

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

WEDNESDAY, THE 2ND DAY OF MARCH 2022/11TH PHALGUNA, 1943

WP(C) NO. 3646 OF 2022

PETITIONER:

KIRAN DAVID
AGED 22 YEARS
S/O SUNIL DAVID, THALIYATH HOUSE,
PATHARAM P O, KOLLAM DISTRICT-690522.

BY ADVS.
MANOJ RAMASWAMY
JOLIMA GEORGE
JISHA SASI
C.B.SABEELA
APARNA G.
CHINNU ROSE MARY THOMAS

RESPONDENTS:

- 1 THE ASSISTANT GENERAL MANAGER
STATE BANK OF INDIA, HEAD OFFICE,
POOJAPPURA, THIRUVANANTHAPURAM-695012.
- 2 THE MANAGER
THE STATE BANK OF INDIA, SOORANAD BRANCH,
SOORANAD P O, KOLLAM DISTRICT-690522.

BY ADVS.
JAWAHAR JOSE
CISSY MATHEWS
EDWIN JOSEPH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.03.2022, ALONG WITH WP(C).4821/2022, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 2ND DAY OF MARCH 2022/11TH PHALGUNA, 1943

WP(C) NO. 4821 OF 2022

PETITIONER:

GAYATHRY V.S.

AGED 22 YEARS

D/O SURESHKUMAR V K, KEERANKARA PUTHENPURAYIL
HOUSE, KEEZHMAD, THOTTUMUKHAM P O, ALUVA,
ERNAKULAM DISTRICT, PIN-683105.

BY ADV O.D.SIVADAS

RESPONDENT:

THE BRANCH MANAGER

STATE BANK OF INDIA, KEEZHMAD BRANCH,
MUNDOKUDY BUILDING, KUTTAMASSERY,
THOTTUMUGHKOM P O, ALUVA,
ERNAKULAM DISTRICT, PIN-683105.

BY ADV. JAWAHAR JOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.03.2022, ALONG WITH WP(C).3646/2022, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

[CR]

N. NAGARESH, J.

W.P.(C) Nos.3646 and 4821 of 2022

Dated this the 2nd day of March, 2022

J U D G M E N T

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The petitioners are aggrieved by the denial of education loan. The petitioner in W.P.(C) No.3646/2022 wanted to study Post Graduate Diploma in Management (Securities Market) in the National Institute of Securities Markets (NISM), Navi Mumbai. The petitioner submitted Ext.P1 application for education loan of ₹7,30,000/- to the 2nd respondent-Manager of State Bank of India. The petitioner had submitted all documents required by the Bank in support of the application. The Bank, however, rejected the loan application submitted by the petitioner. The 2nd respondent

rejected the application for education loan for the reason that the CIBIL score of the co-applicant is not up to the mark. The petitioner challenges Ext.P6 communication and seeks to direct the 2nd respondent to process his loan application.

2. The petitioner in W.P.(C) No.4821/2022 wanted to study MBA in Happy Valley Business School, Coimbatore, affiliated to Annamalai University, Chennai. The petitioner submitted application for sanction of education loan of an amount of ₹3,96,000/- from the respondent-Branch Manager of the State Bank of India. The petitioner submitted all the requisite documents in support of her application. The respondent, however, issued Ext.P5 letter stating that the CIBIL score of the co-borrower is less than 685. The petitioner was required to resubmit the application with a co-borrower of satisfactory credit history.

3. The petitioners state that the Reserve Bank of India had affirmed that education loan is a futuristic loan and the aim of the educational assistance is for providing financial support from the banking system to

deserving/meritorious students for pursuing higher education in India and abroad. Rejection of the loan application submitted by the petitioners goes against the mandate given by the Reserve Bank of India through their various Circulars.

4. The petitioners contended that this Court considered the issue of denial of educational loan on the basis of low credit score of the guarantors. This Court in ***Pranav S.R. v. The Branch Manager, State Bank of India and another*** [2020 KHC 4695] held that unsatisfactory credit scores of the parents of the petitioner cannot be a ground to reject an educational loan application in view of the fact that the repayment capacity of the petitioner after his education should be the deciding factor. Therefore, the respondents are compellable to sanction and disburse the educational loan applied for by the petitioners.

5. The respondents vehemently opposed the writ petition. The respondent-Bank submitted that the educational loan policy of the State Bank of India is that the loan would be sanctioned jointly in the name of the student and his/her

parents/guardians. The parent/guardian would be a co-borrower in the loan. The Bank has to ensure that the co-borrower has necessary credit discipline. The Bank has the prerogative to depend upon the Credit Information Report.

6. The respondent stated that Ext.R2(a) Circular dated 27.06.2014 issued by the Reserve Bank of India requires that banks/financial institutions should include in their credit appraisal process/loan policies, suitable provisions for obtaining Credit Information Reports from one or more of the Credit Information Companies so that the credit decisions are based on information available in the system. The Bank processed the application submitted by the petitioners and it was found that the credit history of co-borrowers is not up to the mark.

7. The educational loans, along with instalment and leases, and small business facilities and commitments, are classified as retail loans as per Ext.R2(b) Circular issued by the Reserve Bank of India, contended the respondents.

Consequently, in Ext.R2(c) Master Circular dated 20.03.2021 issued by the State Bank of India, it was provided that Borrower/Co-borrower/Guarantor should not have any adverse credit history. In case of secured loans, CIBIL Score should be -1 or more than 591 and in the case of unsecured loans, CIBIL Score should be -1 or more than 685.

8. The learned counsel for the respondents argued that the judgment of this Court in ***Pranav S.R.*** (Supra) was delivered on the basis of the Model Scheme framed by the Indian Banks Association and this Court had no opportunity to analyse Exts.R2(a) and R2(b) Circulars of the RBI and Ext.R2(c) Master Circular issued by the SBI based on the Circulars of the RBI. Relying on the judgment of the Hon'ble Apex Court in ***ICICI Bank Limited v. Official Liquidator of APS Star Industries Limited and others*** [(2010) 10 SCC 1], the learned Standing Counsel argued that the Circulars issued by the RBI have statutory force. The Standing Counsel also relied on the judgment in ***Annamalai University represented by Registrar v. Secretary to***

Government, Information and Tourism Department and others [(2009) 4 SCC 590] and urged that the Circulars and Guidelines of the RBI have the status of subordinate legislation.

9. When a judgment is delivered without adverting to such statutory instruments, such judgment should be treated as *per incuriam*, contended the Standing Counsel, relying on the judgment in **Dr. Shah Faesal and others v. Union of India and another** [2020 (4) SCC 1]. In W.P.(C) No.14236 of 2021, this Court directed the student to substitute the Co-obligant with one having sufficient credit score, in order to avail educational loan, pointed out the Standing Counsel.

10. In **Kasaragod Co-operative Educational Society Ltd. No.C.904 v. Registrar of Co-operative Societies (General), Thiruvananthapuram and others** [2016 (3) KHC 630], this Court has held that writ petition is not the remedy when a Co-operative Bank denies loan, contended the petitioner.

11. I have heard the learned counsel for the petitioners and the learned Standing Counsel representing the Bank.

12. The applications submitted by the petitioners for educational loan have been rejected by the Bank for the reason that the parents / co-applicants do not have the requisite credit score. This Court in ***Pranav S.R.*** (Supra) has held that unsatisfactory credit scores of parents cannot be a ground to reject an educational loan in view of the fact that the repayment capacity of the student after his education should be the deciding factor as per the Circulars issued by the Indian Banks Association.

13. The respondents argue that the judgment in ***Pranav S.R.*** (Supra) was delivered by this Court, based on Circulars issued by the Indian Banks Association and this Court had no opportunity to read Exts.R2(a) and R2(b) Circulars issued by the RBI, which have statutory support as those are issued in exercise of the powers under Section 35A of the Banking Regulation Act. The fact that Banks are

bound by the Circulars issued by the RBI, is not in dispute.

The question is whether Exts.R2(a) and R2(b) would be applicable to the educational loans in issue.

14. Ext.R2(a) Circular dated 27.06.2014 has been issued in the context of providing a Data Format for furnishing of Credit Information to Credit Information Companies. Paragraph 2(ii) of Ext.R2(a) Circular is as follows:

Credit Information Reports (CIRs) / Credit Bureau Usage in all Lending Decision and Account Opening : Banks / FIs should include in their credit appraisal processes/loan policies, suitable provisions for obtaining CIRs from one or more CICs so that the credit decisions are based on information available in the system. In this context, as commercial borrowers' data is not adequately populated with the CICs, to start with, banks/FIs may institute board approved policies for credit bureau usage in all lending decisions and account opening to retail borrowers/consumer borrower segment.

Ext.R2(a) provides that Banks should include in their credit appraisal processes/loan policies, suitable provisions for obtaining CIRs from one or more CICs. A reading of

paragraph 2(ii) quoted would indicate that the Circular is primarily intended to apply commercial borrowers. Though the paragraph states that the Banks may institute Board approved policies for credit bureau for all lending decisions and account opening to retail borrowers and consumer borrower segment, it is evident that the loan policies in this regard should be “suitable” so as to take credit decisions on the basis of information available in the system.

15. Ext.R2(b) Guidelines have been issued by the RBI for the purpose of maintaining Accounting Standards. In the said context, the Guidelines proceed to state that the term ‘Retail Banking’ would take in student and educational loans. But, the educational loans provided by the Banks in India under Vidya Lakshmi Scheme, stand on a different footing. India is one of the youngest nations in the world with more than 54% of the total population below 25 years of age. Yet, less than 5% of potential workforce in India gets formal skill training to be employable and stay employable.

16. With a view to enable poor and middle class students to pursue higher education of their choice without any constraint of funds, a Scheme was provided by the Government of India to ensure that no student misses out on higher education for lack of funds. Vidya Lakshmi Portal for students seeking Education Loan has been developed under the guidance of Department of Financial Services, (Ministry of Finance), Department of Higher Education (Ministry of Education) and Indian Banks Association (IBA).

17. In exercise of the powers conferred by Sections 21 and 35A read with Section 56 of the Banking Regulation Act, 1949, the Reserve Bank of India, in public interest, has issued Reserve Bank of India (Priority Sector Lending-Targets and Classification) Directions, 2020. Direction 4 contained therein categorises Education as a priority sector. Direction 11 states that Loans to individuals for educational purposes, including vocational courses, not exceeding ₹20 lakhs will be considered as eligible for priority sector classification.

18. The Banks including the nationalised Banks are within their competence to sanction student/education loans dehors any special Scheme framed by the Government or RBI. But, when the Banks disburse loans as priority sector loans, the eligibility criteria fixed for sanction of such loans should necessarily have a nexus with the object sought to be achieved. The Nationalised Banks and Scheduled Banks will not be justified in framing conditions for sanctioning of such priority sector loans so as to defeat the very purpose of grant of such loans.

19. The judgment in ***Kasaragod Co-operative Educational Society Limited*** (supra) was a case involving denial of a commercial loan and hence will not apply to the facts of the case. In view of my finding that Exts.R2(a) and R2(b) do not apply to the facts of these writ petitions, the judgments of the Hon'ble Apex Court in ***ICICI Bank Limited*** (Supra) and ***Annamalai University*** (Supra) will not be of any assistance to the respondents.

20. This Court in the judgment in ***Pranav S.R.*** (Supra) has held that for educational loans, the repayment possibilities are to be decided not on the financial position of the parents but solely on the projected future earnings of the students on employment after education. In view of the facts and reasons stated above, I find no reason to take a different view in the matter.

The writ petitions are therefore allowed. The respondents are directed to reconsider the loan applications submitted by the petitioners, disregarding the low Credit Score of the co-obligants, if any, and sanction and disburse eligible loan amount, if the petitioners are otherwise eligible, within a period of one month.

Sd/-

N. NAGARESH, JUDGE

aks/26.02.2022

APPENDIX OF WP(C) 3646/2022

PETITIONER'S EXHIBITS

- Exhibit P1** TRUE COPY OF THE APPLICATION FORM SUBMITTED BY THE PETITIONER.
- Exhibit P2** TRUE COPY OF THE OFFER LETTER DATED 10.06.2021 ISSUED BY THE NATIONAL INSTITUTE OF SECURITIES MARKETS (NISM) TO THE PETITIONER.
- Exhibit P3** TRUE COPY OF THE CERTIFICATE DATED 26.11.2021 ISSUED BY THE NATIONAL INSTITUTE OF SECURITIES MARKETS (NISM).
- Exhibit P4** TRUE COPY OF THE FEE STRUCTURE OF PGDM (SM) 2021-2023 OF NATIONAL INSTITUTE OF SECURITIES MARKETS.
- Exhibit P5** TRUE COPY OF THE LETTER VIDE NO.PLGEA-F2/4/2022-PLGEA DATED 25.01.2022.
- Exhibit P6** TRUE COPY OF THE EMAIL LETTER DATED 28.01.2022 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXTS:

- R2 (a) COPY OF CIRCULAR DT 27.6.2014 ISSUED BY RBI.
- R2 (b) COPY OF CIRCULAR DT 18.4.2007 ISSUED BY RBI
- R2 (c) COPY OF RELEVANT PAGES OF CIRCULAR DT 20.3.2021 ISSUED BY SBI
- R2 (D) COPY OF CIRCULAR DT 17.1.2018 ISSUED BY SBI
- R2 (e) COPY OF CHART SHOWING THE PERFORMANCE OF EDUCATIONAL LOAN AS ON DECEMBER, 2020.
- R2 (f) COPY OF RELEVANT PAGES OF CIRCULAR DT 4.9.2020 ISSUED BY RBI.

APPENDIX OF WP(C) 4821/2022

PETITIONER'S EXHIBITS

- Exhibit P1** TRUE COPY OF THE FEES AND EXPENDITURE STATEMENT ISSUED BY HAPPY VALLEY BUSINESS SCHOOL COIMBATORE DATED 01.10.20210
- Exhibit P2** TRUE COPY OF THE LOAN APPLICATION SUBMITTED BY THE PETITIONER.
- Exhibit P3** TRUE COPY OF THE NATIVITY CERTIFICATE OF THE PETITIONER DATED 19.01.2022 ISSUED FROM THE KEEZHMAD VILLAGE.
- Exhibit P4** TRUE COPY OF THE INCOME TAX CERTIFICATE OF THE PETITIONER DATED 2.1.2022M ISSUED FROM THE KEEZHMAD VILLAGE.
- Exhibit P5** TRUE COPY OF THE LETTER DATED 8.2.2022 ISSUED BY THE STATE BANK OF INDIA, KEEZHMAD BRANCH.