

GAHC020005812020



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : WP(C)/219/2020

AKANGNUNGBA AO
R/O YISEMONG TOWN, H/NO.88, MOKOKCHUNG, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
NAGALAND, DEPARTMENT OF INDUSTRIES AND COMMERCE 2:THE
DEPUTY COMMISSIONER

3:THE DIRECTOR

4:THE GENERAL MANAGER

5:THE MANAGER

6:THE BRANCH MANAGE

Advocate for the Petitioner : N. LONGKUMER

Advocate for the Respondent : GOVT ADV NL

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
ORDER

25.04.2023

Heard Mr. N Longkumer, learned counsel for the petitioner along with Mr. M Smith, learned counsel for respondent Nos. 5 & 6 assisted by Mr. Sentilong.

2. This is a petition filed under Article 226 of the Constitution for issuance of the appropriate writ by directing the respondents to extend loan to the petitioner under the Prime Minister's Employment Generation Programme (PMEGP), from Mokukchung District in the year 2017-2018.

3. The petitioner being an unemployed youth had got selected along with other applicants by the Task Force under the Chairmanship of the Deputy Commissioner, Mokokchung and the General Manager, District Industries Centre (DIC) by the letter dated 31.07.2017 had forwarded a list of 8 (eight) selected beneficiaries which included the petitioner to the Bank Manager, HDFC Bank, Mokokchung for loan disbursement. The project of the petitioner was for setting up of Stone Crusher Unit at Yisemyong, Chuchuyimlag under the Mokokchung District costing Rs. 24.49 lakhs (Twenty Four Lakh Forty Nine Thousand) only. However, the HDFC Bank by a Letter dated 25.10.2017 informed the petitioner about its inability to approve the Government sponsored loan on the ground that the application of the petitioner does not meet the internal criteria of the bank. The petitioner was not the only PMEGP selected applicant who was not given the loan and this issue was taken up seriously by the Apex social organizations of Mokokchung district namely the Mokokchung Town Lanur Telongjem (an Apex

Youth Organization) and the AO Students' Conference. Due to the agitation by applicants who were not given the loan, the HDFC and other banks who failed to give the loan were not allowed to function. However, after a Memorandum of Understanding (MoU) signed between the beneficiaries and the Bank in the office chamber of the Deputy Commissioner, Mokokchung in the presence of the NGOs, the banks were allowed to function soon again

4. Thereafter, the petitioner was expecting the loan payment, however, the HDFC bank by an impugned Letter dated 19.03.2018 addressed to the CEO, Mokokchung informed that the HDFC bank was not in a position to fund the proposals under the PMEGP. The reason given with regards to the petitioner given with regards to the petitioner is that 'Project not feasible, Project cost 24.49 lakh, no existing financial banking'. Aggrieved, the petitioner had also served a legal Notice dated 09.09.2020. However, since no response was received, the petitioner has filed the instant writ petition.

5. Mr. N Longkumer, learned counsel for the petitioner, submits that the PMEGP Scheme is meant to generate employment opportunities in rural as well as urban areas through setting up of new self employment ventures/projects/micro enterprises. It is to provide continuous and sustainable employment to a large segment of unemployed youth in the Country and to increase the wage earning capacity of artisans and contribute to increase in growth rate of rural and urban employment.

6. The learned counsel for the petitioner states that the competent authority i.e. the District Task Force under the Chairmanship of the Deputy Commissioner, Mokokchung, after fulfilling all the required procedures had selected the petitioner and

the HDFC bank in Mokokchung was to provide the loan to the petitioner being duly selected by the District Task Force. The HDFC bank instead of providing the loan to the petitioner, had declined to provide the loan in a most arbitrary, unreasonable and discriminatory manner by merely stating its inability to approve the loan for the petitioner since it did not meet the internal criteria of the bank. That while it was the duty of the Nodal Department to ensure that the PMEGP programme is fully implemented, the Task Force headed by the Deputy Commissioner has remained a silent spectator without taking any action upon the HDFC bank. The petitioner is therefore deprived of his right to livelihood in being refused to be provide the loan by the HDFC bank when his project was already approved by the Task Force for implementation of the PMEGP programme.

7. Mr. E Thiba Phom, learned counsel for the State respondents on the other hand submits that the State through the Task Force headed by the Deputy Commissioner has done its part by selecting the project of the petitioner after following all the requisite guidelines under the scheme of PMEGP. The selected list of recommended candidates in the year 2007-2008 under the Mokokchung District, Nagaland was duly forwarded to the HDFC bank, Mokokchung Branch by the office letter dated 31.07.2017. The disbursement of loan is to prerogative of the bank and the Departments have no role in it. As per the guidelines under the PMEGP Scheme, paragraph 11 Clause (ii)(a) clearly states that the bank will have their own decision whether to give loan or not to the candidates, based on their viability on their projects. Thus, the State respondents have no further role to play in this matter.

8. Mr. M Smith learned counsel for the respondent Nos. 5 & 6,

HDFC Bank submits that the loan application of the petitioner was considered in line with the Bank's internal credit policy which is based on a combination of financial and related criteria and/or statically determined scores to assess credit eligibility, however, the petitioner does not meet the above mentioned required internal criteria mainly due to no existing financial banking and regrettably the loan of the petitioner was rejected. Due to the protest by the members of the PMEGP Association against the rejection for which the Branch in Mokokchung was closed for 3 (three) days. The Branch was allowed to re-open after assurance to relook for the second time. Thereafter, the loan for the petitioner, was approved way back in August 2019 for an amount of Rs. 1,30,000/- (One Lakh Thirty Thousand) only, based on his eligibility as per the documentation but not for the amount which was claimed as a loan from the Bank by the Petitioner and the same was communicated to the petitioner as well as the PMEGP Association's convener. However, the petitioner did not avail the sanctioned loan till date.

9. The learned counsel for the HDFC Bank, respondents no.5 & 6, also submits that the grant of credit facility cannot be claimed as a matter of right, rather the financial assistance may be granted only after evaluation/assessment of application/proposal submitted by intended borrower and that each application/proposal has its own merits/demerits, the decision to extend financial assistance rests with the Bank i.e. evaluation/assessment on case to case basis is carried out in line with guidelines, norms and rules prevalent during the relevant period.

10. The learned counsel further submits that the High Court is not to exercise its writ under Article 226 of the Constitution by directing grant of loan since such grant of loan is subject to

eligibility criteria. In support of his submission he has cited the decisions of the Apex court in The Bijnor Urban Cooperative Bank Limited, Bijnor & others vs. Meenal Agarwal & others in Civil Appeal No.7411 of 2021 dated 15 December 2021, Federal bank Ltd. vs. Sagar Thomas and others, reported in (2003) 10 SCC 733, and the decision of the High court of Kerela Anvardeen.K vs. UOI & others, WP(C) No. 22084 of 2020(I).

11. Having heard the submissions made by both the parties, the Guidelines on Prime Minister's Employment Generation Programme hereafter referred to as PMEGP is perused. The scheme is a merger of two schemes that were in operation till 31.03.2008, namely Prime Minister's Rojgar Yojana (PMRYP) and Rural Employment Generation Programme (REGP) for generation of employment opportunities through establishment of micro enterprises in rural as well as urban areas. The scheme is to be implemented by (KVIC) at the Central level and at the State level through the state KVIC Directorates, State Khadi and Village Industries Boards(KVIBs) and District Industries Centres (DICs) and Banks. The ways in which the scheme is to be implemented through the Agencies and the formation of the Task force who are to identify the beneficiary, detailed eligibility conditions of the beneficiary and how the Banks are to Finance and the manner of release of the subsidy to the loanee is provided in detail.

12. It is seen that the petitioner applied for the PMEGP for the year 2017 -2018 by submitting his project from Mokokchung District. The project of the petitioner was for setting up of Stone Crusher Unit at Yisemyong, Chuchuyimlag under the Mokokchung District costing Rs. 24.49 lakhs (Twenty Four Lakh Forty Nine Thousand) only, which the Task Force headed by the Deputy

Commissioner had selected along with other projects after following all the requisite guidelines under the scheme of PMEGP and was duly forwarded to the HDFC bank, Mokokchung Branch by the office letter dated 31.07.2017.

13. The point to be looked into in this writ petition is whether it is mandatory for the bank to sanction the loan to the persons/ projects selected by the Task Force after following all the requisite guidelines under the scheme of PMEGP.

14. As per the Guidelines on Prime Minister's Employment Generation Programme (PMEGP) para 11 (ii)(d) provides that the Task Force is to ensure that maximum number of projects cleared by the Task Force is sanctioned by the Banks for which a Bank's representative will also be made a member of the Task Force. In the instant case, no issue is raised with regards to the composition of the Task Force and it is also stated that the Task Force has followed and fulfilled all the procedures and requirements. Thereafter para para 11.(ii)(e) provides that

“Banks will take their own credit decision on the basis of viability of each project. No collateral security will be insisted upon by Banks in line with the guidelines at RBI for projects involving loan upto Rs. 10 lakh in respect of the projects cleared by the Task Force. However, they will appraise projects both technically and economically after ensuring that each project fulfils inter alia the criteria of

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| (i) | Industry |
| (ii) | Per Capita Investment |
| (iii) | Own Contribution |

(iv) *Rural Areas (projects sponsored by KVIC/KVIBs/DICs) and*

(v) *Negative List (Para 29 of the guidelines refers)*

It is essential that the applications cleared by the District Task Force also fulfil these requirements at that stage itself so as to avoid delays in approval of loans in Banks."

15. Thus on reading of the above provision it is clear that the Banks can refuse grant of loan to the persons/ projects selected by the Task Force if the above mentioned conditions are not met by the selected candidates. Thus this court finds that petitioner was not given loan under the scheme of PMEGP since the HDFC Bank has observed that the project of the petitioner was considered in line with the Bank's internal credit policy which is based on a combination of financial and related criteria and/or statically determined scores to assess credit eligibility and the petitioner's project did not meet the abovementioned required internal criteria. It is seen in the letter dated 19.03.2018 addressed to CEO Mokokchung that the HDFC Bank found that project cost of Rs.24.49 lakh of the petitioner not feasible since the petitioner was found not to have existing financial banking.

16. However, it is also noted that the HDFC Bank had a re -look at the petitioner's project after the protest made due to the none release of loan by the Banks and the project of the petitioner was approved in August 2019 for an amount of Rs. 1,30,000/- (One Lakh Thirty Thousand) only, based on his eligibility as per the documentation, which is stated to be still available to the petitioner till today.

17. The Apex Court in Federal Bank Ltd. v. Sagar Thomas, (Supra) has opined that " ... *a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution.*"

18. Thus in view of the observation of the Apex court and the aforesaid discussions, this court is of the considered view that there is no statutory obligation on the part of the HDFC Bank to disburse the loan under PMEGP even though the project of the petitioner was selected by the Task Force under PMEGP.

19. Accordingly the Writ Petition is dismissed and disposed of

Sd/-

JUDGE

Comparing Assistant