SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik
Mr. Justice Shahid Waheed

CIVIL PETITION NO.5877 OF 2021
[On appeal against the judgment dated 14.09.2021 of the Islamabad High Court, Islamabad, passed in R.F.A. No.358 of 2020]

Higher Education Commission H/9, Islamabad through its Project Director *...Petitioner*

VERSUS

Allah Bakhsh, etc. *...Respondent(s)*

For the Petitioner	:	Mr. Manzoor Hussain, ASC
For Respondent(s)	:	N.R.
Date of Hearing	:	26.04.2023

JUDGMENT

SHAHID WAHEED, J.— This petition for leave to appeal is by the plaintiff, a body corporate constituted under the Higher Education Commission Ordinance No.LIII of 2002, and arises out of its suit for recovery of €47,012/- and Rs.70,725/-. This recovery claim was mainly made on the basis of two documents. The first is an unregistered agreement (Exh.P.4) entered into between respondent No.1 and the petitioner for the award of scholarship for Ph.D studies at Martin Luther University of Halle, Germany, and the second is a registered surety bond (Exh.P.5) signed by respondent No.2. It was alleged that respondent No.1 received the scholarship money, but did not complete the course and returned to Pakistan without the permission of the petitioner, and therefore both the respondents, jointly and severally, were liable to refund the total amount of expenditure of scholarship including the travel cost incurred on respondent No.1 along with penalty. The respondents in their written statement denied the allegation and contested the suit raising a preliminary objection that it was out of time. It was asserted that due to ill health and certain compelling circumstances, respondent No.1

could not pursue his course and returned to Pakistan on 14th of April, 2014, joined his duty and this fact was also brought to the notice of the petitioner by his department, but still, more than three years were allowed to lapse, and the suit was filed on 3rd of March, 2018.

2. The preliminary objection of limitation was material in nature and thus, the trial Court dealt with it through issue No.3 (i.e. whether the suit of plaintiff is hopelessly time barred? OPD). After appreciating the evidence on record, particularly the statement of Ejaz Ahmad (PW-1), the trial Court concluded that it is an admitted fact that respondent No.1 returned to Pakistan on 14th of April, 2014 without completing the degree for which scholarship was awarded to him by the petitioner and the petitioner was informed of such fact by the department of respondent No.1 in June, 2014. Based on such factual finding, the trial Court came to hold that the suit had been instituted by the petitioner after the lapse of limitation period provided under Article 68 of the Limitation Act, 1908 and consequently dismissed the suit vide judgment and decree dated 28th of October, 2020.

3. The petitioner then carried its first appeal under Section 96 CPC before the Islamabad High Court pleading that its suit was governed by Article 116 of the Limitation Act, 1908 which prescribed a period of six years and was thus, within time. On consideration of the matter, the High Court concluded that the deed of agreement (Exh.P.4) alleged to have been breached by respondent No.1, being an unregistered contract, did not attract Article 116, but instead Article 115 of the Limitation Act, 1908 was attracted, which prescribed a period of three years, and it started to run from the time when the contract was breached. The High Court further observed that as the instrument of guarantee (Exh.P.5) furnished by respondent No.2 was a promise by respondent No.2 made to the petitioner to stand as surety for respondent No.1, the breach of such promise attracted Article 65 of the Limitation Act, 1908 which also prescribed a three years limitation period to run from the period when the contingency happened. These findings led the High Court to dismiss the appeal and maintain the dismissal of the suit on the ground of limitation.

4. The petitioner, accepting the findings of fact returned by the two Courts below to the effect that the suit was lodged after a lapse of more than three years, now seeks leave to appeal against the decree dated 14th of September, 2021 of the first appellate Court and takes a new stand which is different from the plea made before the High Court. The contention of the petitioner is that since it is a Government, its suit was governed by Article 149 of the Limitation Act, 1908 but was dismissed based on the wrongful application of the law, and as such, we have to see whether this argument is sufficient for grant of leave to appeal against the decree of the first appellate Court. We accordingly confine ourselves and make a bid to examine the sole and short question whether, in the given circumstances, Article 149 of the Limitation Act, 1908 is attracted to the petitioner's suit?

5. A careful reading of Article 149 of the Limitation Act, 1908 clearly reveals that in any suit by or on behalf of the Federal Government or any Provincial Government except a suit before the Supreme Court in the exercise of its original jurisdiction, the period of limitation would be sixty years. The period of limitation time from which the period begins to run is mentioned under Column 3 of the above Article, which reads as follows. "*When the period of limitation would begin to run under this Act against a like suit by a private person.*" This brings us to consider whether the Higher Education Commission, which has been brought into being as a corporate body by the Higher Education Commission Ordinance, 2002 has the attributes of a Government? The submission made by Mr. Manzoor Hussain, learned counsel for the petitioner, is that the Higher Education Commission was created by the Government to give effect to its policy for the improvement and promotion of higher education, research and development, and also that it is owned and controlled by the Government, and therefore, this body should be deemed to be the Federal Government within the connotation of Article 149. The learned counsel invites us to hold that the Higher Education Commission, being a Government-owned corporation, must be regarded as a Government because the Federal Government not only funds it to meet all the expenses required to carry out its functions, but the Prime Minister, being its Controlling Authority, also appoints

its Chairperson and members. Do these facts make that the Higher Education Commission is an "emanation of the Government"[1] and has no independent legal existence. This depends on the true construction of the Higher Education Commission Ordinance, 2002. We have considered the provisions of that statute and, for the sake of clarity, we propose to state their effect without referring to the various sections in detail.

6. The Higher Education Commission Ordinance, 2002 brings into being the Higher Education Commission, which is a statutory corporation. It has many qualities, for instance, defined powers[2] that it cannot exceed, and it is directed by a group of persons, collectively known as the Commission,[3] whose function it is to see that those powers are properly used. It may acquire, hold and dispose of property, both movable and immovable, and may sue or be sued.[4] The day-to-day control of the administration is vested in the Chairperson assisted by other officers. It makes its own appointments, has its own rules for recruitment.[5] It has an independent account.[6] Its Chairperson, members and officers, servants, consultants and advisers are public servants.[7] All these attributes make it clear that although the Higher Education Commission is owned and funded by the Government, and its Chairperson and members are appointed by the Prime Minister, it is, in the eye of the law, still a separate legal entity and has a separate legal existence. It is its own master and is answerable as fully as any other person or corporation of the State. It is not the Government, nor does it act on behalf of the Government, and as such, does not enjoy any immunity or privileges of the Government.[8]

7. The above-stated point of view is also borne out by a decision of the Privy Council in Fox v. Government of Newfoundland.[9] There the question was whether the Boards of Education in the

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[1] This phrase was first used in Gilbert v. Trinity House Corpn (1886) 17 QBD 795
[2] Section 10
[3] Section 6
[4] Section 4(2)
[5] Section 12
[6] Section 14
[7] Section 19
[8] Article 165-A of the Constitution of the Islamic Republic of Pakistan, 1973
[9] 1898 AC 667

Colony of Newfoundland, which were constituted by the Education Acts of 1892 and 1893 were mere agents of the Government. The Privy Council, after a close scrutiny of the Sections of the Education Act, 1892 held that the said Boards were not agents of the Government and that they were independent bodies. It was pointed out that once money was paid to the Boards, the Government had no longer any control over the money. At page 672 of the report, it is further pointed out that by Section 34, the Boards have power to make bye-laws and rules to be approved by the Governor in Council but are not bound to do so though by Section 37, their accounts have to be audited and returns of all schools duly audited are to be transmitted to the superintendent and these are, by Section 72, to be laid before the Legislature. That procedure was only for the information of the Government and the Legislature and not in order that any item of expenditure may be disallowed if the Government have not approved it. The Privy Council also stated in that case that the appointment of Boards for each of the three religious denominations concerned thereunder and the institution of the Board, indicate that it is not to be a mere agent of the Government for the distribution of the money but is to have within the limit of general educational purposes, a discretionary power in expending, which is a power independent of the Government.

8. In the same trend of thought and which is of greater help in the context of this inquiry is the judgment of the Court of Appeal in Tamlin v. Hannaford.[10] The question at issue in that case was whether the British Transport Commission, which was a statutory authority, was a servant or the agent of the Crown and whether its property was as much subject to the Rent Restriction Acts as the property of any other person. It was argued on behalf of the respondents that the British Transport Commission was an agent of the Government and that the Ministry of Transport had complete control over the business of the Company, it was the Minister of Transport who appointed Directors and fixed their remuneration. The Minister of Transport was given power to give the Company directions of a general nature in matters which appeared to him to affect the

[10] (1950) 1 KB 18

national interest as to which he was the sole judge, and the Directors of the Company were bound to obey such directions. It was, therefore, contended on behalf of the respondents that the Minster's control was complete and the property of the Transport Commission was Crown property and the Rent Restriction Acts had no application to such property. This argument was rejected by the Court of Appeal and Denning L. J. who pronounced the judgment of the unanimous Court held that the Transport Commission was not a servant or agent of the Crown and it was not a Government department and was not entitled to Crown privileges. At page 23 Denning L. J. states:

> *"But there are other persons who have also a vital interest in its affairs. All those who use the services which it provides – and who does not? – and all whose supplies depend on it, in short everyone in the land, is concerned in seeing that it is properly run. The protection of the interests of all these taxpayer, user and beneficiary – is entrusted by Parliament to the Minister of Transport. He is given powers over this corporation which are as great as those possessed by a man who holds all the shares in a private company, subject however, as such a man is not, to a duty to account to Parliament for his stewardship. It is the Minister who appoints the directors – the members of the Commission – and fixes their remuneration. They must give him any information he wants; and, lest they should not prove amenable to his suggestions as to the policy they should adopt, he is given power to give them directions of a general nature, in matters which appear to him to affect the national interest, as to which he is the sole Judge, and they are then bound to obey. These are great powers but still we cannot regard the corporation as being his agent, any more than a company is the agent of the shareholders, or even of a sole shareholder. In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the king. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government."*

9. The principle enunciated in both these authorities supports the conclusion which we have already drawn, namely, that the Higher Education Commission is an independent legal entity and an independent legal existence, and notwithstanding the fact that it is a "Government aided" or "Government controlled" or "Government patronised", it cannot be said to be an alter ego of the Federal Government, and thus, would not be governed by Article 149 of the Limitation Act, 1908.

10. Before parting with the judgment, we wish to observe that to be a suit on behalf of the Federal Government as allowed by Article 174 of the Constitution of the Islamic Republic of Pakistan, 1973 read with Section 79 of the Code of Civil Procedure, 1908, it should be instituted under its authority so as to make the decision of the suit binding on it. In fact, it cannot be, in our view, found to have been instituted on its behalf unless there is an averment in the plaint to that effect either express or such as to contain it by necessary implication. In the absence of any such averment and when admittedly the result of the suit is not intended to be binding on the Federal Government, the plaint cannot possibly be, by any stretch of imagination, held to have been filed on its behalf, and resultantly, the petitioner cannot be permitted to invoke Article 149 of the Limitation Act, 1908 to bring its stale claim within time.

11. For the foregoing reasons, we hold that the petitioner has failed to make out any point for leave to appeal, and the decree of the Islamabad High Court is passed on the correct application of law. Therefore, this petition must fail. Leave is refused and the petition is accordingly dismissed.

Judge

Judge

Judge

Islamabad, the
26.04.2023
"Approved for reporting".
Sarfraz Ahmad & Agha Furqan, L/C