IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22910 of 2013

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Birendra Pathak, son of Late Bachchu Pathak, Resident of quarter No. 17, High Court Campus, Patna, P.S. Kotwali, District – Patna

... ... Petitioner

Versus

1. The State Bank of India, through its Chairman, at State Bank Bhawan, Madam Kama Road, Mumbai – 400021.
2. The Assistant General Manager, State Bank of India, Retail Assets Centralized Processing Centre, Patna.
3. The Branch Manager, State Bank of India, High Court Branch, Patna, P.S. Kotwali, District – Patna.
4. The S.B.I. Life Insurance Company Limited, 2nd Floor, Tumer Morrison Building, G.N. Vidya Marg, Fort Mumbai – 400001.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Binay Kumar Pandey, Advocate Mr. Akhileshwar Singh, Advocate
For the S.B.I.	:	Mr. Kaushalendra Kr. Sinha, Advocate Mr. Sunil Kumar Singh, Advocate
For the S.B.I. Life Insurance Co. Ltd.	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 11-09-2019

Let the reply on behalf of the petitioner to the counter affidavit filed on behalf of respondent no. 1 be taken on the record.

Heard learned counsel for the parties.

This writ application has been preferred seeking a writ in the nature of writ of *certiorari* to quash and

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cancel the communication as contained in letter dated 17.05.2013 issued by the Branch Manager, State Bank of India, Patna High Court Campus Branch (respondent No. 2) enclosed as Annexure '1' to the writ application, by which the respondent no. 2 has refused to adjust the rest amount of education loan sanctioned to the son of the petitioner who died on 15.01.2013 from the coverage of the loan scheme under the SBI Life – RiNn Raksha Policy. The impugned communication as contained in Annexure '1' to the writ application is extracted hereunder for ready reference:

"To Date: 17/05/2013
Sri Rajdan Pathak & Sri Birendra Pathak
Qtr No.17
Patna High Court
Patna – 800 028
BN/06/62/2013-14
Dear Sir/Madam,

EDUCATION LOAN NO. 30898227595
SRI RAJDAN PATHAK & SRI BIRENDRA PATHAK
STUDENT RAJDAN PATHAK DIED ON 15/01/2013
CLAIMING CLOSURE OF LOAN ACCOUNT BY DEATH CLAIM FROM SBI LIFE INSURANCE COMPANY LTD.

With reference to your letters dated 01/03/2013, we have to advise that the our competent authority advised us the borrower has not opted for SBI Life Insurance and withdrawn the entire sanctioned amount of Rs. 3,95,000/- in four installments.

2. In the circumstances above, there is no question of

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the loan account from insurance claim through SBI Life Insurance Company Ltd.

Yours faithfully
Sd/-
BRANCH MANAGER"

Before this court, learned senior counsel representing the petitioner has contended that the petitioner had applied for an education loan of Rs. 3,90,000/- for his minor son for pursuing his study in J.P. Institute of Engineering and Technology, J.P. Campus Mawana Road, Meerut from State Bank of India, Patna High Court Campus Branch. The loan documents were processed and an agreement was signed between the petitioner and the Assistant General Manager of the Bank. A copy of the agreement dated 15/18th September 2009 has been placed on record as Annexure '2' to the writ application and clause 6.2.a of the said agreement has been relied upon to submit that there was complete understanding between the State Bank of India and the petitioner that loan will be covered under the SBI RiNn Raksha scheme and yearly

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premium payable by the State Bank of India in the group insurance policy obtained from SBI Life will be debited to the loan account. Clause 6.2.a of the said agreement reads as under:

> "6.2.a – SBI Life Yearly Premium: SBI Life Yearly Premium to be debited to Loan Account : Rs.Yes"

It is submitted that unfortunately the minor son of the petitioner fell ill on 14.01.2013 in his college Hostel from where he was taken to Hospital where he died on 15.01.2013. This fact was brought to the notice of the Branch Manager of the Bank and a copy of the death certificate was submitted with a request to close the education loan account by recovering the rest amount of the loan from SBI Life. The petitioner requested the Bank to stop any further deduction of monthly installment from his salary account.

It is the grievance of the petitioner that the Bank did not close the loan account, kept on deducting the installment of loan amounting to Rs. 4089/- from the salary account of the petitioner and no

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communication to this effect was made to the petitioner by the respondent Bank. Later on, the petitioner was informed by the impugned communication that there is no question of adjustment of loan account from insurance claim through SBI Life Insurance Company Limited, which is the impugned order in the writ application.

The State Bank of India has opposed the writ application on the solitary ground that for coverage under the insurance scheme the petitioner was required to submit an application to the respondent Bank for sending it to the SBI Life Insurance Company Limited along with relevant papers and documents which he never submitted. Respondent – Bank accepts the factual position to the extent that the petitioner had agreed for debiting the premium amount to his loan account. It is further submitted that petitioner had withdrawn the whole sanction amount and had left nothing with the Bank for payment of the premium loan amount.

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With the counter affidavit, Annexure 'B' is a form which according to the Bank was required to be filled up by the petitioner. It is known as SBI Life – RiNn Raksha Membership Form.

The SBI Life Insurance Company Limited has also filed a counter affidavit in which it is submitted that no writ may be issued against SBI Life Insurance Company Ltd. In paragraph '5' of the counter affidavit, however it is an admitted position that the State Bank of India holds 76% of the share in SBI Life Insurance Company Ltd. and the Central Government holds 58.59% of the issued equity shares in the State Bank of India.

Further in paragraph '23' of the counter affidavit, a stand has been taken on behalf of the SBI Life that in the impugned letter itself the State Bank of India has taken a stand that borrower has not opted for SBI Life Insurance and withdrawn the entire sanction amount of Rs. 3,95,000/-. It is further stated that in

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any insurance contract, the contract is entered into on the basis of a proposal by the proposer and its acceptance by the insurer and unless the contract of insurance is concluded, it will not give rise to a contractual liability against the insurance company. Reliance has been placed on the judgment of the Hon'ble Apex Court in the case of **Life Insurance Corporation of India Vs. Rajavasi Reddy** reported in **AIR 1984 SC 1014** to submit that a mere receipt or retention of premium will not give rise to a concluded contract.

The petitioner has filed a rejoinder to the counter affidavit of the State Bank of India. It is the stand of the petitioner that at no point of time the petitioner was handed over any form of State bank of India Life Insurance Company Limited and this plea has been taken by the bank only for the purpose of this case. The simple case of the petitioner is that in absence of there being any request to the petitioner to fill up the

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form of SBI life, as per agreement he was made to believe that the loan amount has already been insured. As regards the withdrawal of the entire sanction amount from the account it is submitted that the Bank was required to debit the premium amount in the loan account of the petitioner and that could have been realized from the petitioner alongwith the loan amount, therefore, the plea which is being taken that the petitioner had not left any amount in the account from which premium could have been paid is a kind of misleading statement as the recital in the agreement shows that the amount was to be debited in the account.

After hearing learned counsel for the parties at some length earlier, this court called upon learned counsel for the Bank to make available a complete copy of the SBI Student Loan Scheme and the Master Policy document of the SBI Life – RiNn Raksha Group Credit Life Insurance Plan. Mr. K.K. Sinha, learned counsel

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representing the State Bank of India has made available the bunch of documents covering the various clauses of the loan scheme and the RiNn Raksha Policy. The documents are on the record. This court has gone through the same and learned counsel for the parties have referred those documents to support their respective arguments.

A perusal of the SBI Student Loan Scheme shows that the scheme is meant for the students who are eligible in terms of clause 1.8 to pursue the courses eligible falling under clause 1.6 of the scheme. It contains the various terms and conditions including rate of interest and the repayment terms. Clause 1.21 provides the list of papers which are required to be submitted with the loan application and documentation. It also contains the supporting documents to be submitted. Clause 1.21 of the loan scheme is extracted hereunder:

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"1.21 PAPERS TO BE SUBMITTED WITH LOAN APPLICATION AND DOCUMENTATION

<u>Papers to be submitted</u>

Under noted papers/documents would apply:

a) Application-cum-Appraisal Form (*'Annexure-I'*)

(EL Application Form is also available on our PBBU website and on sbi.co.in)

b) Agreement for Term Loan under Education Loan Schemes (*'Annexure-II'*)

c) Guarantee Agreement for Term Loan under Education Loan Schemes (*'Annexure-III'*)

d) Arrangement Letter for Term Loan under Education Loan Scheme (*'Annexure-IV'*)

<u>Supporting Documents to be submitted</u>

a) Letter of Admission

b) 2 passport size photographs

c) State of cost of study

d) PAN Card of the student and Parent/Guardian

However, no Education Loan application should be rejected for want of PAN Card. Refer to section 1.24 for further details.

e) AADHAAR Card of the student and Parent/Guardian

f) Proof of identity (Driving Licence/Passport /Aadhaar/any photo identity)

g) Proof of residence (Driving Licence/Passport/ Electricity Bill/Telephone bill)

h) Student/Co-borrower/Guarantor's bank account statement for last 6 months

i) IT return/IT assessment order, of previous 2 years of parent/Guardian/other co-borrower (**if IT Payee**)

j) Brief statement of assets & Liabilities of Parent/Guardian/other co-borrower

k) Proof of income (i.e. salary slips/Form 16) Parent/Guardian/ other co-borrower (**if IT Payee**)

Opening of Education Loan will be restricted from front end in CBS and mandatorily opened through LOS wef. 01.07.2014.(Ref: e-Circular Sr. No.: 283/ 2014-15; Circular No.: NBG/PBU/ PLEDUCATION/17 /2014-15 dated 14.06.2014.)"

There is a master policy which is in the nature of a Group Credit Life Insurance Plan which provides

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cover to the various loan borrowers, deposit account holders or any group with similar benefits structure against the risk of death within the chosen policy term. It contains the master policy number issued on the basis of the master proposal submitted by the State Bank of India in whose favour the master policy has been issued by the SBI Life Insurance Company Limited. The documents shows that the types of loans covered under this master policy are personal loan, education loan and vehicle loan. The type of plan is single premium and the premium payment terms is single. There is an option for both self-paid and Bank Paid. On the date of commencement of the policy there were altogether 1321 members. The definition clause of the policy document provides the definition of 'Borrowers' which shall mean the new and existing loan borrowers of the Mater Policyholder. *(emphasis supplied)*

The 'claimant' means master policyholder and in the present case it is the State Bank of India who will be

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the claimant. Now the definition of the word "member" is primary borrower or co-borrower of the Master policyholder. The "Mater Policyholder" means the Financial Institution/Bank which has entered into a contract with the Insurance Company for providing insurance cover to its member. The definition of the word "member" and the "Master Policyholder" would show that a primary borrower and co-borrower of the Mater Policyholder is the beneficiary of the Master Policy which has been obtained by the Master Policyholder for providing insurance cover to it's members.

The death benefit clause no. 3.1 provides that *"If you have paid all due premiums, on death of life assured during the policy term, we will pay the sum assured as per the sum assured schedule as mentioned in the COI."* Here the word 'you' refers to the Bank who has been made liable under the master policy to pay the premium. The most relevant part of the Policy document is contained in Clause '5' which talks of participation and

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clause 5.1 and 5.2 thereof reads as under:

> "5.1 We will provide cover to any or all of the individuals taking loans from you which are covered under this policy.
> 5.2 We will cover new as well as existing borrowers at any time during this policy."

A Perusal of the policy document, nowhere shows that for becoming a member of the policy there was any separate requirement on the part of the borrower or the co-borrower to submit a proposal form. Clause 1.21 of the loan scheme does not enlist any document in the nature of a proposal form from he borrower or co-borrower. The entire Master Policy document refers to a contract between the State Bank of India on the one hand and the SBI Life Insurance Company Limited on the other hand. The document is in tune with the concept of group insurance policy which is normally obtained by an employer for the benefits of their employees, in the context of the present case the employer will be the State Bank of India who has obtained the Master Policy for the benefit of it's borrower – co-borrowers. It is the State Bank of India who has

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undertaken to pay the premium for ensuring an insurance cover to it's members. All that the borrower had to do was to agree with the State Bank of India to debit the premium amount in the loan account of the borrower which may be recovered from the borrower as a part of the liability under the loan account.

The concept of a life insurance policy obtained by an individual and that of a group insurance policy obtained by an employer or a body corporate like the present one for the benefit of their employees or any other kind of beneficiaries are two different and distinct things. In an individual life insurance policy it is a contract between the individual and the insurance company based upon declaration of certain informations on the principle of *uberima-fides* i.e. the principles of utmost good faith. In an individual policy, the policyholder whose life is assured pays the premium himself. But in case of group insurance policy it is always the employer and the body corporate who obtains the

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policy for the beneficiaries and the employer undertakes to pay the premium to the insurance company. It is open for the employer either to deduct the premium amount from the salary of it's employees or in any other mode or manner as may be agreed between the employer and the employee, but in case of failure to pay the premium to the insurance company, if the policy lapses, then the employer may be held liable to pay the amount under the coverage or in case the employer is acting as an agent for the disclosed principal to deduct the premium and remit it to the insurance company, the insurance company being the principal may be held liable for the act of it's agent. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the case of **Delhi Electric Supply Undertaking Vs. Basanti Devi & Anr.** reported in **AIR 2000 SC 43** and in the case of **Life Insurance Corporation of India Vs. Rajiv Kumar Bhaskar** reported in **(2005) 6 SCC 188** where the Hon'ble Supreme Court held the

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Insurance Company is liable to pay the amount under the policy to the Policyholder i.e. the beneficiary after holding that the employer was acting as an agent of the life Insurance Corporation of India for purpose of deduction and remittance of premium to the insurance company. Those were the individual policies under salary saving scheme where employee had given an authority to his employer to deduct the premium every month from his salary and remit it to the LIC of India. In L.P.A. No. 1151 of 2004 decided on 21.06.2011 in the case of LIC of India Vs. The State of Bihar & Ors. a Hon'ble Division Bench of this Court had occasion to consider a case of Group Insurance Policy. In concluding part of the judgment the Hon'ble Court held as under: -

> "Having heard counsel for the parties, we are of the opinion that as no material or evidence has been produced before us to show that the employer has made any attempt to alive the Group Insurance Scheme of the deceased employee as such in view of the decision cited supra he is responsible for payment of balance amount of the Group Insurance as there was laches on the part of the employer in depositing the premium amount of the scheme.
>
> In that view of the matter, we modify the order of the learned Single Judge to the extent that it is

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> the employer, i.e. respondent no. 3 who is responsible to pay the balance amount of Group Insurance."

In the present case, what appears from perusal of the records and terms and conditions of the agreement contained in Annexure '2' to the writ application is that the petitioner having given consent to the State Bank of India to debit the premium amount to his loan account had duly understood that he becomes a member of the group insurance policy obtained by the State Bank of India and it is the State Bank of India who will be liable to pay the premium amount to the SBI Life Insurance Company Limited. Of course, the amount contributed towards the coverage of risk for the petitioner and his son would be debited to the loan account. The respondent bank is prima-facie unable to demonstrate from any piece of evidence that at any point of time they had given any proposal form to the petitioner which was required to he filled up to give effect to a policy or coverage under the Master Policy.

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This initial burden lies upon the State Bank of India because it is the State Bank of India who is negating the claim of the petitioner by taking a plea that petitioner had not submitted the proposal form. This court has taken note of some of the relevant part of the scheme of the RiNn Raksha floated by the SBI Life Insurance Company Limited and it has been found that the Master Policy covers the risk not only of the existing members but also of the new members who have been defined as borrowers and co-borrowers of the Bank.

In these circumstances, this court comes to a conclusion that the State Bank of India, if did not pay the premium to the SBI Life Insurance Company Limited and for that reason it is not likely to get the death claim arising on the death of the son of the petitioner from the SBI Life Insurance Company Limited so as to cover the outstanding loan amount the State Bank of India has to blame itself in this situation and bear the burnt. The plea taken in the counter affidavit that the petitioner had

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withdrawn the entire amount and had not left anything in the account for deducting the premium has a fallacy of argument, the fallacy lies in the submission that the premium amount was to be deducted from the account. The agreement clearly shows that the premium amount was to be debited in the account and not to be deducted, therefore, there was no need for the petitioner to maintain any balance in the account for purpose of deduction of the amount because the amount debited to his account could have been recovered with other outstanding loan amount.

In result, this court finds that the writ application is bound to succeed as the petitioner has been able to make out a case where the communication as contained in Annexure '1' to the writ application is to be held arbitrary and the denial of request of the petitioner to close the loan account has been rejected on a totally misconceived ground. The impugned letter as contained in Annexure '1' is hereby set-aside.

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The competent authority of the State Bank of India is directed to consider the request of the petitioner to close the account in the light of the findings, observations, discussions and the legal positions explained hereinabove and to refund the amount recovered from the petitioner after intimation of death of the son of the petitioner.

No further deduction shall be made from the salary account of the petitioner for present. The decision taken by the competent authority shall be communicated to the petitioner within a period of 30 days from the date of receipt/production of a copy of this order.

(Rajeev Ranjan Prasad, J)

*Rajeev/-***AFR**

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Uploading Date	16.09.2019
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