BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 04.08.2016

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P(MD)No.13185 of 2016

Yogesh Kumar Agarwalla ..Petitioner

Vs

The Branch Manager,
Union Bank of India,
No.31 A/52, New Road,
Kovilpatti Branch,
Kovilpatti - 628 501,
Thoothukudi District. ..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondent to provide with an educational loan application form to the Petitioner and thereafter to consider and sanction the educational loan to pursue Petitioner's MBA Degree(2 years course) at Sambharam Institute of Technology, Bangalore, under the Educational Loan Scheme as approved by the Reserve Bank of India by considering the Petitioner's representation dated 27.6.2016.

For Petitioner :M/s.P.Mahendran

For Respondent :M/s.N.Dilip Kumar

ORDER

Heard both sides.

2.By consent of both sides, the main Writ Petition itself is taken up for final disposal.

3.No counter is filed on behalf of the Respondent.

4.According to the Petitioner, his father originally belong to the State of Rajasthan. However, his parents came down to Thoothukujdi before 35 years and get settled there and hence, they had become permanent residence of Thoothukudi District. His father was initially dealing with the business of Match Sticks and was running a factory, but suddenly due to heavy loss incurred in the said business, he has now take some private jobs and thus eking out his livelihood, having no good income.

5.The stand of the Petitioner is that he has two married sisters and he is the only son to look after his parents. His parents are suffering from numerous ailments and in this regard, they spent huge sums towards medical expenses.

6.It comes to be known that the Petitioner had completed his BBM three years course and for payment of second and third year fees, he approached the Respondent/Bank and the Respondent/Bank was pleased to sanction a sum of Rs.80,000/- and another sum of Rs.80,000/- , totalling in all, to a sum of Rs.1,60,000/- for two years payments. He had completed his BBM Course with the assistance from the Respondent/Bank. Moreover, he is liable to pay a sum of Rs.1,84,220/- as per the Statement of Accounts furnished by the Respondent/Bank.

7.In order to furnish higher qualification and to get good job, he has now joined two years MBA(VTU) Course at Sambhram Institute of Technology, Bangalore (which is an approved college by Visweswarayya Technological University and recognized by AICTE).The total fee payable to the college for the two years course is Rs.6,20,000/- and as per the fees structure, he has to pay a sum of Rs.4 lakhs for the first year a and also a balance of Rs.2,20,000/- to be paid for the second year. In order to pay the first year fees of Rs.1,56,000/- his father had pledged the ornaments belonging to his mother with the private Finance Company and paid the said fee to the college. Still the Petitioner has to pay the balance amount for completion of his first year course.

8.At this stage,the Learned Counsel for the Petitioner submits that the Petitioner is very keen and eager to continue his studies and to secure some good employment. He has no other alternative except to seek the assistance and help from the Respondent/Bank by getting educational loan. The learned Counsel for the Petitioner informs this Court that the Petitioner is ready and willing to furnish an undertaking to the Respondent/Bank to refund the total education loan amount that would be availed to by the Petitioner with permissible interest from his monthly salary without any inconvenience, once the Petitioner join in any office/company after completion of his MBA Course.

9.The grievance of the Petitioner is that his representation, dated 27.6.2016 is to be considered by the Respondent/Bank. After receipt of his representation by the Respondent/Bank, the Bank had sent a communication, dated 8.7.2016, inter-alia directing him to visit the Bank for further negotiations.

10.Per contra, it is the submission of the Learned Counsel for the Respondent/Bank that as per the Model Educational Loan Scheme for Pursuing Higher Education in India and Abroad, 2015, issued by the Indian Banks Association at S.No.4, under the heading Eligibility Criteria, which runs as under:

**4. ELIGIBILITY CRITERIA**

**4.1 Students Eligibility**

- The student 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). However, 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, banks will have to adopt appropriate criteria based on employability and reputation of the institution concerned.

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

**4.2 Design elements for classification of education loans**

It is proposed to classify the education loan portfolio into three categories viz.

- **Loans to students admitted to top rated institutions**
- **Loans to students admitted to other domestic institutions**
- **Loans to students seeking studies abroad.**

**It is expected that depending upon risk perception, reputation of the institution and employability of the students banks will be able to fine tune their terms and conditions of sanction suitably to these categories.**

**The guidance note attached to the scheme gives elaboration of design elements for classifying educational loans**

11.In S.No.5, under the caption' '**Courses Eligible'**, which reads as follows:

**5. COURSES ELIGIBLE**

**5.1. Studies in India: (Indicative list)**

. Approved courses leading to graduate/ post graduate degree and P G diplomas conducted by recognized colleges/ universities recognized by UGC/ Government/ AICTE/ AIBMS/ ICMR etc.

Courses like ICWA, CA, CFA etc.

Courses conducted by IlMs, IlTs, IISC, XLRI. NIFT,NID etc.

Regular Degree/Diploma courses like Aeronautical, pilot training, shipping, degree/diploma in nursing or any other discipline approved by Director General of Civil Aviation/Shipping/Indian Nursing Council or any other regulatory body as the case may be, if the course is pursued in India.

Approved courses offered in India by reputed foreign universities.

**Note:**

**I. The above list is indicative in nature. Banks may approve other job oriented courses leading to technical/ professional degrees, post graduate degrees/diplomas offered by recognized institutions under this scheme.**

**2. Courses other than the above offered by reputed institutions may also be considered on the basis of employability.**

*Reference : www.ugc.acin www.educanon.nic.in www.aicte.orgin*

**5.2 Studies Abroad**



Graduation : For job oriented professional/ technical courses offered by reputed universities.

Post-graduation: MCA, MBA, MS, etc.

_ Courses conducted by CIMA- London, CPA in USA etc.

•Degree/diploma courses like aeronautical, pilot training, shipping etc provided these are recognized by competent regulatory bodies in India India /abroad for the purpose of employment in India/abroad.

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*Reference:* *www.webonsetrics.info* (indicative only)

**5.3.Expenses considered for loan**

i.Fee payable to college++/ school/ hostel*

ii.Examination/ Library/ Laboratory fee

iii.Travel expenses/ passage money for studies abroad

iv.Insurance premium for student borrower, if applicable

v.Caution deposit, Building fund / refundable deposit supported by vi.Institution bills/receipts. **

vi.Purchase of books/ equipments/instruments! uniforms***

vii.Purchase of computer at reasonable cost, if required for completion of the course***

viii.Any other expense required to complete the course - like study tours, project work, thesis, etc.***

ix.While computing loan required, scholarships, fee waiver etc., if any available to the student borrower may be taken into account.

x.If the scholarship component is included in the loan assessment, it may be ensured that the scholarship amount gets credited to the loan account when received from the Government.

Notes:

++ For courses under Management quota seats considered under the scheme, fees as approved by the State Government/Government approved regulatory body for payment seats will be taken, subject to viability of repayment.

* Reasonable lodging and boarding charges will be considered in case the student chooses/is required to opt for outside accommodation.

** These expenses could be considered subject to the condition that the amount does not exceed 10% of the total tuition fees for the entire course.



*** It is likely that expenditure under Item Nos. vi, vii & viii above may not be available in the schedule of fees and charges prescribed by the college authorities. Therefore, a realistic assessment may be made of the requirement under these heads. However, the maximum expenses included under vi, vii & viii may be capped at 20% of the total tuition fees payable for completion of the course.

12.It is to be pointed out by this Court that at S.No.6 of the aforesaid Loan Scheme under the head 'Quantum of Finance', it is made mention of as under:

***6.QUANTUM OF FINANCE***

*Need based finance to meet the expenses worked out as per para 4.3 above will be considered taking into account margins as per para 6 subject to the following ceilings:*

*-Studies in India - Maximum upto Rs.10 lakhs*

*-Studies in Abroad - Maximum upto Rs.20 lakhs*

*Note:*

*Banks may consider capping stream wise/institution wise cap on education loan amount by taking into account reputation and placement history of the education institution concerned. Banks may consider higher quantum of loan on course to course basis(eg:courses in IIMs, ISB etc). It may also be noted that even loans in excess of Rs.10 lakhs qualify for interest subsidy under Central Sector Interest Subsidy Scheme for loans up to Rs.10 lakhs,* ***though it may exceed priority sector norms fixed by the RBI****.*

12.At S.No.7, under the caption 'Margin', enjoins as under:

**7. MARGIN**

7-Upto 4 lakhs Nil

Above 4 lakhs Studies in India 5%
Studies Abroad 15%

However, upto 7.5 lakhs, margin will be 'Nil' if loan is eligible for the Credit Guarantee
Scholarship/ assistantship to be included in margin.
Margin may be brought-in on year-to-year basis as and when disbursements are made on a pro-rata basis.



13.In S.No.8, under the head Security, enjoins as follows:

8. SECURITY

| | |
|---|---|
| Upto 4 lakhs | No security<br>Parents to be joint borrower(s). However, banks will have |
| Above 4 lakhs and *up* to fl.5 lakhs | Besides the parent(s) executing the documents as joint borrower(s), collateral security in the form of suitable Third party guarantee will be taken. The bank may, at its discretion, in exceptional cases, waive third party guarantee if satisfied with the net-worth / means of parent/s who would be executing the document as joint borrower(s).<br>However, third party guarantee will be waived if the loan is eligible for Credit Guarantee coverage. |
| Above 7.5 lakhs | Parent(s) to be joint borrower(s)<br>Tangible collateral security of suitable value acceptable to bank,along with the assigment of future income of the student for payment of instalments. |

Note:

*The Loan documents should be executed by the student and the parent/guardian as joint borrower.

*The security can be in the form of land/building/Government securities/Public Sector Bonds/Units of UTI, NSC, KVP, life policy, gold and shares/mutual fund units/debentures/ bank deposit in the name of student/parent/guardian/any other third party or any other tangible security acceptable to the bank with suitable margin.

*Wherever the land/building is already mortgaged, the unencumbered portion can be taken as security on second charge basis provided it covers the required loan amount.

14.In S.No.9, under the head of 'Rate of Interest', speaks of as under:

**9.RATE OF INTEREST**

Interest to be charged at rates linked to the Base rate as decided by individual banks.



Banks may charge differential interest rates for collateralized and non-collateralized loans.

*Simple interest to be charged during the study period and up to commencement of repayment. Simple interest may be charged even during any subsequent moratorium considered.



N o t e : -

Servicing of interest during study period and the moratorium period till commencement of repayment is optional for students. Accrued interest will be added to the principal amount borrowed while fixing EMI for repayment.

15.In S.No.11, under the head 'Repayment', it speaks of as follows:

**11. REPAYMENT**

Repayment Holiday / Moratorium Course period + 1 year. Banks may also provision for moratorium taking into account spells of under-employment/unemployment, say two or three times (maximum of 6 months at a time) during the life cycle of the loan. Banks may also encourage student borrowers who wants to set up start-up units by giving moratorium on repayment of principal and interest during incubation period which may be considered unto 2 years.

If the student is not able to complete the course within the scheduled time, extension of time for completion of course may be permitted for a maximum period of 2 years. If the student is not able to complete the course for reasons beyond his control, sanctioning authority may at his discretion consider such extensions as may be deemed necessary to complete the course. In case the student discontinues the course midway,appropriate repayment schedule will be worked out by the bank in consultation with the student/parent.

The accrued interest during the repayment holiday period to be added to the principal and repayment in Equated Monthly Installments (EMI) fixed.

**1%** interest concession may be provided by the bank, if interest is serviced during the study period and subsequent moratorium period prior to commencement of repayment.

Repayment of the loan will be in equated monthly instalments for a period of 15 years for all categories.

While EMI based repayment is the generally accepted practice, many times the salary levels at the start of the career may not facilitate comfortable payment of EMI in certain cases (e.g. professionals like Doctors). Telescoping of repayment with stepped up installments with passage of time may be considered in such cases.

16.At this stage, this Court perused the reply, dated 8.7.2016 issued by the Respondent/Bank addressed to the Petitioner in and by which it has inter-alia mentioned as under:

*"At present your loan outstanding amount is Rs.1,84,220/- and installments also to be started from July 2017. Now you are requesting to sanction of education loan of Rs.6,20,000/- for pursuing MBA, two years course at Sambharam Institute of Technology in Bangalore. We have already informed to your father our Bank norms regarding your loan sanction. Though, we inform once again we are agreeable to consider your loan subject to fulfill our bank terms and conditions. We request you to come to branch at your convenience day any working day for further discussion."*

17.From the aforesaid tenor and spirit of the letter, it is candidly clear that the Petitioner was requested by the Respondent/Bank to come to its Branch, on his convenient day(in any working day) for further discussion, and at this stage, it is represented on behalf of the Respondent/Bank by the Learned Counsel that the Petitioner had visited the Respondent/Bank by responding to the Banks letter, dated 8.7.2016 and in fact, the Petitioner was appraised of the terms and conditions governing the Loan Scheme for the second time to be filled by him in respect of his post-graduate education. In effect, it is represented on behalf of the Respondent/Bank that the Petitioner had refused to agree to the terms and conditions explained to him by the Respondent/Bank. Further, this aspect is very much disputed on behalf of the Petitioner's side. In fact, it is represented on behalf of the Petitioner that the Petitioner was not furnished with the Educational Loan Application in respect of his Post Graduate studies.

18.Be that as it may, this Court very relevantly points out that 'Education is a National Wealth'. In fact, Article 41 of the Constitution of India runs as under:

*" Right to Work, to education and to public assistance in certain cases.- The State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education."*

19.Moreover Article 46 of the Constitution of India enjoins as follows:

*"The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Cases and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."*



20.In respect of the grant of educational loans every now and then, the Central Government issues necessary instructions/circulars and also that the Central Bank of India, viz., the Reserve Bank of India issues necessary guidelines to its constituent banks pertaining to the grant of educational loans. The aim of the Central Government is to assist the students who want to pursue their educational career either at the degree level or at the post-graduate level. If the scheme of the Central Government relating to educational loan is not been implemented by the Respondent/Bank in respect of educational loan, then Article 14 of the Constitution of India would be rendered nugatory in the considered opinion of this Court.

21.It is to be pointed out that a 'guarantee' is a tri-partite contract between three persons (1) Principal Debtor (2) Creditor and (3) Surety. After all, the Contract of Indemnity is a bilateral one. For constituting a 'Contract of Guarantee' there ought to be a third contract by which the Principal Debtor expressly or impliedly requests the surety to act ' as surety'. The contract is a consensual act and parties are at liberty to impose any terms, as they desire/like. A written contract may be a single document and each party is bound by signing it.

22.It is to be borne in mind that one side makes an offer by means of a communication and the other side by accepting it, may conclude a contract. It cannot be over emphasized that a clear/true contract requires an agreement of parties freely may with full knowledge and without any feeling of restraint.

23.At the same time, when a prospective loan applicant applies for a particular loan in respect of a concerned course and after availing the said loan amount and after completing the educational course, is to repay the loan amount as per the conditions agreed to by him with the Bank. It is incumbent on the part of the concerned student/prospective loan applicant to pay the monthly EMI periodically without any default, because of the simple reason that it is dealing with the money of the general public and also small/big customers and when once loan is availed of by the concerned student, then he will not commit any default in regard to the payment of the loan amount to be paid by him in equal monthly installments.

24.Be that as it may, considering the fact that the Petitioner had already availed the educational loan in respect of his three years BBM Course and has an outstanding of Rs.1,84,220/- and further, he is in need of Rs.6,20,000/- for the two years MBA Course(as per the fees structure of the college concerned), then this Court, in the interest of justice and fair play, directs the Petitioner/student to approach the Respondent/Bank within a period of one week from the date of receipt of a copy of this order. Thereafter the Respondent/Bank is to furnish/supply Educational Loan Application Form to the petitioner and if any, charges are to be received from the Petitioner, then it is open to the Respondent/Bank to receive the same from the Petitioner and thereafter, the Petitioner is to fill up the necessary columns in the said loan application and after submission of filled up loan application, the Petitioner is further directed to submit the loan application together with requested particulars/documents in full form/shape and thereafter, the Respondent/Bank is directed to consider the Educational Loan Application of the Petitioner as per the Central Government Educational Scheme Rules and Regulations and guidelines issued by the Reserved Bank of India and the Respondent/Bank's Rules and Regulations. In any event, the Respondent/Bank is to dispose of the said loan application within a period of three weeks thereafter. In case, if the Respondent/Bank comes to a resultant conclusion that the Petitioner/prospective loan applicant is entitled to avail the loan amount of Rs.6,20,000/- for his MBA Course in question, then it is open to the Respondent/Bank to seek any person other than the Petitioner as co-applicant or as a co-obligant and in fact, it is well within the purview of the Respondent/Bank to obtain a document of indemnity between the Petitioner, Respondent/Bank and any third party, as the case may be, of course, in accordance with Law.

25.With the aforesaid observation(s) and direction(s), the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To
The Branch Manager,
Union Bank of India,
No.31 A/52, New Road,
Kovilpatti Branch,
Kovilpatti - 628 501,
Thoothukudi District.

+1cc to M/s.P.Mahendran, Advocate SR.No.42098
+1cc to M/s.N.Dilip Kumar, Advocate SR.No.42021

vsn
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W.P(MD)No.13185 of 2016
04.08.2016