed to be paid into the accounts of the students.

19. Learned counsel for the appellants Sri Anuj Kudesia would, in reply, submit that there is no plea of promissory estoppel. He points out again that the Rules were not quashed. According to him, Clause 9 is mandatory. As far as the interim order is concerned, he would point out that it only directed that compliance be made of the order dated 01.04.2011, which itself predicated payments being made into the accounts of the students. He drew our attention to the judgment of the Hon Tale Apex Court in Indian Railway Catering and Tourism Corpn. Ltd. Vs. Indian Railway Major and Minor Caterers Association and Others, and State of Kerala and Another Vs. Naveena Prabhu and Others, for the proposition that the Court would be loathe to interfere in policy matters and he would submit that it is actually a clear policy decision of the Government, which is reflected in the impugned Rules. According to the learned counsel for the appellants, dual system of payments cannot be countenanced.

Findings of the Court:

20. As we have already noticed, there is a challenge to the Rules made by the appellants. It is significant to note, in fact, that, though they are dubbed as Rules, they are not statutory in nature. Essentially, it can only be described as product of the exercise of the Executive power of the State. The first question we must ask is, whether the Rules were meant to operate retrospectively. The Rules came into force, as we have noticed, on 24.09.2012; but, we would think that they were meant to apply in respect of the year 2012-2013. This result is inevitable on a perusal of the dates, which have been provided for seeking the benefit of the scholarship. They are as follows:

21. Though Mr. Arvind Vashistha, learned Senior Counsel, would submit that, actually, they were not part of the Rules as such, but they were subsequently issued by way of directions to the officers; we are of the view that it may not be either fair or proper to read this as not having any effect as they were intended to have effect and, if the applications were made within the extended time, certainly, the State of U.P. would have been obliged to consider those applications in accordance with the extended dates. Therefore, there is intrinsic evidence available in the Rules to show that the Rules were intended to apply from 2012-2013 onwards.

22. As far as the validity of the Rules is concerned, though the writ petitioners

sought to quash the Rules, the learned Single Judge was not inclined to grant them the said relief. On the other hand, a perusal of the judgment would show that the learned Single Judge has found that, on the face of it, there is nothing improper in the system and, as the Institutions are private institutions, they can always refuse to grant admission. What the learned Single Judge has reasoned is that, since a change itself has come in September, 2012, after the students were admitted in July, 2012, there is a change in the system and Rules have been changed after the game started. It is categorically held by the learned Single Judge that, to that extent alone, it is not proper and, for that reason alone, interference is not made for the academic year 2012-2013 and for the previous sessions. Therefore, all the contentions of the writ petitioners against the scheme must be treated as having not found meritorious. There are no cross-appeals filed challenging the judgment of the learned Single Judge. Therefore, resultantly, we must proceed on the basis that the Rules were neither arbitrary, nor unfair, as was sought to be made out by the writ petitioners before the learned Single Judge. Therefore, we have come to the conclusion that the scheme is proper and there is nothing in the same, which warrants interference by the Court. We have also come to the conclusion that the scheme was intended to operate retrospectively in the sense that it is to operate from the academic year 2012-2013 and we can only proceed on that basis.

23. What the learned Single Judge has reasoned is, as we have already noted, that the students were admitted and the fee was being transferred to the account of the Institutions and the same should continue to those students, who have been admitted in the academic year 2012-2013. The reasoning, as we have noted, is that the change, itself, has come in September, 2012 and that the students were admitted in July, 2012 and the reasoning is that had the writ petitioners known about that change, they would not have admitted these students, appears to be a valid argument. In this connection, we must notice that the very case of the writ petitioners, admittedly, is that the students could not have been denied admission. If one looks at it in the context of the said reasoning, then the very premise of the entire judgment would no longer survive. This is a case, where, by an executive action though under the nomenclature Rules, the Government has decided to introduce certain procedure and restrictions. The complaint, which found acceptance at the hands of the learned Single Judge, is that the Rules of the game have been changed.

24. Does the executive power of the State extend to changing the Rules of the game; in the sense, does it have the authority to operate in the past; can legal rights be taken away; what happens if there is no legal right as such, but if it is only a promise; what is the ambit of the doctrine of promissory estoppel; will the principle of promissory estoppel apply in the facts of this case; and what is the ambit of principle of legitimate expectation?

25. We would think that, to consider these questions, we need refer only to one decision of the Hon''ble Apex Court, which, we would think, has articulated the

principles with reference to earlier case-law and that is the judgment in the case of Monnet Ispat and Energy Ltd. Vs. Union of India (UOI) and Others, . In the said judgment, it has been held as follows:

"The following principles must guide a court where an issue of applicability of promissory estoppel arises:

1. Where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.
2. The doctrine of promissory estoppel may be applied against the Government where the interest of justice, morality and common fairness dictate such a course. The doctrine is applicable against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. However, the Government or even a private party under the doctrine of promissory estoppel cannot be asked to do an act prohibited in law. The nature and function which the Government discharges is not very relevant. The Government is subject to the rule of promissory estoppel and if the essential ingredients of this doctrine are satisfied, the Government can be compelled to carry out the promise made by it.
3. The doctrine of promissory estoppel is not limited in its application only to defence but it can also furnish a cause of action. In other words, the doctrine of promissory estoppel can by itself be the basis of action.
4. For invocation of the doctrine of promissory estoppel, it is necessary for the promisee to show that by acting on promise made by the other party, he altered his position. The alteration of position by the promisee is a sine qua non for the applicability of the doctrine. However, it is not necessary for him to prove any damage, detriment or prejudice because of alteration of such promise.
5. In no case, the doctrine of promissory estoppel can be pressed into aid to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. No promise can be enforced which is statutorily prohibited or is against public policy.
6. It is necessary for invocation of the doctrine of promissory estoppel that a clear, sound and positive foundation is laid in the petition. Bald assertions, averments or allegations without any supporting material are not sufficient to press into aid the doctrine of promissory estoppel.

7. The doctrine of promissory estoppel cannot be invoked in abstract. When it is sought to be invoked, the Court must consider all aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present to the mind of the court. Absence of it must not hold the Government or the public authority to its promise, assurance or representation."

26. In this connection, we must examine what is the foundation laid in the pleadings in the writ petitions for raising the plea of promissory estoppel. The learned Senior Counsel for the writ petitioners, on being alerted to this, drew our attention to paragraphs 7, 20, and 21. It is, therefore, necessary that there should be sound and positive foundation in the writ petition. Bald assertions, averments of allegations, without any supporting materials, cannot lead to the successful invocation of the principle. It is necessary that there must be alteration of the position by the promisee. It is though not necessary that there be detriment or prejudice. In the context of this enunciation of the law, let us examine the pleadings. What is pleaded in paragraphs Nos. 7, 20 and 21 of the writ petition No. 2172 of 2012 (M/S) is as follows:

"7. That the Respondents have directed the Educational institutions first to grant admission to the students and then to recover the fee from State Government as per their scheme. The Petitioner Association has admitted the students belonging to the Schedule caste and the Schedule Tribe Category strictly on the basis of this scheme upto the present session i.e. upto 15 September" 2012 and the fee due towards the admission is to be recovered by the petitioners by the State for the present session. The petitioner gave admission to Schedule caste and the Schedule Tribe Students in various courses strictly in consonance with the "Post Metric Scholarship Scheme" for students belonging to the Schedule caste and the Schedule Tribe Community. This procedure was followed from the last four decades. The true copy of the present scheme dated 1.4.2011 of the Union of India is annexed herewith as Annexure No. 1 to the writ petition.

20. That as per the previous policy which was active for the last four decades every Educational Institution was under a directional obligation of the State to admit the student belonging to the Schedule Tribe and Schedule Caste with out charging him/her any admission/tuition fee or any other charge as may be required by the College. The Educational Institutions were following the said policy/order for the last Four decades. These Educational Institutions operating from out of the State of Uttar Pradesh after giving admissions to the students of Uttar Pradesh use to send the list along with complete set of documents to the Director Social Welfare Department, Lucknow. After verification of the respective documents all the expenses pertaining to the tuition fees etc were directly reimbursed to the college. The Director Social Welfare Department has a complete system for verification of the documents as are submitted in routine despite the number of students and the requisite fee is being paid to the respective college i.e. the college had to approach a "single window" to seek a

refund of its dues.

21. That as per the previous policy which was active for the last Four Decades every Educational Institution which was within a state was getting the student's dues from their respective District Social Welfare Officer and the Out Of State Colleges were availing the services from a single window i.e. Director, Social Welfare Lucknow. As per the impugned new policy the Out of State Colleges will also have to now visit and apply to all the approx. 72 districts individually to get the documents verified within the prescribed time period and as per the proforma. They will also have to get the discrepancies removed. Even after so much of labour input the fee/dues shall be deposited in the bank account of the Students. And thereafter, for the recovery of the Dues from the student the respective college shall have to approach the student at his District within the State."

27. There is no express invocation of the principle of promissory estoppel as such. When we asked the learned Senior Counsel as to since when the writ petitioner Institutions have been in operation, the answer given was that they have been operating since 2009-2010. This question looms large and assumes significance in the context of the claim made in para 21 that the policy is applicable for the last four decades.

28. In fact, what is involved in the Rules is not that the scholarship amount will not be paid as such at all in respect of the students. What is involved, essentially, is the laying down of a procedure for the disbursement of the scholarship amount. In this context, it is noteworthy that the scheme is, essentially, one, which has been enunciated by the Government of India. Clause IX of the order dated 01.07.2010, Government of India, in fact, contemplated that the amount should be disbursed directly into the accounts of the students. All that the State of U.P. was attempting to do was to comply with the said salutary procedure, which, even in the contemplation of the Government of India, is a scheme for preventing misuse of the public funds and also to see that the funds reach the doorsteps of the genuine claimants and they are not siphoned off. There is, in fact, a case for the State of U.P. that, out of about 1600 students, almost half were found to be fake.

29. Therefore, could we say that the impugned Rules were not made in public interest, or, could we say that it is an arbitrary exercise of power? Indeed, we cannot, as it is a bounden duty of the State of U.P., in fact, to frame such Rules. If at all, they were late in the day in complying with the injunction of the Government of India. There is no explicit promise as such made by any person competent to hold that promise that the practice, which was prevailing in respect of payment of fee reimbursement into the account of the Institutions, would be followed in 2012-2013 also. At this juncture, it is necessary to notice some of the documents relied on by the learned Senior Counsel for the writ petitioners.

30. There is order dated 01.04.2011, which is referred to in the interim order

passed by the learned Single Judge also. The said order specifically in Clause 3.0 provides as follows:

"3.0 Timely payment of scholarship must be ensured to all eligible students covered under the Scheme. This Ministry has already written to all the State Governments/UTs to ensure that accounts are opened in Post-offices/Banks in name of individual beneficiary students, so that the scholarship amount can be directly credited in these accounts. In due course, students should be able to get their scholarship money through ATM/Smart Cards. In case your State Government/UT has still not introduced this system of payment, then immediate steps may be taken to ensure that the system is in place from the current financial year (2011-12). The status in this regard should be clearly indicated while forwarding your proposal. While considering proposal for release of central assistance, preference will be given to State Govts./UTs. which have already introduced the system of disbursement of scholarship through Bank/Post office accounts."

31. No doubt, at this juncture, it is also necessary to notice that, what is provided therein in clause 3,, inter alia, is that preference will be given to the State Governments/Union Territories, which have already introduced the system of disbursement of the scholarship to the bank accounts by considering proposal for release of Central assistance. It may be true that, in the sense, if the amounts are paid into the accounts of the Institutions, it may not be wholly illegal, but as disincentive to such payments made otherwise than into the bank accounts, the Government of India has held out a threat that the preference, which they would get in the matter of release of Central assistance, would be forgone. But, at the same time, even though it may not be strictly illegal, what is actually contemplated under the scheme is the payment of the amounts into the accounts of the students. This is clear from a perusal of Clause-3, itself, and Government wanted, in fact, to finally introduce system of payment through ATM and Smart Cards.

32. Now, it is necessary to notice order dated 30.08.2011. English translation of the said communication issued by the Director, Social Welfare Department, to the Director, Information and Public Relations Department, U.P., reads as follows:

"2. From the ongoing Session the amount of Scholarship/Fee reimbursement of the student belonging to General Caste will be remitted into the bank account of student and in case of Student belonging to Scheduled Caste the scholarship will be remitted into the bank account of the student and the amount of Fee reimbursement will be remitted into bank account of institution."

33. The argument based on Clause-2 of the Press-Note is sought to be met by the learned counsel for the appellants by pointing out that it related to the year 2011-2012 and no reliance could possibly be placed it to rest the argument of estoppel. We also feel that it relates to the year 2011-2012 as such. At any rate, there is no such press release for the year 2012-2013. On the other hand, within

the space of one year, i.e. in September, 2012, the impugned Rules were brought out.

34. There is communication dated 10.04.2012 issued by the Government of India. Essentially, this document assumes significance in the context of Clause-3, which reads as follows:

"3. Timely payment of scholarship must be ensured to all eligible students covered under the Scheme. This Ministry has already written to all the State Governments/UTs to ensure that accounts are opened in Post offices/Banks in name of individual beneficiary students, so that the scholarship amount can be directly credited in these accounts. In due course, students should be able to get their scholarship money through ATM/Smart Cards. In case your State Government/UT has still not introduced this system of payment then immediate steps may be taken to ensure that the system is in place from the current financial year (2012-13). The status in this regard should be clearly indicated while forwarding your proposal. While considering proposals for release of central - assistance preference will be given to State Govts/UTs, which have already introduced the system of disbursement of scholarship through Bank/Post office accounts."

35. From all this, we may be on slippery ground if we were to enter a finding of the petitioners making out a case of promissory estoppel.

36. If we pass on to the plea raised on the basis of legitimate expectation, we would think that we can safely conclude that the writ petitioners can lay no store by the said principle. Again, we turn to the judgment of the Hon"ble Apex Court in *Monnet Ispat and Energy Ltd. Vs. Union of India (UOI) and Others*, . Therein, the Hon"ble Apex Court has, inter alia, held as follows:

"The following principles in relation to the doctrine of legitimate expectation are now well established:

1. The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.

2. The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.

3. Where the decision of an authority is founded in public interest as per executive policy of law, the court would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.

4. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be

justifiable, legitimate and protectable.

5. The protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit."

37. We cannot hold that, in fact, the learned Single Judge has also not thought it fit to interfere with the Rules. Rules have, apparently, been carved out in public interest. We would think that the principle of legitimate expectation would not clothe the writ petitioners with the right to enforce it as a cause of action in, itself, against the action of the appellant State of U.P.

38. We must also not be oblivious to the fact that, under the impugned Rules, there is a priority fixed. In fact, the learned Single Judge has not considered the effect of the seniority list contemplated under Rule 11 of the Rules. According to the appellants, the writ petitioners would fall in the last category. Once the Rules were upheld, the case of the writ petitioners could not be considered, except in terms of the priority. There is a case for the appellant State of U.P. that, for the year 2012-2013, funds stand exhausted. We must not be unmindful that, when the court issues writs, they are not intended to be futile. In other words, if there is a plea of lack of funds, in the scheme of things, as contemplated under the scheme in question, the State is expected to process the applications made in terms of the Rules. It would lay out budget. It would prepare the funds necessary in terms of its liability on the basis of the priority. No doubt, the Centre is also expected to chip-in with its share of funds. The liability of the State would appear to be limited by what is called committed liability. We must note that these words did engage us on more than one occasion. On the one hand, Mr. Arvind Vashishtha, learned Senior Counsel for the writ petitioners, would submit that committed liability means the amount, which is actually spent by the State Government in the last year of the Five Year Plan, which, in this case, is 2011. On the other hand, the case of the appellant State of U.P. is that it is an amount, actually, which the State spends excluding the amount, which comes from the share of the Government of India. More importantly, he would submit that, actually, in this case, the committed liability is fixed by the Central Government.

39. We are only referring to this aspect to point out that, even if we were to take the view that, in terms of the past practice, which held the field till 2012-2013, the amounts were being paid to the Institutions directly in regard to the reimbursement of fees and, therefore, it at least in respect of students, who were admitted for the academic year 2012-2013, the same practice should be followed; we would think that we would perceive the plea of lack of funds as a veritable defence against grant of relief to the writ petitioners. It is, no doubt, true that we must not overlook the fact that there was an interim order passed by this Court; but, today, when we are deciding the Appeals, we would have to, first, decide whether the writ petitioners did make out a case. If we decide that

the writ petitioners did not make out a case, then we must consider whether, in the light of the interim order obtained by the writ petitioners alone, the writ petitioners should be held entitled to succeed. Interim orders cannot govern the fate of a case beyond the final judgment. Interim orders are intended to maintain the status quo and, no doubt, in appropriate cases also, no doubt, interim orders can be passed, which amount to final disposal of the case itself; but they would be very rare. In this case, pursuant to the order dated 31.12.2012, the Principal Secretary has filed an affidavit. It would be appropriate to refer to the said affidavit. It reads as under:

"4. That it is most respectfully submitted that in the State of Uttar Pradesh financial assistance is being given to scheduled caste/scheduled tribe students as per Rule 11 of the Scheduled Caste/Scheduled Tribe Post Matric Scholarship Scheme Rules-2012. As per Rule 11 of the said scheme, the scholarship amount is being transferred directly to the bank/post office accounts of the beneficiary students, and the Scheduled Caste/Scheduled Tribe Post Matric Scholarship Scheme Rules 2012, provide for payment of fees by students to their Education Institutes within 15 days of receipt of the fees amount in their accounts. For the concerned academic year 2012-13, no Education Institute has been given financial assistance directly, as contended by the counsel for the petitioners.

5. That the contention of the counsel for the petitioners that the funds meant for SC/ST students of Uttarakhand, are lying idle with the Government of Uttar Pradesh is not correct, as no funds meant for scholarship for the financial year 2012-13 are pending at the directorate level."

40. According to the learned counsel for the State of U.P. what is fixed as committed liability is Rs. 661.30 lacs though the total amount spent is Rs. 1023 crore for 2011-12. What is pointed out by the appellant is that out of the total expenditure incurred during the terminal year of the previous five-year plan, the outstanding dues of the previous year are deducted and the current year outstanding dues are added and that is how the committed liability is determined.

41. If we accept his plea of the committed liability, we would think that quite clearly even if everything else is made out and if we hold everything in favour of the writ petitioners also, this Court would not be justified in issuing a writ directing payment of the amount to the Institutions even on the basis of equity or fairness, which could be contended for on the basis of past practice. There is another issue involved in this litigation. Scheduled Caste students from U.P. may have taken admission in the petitioner Institutions in the years 2009-10, 2010-11 and 2011-12. According to the learned senior counsel for the writ petitioners Sri Arvind Vashist, in fact, in Writ Petition No. 2172 of 2012 (MS) itself, there are 315 students belonging to the Scheduled Caste community in the State of U.P. pursuing studies in various courses for the 2nd year in the year 2012-13, and more importantly, these students have been found to be genuine. Also 48 students are pursuing their 3rd year and 3 students are pursuing in 4th year, i.e. these students were admitted much earlier than 2012-13. They were

admitted prior to 2012-13 and, thus, the total of 366 students were studying in the Institutions. Learned counsel for the appellants would, in fact, submit that the writ petitions related to the admissions, which were made for the year 2012-13. The learned senior counsel for the writ petitioners would submit that, in fact, it related to the students, who were admitted in 2012-13. But even students, who were admitted in the previous year, would have to seek fresh admission in 2012-13, and, in that sense, at least in respect of 816 students, who have already been found to be genuine, even on verification by the State of U.P. and, at any rate, in respect of 366 students, the writ petitioners may be given relief.

About 816 students, who have been found to be genuine, which may include fresh admissions and, at any rate, those students, 366 in number in the petitioner Institutions, who obtained admission earlier to 2012-13, in respect of them, the amount may be paid to the Institution. This is sought to be met by the learned counsel for the appellants by pointing out that the amount cannot be paid to the Institutions. Secondly, it is submitted that the students are not before the Court. Thirdly, it is submitted that the demand has not been generated as provided in the Rules and there cannot be a dual system of payment.

42. Even though, we may find some merit in the argument of the learned senior counsel for the writ petitioners in regard to 366 students, inasmuch as they were students, who were already admitted and the genuineness of these students vouchsafed on the basis of inquiries conducted and they were genuine students belonging to the Scheduled Caste community, we would think that in view of the plea of nonavailability of funds pleaded by the State, we may not be justified in granting relief to them either. The upshot of the above discussion is that the Appeals must be allowed. The Appeals are, accordingly, allowed. The judgment of the learned Single Judge will stand set aside and the writ petitions will stand dismissed.