



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.16836 of 2018

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K.Alagarsamy

... Petitioner

vs.

1.The District Collector
Madurai District
Madurai

2.The Branch Manager
Andhra Bank
Karupatti Branch
Vadipatti Taluk, Madurai District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the second respondent to sanction the Educational Loan of Rs.4,60,000/- for the Petitioner's daughter A.Pavithra for her B.Sc., Agriculture Course (4 Years) at S.Thangapazham Agriculture College, Vasudevanallur, Tirunelveli District.

For Petitioner : Mr.V.Santhakumaresan

For Respondents : Mr.A.Muthu Karuppan

Additional Government Pleader for R1

Mr.Pala.Ramasamy for R2

ORDER

The petitioner's daughter, namely, Pavithra has completed Higher Secondary Course during March, 2016 by securing 1081 Marks out of 1200 Marks. She was keen in pursuing higher education in agriculture and on the basis of her marks in the Higher Secondary Course, she was admitted to B.Sc. Agriculture Course, in S.Thangapazham Agricultural College, Vasudevanallur, Tirunelveli District. The said Course is for a period of four years and the said College is also affiliated to Tamil Nadu Agricultural University. The total tuition fee and hostel fee for the entire course was to the tune of Rs.4,60,000/-.

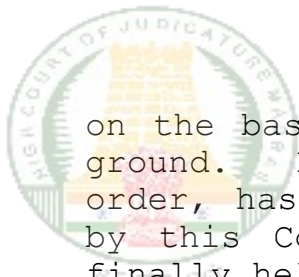
2. The petitioner, being a Coolie, was unable to fund his daughter's higher education. Since, in terms of the Government of India Policy, the Nationalized Banks were lending loans towards aspiring students for pursuing their higher education, the petitioner had approached the second respondent - Bank during April, 2014 for sanction of educational loan for his daughter in order to pursue her B.Sc., Agriculture Course in the College, where she was admitted.



3. According to the petitioner, despite he approaching the second respondent - Bank, there was no response at all and even the loan application itself was not furnished to him so as to enable him to apply for loan. In this regard, the petitioner appears to have sent several representations to the first respondent - District Collector, on 29.05.2017, 07.05.2018 and 15.05.2018, highlighting his grievances in not being granted educational loan to him by the second respondent - Bank. In response to the representations, it appears that the first respondent had forwarded the same to the second respondent with an instruction to consider the request of the petitioner for educational loan. Despite the same, the second respondent has not sanctioned educational loan to the petitioner. On enquiry, it was found by the petitioner that the educational loan was not sanctioned by the second respondent - Bank for the reason that the petitioner was a defaulter of previous agriculture loan obtained by him from the second respondent - Bank. According to the petitioner, he had borrowed a sum of Rs.10,000/- towards agriculture loan and eventually the said agriculture loan was waived by the Government of Tamil Nadu and in any case, according to the petitioner, it was not open to the second respondent - Bank to hold the default in discharge of agriculture loan against granting educational loan. Such an approach of the second respondent - Bank would defeat the very letter and spirit of the Model Educational Loan Scheme floated by the Government. Since the educational loan, as requested by the petitioner, has not been sanctioned by the second respondent - Bank, he is before this Court seeking a writ of mandamus directing the second respondent - Bank to sanction educational loan to the tune of Rs.4,60,000/- for his daughter's higher education i.e., B.Sc., Agriculture Course, in S.Thangapazham Agricultural College, Vasudevanallur, Tirunelveli District.

4. The learned counsel appearing for the petitioner would, at the outset, submit that the reason, as informed to the petitioner that he being a defaulter of agriculture loan, cannot be a valid ground for denying educational loan to his daughter, since both loans stand on different footing. In any event, the agriculture loan obtained by the petitioner has been ordered to be waived by the Government of Tamil Nadu and therefore, it was not open to the second respondent - Bank to hold the agriculture loan obtained by the petitioner any longer against the petitioner and deny educational loan sought by the petitioner for his daughter's higher education.

5. According to the learned counsel for the petitioner, the Courts have time and again held that default by the parents of the wards in discharging some other loan cannot be a basis for denying educational loan. In this connection, the learned counsel for the petitioner would rely upon an unreported decision of this Court rendered in W.P.(MD) No.5144 of 2018, dated 12.04.2018, in which the learned judge of this Court, in similar circumstances, has ordered grant of educational loan stating that denial of educational loan,



on the basis of default by the parents of the wards, was a flimsy ground. In fact, the learned Judge of this Court, in the said order, has in extenso incorporated the rulings of the order passed by this Court in W.P.(MD) No.5296 of 2018, dated 10.04.2018 and finally held that the petitioner therein was entitled to sanction of educational loan. Since the issue, as raised in the present writ petition, is squarely covered by the aforementioned order dated 12.04.2018 in W.P.(MD) No.5144 of 2018, the observations and the rulings of this Court are extracted hereunder:

"2. This Court by an earlier order dated 10.04.2018 in W.P.(MD) No.5296 of 2018 had an occasion to deal with such a reasoning for rejection of educational loan and the relevant portion of the said order reads as under:

"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



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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



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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 disbursement 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



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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



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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.

3. The above observations are self-explanatory and as such the second respondent - Bank may not be justified in rejecting the petitioner's request on the ground that the petitioner's CIBIL ratings and his earlier default is a bar for consideration for his son's educational loan.

4. In view of the same, the impugned order dated 19.02.2018 passed by the second respondent herein is quashed. Consequently, the petitioner is granted liberty to approach the second respondent - Bank with fresh application seeking for educational loan for his son Mr.Sarvin Prabhu and on receipt of such a representation, the second respondent shall pass favourable orders sanctioning the educational loan. Such an exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order.

5. With the above observations, the writ petition stands allowed. No costs."

Therefore, the learned counsel for the petitioner would submit that the petitioner is also a similarly placed person and hence, the second respondent - Bank may be directed to sanction educational loan to the petitioner.

6. Per contra, Mr.Pala.Ramasamy, learned counsel, entered appearance for the second respondent - Bank and filed a detailed counter affidavit putting up a stiff resistance to grant of any relief to the petitioner. The substance of the resistance, as averred in Paragraph Nos.6, 7, 8 and 12, are reproduced hereunder in order to understand the basis of the contention of the second respondent - Bank:



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"6. It is submitted that, repayment capacity is a vital factor of the loan availed. It is proportionate to the employability and other facts governing the scenario. If employability is in dark, then account will turn NPA. The overall NPA for Educational loan was at Rs.6,356 Crores across 3,45,340 accounts. Our Tamilnadu accounts for 40% of the NPA in Educational Loan. The copy of the relevant data extracted from Hindu dated 22.07.2018 is enclosed in our typeset of papers.

7. It is submitted that, the writ petitioner has availed Agriculture loan as stated in his writ affidavit in Page No.4, the petitioner on 26.10.1999 has availed a sum of Rs.20,000/- from the answering respondent bank. The said amount was not repaid. Our Hon'ble High Court in Writ order dated 06.06.2018 has held as follows:

"Whether the loan amount is small or huge, it needs to be recovered from the defaulters. Rather running behind the defaulters, a loan can better be rejected at the threshold by identifying a person's credentials. In this case, the Bank has rightly done so, as the petitioner's father has defaulter in paying several loans.

11.Hence, I find that, except the reason that nursing course does not come under IBA guidelines, all other reasons are found to be sound and the petitioner is not entitled for the loan under the Model Educational Loan Scheme. Accordingly, the Writ Petition stands dismissed. No costs.

Thus, financial discipline of the writ petitioner, who has availed Public money as loan is not satisfactory to lend another loan from the Public money.

8. It is submitted that, application was made for Educational loan to pursue the study of Pavithra for a sum of Rs.1,15,000/-. The said application was considered and sanctioned Rs.1,15,000/- for the following reasons:

"1.The college is not our accredited list of colleges of our bank.

2.The father of the applicant (Mr.K.Azhagarsamy) is having a CIBIL score of 554. The applicant has availed an Agricultural Term Loan of Rs.10,000/- from our Karupatti branch, Andhra Bank. The account has become NPA on 07.02.2009. The account is a technically written off account.

The said communication is available in page No.23, in the petitioner's typeset remains intact as the petitioner is not aggrieved, he has not challenged



the same. Under the circumstances, the present writ petition for Mandamus to sanction Rs.4,60,000/- is not maintainable under law and on facts.

....

12.

It is submitted that, our Hon'ble Division Bench of Madurai seat in its judgement dated 20.04.2012 has held as follows:-

No inherent right to educational loan: From the scheme of Article 21A of the constitution, it is the primary obligation of the state to provide free and compulsory education to all children of the age of 6-14 years and in the recent judgement dated 12.04.2012, the supreme court upheld the constitutional validity of right of children to free and compulsory education under Right to Education Act, 2009 which provides for free and compulsory education to children between age of 6 and 14 years and mandates government / aided / non-minority and unaided schools to reserve 25% of the students for these children. There is no such fundamental right to higher education. Of course, under article 41, the state, shall within its economic capacity and development, make effective provision for securing the right to education. In terms of Article 21A and Article 41, while there is a right to education, there is no inherent right to educational loan.

On behalf of the petitioners, it was contended that when banks are giving crores to Industries, why not to students. It was further submitted that there are any number of meritorious students, who apply for seats under "Management Quota" and the move in stipulating 60% marks will deprive them of the opportunity to get education. Learned counsels appearing for the petitioners as well as the appellant have also advanced arguments raising objections as to the other parameters viz., security, inadequacy of quantum of finance and other directives. It is within discretion of the bank either to grant or not to grant the educational loan to the students, who secured admission under "Management Quota" on case to case basis, subject to their academic performance. The court cannot issue directions diluting the policy/guidelines issued by the IBA comprising body of experts.



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Further in Para No.47 it has held as follows:

"So long as the guidelines are within the zone of reasonableness, the Court would not substitute its judgment as to the matters within the power of IBA. The Court cannot supplant the guidelines framed by the experts by substituting its own values."

Therefore, our bank is in order in rejecting the application, as it is contrary to the scheme.

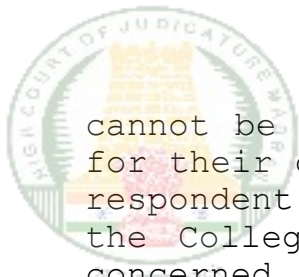
7. From the contentions, as raised on behalf of the second respondent - Bank, it is seen that there are two issues emerged for consideration of this Court. One is that, as averred by the petitioner himself, he was a defaulter in respect of an agriculture loan of Rs.10,000/- obtained by him earlier from the second respondent - Bank and the other issue is in regard to accreditation of the College, in which the petitioner's daughter is admitted and pursuing her higher education.

8. As regards the second issue is concerned, according to the second respondent - Bank, they have a list of Agricultural Colleges, found in the website, in which, the name of the College, in which petitioner's daughter is studying, did not find a place. This was due to the reason that the said College was founded only on 29.09.2015 and therefore, no information was available about the ranking of the College and employability of the students graduating from the Institution. However, it is admitted that the College is affiliated to the Tamil Nadu Agricultural University.

9. In addition, the learned counsel for the second respondent - Bank would also rely upon a decision rendered by the Honourable Division Bench of this Court in A.Kasinathan vs. The Branch Manager, Canara Bank, reported in 2012 Writ LR 640 and the relevant portion of the said decision has already been extracted in Paragraph No.12 of the counter affidavit filed on behalf of the second respondent - Bank. From the extracted paragraph, it could be seen that ultimately, the Honourable Division of this Court has held that so long as the guidelines are within the zone of reasonableness, the Court would not substitute its Judgment as to the matters within the power of the Indian Bank Association. The Court cannot supplant the guidelines framed by the experts by substituting its own values.

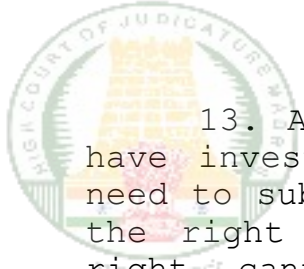
10. Although the Honourable Division Bench has held that the norms framed by the Banks cannot be ignored by any directions of this Court, but, at the same time, it has to be seen as to whether the norms, as applied by the second respondent - Bank in respect of the petitioner's claim, come within the zone of reasonableness or not.

11. As rightly held by the learned Judge of this Court in the order dated 12.04.2018, passed in W.P.(MD) No.5144 of 2018, default by the parents in discharging of some other loan availed by them



cannot be a valid basis for denial of sanction of educational loan for their children. Moreover, the other reasons cited by the second respondent - Bank that the employability and the accreditation of the College, in which the petitioner's daughter is admitted, are concerned, the same also cannot be a valid basis for denial of sanction of educational loan, since the College was founded only during 2015 and the first batch of graduates is yet to emerge. In any event, admittedly, the College, in which the petitioner's daughter is admitted and pursuing her higher education, is affiliated to the Tamil Nadu Agricultural University, which is a State University and once the College is affiliated to a recognized University, the question with regard to accreditation of the individual College would not arise at least for the purpose of grant of educational loan. In any event, it is needless to mention that Degrees would be ultimately awarded by the University and not by the College. Therefore, the issue of accreditation, which is held against the petitioner, cannot be countenanced either under law or on facts. Therefore, the same has to be rejected outright.

12. In the overall circumstances, this Court is of the view that the grant of educational loan to the aspiring students cannot be perilously depend on the whimsical approach of the concerned Branch of the Nationalized Banks. The Bank cannot be allowed to find and fish out norms in order to deny educational loan to the aspiring students. On the other hand, in the present context of higher education, being pursued mostly in Private Institutions, it is incumbent on the part of the Nationalized Banks to lend a succor to the meritorious students, who seek to pursue their higher education in order to achieve excellence in furtherance of their dream. This is more particularly so, when the State itself denuded of its fundamental duties to provide free higher education to all its citizens. When the State has abdicated its primary responsibility in providing free education to its citizens and when the State has allowed plethora of private players to run professional and other educational institutions in the State and the mushrooming of such private Institutions has rendered the education a costly affair. In such scenario, it is imperative on the part of the Nationalized Banks to grant educational loan as far as possible in order to help the students, particularly from the poorer background, to achieve their dream and goal. In the absence of any considered approach by the Banks in alleviating the grievances of the poor people, who find it difficulty to provide good education to their children, the result would be that many deserving students would be denied of pursuing higher education only because of their poverty and non-affordability. Such a situation would not advance the cause of a welfare State. In the said circumstances, the Nationalized Banks have to assume larger social responsibility towards realisation of legitimate ambition of tens and thousands of students belonging to poor social and economic background, who could otherwise ill-afford to pursue their higher education.



13. Although this Court is conscious of the fact that public have invested their monies in the Banks and therefore, the Banks need to subserve the public interest as well, but at the same time, the right to pursue higher education, which is a constitutional right, cannot be denied to the deserving students, who are cursed with poverty and backwardness. Such a denial of educational loan will undermine the very essence of Article 14 of the Constitution of India, as they have equal rights for competing with the other fortunate students in pursuing higher education. Therefore, the essence of equality is rather more than well subserved them to find reasons to deny educational loan to the deserving poor students, who are aspiring to pursue higher education against all odds, which are loaded against them, in the poverty stricken State as ours.

14. With the above observations, the writ petition is allowed and there shall be a direction to the second respondent - Bank to consider the claim of the petitioner and sanction educational loan, as sought by him, within the prescribed norms, without holding the reasons as set forth in the counter affidavit against the petitioner. This Court also rejects the contention of the second respondent - Bank that there was no challenge to the decision of the Bank in rejecting the petitioner's claim, since such an objection is only a technical objection and it does not merit serious consideration by this Court. The second respondent - Bank is directed to sanction educational loan, as admissible, to the petitioner and pass appropriate orders in this regard, within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To:

The District Collector,
Madurai District,
Madurai.

+1CC to Mr.V.Santhakumaresan, Advocate, SR.No. 80362
+1CC to Mr.Pala.Ramasamy, Advocate, SR.No. 80536
+1CC to the Special Government Pleader SR.No.80624

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