

sng

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.6704 OF 2020**

Mrinmayee Rohit Umrotkar .. Petitioner
Versus
Union of India and Others .. Respondents
--

Shri Kiran Bapat along with Shri Pralhad Paranjape and Shri Manish Kelkar for the Petitioner.

Shri Anil C. Singh, Additional Solicitor General along with Shri Rui Rodrigues and Shri D.P. Singh for Respondent No.1- U.O.I.

Ms.P.H. Kantharia, Government Pleader with Ms. Jyoti Chavan, AGP for Respondent Nos.2 and 3 - the State.

Shri Rui Rodrigues for Respondent No.4 - SCETC.
--

CORAM : DIPANKAR DATTA, CJ &
G.S. KULKARNI, J

DATED : DECEMBER 8, 2020

ORAL JUDGMENT:

1. The question that emerges for decision on this writ petition is, whether the Industrial Development Bank of India Limited (hereafter "IDBI Limited", for short) can be regarded as an undertaking of the Government of India? If the answer is in the affirmative, the same would enure to the benefit of the petitioner, for, in such case, she can avail of the exception

clause engrafted in paragraph 4.8.1 of the Medical Entrance Information Brochure pertaining to the National Eligibility and Entrance Test UG-2020 (hereafter “NEET 2020”, for short).

2. The petitioner, desirous of becoming a doctor, had participated in the NEET-2020. The Information Brochure for NEET-2020 provides that a candidate aspiring for admission in the MBBS course in the 85% State quota, reserved for Maharashtra candidates, is required to be a domicile of Maharashtra apart from having passed the 10th standard S.S.C. or equivalent examination and the 12th standard H.S.C. or equivalent examination from schools in Maharashtra. Admittedly, the petitioner is a domicile of Maharashtra and passed the 10th standard S.S.C. examination from a school in Maharashtra; however, she cleared the 12th standard H.S.C. examination after pursuing studies in the 11th and the 12th standards in a school in Telangana while residing with her father. Incidentally, the petitioner’s father is an employee of IDBI Limited who was posted in Telangana at the relevant point of time and has since been transferred and posted in Maharashtra with effect from November 19, 2020.

3. In support of the contention that IDBI Limited, in fact, is a Government of India undertaking, Shri Bapat, learned advocate appearing for the petitioner had on November 25, 2020 (when we considered the writ petition for the first time), placed heavy reliance on letters dated December 31, 2007 and December 17, 2019 of the Ministry of Finance, Government of India. The first of the aforesaid two letters conveyed to the Secretaries of all Ministries and/or departments of the Government of India the decision of the Ministry of Finance to treat IDBI Limited on par with Nationalized Banks/State Bank of India by Government Departments/Public Sector Undertakings/other entities for all purpose, including deposits/bonds/investments/guarantees etc. and Government business. By the other letter, which is of recent origin, the Ministry of Finance conveyed to the addressees that pursuant to the acquisition of stake in IDBI Limited by the Life Insurance Corporation of India (hereafter "LICI", for short) to the extent of 51% of the share capital, and keeping in view the fact that LICI is wholly owned by the Government of India and also that the Government of India's holding in IDBI is 46.46%, the direct and indirect Government holding in IDBI is 97.46%; hence, the

Central/State Government/departments/agencies/ institutions may continue to consider IDBI Limited for grant of Government business.

4. On the aforesaid date, i.e., November 25, 2020, Shri Rodriques, learned advocate representing the respondent no.4, i.e., Competent Authority & Commissioner, State Common Entrance Cell, Government of Maharashtra, had brought to our notice a letter dated March 14, 2019 of the Reserve Bank of India (hereafter "RBI", for short), whereby RBI categorized IDBI Limited as a 'Private Sector Bank' and contended that IDBI Limited cannot be regarded as an undertaking of the Government of India.

5. In view of such letter, we required the assistance of Shri Anil Singh, learned Additional Solicitor General. He was requested to apprise us of the status of IDBI Limited in the light of the letters dated December 17, 2019 and March 14, 2019, referred to above. While adjourning hearing, we had directed that until further orders, one seat in the medical course may not be allotted to anybody.

6. The writ petition has been listed today for further consideration. Shri Singh has placed before us written

instructions received by him from the Ministry of Finance. Copy of such instructions has been shared with Shri Bapat. Relevant portions of the instructions read as under:

“2. With regard to the above, the undersigned is directed to apprise as under:

- (a) The Reserve Bank of India (RBI) categorises Scheduled Commercial Banks into various categories such as Public Sector Banks, Private Sector Banks, etc. RBI, vide its letter no.DBOD.BP.1630/21.4.152/2004-05, dated 15.4.2005 (copy enclosed) addressed to IDBI Limited (renamed as IDBI Bank Limited in 2008), had informed that considering the latter’s shareholding pattern, it is categorized as “Other Public Sector Bank”. RBI, vide its subsequent press release dated 14.3.2019 (copy enclosed), has recategorised IDBI Bank Limited (:IDBI Bank”) as a private sector bank with effect from 21.1.2019 consequent upon the Life Insurance Corporation of India acquiring 51% share capital of the bank. Thus, with effect from 21.1.2019, IDBI Bank has ceased to be a Public Sector Bank and is now a Private Sector Bank.
- (b) Following the above press release dated 14.3.2019 recategorising the bank as a Private Sector Bank, IDBI Bank Limited issued instructions dated 15.3.2019 to its various offices (copy enclosed), communicating the aforesaid press release and advising them to remove the words “Govt. of India owned Bank” from the bank’s signboards.

3. The undersigned is directed to further convey with regard to the import of this Department’s letter dated 17.12.2019 (copy enclosed), referred to in paragraph 4 of the Hon’ble Court’s aforementioned order, that the said letter is an advisory conveying that Central/State

Governments/Departments/Agencies/Institutions may continue to consider IDBI Bank for grant of government business. In other words, the Central Government does not have any objection if governments or their agencies etc. choose to grant government business to IDBI Bank. Such advisory was issued in light of earlier advisory placing an embargo on grant of government business to private sector banks. However, the advisory dated 17.12.2019 in no way determines the status of the bank to which grant of government business has been permitted. In this regard, it is pertinent that as per RBI's circulars no.DGBA.GAD.No.218/42.01.001/2003-04 and DGBA.GAD.No.220/42.01.001/2003-04, both dated 27.8.2003 (copies enclosed), certain Private Sector Banks (e.g. ICICI Bank Limited and Axis Bank Limited) were authorized for grant of government business to them."

7. Based on the above instructions, it is Shri Singh's categorical submission that the letter dated December 17, 2019 is in the nature of advisory which was required to be issued in view of a previous embargo that had been placed on grant of Government business to private sector banks like IDBI, ICICI Bank, Axis Bank, etc. and that the said advisory can, in no way, be regarded as decisive to determine the status of IDBI Limited. Responding to our query, Shri Singh submits that IDBI Limited cannot be regarded as a Government of India undertaking for the purpose of entitling the petitioner to avail of the exception clause in paragraph 4.8.1.

8. Upon hearing Shri Singh, we gave Shri Bapat an opportunity to respond. He once again relies on the letters dated December 31, 2007 and December 17, 2019 of the Ministry of Finance. In addition, he relies on a compilation of documents to drive home the point that IDBI Limited is indeed an undertaking of the Government of India and, therefore, the petitioner is entitled to the benefit of exception clause in question.

9. The compilation relied on by Shri Bapat includes, apart from the two letters dated December 31, 2007 and December 17, 2019, the following letters: -

- (a) Letter of RBI dated April 15, 2005 addressed to the Chairman of IDBI Limited categorizing IDBI Limited under a new sub-group "Other Public Sector Banks".
- (b) Press release by RBI dated March 14, 2019 categorising IDBI Limited as a 'Private Sector Bank';
- (c) Letter dated May 31, 2019 of the Under Secretary (Vigilance), Ministry of Finance, Government of India, conveying to the Chief Vigilance Officer, "IDBI Bank", that LICI is a body within the jurisdiction of the Central Vigilance Commission and since LICI holds 51% shares of "IDBI Bank Ltd.", the vigilance administration of "IDBI Bank Ltd." automatically falls within the jurisdiction of the Commission; and

- (d) Letter dated June 3, 2019 of the General Manager (Legal) of “IDBI Bank” clarifying applicability and continuance of the present vigilance set up in “IDBI Bank”.

10. Referring to the Central Vigilance Commission Act, 2003 (hereafter “the CVC Act”, for short), it is the contention of Shri Bapat that the Central Vigilance Commission has been allowed to exercise vigilance control over IDBI Limited and, *a fortiori*, the petitioner’s father would be treated as a public servant to whom the Prevention of Corruption Act, 1987 would apply. If indeed that be so, i.e., the petitioner’s father is a public servant by reason of his employment in IDBI Limited, denying the petitioner benefit of the exception clause in paragraph 4.8.1 of the Information Brochure on the ground that IDBI Limited is not an undertaking of the Government of India has no rational basis and would work out serious injustice to her.

11. Shri Bapat further contends that the status of the IDBI Limited available on the official website of the Ministry of Corporate Affairs under the caption “Company Master Data” records that IDBI Limited is a “Union Govt. co.”. Regard being

had to the same, there is no reason to treat IDBI Limited as anything other than a Government of India undertaking.

12. Shri Bapat also contends that having regard to the shareholding pattern of LIC and the Government of India (51% + 46.46%), it is clear that IDBI Limited is a Government of India owned and controlled undertaking and the decision to deny the petitioner the benefit of the exception clause in paragraph 4.8.1 of the Information Brochure is grossly illegal, arbitrary and without jurisdiction.

13. Shri Bapat, accordingly, prays for a declaration that IDBI Limited be declared as an undertaking of the Government of India and consequent relief be granted to the petitioner by directing the respondent no.4 to allow the petitioner admission in the MBBS course upon extending to her the benefit of the exception clause in paragraph 4.8.1 of the Information Brochure.

14. We have heard the parties at length, perused the materials placed on record and considered the rival contentions.

15. Consequent to the enactment of the Industrial Development Bank of India Act, 1964 (hereafter “the IDBI Act”,

for short) and issuance of notification in terms of Section 3 thereof, the Industrial Development Bank of India (hereafter “the Development Bank”, for short) was brought into existence as a body corporate with effect from June 20, 1964. Section 26 of the IDBI Act provided for “staff” of the Development Bank. It was authorized to appoint such number of officers and employees as it considers necessary or desirable for the efficient performance of its functions and determine the terms and conditions of their appointment in service.

16. The Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003 (hereafter “the 2003 Act”, for short) was enacted by the Parliament to provide for transfer and vesting of undertaking of the Development Bank to and in the Company to be formed and registered as a Company under the Companies Act, 1956 (hereafter “the 1956 Act”, for short) to carry on banking business and for matters connected therewith or incidental thereto and also to repeal the IDBI Act. Section 3 of the 2003 Act provides that on and from the date the Central Government may, by notification, appoint, the undertaking of the Development Bank shall be transferred to, and vest in, the Company, meaning thereby the “Industrial Development Bank

of India Limited” to be formed and registered under the 1956 Act. We find that from October 1, 2004, the undertaking of the Development Bank stood transferred to, and vested in, the Company in terms of Section 3(1) of the 2003 Act.

17. Section 5 of the 2003 Act contains provisions in respect of officers and other employees of IDBI Limited. Sub-section (1) thereof provides that every officer or other employee of the Development Bank (except a director of the Board or the chairman and managing director or any whole-time director) serving in the employment immediately before the appointed day shall, insofar as such officer or other employee is employed in connection with the undertaking which has vested in the Company by virtue of such Act, become, as from the appointed day, an officer or, as the case may be, other employee of the Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges in respect of matters mentioned therein and other benefits as he would have held under the Development Bank if its undertaking had not vested in the Company.

18. In our considered view, section 5 of the 2003 Act is crucial and clinches the issue against the petitioner and for the respondents. Perusal of the 2003 Act clearly reveals cessation of the Development Bank as a body corporate which, by operation of the said Act, would stand transferred to and vested in the Company to be formed and registered under the 1956 Act. The Development Bank, from a body corporate, by reason of the 2003 Act (which also repealed the IDBI Act) attained an identity of a “Company” governed by the 1956 Act.

19. Though ‘undertaking’ is a word of large import, it has to be read and understood in the context where it occurs. In the present context, a Government of India undertaking would mean an undertaking run by the Government of India, that is to say, it belongs to the Government of India. We regret to record, it has not been so shown that IDBI Limited belongs to the Government of India and is run by it. The transition of the Development Bank from a body corporate to a Company (IDBI Limited) without deep and pervasive administrative, financial and functional control of the Government of India over such Company having been shown gives us little reason to hold that after the enactment of the 2003 Act, IDBI Limited

could still be regarded as an undertaking of the Government of India. We place on record that Shri Bapat has not referred to any authority which lays down the test for identifying an entity as an undertaking of the Government of India and, hence, we have proceeded to decide the issue formulated at the beginning of the judgment based on our reading of the IDBI Act and the 2003 Act and our understanding of the meaning of the word 'undertaking' referred to above.

20. Submission of Shri Bapat that the CVC Act has been made applicable to IDBI Limited and that the Ministry of Corporate affairs having recorded IDBI Limited as a non-banking Company and, therefore, IDBI Limited ought to be regarded as an undertaking of the Government of India, has failed to impress us. The vigilance control over IDBI Limited by the Central Vigilance Commission cannot be the guiding factor for exploring the answer to the issue which we are primarily tasked to decide. On this writ petition, we are not called upon to decide whether exercise of vigilance control over IDBI Limited by the Central Vigilance Commission is legal and valid. Such a question can be dealt with in an appropriate proceeding, if the occasion therefor arises. Further, nothing

substantial turns on holding of 51% share capital in IDBI Limited by LIC. By reason of the definition in section 2(45) of the Companies Act, 2013, IDBI Limited is not a Government company. LIC could be a 'State' as defined in Article 12 of the Constitution but by reason thereof, it does not necessarily follow that IDBI Limited would attain the status of "State" within the meaning of Article 12. Also, reliance placed by the petitioner on the data maintained by the Ministry of Corporate Affairs on the Company (IDBI Limited) as per the requirement of the 1956 Act or the Companies Act, 2013 cannot be accepted as sacrosanct for ruling in favour of the petitioner having regard to the clear provisions of the applicable statutory enactments, as noted above.

21. For the reasons aforesaid, the writ petition stands dismissed. There shall be no orders as to costs.

22. At this stage, Mr. Bapat prays that the interim order passed earlier may be continued for some time. In view of our conclusions, we see no reason to grant the prayer.

23. This order will be digitally signed by the Private Secretary/Personal Assistant of this court. All concerned will

act on production by fax or e-mail of a digitally signed copy of this order.

(G.S.KULKARNI, J)

(CHIEF JUSTICE)