IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7516 of 2016

Muthuvel, Minor aged 17 years
S/o Sakthivel,
Rep by his natural guardian,
Mr.Sakthivel,
Periyanarkunam Village,
Chinnanarkunam Post,
Bhuvanagiri Taluk,
Cuddalore District .. Petitioner

Vs.

1) The Branch Manager,
Indian Overseas Bank,
Sethiyathope Branch,
No.111/4, North Main Road,
Sethiyathope,
Cuddalore District.

2) The Principal,
Tagore Institute of Engineering and Technology,
NH-79, Salem- Chennai By Pass Road,
Deviyakurichi (PO),
Attur Taluk, Salem District,
Pin - 636 112. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the the records of the 1st respondent pertaining to the impugned order dated 31.10.2015 rejecting the petitioner's loan application and quash the same as arbitrary, illegal and consequently direct the 1st respondent to sanction the educational loan to the petitioner for pursuing his B.E. Course.

For Petitioner : Mr.P.R.Thiruneelakandan

For Respondents : M/s.Anand Gomathi for R1
Mr.R.Nellaiyappan for R2.

ORDER

The petitioner Muthuvel, a minor, represented by his guardian, has come up with the present Writ Petition challenging the order dated 31.10.2015, passed by the 1st respondent and for a consequential direction to the 1st respondent herein to sanction him educational loan to pursue his Engineering course.

2. According to the petitioner, he is a minor, aged about 17 years, hailing from an agricultural family and he is the first person from his family to enter into an Engineering College. The petitioner belongs to Most Backward Community and had obtained 625 marks out of 1200 in Higher Secondary School Examinations held in March 2015 and after counseling, he got admission in the 2nd respondent's College. The duration of the Course is four years and the total fees including hostel fees for one academic year is Rs.72,000/-. Besides other charges, the entire course fee amounts to Rs.3,00,000/-.

3. The case of the petitioner is that his application seeking education loan from the 1st respondent to pursue higher studies was rejected on the ground that he has not secured 60% marks in the qualifying examination (Higher Secondary Examination) for non-SC/ST students. Thus, aggrieved by the said rejection order passed by the 1st respondent, the petitioner is before this Court.

4. Learned counsel for the petitioner submitted that the petitioner had attended the Counseling and in continuance, he was selected to pursue his higher education, based on the fixation of marks as 40% in Higher Secondary School Examinations as qualifying marks for MBC (Most Backward Class) candidates by the Government, for joining in a College. It is his contention that when 40% marks of Higher Secondary Examinations is fixed as qualifying marks, rejection of the petitioner's loan application by the 1st respondent/Bank is is arbitrary and illegal and not in conformity with the State and Central Government's educational loan scheme.

5. He drew the attention of this Court that in a similar circumstance, this Court in the case of S.Maran vs. The Branch Manager, State Bank of Travancore (CDJ 2010 MHC 5278), referring to a decision rendered in the case of S.Saran Kumar Vs. Regional Manager, Karur Vysya Bank (2010 (6) MLJ 47), has held that once the eligibility for admission is established and the candidate is selected through any one of the modes of selection, which is permitted by the Monitoring Committee and the University having approved the admission of the petitioner, it is not open to the respondent Bank to refuse loan facility viz., educational loan

to a deserving candidate like that of the petitioner. Relevant portion of the judgment rendered in Saran Kumar's case (cited supra) is extracted hereunder:

> "12. The fact that the petitioner was selected and admitted in the management quota seat and pursuing his studies cannot be a debarment for submitting application to avail education loan. It is not the case of the respondents that the petitioner is not eligible to be admitted in the B.E. Degree course due to lack of minimum marks, age or otherwise. Once eligibility for admission is established and a candidate is selected through any one of the mode of selection, which is permitted by the Monitoring Committee and the University approved the admission of the petitioner, it is not open to the respondent bank to refuse loan facility viz., education loan for a deserving candidate like the petitioner. The Central Government as well as the Reserve Bank of India gave guidelines to the banking sectors to sanction education loan to all deserving candidates. The requirements, the banks can insist upon is whether the candidate is eligible to be admitted in the course, whether the course is approved by the competent body, and whether the college is affiliated to the University which conducts examination."

6. Learned counsel for the petitioner further contended that refusal of educational loan by the 1st respondent/Bank needs interference by this Court and that when the Government has prescribed a mere pass for admission to SC/ST candidates, depriving education loan to students like that of the petitioner, who has secured 625 marks out of 1200, on the ground that he has not secured 60% marks, is not correct. Learned counsel for the petitioner also relied upon a judgment of a Division Bench of this Court in the case of Branch Manager, Indian Overseas Bank Vs. A.Ravi and others (2014 (4) CTC 363) and contended that similar loan facility has been extended to students like that of the petitioner. Relevant portion of the said decision is extracted below:

> "6. .. ... In the guidelines framed in the Review Meeting held on 27.09.2012 nowhere it is stated that Education Loan can be sanctioned only got those, who have secured 60% and more marks.
>
> 7.In the light of the revised policy evolved in the review Meeting held on 27.09.2012 at the

> instance of the Hon'ble Finance Minister, Government of India, we are unable to find any reason to interfere with the order of the learned Single Judge dated 20.06.2013 in allowing the writ petition. Consequently, this Writ petition is dismissed, confirming the order dated 20.06.2013 made in W.P.No.923/2013. The Appellant Bank is directed to process the Application of the First Respondent without reference to the objections raised and sanction Education loan as per the eligibility of the First Respondent, within a period of two weeks from the date of receipt of a copy of this Order. No Costs. Consequently, connected Miscellaneous petition is closed.”

7. Per contra, learned counsel appearing for the 1st respondent/Bank submitted that as per Clause 3 and Clause 4 of the Guidelines issued by the Indian Banks' Association relating to Model Educational Loan scheme for pursuing higher education in India and abroad (2015), it is open to the implementing Bank to make changes as deemed fit, with regard to the scheme providing guidelines to the Banks for operationalizing the educational loan scheme. Learned counsel further submitted that admission into the College may not be made unless the student has secured 60% and above. Though, the same has not been mentioned in the Model Educational Loan Scheme and in the guidelines issued by the 1st respondent/Bank, since the Bank is vested with the power to decide about the sanctioning of loan and Circulars have been issued fixing the minimum marks as 60%, based on which the loan would be sanctioned and admission is made into the College, education loan may not be sanctioned for candidates with lesser mark, and based on the guidelines in force, the petitioner herein would be ineligible for loan.

8. Heard the learned counsel on either side and perused the materials available on record.

9. The fact that the petitioner belongs to MBC category and is the first in the family to enter into an Engineering College and has secured 625 marks are not at all in dispute. The only issue is whether the 1st respondent/Bank is justified in rejecting the education loan of the petitioner based on the Model Educational Loan Scheme by fixing minimum marks as 60%. It is very clear that any Circular issued should be in consonance with the scheme. The scheme is meant to benefit the students to pursue higher education. What has to be seen is whether it is specifically stated in the Guidelines that education loan will be sanctioned only to students, who have secured 60% marks and above.

10. For better appreciation of the case, Clause 4.1 of the Model Educational Loan Scheme is extracted below:

"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."

A reading of the above clause would make it very clear that if a student secures admission to a higher education course in recognised institutions through entrance test/merit based selection process after completion of HSC (10 plus 2 or equivalent), then he/she will be entitled to education loan.

11. Taking note of the fact that the petitioner has been selected to an Engineering College to pursue his higher education, it has to be construed that he has been selected based on merit. The reservation of 67% in Tamil Nadu in all walks of life, namely education and employment, would give free hand to a person securing lesser mark, which is considered as meritorious than the person securing more marks in other categories. While taking into consideration the eligibility criteria, though the marks scored by the petitioner herein cannot be considered as meritorious, based on reservation policy and also based on the guidelines framed by the 1st respondent/Bank, seat has been given to the student and that in terms of clause 4.1 mentioned supra, the student getting admission to the College with lesser marks has to be treated as meritorious based on selection.

12. Learned counsel appearing for the respondent submitted that the petitioner has produced documents relying only upon the Model Educational Loan Scheme and based on the revised educational loan scheme of the year 2015, the petitioner would not be eligible for the loan, as he has not secured 60% marks in the qualifying examination, which is a mandatory requirement in getting education loan as per the objectives of the scheme. For the sake of convenience, the Revised Rules for pursuing education in India and Abroad (2015) is extracted as under:

"Revised Guidance Notes on Model Educational Loan scheme for pursuing Higher Education in India and Abroad (2015)

II. Objectives of the Scheme:

The educational loan scheme is meant to provide need-based assistance to meritorious students in pursuing higher education. Since the word "meritorious" is a relative term it would be necessary for banks to specify parameters for defining the term meritorious. The following approach is suggested:

If the student has obtained admission to an eligible course through a merit based selection process, he/she could be considered a meritorious student. Generally, admission to professional and technical courses are through common entrance tests and those who get admission through this process could be considered meritorious. Where the admission is purely based on the marks scored in qualifying examinations, the bank may fix cut off marks (percentage) for loan eligibility."

13. Learned counsel for the respondent relied upon a Division Bench judgment of this Court in W.A.(MD) No.1629 of 2011 etc. batch in the case of A.Kasinathan Vs The Branch Manager, Canara Bank, wherein, by an order dated 20.04.2012, taking into account granting of educational loan to the petitioner therein with regard to securing 60% marks, which is set as eligibility criteria under the "Management Quota", the Court came to a conclusion that it is the discretion of the Bank either to grant or not grant the educational loan to the students, who secured admission under "Management Quota" on case to case basis, subject to their academic performance.

14. Learned counsel for the petitioner contended that once a student is selected based on the qualifying marks and gets admission in a College, based on the marks obtained in the Counseling, the student is considered as meritorious on the eligibility criteria that would allow the Bank to sanction loan. According to him, the word "meritorious" in the objective of the scheme has got to be read with clause 4.1 which is extracted supra and that rejecting the loan on the ground of non-securing of 60% of qualifying marks is an arbitrary act of the 1st respondent/Bank and it is illegal.

15. In reply, learned counsel for the 1st respondent/Bank submitted that the word "meritorious" is a relative term and the

contention of the petitioner can be accepted if there had been an entrance test and if the petitioner had come out successful in it. But, when the admission is purely based on the marks scored in the qualifying examinations, the Bank may fix cut-off marks (percentage) for loan eligibility, which has been provided under the head "Objectives of the Scheme" in the Revised Guidance Notes on Model Educational Loan Scheme for pursuing Higher Education in India and Abroad (2015).

16. Though this Court, in Indian Overseas Bank case (cited supra), has directed the Bank to grant loan to the student therein as per the guidelines framed with regard to education loan, no condition was stipulated to the effect that the student should secure a minimum of 60% marks. But, in the present case on hand, as per the Revised Guidance Notes on Model Educational Loan Scheme for pursuing Higher Education in India and Abroad (2015), the 1st respondent/Bank has clearly prescribed the condition that the student should have secured atleast 60% marks for availing education loan.

17. In view of the above and taking note of the decision of this Court rendered in W.A.(MD) No.1629 of 2011, etc. batch (cited supra), this Court is of the view that the entire 2015 Scheme has got to be read as a whole and that fixation of 60% marks as eligibility for education loan by the 1st respondent/Bank cannot be interfered with. Thus, this Writ Petition stands dismissed. No costs.

Sd/--
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sts/aeb
TO
1) The Branch Manager,
Indian Overseas Bank,
Sethiyathope Branch,
No.111/4, North Main Road,
Sethiyathope,
Cuddalore District.
+1cc to Mr.Ananda Gomathy, Advocate, S.R.No.51837
+1cc to Mr.P.R.Thiruneelakandan, Advocate, S.R.No.51517

W.P.No.7516 of 2016

GN(11/10/2017)