BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.11.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE M.SUNDAR**

W.P(MD)No.15690 of 2019

P.Muthukaruppan ... Petitioner

/Vs./

1.The Branch Manager,
State Bank of India,
Aviyur Branch,
Kariappatti Taluk,
Virudhunagar District.

2.The Lead Bank Manager,
Indian Overseas Bank,
103, Katcheri Road,
Virudhunagar District - 626 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned letter issued by the 1st respondent dated 16.04.2019 and quash the same as illegal and arbitrary and consequently direct the 1st respondent to sanction the educational loan amount of Rs.2,00,000/- to the petitioner for studying B.E., (Mech) Engineering Course.

For Petitioner : Mr.K.C.Ramalingam

For R-1 : Mr.G.Radhakrishnan
For R-2 : Ms.J.Balameenakshi
for Mr.Pala Ramasamy

ORDER

Mr.K.C.Ramalingam, learned counsel for writ petitioner, Mr.G.Radhakrishnan, learned counsel for first respondent and Ms.J.Balameenakshi, learned counsel for second respondent are before this Court.

2. With consent of all the aforesaid learned counsel, main writ petition is taken up, heard out and is being disposed of.

3. Writ petitioner who has secured admission in B.E., (Mech) Engineering Course in an Institution which goes by name Sethu Institute of Technology, Pulloor applied for educational loan of Rs.1,96,000/- (Rupees One Lakh and Ninety Six Thousand only) for the entire four year course vide 'Application ID 214252' in first respondent Bank (hereinafter referred to as 'said loan application' for brevity). To be noted, this Court is informed that 'Mech' is a short form which stands for 'Mechanical'.

4. To be noted, said loan application has been made via Vidya Lakshmi common education loan application form vide the portal in this regard created by Central Government. Critical particulars

NSDL

Student ID	516985
Application ID	214252
Bank Name	State Bank of India
Bank Scheme Name	SBI STUDENT LOAN SCHEME
Preferred Bank IFSC Code	[illegible]
Preferred Bank Branch Name	AVIYUR
Date of Application	[illegible]-Jun-2018

about said loan application are as follows:

5. As said loan application was not processed, writ petitioner approached the second respondent and the second respondent gave a letter dated 30.11.2018 bearing Letter No.55 which reads as follows:

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அனுப்புநர்	பெறுநர்
முன்னோடி வங்கி மேலாளர் இந்தியன் ஓவர்சீஸ் வங்கி 103, கச்சேரி ரோடு விருதுநகர் - 626001 போன் : 04562 - 244665	கிளை மேலாளர் State Bank of India Aviyoor
கடிதம் எண் 55	நாள் 30/..../19

அன்புடையீர்,

<u>துயர் துடைப்புநாள் மனுக்கள்</u>

திருமதி/ திரு P. Suresh kumar

கோரிக்கை மனு எண் : 974456 - 26/...../19

இத்துடன் ——— தேதியில் நடைபெற்ற மக்கள் குறைதீர்க்கும் நாள் / முதலமைச்சர் / விவசாயிகள் குறைதீர்க்கும் நாள் / மாவட்ட ஆட்சியர் / — அலுவலகம் மூலமாக பெறப்பட்ட மேற்கண்ட கோரிக்கை மனு இத்துடன் இணைக்கப்பட்டுள்ளது.

மனுதாரரின் கோரிக்கையை தங்களது வங்கியின் சட்ட திட்டங்களுக்குட்பட்டு பரிசீலனை செய்து மேல் நடவடிக்கை எடுக்குமாறு கேட்டுக் கொள்கிறோம். இம்மனு மீது எடுத்த நடவடிக்கையினை 10 நாட்களுக்குள் சம்பந்தப்பட்ட மனுதாரருக்கும் அலுவலகத்திற்கும் தெரியப்படுத்தி நகலினை முன்னோடி வங்கி அலுவலகத்திற்கு அனுப்புமாறு கேட்டுக் கொள்கிறோம்.

தங்கள் அன்புள்ள,

(signature)

முன்னோடி வங்கி மேலாளர்

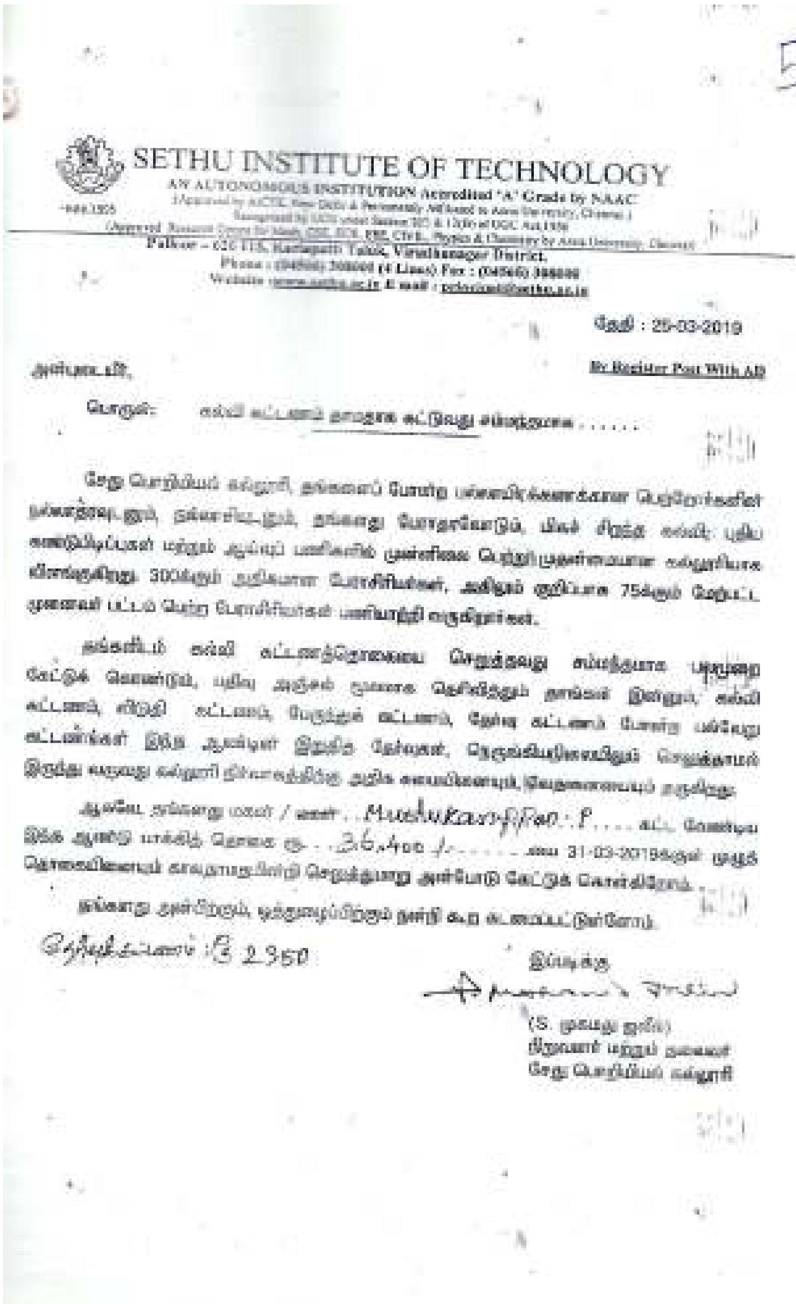
நகல்:

1.மனுதாரர்:
P. Sureshkumar
4/325, East Street
Aviyoor, Kariapatti tk

2. சம்பந்தப்பட்ட துறை

சம்பந்தப்பட்ட தேவையான ஆவணங்களுடன் State Bank of வங்கியை தொடர்பு கொள்ளவும் India, Aviyoor

6. Thereafter there was fee demand from Sethu Institute of Technology where the writ petitioner is pursuing education and the same is as follows: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SETHU INSTITUTE OF TECHNOLOGY

AN AUTONOMOUS INSTITUTION Accredited 'A' Grade by NAAC

25-03-2019

By Register Post With AD

Muthukaruppan. P

36,400/-

31-03-2019

2350

7. Under the aforesaid circumstances, owing to inaction on the part of first respondent in respect of writ petitioner's educational loan application dated 06.06.2018 inspite of the aforementioned letter dated 30.11.2018 from the second respondent, writ petitioner moved this Court by way of writ petition being W.P.(MD)No.8488 of 2019 and the same was disposed of by a Hon'ble Single Judge of this Court, by order dated 09.04.2019 after hearing all the parties concerned. Most relevant portion of this order made by another Hon'ble Single Judge of this Court is contained in paragraph Nos.4,5 and 6, which read as follows:

'*4.The learned counsel for the petitioner, now,* *submitted that the petitioner has no financial resources for paying the fee and hence, seeks a direction to the respondents to sanction the loan.*

5.The learned counsel appearing for the respondents, on instructions, submitted the loan application of the petitioner would be considered and appropriate orders would be passed by the respondents.

6.Under such circumstances, the petitioner is directed to appear before the 2nd respondent on 15.04.2019 with all necessary documents and on such appearance, the respondents are directed to pass necessary orders, on the loan application of the petitioner on merits and in accordance with law, within a period of one week therefrom, after hearing the petitioner.'

8. Thereafter, writ petitioner wrote a representation to the first respondent on 11.04.2019 and the first respondent pursuant to the order of this Hon'ble Court passed an order on said representation of writ petitioner which is in the form of a 'communication to the writ petitioner dated 16.04.2019' (hereinafter referred to as 'impugned order' for the sake of brevity, clarity and convenience), which reads as follows:


SBI

State Bank of India

9. Assailing the impugned order, instant writ petition has been filed.

10. A perusal of the impugned order reveals that the loan application of the writ petitioner has been declined on only one ground and that one / lone ground is that gold loan of co-applicant had been written off.

11. This Court is informed that the expression 'co-applicant' used in the impugned order is incorrect and that it is 'co-obligant'. Be that as it may, this Court is also informed that the co-obligant qua said loan application of the writ petitioner is writ petitioner's father Mr.Palani, who is an agriculturalist / farmer with an annual income of Rs.60,000/-.

12. The impugned order has been made pursuant to aforesaid earlier order of a Hon'ble Single Judge of this Court, wherein first respondent has submitted that the loan application ie., said loan application of writ petitioner would be considered and appropriate orders would be passed by the respondents. Therefore, it is clear that loan application ie., said loan application of writ petitioner dated 06.06.2018 has been considered with regard to all aspects / determinants and impugned order has been passed.

13. As already alluded to supra, lone ground on which education loan has been declined vide impugned order is writing off gold loan of co-obligant ie., writ petitioner's father. Therefore, it can be safely inferred that writ petitioner satisfies all other conditions for grant of loan qua said loan application. In any event, besides the impugned order being made pursuant to order of this Court, law is well settled that impugned order cannot be improved by way of counter affidavit or by way of submissions at the bar.

14. Lead case with regard to aforesaid well established principle is constitution bench Judgment of Hon'ble Supreme Court in **Mohinder Singh Gill** case being **Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi** reported in **AIR 1978 SC 851** and relevant paragraph in *Mohinder Singh Gill* case is paragraph No.8, which reads as follows :

> *'8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :*
>
> > *"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he*

meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.'

15. In any event, in the instant case, there may be little need to even fall back on *Mohinder Singh Gill* principle as there is no disputation that all the determinants / aspects of said loan application have been considered and impugned order has been passed thereafter.

16. This takes us to the lone ground mentioned in the impugned order.

17. With regard to lone ground, this Court in order dated 15.10.2019 in **R.Gayatri** case being **R.Gayatri vs. Regional Manager, State Bank of India, Madurai and others** has held that an applicant's educational loan application cannot be refused to be processed and / or cannot be rejected citing applicant's parents' credit score. This Court has held that it is against first principles of civil law, besides being contrary to known canons of equity.

18. It is not in dispute before this Court that R.Gayatri case is one where educational loan application of writ petitioner was rejected citing poor CIBIL score of applicant's parents. To be noted, 'CIBIL' stands for 'Credit Information Bureau (India) Limited'. Relevant paragraphs in R.Gayatri's case are paragraphs 28 and 29 which read as follows:

'28. In the considered view of this Court, the sole reason given in the impugned order is clearly not sustainable as it is against first principles of civil law and contrary to canons of equity. It is a matter of first principle in civil law that a person inherits assets from predecessors / parents and passing on of liability, if at all, is limited to the extent of the estate inherited. In this view of the matter, refusing to process writ petitioner's educational loan application on the sole ground that her

parents' CIBIL score is poor is clearly opposed to first principles of civil law besides being opposed to well established canons of equity. After all, it is both a matter of rule of law and a matter of civility / social ethics that a child should not be penalised for alleged misdeeds of his / her parents.

29. In the light of the aforesaid dispositive reasoning, this Court is left with the considered view that impugned order is liable to be set aside. This Court while setting aside the impugned order has considered the stated position of said Bank that writ petitioner's parents' CIBIL score is the only impediment in approving, granting and disbursing educational loan sought for. In other words, what unfurled from the trajectory of the hearing is that, if the sole reason given in the impugned order is nullified, it will result in loan being approved, granted and disbursed to writ petitioner. Therefore, in the light of this aspect of the matter unfurling in the hearing, this Court is inclined to give a positive direction to disburse the educational loan (in the operative portion infra) rather than restricting it to a direction to process the application.'

19. What is of relevance is that both the respondents submit that no appeal has been preferred against the order in R.Gayatri case until today.

20. Therefore, if R.Gayatri case is applied and if the impugned order is decided on the principle laid down therein, it follows as a sequitur that the impugned order is liable to be set aside. If the impugned order is set aside, it follows as a sequitur that the writ petitioner will be entitled to mandamus limb also, owing to the narrative set out supra in this order.

21. To be noted, prayer refers to two limbs, second limb ie., mandamus limb talks about Rs.2,00,000/- whereas the said loan application placed before this Court shows that education loan sought for by the writ petitioner is Rs.1,96,000/-. However, the breakup of Rs.1,96,000/- (for 4 years) is as follows:

Particulars	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Total
Tuition fees	30000	30000	30000	30000			120000.00
Exam fees	5000	5000	5000	5000			20000.00
Books Stationary	4000	4000	4000	4000			16000.00
Equipment&Computer	10000	10000	10000	10000			40000.00
Hostel Expenses	0	0	0	0			
Sundries/Travel	0	0	0	0			
TOTAL	49000	49000	49000	49000			196000.00
Own Source / Scholarship	0	0	0	0			
Loan Required	49000	49000	49000	49000			196000.00

22. It is not in dispute that writ petitioner secured admission for aforesaid Engineering College for the academic year 2017-18. Said loan application is dated 05.06.2018. Therefore, writ petitioner has made loan application only after completing the first academic year. This means that writ petitioner's loan application can be construed to be for the years 2, 3 and 4 according to first respondent, which in turn means loan amount of Rs.1,96,000/- also will now become Rs.1,47,000/-.

23. Certiorari limb of writ petition is allowed. Mandamus limb of writ petition is also allowed but by holding that two lakhs in the prayer will now read as Rs.1,47,000/- (Rupees One Lakh and Fourty Seven Thousand only). Writ petitioner undertakes to execute all necessary documents / papers for disbursement of the education loan which shall be done within a fortnight from the date of receipt of a copy of this order. Writ petition is allowed in the aforesaid manner. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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ENCL.: XEROX COPY OF SCANED IMAGES(PAGE NOS.2,3,4,5 & 9)

TO

1.The Branch Manager,
State Bank of India,
Aviyur Branch,
Kariappatti Taluk,
Virudhunagar District.

2.The Lead Bank Manager,
Indian Overseas Bank,
103, Katcheri Road,
Virudhunagar District - 626 001.

+1CC TO MR.G.RADHAKRISHNAN, Advocate Sr. No. 100204
+1CC TO MR.K.C.RAMALINGAM, Advocate Sr. No. 100476

Order made in
W.P(MD)No.15690 of 2019
Dated: 20.11.2019

MR(CO)
TR(29.11.2019) 10P 5C