

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937**

**WP(C).No. 11421 of 2015 (C)**  
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**PETITIONER :**  
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**ANUPRIYA SREEDHARAN, AGED 18 YEARS,  
D/O.N.SREEDHARAN, ANUBHAVANAM, KADUVINAL P.O.,  
VALLIKUNNAM, ALLEPPEY DISTRICT PIN - 690 501.**

**BY ADV. SRI.O.D.SIVADAS**

**RESPONDENT :**  
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**THE MANAGER  
STATE BANK OF TRAVANCORE, VALLIKUNNAM BRANCH,  
MANI'S BUILDING, KADUVINAL P.O.,  
VALLIKUNNAM, ALLEPPEY DISTRICT PIN - 690 501.**

**BY SRI.R.S.KALKURA, SC, SBT**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 08-07-2015, ALONG WITH WPC. 11290/2015 AND CONNECTED  
CASES, THE COURT ON 17-07-2015 DELIVERED THE FOLLOWING:**

**bp**

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**APPENDIX**

**PETITIONER(S)' EXHIBITS**

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- P1: COPY OF THE ADMISSION LETTER DATED 30.6.14 ISSUED BY K.T.G COLLEGE OF PHYSIOTHERAPY, BANGALORE TOGETHER WITH CERTIFICATE OF FEES.**
- P2: COPY OF THE PROCEEDINGS DATED 28.4.2001 ISSUED BY RESERVE BANK OF INDIA.**
- P3: COPY OF THE RELEVANT PORTION OF MODEL EDUCATIONAL LOAN SCHEME FRAMED BY THE INDIAN BANK'S ASSOCIATION.**
- P4: COPY OF THE LETTER DATED 27.10.2014 ISSUED BY THE RESPONDENT BANK**

**RESPONDENT(S)' EXHIBITS :**

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- EXT.R1(a): COPY OF THE EDUCATION LOAN SCHEME ISSUED BY THE RESERVE BANK OF INDIA DT 2/5/2001 BEARING NO. RPCD.PLNFS. VC.NO.83/06.12.05/2000-01.**
- EXT.R1(b): COPY OF THE COMMUNICATION DT 31/5/2012 ISSUED TO THE CHIEF EXECUTIVE OF ALL MEMBER BANKS BY THE INDIAN BANKS ASSOCIATION.**
- EXT. R1(c): COPY OF THE MASTER CIRCULAR BEARING NO. PSB18/2011 DT 13/6/2011 RELATING TO SBT EDUCATION LOAN SCHEME.**
- EXT.R1(d): COPY OF THE MASTER CIRCULAR N EDUCATION LOAN BEARING NO. PSB 01 OF 2012 DT 10/1/2012.**
- EXT.R1(e): COPY OF THE IBA MODEL EDUCATION LOAN SCHEME DT SEPTEMBER 2012.**
- EXT.R1(f): COPY OF THE MASTER CIRCULAR BEARING NO. PSB/23/2012 DT 20/11/2012.**
- EXT.R1(g): COPY OF THE REVISED GUIDANCE NOTES DT 31/5/2012 ISSUED BY THE INDIAN BANKS ASSOCIATION.**
- EXT.R1(h): COPY OF THE CENTRAL SCHEME TO PROVIDE INTEREST SUBSIDY ISSUED BY THE GOVERNMENT OF INDIA, MINISTRY OF HUMAN RESOURCES DEVELOPMENT, DEPARTMENT OF HIGHER EDUCATION.**
- EXT.R1(i): COPY OF ORDER NO. 8-8/2009-EF.3 OF THE GOVERNMENT OF INDIA, MINISTRY OF HUMAN RESOURCES DEVELOPMENT, DEPARTMENT OF SCHOOL EDUCATION AND LITERACY EE-3 SECTION DT 14/9/2009.**
- EXT.R1(j): COPY OF THE ORDER NO. F.11-3/2006-U.5 OF THE GOVERNMENT OF INDIA, MINISTRY OF HUMAN RESOURCES DEVELOPMENT, DEPARTMENT OF HIGHER EDUCATION DT 8/9/2009 TO M.V. NAIR, CHAIRMAN, INDIAN BANKS ASSOCIATION.**

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**EXT.R1(k): COPY OF THE BIO-DATA FORM SUBMITTED BY THE PETITIONER'S FATHER N. SREEDHARAN FOR AVAILMENT OF LOAN ON 30/7/2013.**

**EXT.R1(l): COPY OF THE RATION CARD OF THE PETITIONER'S FATHER SERRDHARAN IN THE ADDRESS MENTIONED IN THE PETITION BEARING NO. 1421072691 DT 24/12/2008.**

**//TRUE COPY//**

**P.S. TO JUDGE**

**bp**

**K. VINOD CHANDRAN, J.**

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11422 of 2015, 11449 of 2015,  
11290 of 2015, 11439 of 2015**

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**Dated this the 17<sup>th</sup> day of July, 2015**

### **J U D G M E N T**

The petitioners in all the writ petitions are students, carrying on different courses out side the State but, in affiliated colleges of Universities approved by the University Grants Commission (U.G.C); who assert their entitlement to get educational loans from the respondent Bank. The admitted facts are that the petitioners, all of them have been admitted to the various colleges under the Management Quota, but however allegedly by virtue of an admission test carried on by the respective colleges.

2. The petitioners assert their claim on the basis of the judgments of this Court interpreting the educational loan scheme framed by the Indian Banks' Association (IBA) in **Jiby**

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**John v. State Bank of India [2011 (2) KLT 922], Runa Varghese v. Federal Bank [2014 (2) KLT 764], Andhra Bank v. Reshma Syam [2014 (4) KLT 855] and Branch Manager, Kerala Gramin Bank, Kollam and Another v. Rajendran P. and Another [2015 (3) KHC 561 (DB)].** The respondent Bank however seeks a re-look into the terms of the scheme, as modified over the years, as has been permitted by a Division Bench of this Court in an unreported decision dated 02.02.2015 in **W.A No.1147 of 2014.**

3. I have heard the learned Counsel for the petitioners as also the various learned Standing Counsel appearing for the Bank.

4. Since, the question to be decided is common and the petitioners more or less stand on the same footing, W.P.(C) No.11421 of 2015 is taken as the lead case. The petitioner therein is a graduate student of Physiotherapy. The learned Counsel for the petitioners bases his contention on the notification of Government of India at Ext.P2, which modified the

“Model Educational Loan Scheme for pursuing higher education in India and abroad”. The decisions aforesaid are all relating to the aforesaid scheme.

5. **Runa Varghese** (supra) was concerned with the rejection of a loan application on almost similar circumstances for non-satisfaction of the eligibility criteria set by the Bank, which required a minimum percentage of marks in the qualifying examination. The Circular produced at Ext.P2 dated 28.04.2001 came up for consideration and it was found that since the petitioner had gone through a selection process before getting admission as is evident by a score sheet, produced therein, and the Institution being approved by the Apex Body ie., the Indian Nursing Council, the rejection on the ground that the student could not get 65% marks in the qualifying examinations, was found to be illegal.

6. In **Jiby John** (supra) a learned Single Judge considered the question of whether the Bank could refuse educational loan for reason only that the student has another

Bank nearer to his residence. The question was found against the Bank, but however that does not arise herein.

7. In **Reshma Syam** (supra), the rejection was on the ground that the student was not admitted to the course through an Entrance Test/Merit Test Selection Process. The Institution admittedly was one recognised by the academic body and it was also admitted that the petitioner was not admitted through a Common Entrance Test. Therein also the student was found to have been admitted through an Entrance Test, of the college, but not the Common Entrance Test resorted to by the Government. Since, the selection process was based on a test, it was found that the minimum 65% criteria in the qualifying examination could not be applied. Therein, the Circular referred to was of 28.05.2012. Similar was the finding in **Rajendran P.** (supra) by the very same Division Bench following the earlier decision, which referred to a Circular applicable to Kerala Gramin Bank dated 19.11.2012.

8. Yet another Division Bench in the unreported

decision, noticed the decisions in **Runa Varghese** (supra) and **Reshma Syam** (supra) as also two decisions of the Madras High Court in **A. Kasinathan v. The Branch Manager, Canara Bank Madurai [CDJ 2012 MHC 2040]** and **Branch Manager, Indian Overseas Bank v. A. Ravi [Laws (MAD)-2014-6-269]**. The Division Bench at the out set found that the intra-court appellate jurisdiction confined the examination of the issues to that raised before the learned Single Judge. Garnering guidance from Order XLI of the Code of Civil Procedure, it was found that admission of fresh evidence could only be under Rule 27 of Order XLI, that too only in cases where the pleadings revealed such grounds. Finding the pleadings to be insufficient, the Division Bench refused to interfere with the discretion exercised by the learned Single Judge. However, it was specifically noticed that the issues would still loom large and the Bank was left the remedy to raise appropriate pleas in another case.

9. In the circumstance of the aforecited unreported decision as also the pleadings placed on record, with

substantiating materials of modification of the scheme, this Court would have to look into the terms of the scheme as it exists now.

10. The earlier scheme which was framed by the IBA was approved by the Government of India, Ministry of Finance with certain modifications, which modification inter alia directed that the condition of minimum qualifying marks in the last examination be dropped. It was in pursuance to that, Ext.P3 scheme was brought in by the IBA, which contained the eligibility norms of the student being an Indian National and having secured admission " to a higher education course in recognised institutions in India or Abroad through Entrance Test/Merit Based Selection process after completion of HSC (10 plus 2 or equivalent)". It is to be specifically noticed that even in the said scheme, there was a Note appended, which is extracted hereunder:-

Note: It would be in order for banks to consider a meritorious student (who qualifies for a seat under merit quota) eligible for loan under

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this scheme even if the student chooses to pursue a course under Management Quota.

Hence, the eligibility criteria was to be essentially based on merit.

11. The Reserve Bank of India Circular, Ext.R1(a) (Ext.P2 itself) by which the aforesaid scheme was circulated, also speaks of the objectives, so:-

The Educational Loan Scheme outlined below aims at providing financial support from the banking system to deserving/ meritorious students for pursuing higher education in India and abroad. The main emphasis is that every meritorious student though poor is provided with an opportunity to pursue education with the financial support from the banking system with affordable terms and conditions. No deserving student is denied an opportunity to pursue higher education for want of financial support.

In short, the scheme aims at providing financial assistance on reasonable terms:

\* to the poor and needy to undertake basic education.

\* to the meritorious students to pursue higher/professional/technical education.

The student eligibility condition under clause 4.2 in the Circular of the RBI specifically indicated so:-

#### 4.2 Student eligibility

\* Should be an Indian National

\* Secured admission to professional/ technical courses through Entrance

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Test/Selection process.

\* Secured admission to foreign university /  
Institutions.

\* **Should have scored minimum 60%  
(50% for SC/STs) in the qualifying  
examination for admission to graduation  
courses.**

This demonstrates that the minimum marks to be scored in the qualifying examination for admission to graduate courses was a criteria, in addition to the admission having been secured through an Entrance Test or Selection Process. In fact the IBA is not a statutory body and the RBI which has a supervisory control over the Banks, issued the said Circular, based on the modifications suggested by the Government of India itself.

12. The Bank which is the respondent herein had also brought out a Master Circular, which is exhibited at Exts.R1(c) and (d) respectively on 13.06.2011 and 10.01.2012. In Ext.R1(c) the Note referred to earlier was incorporated insofar as permitting grant of loans to meritorious students even if they had been admitted in the Management Quota. By Ext.R1(d), the

minimum marks for eligibility was done away with, but it was specifically provided that the entrance test through which selection is made should be one conducted by Government/approved Regulatory Bodies or Universities approved by U.G.C/A.I.C.T.E. A revised scheme was brought in on 31.05.2012 by Ext.R1(b). The said modifications were brought in, in the form of guidelines on the strength of experience gained in operating the loan scheme over a period of time. One of the salient aspects of the modification incorporated in the Revised Scheme/Guidelines-Note specified that "admissions under Management Quota for all courses including Nursing courses kept out side the scope of the scheme". The scheme as it exists now is produced as Ext.R1(f), a Circular of the Bank, dated 20.11.2012.

13. The extant scheme; revised in an attempt to address the concerns expressed by Bankers and the operational difficulties being faced by Branches, listed out the salient aspects as follows:-

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- i. Merit as the sole criteria for eligibility
- ii. Admission under management quota kept outside the scope of the scheme subject condition mentioned in para 2.1 below.
- iii. The quantum of loan to be justified by the employment potential.
- iv. Extension of repayment period to reduce burden on the beneficiaries.

The eligibility criteria as per Clause 2 is as follows:

### 2.1 Student eligibility

\* Should be an Indian National.

\* Should have secured admission to a higher education course in recognized institutions in India or Abroad through Entrance Test/Merit Based Selection process after completion of HSC (10 plus 2 or equivalent). It would be in order for banks to consider a meritorious student (who qualifies for a seat under merit quota) eligible for loan under this scheme even if the student chooses to pursue a course under Management Quota seat in an institution for reasons of convenience (proximity) or choice of course.

The entrance test conducted by Government / Approved Regulatory Bodies or Universities approved by UGC / AICTE may be reckoned for this purpose.

\* Entrance test or selection purely based on marks obtained in qualifying examination may not be the criterion for admission to some of the post graduate

courses or research programmes. In such cases, we may take into consideration the reputation of the institution concerned and the employability of applicant on the completion of the course, of sanction of loans.

\* As Education Loan is, henceforth, restricted to applicants securing admission through merit-based selection process only all stipulations regarding minimum marks stand withdrawn.

14. The revised guidelines of the IBA also produced at Ext.R1(g) proceeds on the same vein and in the objectives of the scheme specifically notices that meritorious is a relative term and it would be necessary for Banks to specify parameters for defining the term meritorious. A plausible approach is suggested insofar as a student qualifying in a merit based selection process being considered a meritorious student. Such selection process is specified as one through common entrance test (as emphasised above). However in the case of admissions purely based on the marks scored in the qualifying examinations, the Banks were authorised to fix cut of marks for deciding eligibility. With respect to management seats it was

specifically provided so:-

Usually for the management seats the only requirement would be passing of the qualifying examination with certain minimum stipulated marks. It is logical to interpret that these seats do not qualify for being called "meritorious".

Banks have reported certain cases where the employment potential would not justify the fee structure for management seats from the point of repayment of the loan being sought. Hence, any loan considered by banks for students getting admission under management quota would be outside the model scheme. Banks may fix appropriate terms and conditions for such loans.

15. The Central scheme brought in by the Government of India lays emphasis on the need to ensure that no meritorious student is denied the professional education only because he or she is poor. A review of the various provisions as originally existed in the scheme and later modified on the basis of the operational experience, indicates that the thrust is to ensure education to meritorious students and to enable even students who do not have the necessary financial wherewithal to go for higher studies, especially in technical and professional courses.

16. Essentially, it is to be noticed that the loan is not a largesse granted by the Government, but a financial facility extended, which has to be repaid after the course is completed. The repayment schedule indicates that the same has to commence immediately on getting employment or within one year of the completion of the course. Hence, the employability is a primary consideration in extending such loans. The capacity of a student to complete a course is very significant. It is in that context that the scheme has given more emphasis on merit and the eligibility being defined on that count. Merely because a student does not have the financial ability to go for higher studies would not enable extension of such financial facility. Merit and financial status are both to be taken into account. In the case of a meritorious student, the object is to provide necessary financial help for such a meritorious student to go for higher studies.

17. The Bank, it cannot be ignored, is dealing with public money and the repayment of loans is also an important

consideration. A student who is not meritorious and who does not have the necessary capacity to complete the studies and come out successful in a professional or technical course, cannot be granted the loan merely for reason of the student coming from poor financial circumstances.

18. More reason why finance cannot be granted to enable students to be admitted to Management Quota seats. Even if the management seats are filled up on the basis of entrance examination, there is nothing wrong in the financial institution specifying a minimum eligibility in the qualifying examinations. In the present case, merit based selection ie., the Entrance Examination, is said to be one carried out by the college itself. The scheme as it stands now insists on the selection process being conducted by a common entrance test by Governmental Agencies or Universities or Academic Bodies. The entrance examinations conducted by a private management college to fill up its management seats cannot be said to come within the ambit of common entrance test. The prescription of a

minimum requirement hence, cannot be found to be bad.

19. A Division Bench of the Madras High Court had comprehensively considered the issue in the light of the Circular of the RBI dated 28.04.2001 and the revised guidelines permitted to be implemented by the RBI based on which the IBA and respective Banks have framed the present scheme. The question of whether the circular issued by the RBI has statutory force in terms of Section 21(2) and Section 35(a) of the RBI Act was considered and it was found that the same is in doubt. The information furnished by the RBI itself in its website on 21.06.2006 in reply to a query was extracted as hereunder:-

"A "New Education Loan Scheme" was formulated by IBA in consultation with the Govt. of India and circulated by RBI to all scheduled commercial banks vide circular RPCD.PLNFS.BC.83/06.12.05/2000-01 dated April 28, 2001 for implementation. The circular is available on our website [www.rbi.org.in](http://www.rbi.org.in). The Scheme provides broad guidelines to the banks and implementing bank will have the discretion to make changes suiting to the convenience of students/parents etc.

20. The guidelines for educational loans were found to be framed by the IBA and Circular issued by the RBI. Even if

the said scheme has statutory force, it was categorically held that the High Court under Article 226 of the Constitution of India cannot issue directions to the Banks to dilute the policy and ignore the cut of marks prescribed. The mushrooming of private colleges and the trend of admitting students indiscriminately to courses, merely with a profit aim, to collect the fees, without looking at the aptitude/capacity of the student, to complete the course was specifically emphasised to find that, though education is the duty of the Government, extension of a loan facility was not mandatory. Financial incapacity is what is sought to be overridden in providing an educational loan, and not the lack of merit.

21. Financial facilities cannot be, indiscriminately extended to even candidates, who do not have the academic merit and the necessary capacity to complete a technical or professional course. The marks in the qualifying examination though not always conclusive, is definitely indicative of the academic capacity of a student. In fact the scheme provides for

loans even to candidates admitted in the Management Quota, provided the candidate scored the required percentage of marks in the qualifying examination. In view of the revised scheme and the revised norms, the decisions cited by the petitioners will not be applicable. None of the petitioners have required minimum percentage of marks. They all are admitted to management seats and have not been admitted through a common entrance test.

22. The educational loan scheme is brought out by the IBA, as a public policy measure to ensure that no meritorious student is denied admission to professional and technical courses for reason only of the financial incapacities of himself or his family. The scheme is not statutory in character and even the RBI, the regulatory authority has left it to the discretion of the Banks to lay down the terms; which has to be on a balancing consideration of the public policy and the financial discipline inherent to an institution dealing with public funds. The scheme intends to aid meritorious students to tide over their financial

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difficulties. It cannot in any manner supplement or supplant academic deficiencies or ineptitudes.

The writ petitions hence are devoid of merit and would stand dismissed.

**Sd/-**  
**K. VINOD CHANDRAN,**  
**JUDGE**

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P.A to Judge.