

(2022) 12 J&K CK 0065

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 3340 Of 2019, Civil Miscellaneous No. 6692 Of 2019

Suresh Gyan Vihar University

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 26-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 226(1), 226(1)(a), 226(2)
University Grants Commission Act, 1956 — Section 12B

Citation : (2022) 12 J&K CK 0065

Hon'ble Judges : M.A.Chowdhary, J

Bench : Single Bench

Advocate : T.M.Shamsi, Bilal A. Malla, Faheem Shah, Asif Maqbool

Final Decision : Dismissed

Judgement

M. A. Chowdhary, J

1. The instant petition has been filed to resolve the controversy relating to sanction the amount of scholarship in favour of the left over students as per the annexed list and to credit the same to the account of the petitioner-University as per the scale prescribed in guidelines of Prime Ministers Special Scholarship Scheme (PMSSS) and as per the approved fee structure of the petitioner-University.

2. The petitioner has prayed for the following relief:-

"Issuance of appropriate writ, direction or order by commanding the respondents 1 and 2 to sanction the amount of scholarship comprising tuition fee, hostel fee, mess charges and other incidentals including the consequential renewals till the completion of the course in favour of the left over 271 students Session 2014-15 as per list contained in Annexure-XI and credit the same to the account of the petitioner University as per the scale prescribed in guidelines of Prime Ministers Special Scholarship Scheme (PMSSS) and as per the approved fee structure of

the petitioner-University.”

3. For appreciating the controversy in its right perspective, it shall be advantageous to go through the background of the case:-

(i) An Expert Group was constituted by the Prime Minister on 18th August 2010, under the Chairmanship of Dr. G. Rangarajan to formulate jobs plan for the State of J&K. The Expert Group gave valuable insights into the practical problems and offered innovative suggestions for employment generation and recommended number of measures and one of the recommendations made by the Expert Group was that the Special Scholarship Scheme would be launched for the students of J&K and under clauses 9.3 and 9.4 of the recommendations the framework of the scheme was prescribed. The said clauses of the recommendations are reproduced as under: -

“9.3 The scholarship scheme would be applicable for courses in all Government Colleges/Universities, Engineering Institutions, Medical Colleges and some select private institutions to be identified by the Government on the basis of some objective criteria. This merit cum means scholarship will be available to students from J&K who get admission in these institutions through the normal selection process subject to the parental income being below Rs.4.5 lakhs per annum. However, if the demand for these scholarships exceeds supply, the selection could be made on the basis of a set of criteria consisting of a combination of means cum merit. The Expert Group recommends that 5000 scholarships per annum may be awarded for the next 5 years. Out of the total, 4500 scholarships (90%) could be for general degree courses, 250 for Engineering (5%) and 250 for Medical studies (5%). These scholarships would not only cover, subject to a normative ceiling, the full tuition fee but also hostel fee, cost of books and other incidentals. A possible annual normative ceiling for programme fee could be Rs 30,000 for general degree courses, Rs 1.25 lakhs for engineering and Rs 3.0 lakhs for medical studies. The hostel fee and other incidentals could be capped at Rs 1.0 lakh per annum. The Expert Group recommends an outlay of Rs.1200 crores for this initiative, which will benefit 25,000 students of J&K over a period of 5 years. We expect that this five year window will be able to build capacities of the youth to enable them to compete in the normal course. This Special Scholarship Scheme in J&K will be in addition to other scholarship schemes currently available.

9.4. The success of the Special Scholarship Scheme depends on the ability of the students from J&K to get admission in the identified institutions. Some of the admission tests are tough and intensely competitive. The students may require additional coaching to clear the basic benchmarks set by these institutions. The Expert Committee recommends that the State Government may actively incentivize coaching centers from the rest of the Country to establish branches in the State. The existing educational institutions including IGNOU could partner with the State Government in this initiative.”

(ii) The Cabinet Committee on Economic Affairs approved Special Scholarship Scheme for J&K to encourage the youth of J&K to pursue higher studies outside their State. The total cost of the scheme was quantified to the tune of Rs. 1200 crores of which Rs. 88 crores was to incur in the financial year 2012-13 and it was provided that only those students belonging to the State of J&K who passed the Class 12th or equivalent from J&K Board and pursue general degree course i.e., Engineering, Medical studies and other professional courses in Government Colleges/ institutes/ other reputed institutes, located outside J&K, would be eligible for scholarship scheme.

(iii) The Ministry of Human Resources Development Department of Higher Education issued revised guidelines for the academic year 2013-14 and for academic year 2014-15 for the Special Scholarship Scheme for J&K.

(iv) The respondent No. 2-All India Council for Technical Education, New Delhi was made the Implementing Agency of the said scheme on the recommendations of the Inter Ministerial Committee (IMC) which revised and formulated the guidelines of the scheme from time to time. The Inter Ministerial Committee (IMC), in order to implement the scheme in letter and spirit, has tried to plug the number of loopholes which become evident during the implementation of the scheme and first step was taken to remove the practice of the students taking admission of their own and on the advice of the agents of various Institutes and it was clearly stipulated in the scheme that no admission will be granted without going through the centralized counseling and after proper allotment of Colleges/ Universities.

4. Contention of learned counsel for the petitioner is that the petitioner-University, created under the Suresh Gyan University Jaipur Act 2008, admitted the students from the State of J&K in different courses, provided them education without charging any fee like tuition fee, hostel fee etc. and has filed the instant writ petition on the ground that the University has been excluded by the respondent No. 2 from the benefit of Scholarship as it has not got the approval of AICTE and has lodged the claim on the ground that the approval of the AICTE is not required to the University and has sought direction upon the respondents that the amount of Scholarship comprising of tuition fee, hostel fee, mess charges and other charges including consequential renewals till the completion of the course in favour of the 271 left-over students for the academic session 2014-15, be released in favour of the petitioner-University.

5. Learned counsel for the petitioner referred and relied upon the judgment titled 'Bharathidasan University & Anr. Vs. All India Council for Technical Education & Ors. reported as (2001) 8 SCC 676, wherein it has been observed that:-

"... All India Council for Technical Education Act, 1987 does not require a University to obtain prior approval of AICTE for starting a department or unit as an adjunct to the University itself to conduct technical education courses of its choice and selection. Regulations framed under the Act requiring the University

to obtain such approval are held void and unenforceable...”

6. Respondent No.1 in its reply has stated that the students from J&K were required to apply under the scheme on the AICTE portal and only those eligible students, who were within the merit list and had been allotted colleges through centralized counselling or had taken admission on their own in college/University either approved under Section 12 B of UGC Act or recognized by AICTE or by other regulatory authority and their application forwarded by the Government of J&K, were to be considered for award of scholarship under the scheme. It is stated that as the number of scholarship is limited, mere eligibility of the student does not guarantee them scholarship. Further, it is stated that the scholarship of eligible students of the academic year 2014-15 of the petitioner-University, had already been released to the advantage of eligible persons by relaxing Condition No.9. It is further stated that 271 left over students have not been found eligible for scholarship under the Special Scholarship Scheme for J&K due to “not in merit”, courses not approved by AICTE or either for other reasons, therefore, 271 left over ineligible students of Suresh Gyan Vihar University of the academic year 2014-15 cannot be considered and granted scholarship under the Scheme.

7. On the other hand, respondent No.2, claiming an Implementing Agency under the Scheme has taken preliminary objection regarding the locus of the University to file the instant writ petition, on the ground that the scholarship is granted to the students and not to the Colleges or Universities. Respondent No. 2 has also taken the stand that the litigation was sponsored by the petitioner-University and its conduct is highly objectionable as in the first instance it admitted the students of its own without proper permission of the respondent-concerned authority and after completion of their courses the petitioner-University filed the writ petition to obtain the wrongful gain. Respondent No. 2 has also opposed prayer of the petitioner-University on the ground that the said University is not approved under Section 12 B of the UGC Act and does not have approval of the AICTE for all its engineering branches excepting Information & Technology Engineering, Mechanical Engineering, Computer Science Engineering and the University has admitted the students in all the programs of the University. Respondent No. 2 has released scholarship in favour of those students of the petitioner-University who had taken admissions in the approved courses and the respondent No. 2 has also issued warnings from time to time and has made clear to both, students as well as to Universities/ colleges that they should not take admissions of their own. Respondent No.2 has also highlighted in its reply affidavit the financial compulsions and has submitted that budgetary support is granted by the Ministry of Human Resource Department for each financial year based on the calculation of the amount of scholarship for eligible candidates, academic year-wise. The budget support expires on 31st March each year and fresh budget is demanded on RE&BE (Revised Estimates and Budgetary Estimates). Respondent No. 2 has released scholarship of eligible students of batch 2014-15 of the petitioner-University by relaxing the condition No.9 in terms of the decision taken by the IMC and the 271 left-over students have not been found eligible for scholarship

under the PMSSS due to 'not in merit' or not being in the courses approved by the AICTE.

8. Another objection raised by respondent No.2 is that no cause of action has accrued to the petitioner-University within the territorial limits of this Court to institute the present writ petition as neither any order has been passed against the petitioner-University by the respondents nor any legal right has been infringed by the respondents in the UT of J&K and on this ground alone the writ petition is liable to be dismissed.

9. Heard and considered.

10. Issue of maintainability of the instant writ petition raised by respondent No.2, is to be addressed at the very outset, as it is stated that the petitioner-University has no locus-standi to file the instant writ petition. Respondent No. 2 submits that the Prime Ministers Special Scholarship Scheme, meant for the students of J&K, is a Merit Cum Means Scholarship Scheme and scholarship is to be granted to the students and not to the University or a College. Once the 271 left over students failed to obtain the benefit of Scholarship under the scheme, the University approached this Court by filing writ petition for the left over students who were earlier considered by this Court and were not found eligible. Respondent No. 2 submits that the petitioner-University has no locus and has relied upon a judgment of the Hon'ble Supreme Court in this regard rendered in 'Jasbhai Motibhai Desai Vs. Roshan Kumar AIR 1976 SC 578', which has observed as under:-

"...In order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and, in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfill that character, and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances.

This takes us to the further question: Who is an "aggrieved person" and what are the qualifications requisite for such a status ? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of rigid, exact and comprehensive definition..."

11. The foremost question that requires to be determined in this case is whether the petitioner-University could maintain the aforesaid writ petition. It is well settled that though Article 226 of the Constitution of India in terms does not describe the classes of persons entitled to apply there-under, the existence of the right is implicit for the exercise of the extraordinary jurisdiction by the High Court under the said Article. It is also well established that a person who is not aggrieved by the discrimination complained of, cannot maintain a writ petition.

12. Petitioner-University is seeking the benefit of the judgment passed by this Court in 'Sania Ishaq Vs. Union of India & Ors., OWP No.701/2015 decided on 07.06.2017'. The said judgment, however, is not applicable to the instant case as

the Court in the said judgment has held it as 'one time exception' for the academic year 2014-15 and has directed that the students admitted by the respondent therein shall be registered for scholarship. The said judgment was upheld by the Division Bench of this Court while observing that the students failed to reach the counseling centers because of the unprecedented floods of September 2014 and could not participate in counseling and as 'one time exception', the respondents were directed to admit the students and grant them the benefit of scholarship.

13. Mr. Bilal A. Malla, learned counsel for respondent No.2 contended that no cause of action or any part of cause of action has arisen to the petitioner-University, within the territorial limits of this Court to maintain the writ petition.

14. In the decision reported as (2007) 11 SCC 335 (Alchemist Ltd v. State Bank of Sikkim), Hon'ble Supreme Court considered the provision contained in Article 226(1)(a) of the Constitution of India and answered the said issue in paragraphs 19 to 24 which read thus:-

"19. The question for our consideration is as to whether the assertion of the appellant is well founded that a part of cause of action can be said to have arisen within the territorial jurisdiction of the High Court of Punjab and Haryana. Whereas, the appellant Company submits that a part of cause of action had arisen within the territorial jurisdiction of that Court, the respondents contend otherwise.

20. It may be stated that the expression "cause of action" has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It may, however, be described as a bundle of essential facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit.

21. The classic definition of the expression "cause of action" is found in *Cooke v. Gill* ((1873) 8 CP 107 : 42 LJCP 98) wherein Lord Brett observed: " 'Cause of action' means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court."

22. For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed.

23. Mr Soli J. Sorabjee, Senior Advocate appearing for the appellant Company placed strong reliance on *A.B.C. Laminart (P) Ltd. v. A.P. Agencies* ((1989) 2 SCC 163 : AIR 1989 SC 1239) and submitted that the High Court had committed an error of law and of jurisdiction in holding that no part of cause of action could be said to have arisen within the territorial jurisdiction of the High Court of Punjab and Haryana. He particularly referred to the following observations: (SCC p. 170, para 12) "12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of

the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

24. In our opinion, the High Court was wholly justified in upholding the preliminary objection raised by the respondents and in dismissing the petition on the ground of want of territorial jurisdiction."

15. In paragraphs 37 and 38, the Supreme Court further held as follows:-

"37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that.

38. In the present case, the facts which have been pleaded by the appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of "cause of action" within the meaning of Article 226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition."

16. Whether receiving of an order within the territorial limits of High Court will confer jurisdiction was considered by Hon'ble the Supreme Court in the decision reported as AIR 1999 SC 2362 CBI v. Narayan Diwakar). In the said judgment the entertaining of the writ petition seeking to quash the FIR on the ground that FIR was communicated at Itanagar Arunachal Pradesh, was a part of cause of action for filing the writ petition before the Gauhati High Court. Hon'ble the Supreme Court held that entertaining of the writ petition by the Gauhati High Court was not maintainable.

17. In the decision reported as AIR 2002 SC 126 (Union of India & Ors v. Adani Exports Ltd & Anr.), it is held that in order to confer jurisdiction on a High Court to entertain a writ petition the High Court must satisfy from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the Court to decide the dispute which has, at least in part, arisen within its jurisdiction. It is clear that each and every fact pleaded in the

application does not ipso-facto lead to the conclusion that those facts give rise to a cause of action unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case.

18. In another decision reported as AIR 2004 SCV 1998(1), (National Textile Corporation Ltd. & Ors v. M/S Haribox Swalram & Ors), Hon'ble the Supreme Court reversed the Division Bench judgment of Calcutta High Court in entertaining the writ petition and held that mere communication of the message or where the writ petitioner resides or carries on the business, will not be a determinative factor to decide the territorial jurisdiction of the Court.

19. Mere saying of learned counsel for the petitioner that the students admitted in the petitioner-University are from UT of J&K, will not give any cause of action to file the writ petition before this Court. Clause (1) of Article 226 of Constitution of India begins with a non-obstante clause notwithstanding anything contained in Article-32 and provides that every High Court shall have power "throughout the territories in relation to which it exercises jurisdiction", to issue to any person or authority, including in appropriate cases, any Government, "within those territories" directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under Clause (2) of Article 226 the High Court may exercise its power conferred by Clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

20. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution, it becomes clear that High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued, is not within the said territories. It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour. The cause of action has no relation whatever to the defense which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set-forth in the plaint as the cause of action upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

21. Since the petitioner-University is Jaipur based in Rajasthan and claims reimbursement of the expenses incurred with regard to tuition fee, hostel fee, cost of books and other incidental expenses borne out by the petitioner-University for having admitted, on its own, the students of Jammu & Kashmir under the Prime Ministers Special Scholarship Scheme, which has been denied to the left-over 271 students of Session 2014-15 by respondent No.2, who is also Delhi based. The cause of action, under the given circumstances, cannot be said

to have wholly or partly accrued within the jurisdiction of this Court. Therefore, without going into the merits of the case, this petition is not worth to be entertained, in the light of the aforementioned settled legal position and 'no cause of action' having arisen within the territorial jurisdiction of this Court. As a result this Writ Petition filed by the petitioner- University is held to be non-maintainable before this Court for lack of jurisdiction.

22. This Court, while exercising writ jurisdiction, has discretion to decide the same and the discretion cannot be used in favour of the party, which deliberately invokes the jurisdiction of the Court which has no jurisdiction whatsoever.

23. Petition, along-with pending application(s) for want of jurisdiction, is dismissed. No order as to costs.