
(2017) 02 KL CK 0008
In the High Court Of Kerala
Case No : WP(C).No. 16269 of 2014

Alida S. Jolly

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 KerLJ 463 : (2017) 2 KLT 23

Hon'ble Judges : Mr. Devan Ramachandran, J.

Bench : Single Bench

Advocate : Sri. T.N. Suresh, Advocate, for the Petitioner; Smt. Mable C. Kurian, Government Pleader, for the Respondent No. 1; Sri. R.S. Kalkura, SC, SBT, for the Respondents No 3 to 5

Final Decision : Disposed Off

Judgement

Devan Ramachandran, J.—In strictu sensu, the petitioner may not be able to obtain relief in this writ petition since the issue raised stands squarely covered against her by a Division Bench judgment of this Court reported in *Arya K.R. v. Assistant General Manager* (2015 KHC 884). Bound by such precedent, obviously I would get no leeway or latitude to provide relief to the petitioner contrary to the express terms of the judgment, the application of which would indubitably lead to the rejection of the petitioner's claim. However, from the pleadings on record, I am of the view that this Court cannot turn a blind eye to the trepidation of the petitioner who only wants financial assistance to pursue her studies.

2. The pleadings compendiously would show that the petitioner belongs to a family suffering from abject impecuniousness. Even in such circumstances of aridity and exiguity she has done tolerably well to pursue her studies and reach a level where she is now studying at the Srinivas School of Architecture, Mangalore after securing more than 78% in the Higher Secondary Examination. This writ petition was filed in the year 2014 and obviously more than two years have elapsed since it was filed. I am told by the learned counsel for the petitioner that

the petitioner has now completed the second year of the course and it would require three more years to complete it. He asserts that the petitioner is desolate and despondent in not being able to get financial assistance to complete her studies and she is going through hard daily struggle in such pursuit with little or no financial support being able to be given to her by her family in studies. The learned counsel also says that the petitioner's mother had died after a prolonged treatment for cancer and this has plunged the family into a greater financial constraints.

3. It appears that the petitioner had applied for an educational loan from State Bank of Travancore but that was denied on the ground that she had not secured 60% marks in one of the qualifying subjects in the Higher Secondary Examination, which, according to the Bank, is a mandatory provision of the Scheme relating to grant of educational loan. The Bank relies on the Educational Loan Scheme issued by the Reserve Bank of India, appended as Exhibit R5(a) along with the counter affidavit. The Bank says that since the petitioner has obtained admission under the management quota, the condition that she obtain 60% marks in all subjects in the qualifying examination is an imperative and inflexible condition. They say that as is obvious from her mark list, which is produced as Exhibit P1, she has not obtained such minimum percentile in one of the subjects, namely Chemistry in the qualifying examination. Therefore, they assert that they were justified in rejecting the loan applied for by the petitioner.

4. I see that the petitioner, though not given a specific letter by the Bank showing such rejection, had approached the learned Banking Ombudsman, who had considered the matter and issued Exhibit P8 order. The petitioner assails this order and the consequential Exhibit P9 communication issued by the Bank informing that her request has been rejected, as being illegal and unlawful and in violation of her fundamental right to education.

5. I notice that the specific contention of the petitioner is that Exhibit P8 order has been issued by the learned Ombudsman without notice to her and without hearing her. However, I can find no infirmity in the same because the learned Ombudsman has only recorded that the Bank was within its legal confines to have rejected the loan since the petitioner has not obtained 60% in one of the subjects in the qualifying examination. This view of the learned Ombudsman is beyond fault because the Division Bench in *Arya K.R.* (supra) has already concluded that a candidate has to obtain 60% marks as per the Scheme and that such stipulation is valid and intra vires. In such view of the matter, it cannot be said that the order of the learned Ombudsman suffers from any vice. However, it cannot be lost sight of that the learned Ombudsman has, in fact, said that the petitioner's case has to be re-considered by the Bank as a special case. This has obviously not been done and the Bank has issued Exhibit P9 without adverting to such suggestion but merely recording that her application for loan has been rejected and that it has been approved by the learned Ombudsman.

6. I do not think that the Bank has applied its mind correctly to the situation,

especially taking into account the abjection and circumstances of melancholia that the petitioner has faced in her life and without appreciating that in spite of this the petitioner has pursued her studies. The circumstances which the petitioner has faced in life should have been noticed by the Bank because it would obviously lead to an inference that deserves latitude because the petitioner has not been able to perform exemplarily in her examinations because of the constraints that she faced in her life, including the death of her mother due to cancer. I am of the view that the Bank ought to have given some benefit so as to extend her a helping hand to complete her studies.

7. In such circumstances, I direct respondents 3 to 5 to consider the request of the petitioner for financial assistance to pursue her studies under the Educational Loan Scheme or under any other available method as has been suggested by the learned Ombudsman in Exhibit P8 within a period of two months from the date of receipt of a copy of this judgment. Since the petitioner has already completed a couple of years of her studies, such assistance will have to be provided immediately, if she is eligible. Otherwise, the purpose of such exercise would be rendered completely superfluous and redundant.

With the above directions, the writ petition is ordered. In the facts and circumstances of the case, I make no order as to costs and the parties are directed to suffer their respective costs.