BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD).No.5296 of 2018

M.Hariharasudhan ... Petitioner

Vs.

1. The Union of India
   Represented by the Secretary,
   Ministry of Finance,
   North Block, New Delhi-1.

2. The District collector,
   Collectorate Building,
   Madurai 625 020.

3. The Zonal Manager,
   Indian Bank,
   No.100/101, East Avani Moola Street,
   Madurai 625 001.

4. The Branch Manager,
   Indian Bank,
   New Vilangudi Branch,
   Madurai625 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India to issue a writ of Mandamus directing the respondent No.4 to provide the educational loan of Rs.70,000/- (Rupees Seventy Thousand only) for the Academic Years 2017-2018 to the petitioner to continue his further studies.

For Petitioner	:	Mr.A.C.Asatihambai
For RR1 & 2	:	Mr.J.Gunaseelan Muthiah Additional Government Pleader
For RR3 & 4	:	M/s. Pala.Ramasamy

<u>O R D E R</u>

The petitioner, who had joined the five year B.L Course in Prist University, Thanjavur had applied for a educational loan for a a sum of Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand only) with the 4th respondent herein and since the application was not considered in time, which prompted him to file the present writ petition, seeking for a direction to the 4th respondent to provide educational loan.

2. The respondents 3 and 4 had filed a counter affidavit dated 08.04.2018 in which two clarifications have been raised on the petitioner's application namely:-

> (a) The petitioner has completed +2 and got transfer certificate dated 21.05.2016 but he got admission for the academic year June 2017. Whether he perused any course, during the intera gunam period I.e.2016-2017. Or justification for one year delay in admission.
>
> (b) CIBIL report (credit report) reveals that the petitioner's father score is only 570 and it reveals that, "One or more traders written off".

3. The learned counsel for the respondents 3 and 4 submitted that in view of these clarifications sought for against the petitioner's application, they are unable to pursue any further on the petitioner's request. The educational loan scheme based on the policy decision of the Government of India, came to be introduced with the object of enriching the meritorious student to pursue his or her education with financial support from the banking system under reasonable terms and conditions. The student who seeks educational loan is the principal borrower in all the cases and that the loan availed by such a student is for the sole purpose of utilising it for his educational needs. As such, any reasonable restrictions imposed by the financial institution can only be in conformity with the object of the scheme and any factor which is beyond the scope of the scheme as a bar for availing the loan, could only be deemed to be prima facie illegal.

4. Various orders have been passed by this Court justifying that the students/ applicants would be entitled for educational loan subject to the terms and conditions of the scheme and as such the financial institutions may not be justified in rejecting such loans on grounds which are out side the scope and object of the scheme. Among such orders, the order dated 18.08.2011 passed in W.P.No.6286 of 2011 of the Principal Bench of this Court had dealt with the issue in detail and the relevant portion of the said order reads as follows:-

> *"....8.Based on the policy decision of Government of India, the Model Education Loan Scheme was announced during the month of November 2007. Under the scheme, it has been stated that Education is central to the Human Resources Development and empowerment in any country. National and State level policies are framed to ensure that this basic need of the population is met through*

appropriate public and private sector initiatives. While government endeavour to provide primary education to all on a universal basis, higher education is progressively moving into the domain of private sector. With a gradual reduction in government subsidies higher education is getting more and more costly and hence the need for institutional funding in this area. It has been further stated that the scope of education has widened both in India and abroad covering new courses in diversified areas. Development of human capital is a national priority and it should be the endeavour of all that no deserving student is denied opportunity to pursue higher education for want of financial support. Loans for education should be seen as an investments for economic development and prosperity. Knowledge and information would be the driving force for economic growth in the coming years. It has also been stated that based on recommendations made by a study Group, IBA had prepared a Model Educational Loan Scheme in the year 2001 which was advised to banks for implementation by Reserve Bank of India vide circular No.RPCD.PLNFS.BC.No.83/06.12.05/2000-01 dated April 28, 2001 along with certain modifications suggested by the Government of India. In line with the announcement made by the Hon'ble Finance Minister in his Budget Speech for the year 2004-05, IBA had communicated certain changes in the security norms applicable to educational loans with limits above Rs.4 lakhs and up to Rs.7.5 lakhs.

9. With the above mentioned avowed object, the Model Scheme was prepared based on the suggestions of the Study Group. The object of the scheme was that every meritorious student though poor is provided with an opportunity to pursue education with the financial support from the banking system with affordable terms and conditions.

10. The scheme could be adopted by all commercial Banks. It is further stated that the scheme only provides broad guidelines to the banks for operationalising the educational loan scheme and the implementing bank will have the discretion to make changes suiting to the convenience of the students/parents to make it more customer friendly.

11. Admittedly, the principal borrower insofar as the education loan is concerned is the student, who avails the loan. It is brought to the notice of this

Court by the learned counsel for the petitioner that it is the petitioner, who has to repay the loan after the completion of her course of study and the bank gives moratorium for the repayment of the loan. Therefore, it is contended that the position of the co-obligant / co-borrower is hardly a factor, which could be basis for rejection of an application. Identical issue as in this case came up for consideration before this Court in W.P.No.12432 of 2011 [R.Sahana vs. The manager, Oriental Bank of Commerce and others] and the learned Judge (Justice D.Hariparanthaman), while considering the similar case, where the student's father was a defaulter in respect of a loan availed by him, after analyzing the scheme relating to the education loan, which was produced by the respondent bank therein held as follows:-

10.According to the Bank, since the petitioner's parents became defaulters and their loan accounts became NPA, the Bank could not disburse the educational loan to the petitioner.

11.In my view, the educational loan could not come within the purview of the loan that is mentioned in the Loan Policy Review and Modification (2009-10) produced by the Respondents Bank. If the petitioner's parents want the disbursal of any loan amount even after they became defaulters, the Bank could refuse to disburse the amount. In this case, it is not the request of the petitioner to disburse the loan to her parents. On the other hand, it is her case that the sanctioned educational loan should be disbursed to her and the same cannot be stopped citing that her parents became defaulters. In my view, the submissions made by the learned counsel for the petitioner is well founded and the respondents Bank could not stop the educational loan that too for the final year. If the arguments of the Bank is accepted, the same could not advance the object of the scheme providing assistance by way of educational loan. If the Bank refuses to disburse the loan for the 4th year, that would frustrate the very purpose of the scheme and if the petitioner discontinues her studies at the final year, the loan amount so far paid without security could become sticky. Even for the interest of the Bank, they should see that the loanee student completes education so that the Bank could get back the loan advanced. Though the parents are to be made as co-applicants, it is stated in the scheme that irrespective of their means, loan *upto Rs.4,00,000/- should be sanctioned without any security. Further, as per the scheme, repayment has to be made by the petitioner student. Repayment clause states that repayment has to be made twelve months after completion of the course or six months after getting job, whichever is earlier. The clause relevant to the repayment is extracted hereunder:*

"Repayment In 84 months in Equated Monthly Installments.

Moratorium Period

12 months after completion of the course or 6 months after getting the job, whichever is earlier.

Regional Heads are empowered to permit extension in study period upto a maximum of two years,

Note: In the cases where loan has been sanctioned for the two/ dual courses, moratorium period.

12.Therefore, the Bank is not justified in refusing to disburse loan to the petitioner for the final year on the ground that her parents became defaulters. Hence, I am inclined to direct the respondent Bank, to forthwith disburse of the loan to the 3rd respondent college payable for the final year B.Tech Course of the petitioner The writ petition is disposed of in the above terms. No costs...."

5. The above order is self explanatory, restricting the scope for refusal to entertain a student's loan application on flimsy grounds. In the instant case, the respondent bank has raised queries in the form of clarifications, calling upon the student to explain his one year delay in admission and by placing reliance on the CIBIL report of the petitioner's father. As observed by this Court in the aforesaid judgment, the petitioner would be the principal borrower and the status of his parents or family members cannot be a factor for rejection of the petitioner application. It is rather unfortunate that the aforesaid order came to be passed in the year 2011 and various subsequent orders of this Court had also passed, even then the financial institutions have been continuing to reject applications of this nature on similar grounds. In my view, the rejection on the ground that the CIBIL reports of the petitioner's family members cannot be a ground for rejection of the application and that the bank may not be justified in seeking for an explanation for his delayed admission.

6. Apart from these two clarifications, the counter affidavit does not raise any other objection with regard to the petitioner's entitlement for sanction of the loan. As such, it can be only concluded that the petitioner's loan application does not suffer

from any other infirmity and this Court having held that the clarifications raised by the respondent bank is not justifiable, it would automatically follow that the petitioner is entitled for disbursement of the loan requested by him.

7. Before parting with the order, I am constrained to observe that the nationalised banks have been time and again rejecting applications, on the ground that the CIBIL reports of the applicant/student's family members are quoted as a disqualification for the student to avail the loan. In my view, such reasoning would amount to willful disobedience of the various orders of this Court being passed, for which the concerned nationalised bank would be liable for contempt of this Court orders. In the instant case, the Head office of Indian Bank, Chennai shall endeavour to issue necessary directions to all its branches through out the State of Tamil Nadu to refrain from rejecting educational loan applications on the aforesaid grounds.

8. With the above observations, there shall be a direction to the 4th respondent to positively consider the petitioner's application forthwith and disburse the loan amount sought for by the petitioner. Though his application dated 02.02.2018, such an exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order. This writ petition stands allowed accordingly.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
   The Union of India
   Ministry of Finance,
   North Block, New Delhi-1.

2. The District collector,
   Collectorate Building,
   Madurai 625 020.

3. The Zonal Manager,
   Indian Bank,
   No.100/101, East Avani Moola Street,
   Madurai 625 001.

4. The Branch Manager,
   Indian Bank,
   New Vilangudi Branch,
   Madurai625 001.

Copy To:-

The Chief General Manager,
Head office, Indian Bank,
Chennai.

+ 1 CC TO Mr.A.C.ASAITHAMBI, ADVOCATE IN SR No. 60533
+ 1 CC TO Mr.PALA RAMASAMY, ADVOCATE IN SR No. 60782
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 60709

SJI
TE/SV-MMS/SAR-2 : 17/04/2018 : 7P/9C

W.P.(MD).No.5296 of 2018
10.04.2018