

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 9TH DAY OF JULY 2021 / 18TH ASHADHA, 1943

WP (C) NO. 6593 OF 2021

PETITIONER/S:

DEVIKA SONIRAJ
AGED 21 YEARS
D/O. MR. SONIRAJ, VATTATHERY HOUSE, PALLIPORT
P.O. ERNAKULAM 683 515.
BY ADVS.
REJI MATHEW.M
SMT.M.K.MEHRUNISHA BASIMA
SHRI.MATHEW VARGHESE

RESPONDENT/S:

- 1 THE ZONAL MANAGER, BANK OF INDIA
ZONAL OFFICE, KALOOR TOWERS, K.K. ROAD, KALOOR,
KOCHI 682 017.
- 2 THE BRANCH MANAGER,
BANK OF INDIA, PARUR MAIN ROAD BRANCH, NORTH
PARUR, PIN-683 513.
BY SRI.JAWAHAR JOSE, SC, BANK OF INDIA - BOI
BY ADVS.SRI.K.M.ANEESH
SRI.SHASHANK DEVAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 09.07.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

W.P.(C) No.6593 of 2021

..2..

P.B.SURESH KUMAR, J.

W.P.(C) No.6593 of 2021

Dated this the 9th day of July, 2021.

JUDGMENT

The grievance of the petitioner in the writ petition concerns the decision of Bank of India, a public sector bank in declining the request of the petitioner for an educational loan.

2. The petitioner is a second year BAMS student in Poomulli Neelakandan Namboothiripad Memorial Ayurveda Medical College, Shoranur. She secured admission in the said college for the 5½ years long BAMS course through the centralized allotment process of the State Government during 2019 on the basis of her rank in the National Eligibility Cum Entrance Test, 2019. The total fee which the petitioner is obliged to pay for the course in year-wise instalments is Rs.16,32,325/- . The petitioner has paid the fee payable for the

first year of the course and a portion of the fee payable for the second year of the course. As the family of the petitioner was unable to raise the entire balance fee for the course and as they do not have any collateral security to be offered for availing an educational loan for the entire balance fee, the petitioner along with her father applied to the bank for an educational loan of Rs.7,50,000/- for which no security is insisted by the bank in terms of its Educational Loan Scheme. As per Ext.P8 communication, the petitioner was, however, informed by the bank that the request of the petitioner cannot be considered. It is stated in Ext.P8 communication that the petitioner has not made available satisfactory evidence to show that she will be in a position to pay the deficit fee and that the stand of the petitioner that the deficit fee would be met by her father from his business income cannot be accepted, as her father is not generating any income from his business. It is also stated in Ext.P8 communication that the petitioner has not disclosed in the application the liabilities of her father to the State Bank of India, and the request of the

petitioner cannot, therefore, be considered as a bonafide one. Ext.P8 communication is under challenge in the writ petition.

3. A statement has been filed by the bank reiterating the stand taken in Ext.P8 communication.

4. Heard the learned counsel for the petitioner as also the learned Standing Counsel for the bank.

5. The learned counsel for the petitioner contended that the reasons stated in Ext.P8 communication are not sufficient to justify the decision to decline the educational loan sought by the petitioner.

6. The learned Standing Counsel for the bank, on the other hand, pointed out that the bank cannot be blamed for having expressed concern over the ability of the family of the petitioner to raise the deficit fee payable for the course, especially when the bank is satisfied that the family of the petitioner will not be in a position to pay the deficit fee. It was also pointed out by the learned Standing Counsel that to tide over the said concern, the bank has offered the entire balance fee payable by the petitioner for the course by way of loan and

the petitioner has refused to accept the said offer. It was further pointed out by the learned Standing Counsel that in terms of Ext.P11 Model Educational Loan Scheme formulated by Indian Banks' Association, on the basis of which the bank has formulated its educational loan scheme, the father of the petitioner ought to have divulged his liabilities to other banks in the application, and since the father of the petitioner has not divulged the said information in the application, the application of the petitioner cannot be said to be a bonafide one.

7. It is seen that having found that education is a matter of great importance for the development of human resources and empowerment of the country and having taken note of the fact that higher education is progressively moving into the domain of private sector and has become a very costly affair in the country in course of time and that there is a need for institutional funding in the area to ensure that no deserving student is denied the opportunity to pursue higher education for want of financial support, the Central Government has

evolved a policy decision for the same, and in furtherance to the said policy decision, the Reserve Bank of India has issued Circular bearing No.RPCD.PLNFS.BC.NO.83/06.12.05/2000-01 on 28.4.2001, forwarding to all Banks a Model Educational Loan Scheme prepared by Indian Banks' Association along with the modifications suggested by the Government of India for formulation of appropriate educational loan schemes and disbursal of educational loans on that basis. It is also seen that it is in tune with the aforesaid policy declaration made by the Central Government and the Circular issued by the Reserve Bank of India that the Banks in the country including the Bank involved in this matter have formulated Educational Loan Schemes, and are disbursing educational loans to the needy students. It is thus evident that the object of all Educational Loan Schemes formulated by Banks pursuant to the direction issued by the Reserve Bank of India in terms of the said Circular is to ensure that a meritorious student shall not be deprived of opportunity to pursue higher education merely on the ground that he/she does not have resources for the same.

8. It is also seen that the Indian Banks' Association has modified the original Model Education Loan Scheme formulated by them on a few occasions later, having regard to the operational difficulties in implementing the same, and the lending banks have been following the modified scheme for sanctioning and disbursing loans, after making appropriate changes in their loan schemes. The revised guidance notes on Model Education Loan Scheme for pursuing higher education issued by the Indian Banks' Association in the year 2015 clarify that the loan scheme has been conceived by them as a socially and economically relevant scheme aiming to provide need based finance to meritorious students for taking up higher education and that repayment possibilities of educational loans under the scheme are not to be assessed based on the financial position of the parents, but based on the projected future earnings of the students on employment after education. The relevant portion of the revised guidance notes on Model Education Loan Scheme issued by the Indian Banks' Association reads thus:

“Educational Loan Scheme is a socially and economically relevant loan scheme from the Indian Banking industry. Rightly, the RBI has included education loans as part of the priority sector lending of Banks. It aims to provide need-based finance to meritorious student for taking up higher education.

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x x x x x x

The model scheme does not look at the financial position of parents while evaluating loan to a meritorious student. Repayment possibilities have to be based on projected future earnings of the student on employment after education. To avoid subjectivity in assessment, it is suggested that the Banks may fix from time to time earning potential for various courses, percentage of income to be considered for repayment etc. A well laid appraisal procedure will ensure that the decision to sanction an education loan is based on sound commercial logic, besides serving a noble social cause.”

This Court has taken note of the aforesaid facts in the judgment in W.P(C) No.19248 of 2019, while dealing with a similar case .

9. Reverting to the facts, as noted, the petitioner is pursuing her BAMS course in a college allotted to her through the centralized allotment process of the State Government on the basis of her rank in the National Eligibility

Cum Entrance Test. The fact that the petitioner is unable to pay the fee payable for the course and the fact that the petitioner is eligible for an educational loan for pursuing her course in terms of the Scheme formulated by the bank are not disputed by the bank. As noted, the stand of the bank is that in the event of the inability of the petitioner to raise the deficit fee, the petitioner may not be able to complete the course and in that event, the bank may not be able to recover the loan and therefore, the bank is bound to ensure that the petitioner would be in a position to pay the balance fee. Insofar as the object of the Educational Loan Scheme formulated by the bank in compliance with the Circular issued by the Reserve Bank of India having statutory force is to ensure that a meritorious student shall not be deprived of the opportunity to pursue higher education merely on the ground that he/she does not have resources for the same, and in so far as the repayment possibilities of the loan to be disbursed under the scheme are contemplated to be made not on the financial position of the parents, but solely on the projected future earnings of the

students on employment after education, I am of the view that the stand of the bank that the family of the petitioner may not be in a position to pay the deficit fee payable by the petitioner for the course and therefore the petitioner is not entitled to the loan applied for, is unsustainable in law. Further, as noted, as per the scheme formulated by the bank for educational loan, applicants for loans exceeding a sum of Rs.7.5 lakhs have to provide security. As such, if the stand taken by the bank to decline the request made by the petitioner for educational loan is accepted as valid, students who secure admission for courses for which fee payable is more than Rs.7.5 lakhs and who are unable to provide collateral security, will not be in a position to avail educational loans. The very purpose of the Educational Loan Scheme formulated by the bank being to ensure that a meritorious student shall not be deprived of opportunity to pursue higher education merely on the ground that he/she does not have resources for the same, if the contentions raised by the bank are accepted, the same would defeat the object and purpose of the scheme.

W.P.(C) No.6593 of 2021

..11..

10. If the ability of the parents of the applicant to repay the loan cannot be a consideration for granting an educational loan, according to me, the liability, if any, of the parents shall not also be an impediment for the bank in considering an application for educational loan. As such, the contention of the bank that since the father of the petitioner has not disclosed his liabilities in the application, the application of the petitioner cannot be considered as one preferred bonafide cannot be accepted, especially when the bank does not dispute the eligibility of the petitioner for the educational loan applied for by her.

In the result, the writ petition is allowed and Ext.P8 is quashed. The respondents are directed to disburse the loan applied for by the petitioner forthwith.

Sd/-
P.B.SURESH KUMAR
JUDGE

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W.P.(C) No.6593 of 2021

..12..

APPENDIX OF WP (C) 6593/2021

PETITIONER ANNEXURE

EXHIBIT P1 THE TRUE COPY OF THE MOP-UP ALLOTMENT, MEMO FROM THE HOME PAGE OF COMMISSION.

EXHIBIT P2 TRUE COPY OF NEET (UG) 209 RESULT SUBMISSION REPORT.

EXHIBIT P3 TRUE COPY OF THE CANDIDATES DATA SHEET ISSUED BY THE COMMISSIONER OF ENTRANCE EXAMINATIONS SHOWING THE PETITIONERS AYURVEDA RANK NO. 16904.

EXHIBIT P4 THE TRUE COPY OF THE LETTER ISSUED TO THE PETITIONER BY THE COLLEGE SHOWING THE DETAILS OF THE FEES TO BE PAID IN EACH YEAR.

EXHIBIT P5 TRUE COPY OF THE RECEIPT OF PART PAYMENT OF TUITION FEE PAID BY THE PETITIONER FOR THE ACADEMIC YEAR 2019-20.

EXHIBIT P6 THE COPY OF THE JOINT APPLICATION FOR LOAN WITH RELEVANT DOCUMENTS OF THE PETITIONER AND HER PARENT SUBMITTED BEFORE THE 2ND RESPONDENT.

EXHIBIT P7 TRUE COPY OF THE LETTER NO. GS4-3440/2020 DATED 01/01/2021 RECEIVED FROM HIS EXCELLENCY THE GOVERNOR OF KERALA.

EXHIBIT P8 TRUE COPY OF THE COMMUNICATION NO. KZO.CR.REJ 2020-21-08 DATED 21.01.21 OF THE 1ST RESPONDENT REJECTING THE LOAN APPLICATION OF THE PETITIONER.

EXHIBIT P9 TRUE COPY OF JUDGMENT DATED 15/02/2021 IN WPC NO. 24763/2020.

EXHIBIT P10 TRUE COPY OF JUDGMENT DATED 03/07/2020 IN WPC NO. 10968/2020.

W.P.(C) No.6593 of 2021

..13..

EXHIBIT P11

TRUE DOWNLOADED COPY OF THE REVISED
GUIDELINES ON MODEL EDUCATIONAL LOAN
SCHEME FOR PURSUING HIGHER EDUCATION
INDIA, AND ABROAD 2021 ISSUED BY THE
INDIAN BANK ASSOCIATION.