IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12233 of 2022

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Raj Kumar Mishra S/o Sri Subedar Mishra Resident of - Arpana Bank Colony, Phase- II, Near Ganga Colony, Ramjaipal Road, Bailey Road, Patna, P.O.- Danapur Cantt., P.S.- Rupaspur, District- Patna ... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Additional Secretary, Education Department, Govt. of Bihar, Patna.
4. The Director (Higher Education), Education Department, Govt. of Bihar, Patna.
5. The Zonal Manager, Bank of India, R. Block, Birchand Patel Path, Patna- 800001.
6. The Branch Manager, Bank of India, Branch Bailey Road, Jagdev Path, Patna- 800014. ... Respondents

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Appearance :

For the Petitioner	:	Mr.Amit Shrivastava, Sr. Adv. with Mr. Girish Pandey, Adv.
For the State	:	Mrs.Binita Singh, SC XXVIII with Mr. Vivek Anand Amritesh, AC to SC XXVIII
For the Bank	:	Mr. Ajay Kumar Sinha, Sr. Adv. with M/s Ajit Kumar Sinha, Dilkash Khan and Minu Kumari, Advs.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

11 23-04-2024 Heard the parties.

2. The present application has been filed by the co-applicant of a loan taken from the respondent-Bank.

3. It is the case of the Writ Petitioner that consequent to the scheme formulated by the Government of Bihar, the son of the petitioner has applied for a loan with the respondents five and six (Bank). That under the scheme formulated by the Government of Bihar the student would be entitled to a student loan for pursuing higher education at nominal rate of interest

and also eligible for moratorium for a period of three years for repaying the loan. Learned counsel for the petitioner has stated that as per the terms and conditions of the scheme and the memorandum of understanding entered between the State of Bihar and the respondent-Bank the student will be issued a “Student Credit Card”. As per the scheme the students will be given a loan covering the tuition fees and they are obligated to re-pay the said loan amount only after a moratorium period of three years or in case they are still unemployed even after completion of the course, a further moratorium period of one year is granted and the interest chargeable is nominal, i.e., 2% to 4%. However, the Bank-authorities have issued a letter to the petitioner, herein, stating that the petitioner is due an amount of Rs.4,60,319/- as on 25.04.2022 and charging interest at the rate of approximately 11.7%. That the petitioner has applied through the District Registration and Counselling Center (DRCC) and the said application was forwarded to the Bank which has sanctioned the loan of Rs.4,00,000/-. As per the scheme, in case the student is unable to re-pay the loan amount, then, the State Government will reimburse the loan amount to the maximum of Rs.4,00,000/- to the Bank and the interest payable is between 2% to 4% only. Learned counsel has, therefore, stated that the issuance of the letter asking the petitioner to re-pay the loan amount with interest of approximately 11.7% is totally against the scheme formulated by the State and the same is bad, illegal, arbitrary and liable to be set aside. Learned counsel has stated that the petitioner is willing to re-pay the entire loan amount provided a nominal interest of 2% to 4% is charged to the petitioner.

4. Per contra the learned counsel appearing on behalf of the respondent-Bank has vehemently opposed the very maintainability of the present Writ Petition and stated the present Writ Petition is not maintainable as it is purely a commercial transaction entered between the petitioner and the respondent-Bank. That as per the terms and conditions of the loan agreement, the loan sanction letter and also the various correspondences between the Bank and the petitioner, the student has to re-pay the entire loan amount after moratorium period of three years is one and the rate of interest chargeable on the said loan is as per the terms and conditions of the loan agreement. That the rate of interest chargeable is 10% + 1.2%. That the petitioner was well aware of this interest chargeable, but, is now trying to take advantage of the memorandum of understanding entered between the Government of Bihar and the

respondent-Bank. That the scheme has been introduced only to provide succor to the poor, deprived and under privileged students who are unable to get students loan easily. That to help the poor students get loan easily the Government of Bihar has come out with this particular scheme and as per the terms and conditions of the said scheme. The Government stand as guarantor for the loan and in case of any default in repaying the loan the State Government will step-in and re-pay the loan amount up to the maximum of Rs.4,00,000/- and the interest chargeable to the State Government on the said loan is nominal. Where the borrowers are having sufficient financial capacity to re-pay the loan, the question of waiving the loan does not arise nor a nominal interest will be charged. Learned counsel has stated that in case of any default by the loanee, the Bank is obligated to declare the loan as a NPA and take all necessary steps for recovery of the loan amount. In case they fail to recover the loan amount then the State Government will reimburse the said loan amount to the extent of Rs.4,00,000/- and not otherwise. That the nominal interest chargeable on the said defaulted loan is between 2% to 4% but the same benefit cannot be extended to the students who are having sufficient means to re-pay the loan. In this particular case the main applicant, i.e., the son of the Writ Petitioner has secured a job and has the necessary financial capacity to re-pay the amount. That the present CWJC is totally misconceived and prayed this Hon'ble Court to dismiss the present CWJC.

5. A perusal of the documents more particularly the application made by the petitioner, the sanction letter issued by the Bank at the time of disbursal of the loan amount and also the other correspondences between the parties reveal that the petitioner as well as his son were fully aware of the terms and conditions of the loan. That the interest rate chargeable at the time of sanctioning of loan was 10% + 1.7%. The relevant portion of the loan sanction letter where the terms and conditions stipulated in the loan agreement are extracted below :

> *Dear Sir/Madam*
>
> *We are pleased to advise you that your request for EDUCATION LOAN for Rs.334,000.00 considered favourably subject to compliance of the following terms and conditions*
> *1. Loan Sanctioned Rs.334,000/-*
> *2. Margin 0.00%*
> *3. Rate of interest : 1.70% above the yearly BOIMCLR p.a., as may be reset by BOI on annual basis, with with monthly rests, presently 10.00% p.a. (floating) interest.*
> *During moratorium period, interest shall be charged*

at applicable simple rate, and will be compounded after that."

6. Further in the application for sanction of loan (Annexure 'E') the petitioner along with his son has signed an undertaking which reads as under :

"I/We hereby apply for a loan from BOI (Name of the Bank) to the extant indicated in the Loan Request Section of this application form. I/We declare that the foregoing particulars and information furnished in this application form are true, accurate and complete and that they shall form the basis of any loan BOI (Name of the Bank) may decide to sanction to me/us. I/We confirm that I/We have/had no insolvency proceeding against me/us. Nor have, I/We been adjudicated insolvent. I/We further conform that I/We have read the terms and conditions and understood the contents therein. I/We am/are aware that I/We opt for loan at floating rate of interest, the equated Monthly installment will comprise Principal and interest based on BOI (Name of the Bank) Advance Rate which is subject to change from time to time".

7. A reading of the above clearly reveals that the petitioner as well as his son, who is main applicant of the loan were fully aware of the terms and conditions of the loan and

voluntarily singed the agreement. More over, it is not the case of the petitioner that they were not given the moratorium as per the scheme, as a matter of fact the son of the petitioner has himself applied for increasing the period of moratorium by one more year and the same has been sanctioned by the Bank authorities. The petitioner was asked to re-pay the loan amount due to the Bank only after the period of moratorum of 4 years. Though the counsel for the petitioner has relied on the judgments of the Hon’ble Supreme Court reported in **AIR 1993 SC, 2592 (Smt. Naseem Bano Vrs. State of UP & Ors.)** and **AIR 1986 SC, 1571 (Central Inland Water Transport Corporation Ltd & anr. Vrs. Brojo Nath Ganguly & Anr.)**. The above judgments relied by the petitioner are distinguishable on the facts of this particular case and, therefore, not applicable. Learned counsel has further argued that Bank authorities were in dominant position and, therefore, the petitioner was coerced into entering into the agreement which carries on higher interest and the same is contrary to the terms and conditions of the scheme formulated by the Government of Bihar. However, it is to be noted that the above scheme is only to facilitate the student in getting easy loans but not granting loans at a nominal interest to the students as claimed by the petitioner.

8. The petitioner while applying, signing the loan agreement was fully aware of the terms and conditions of the agreement and they cannot now wriggle out of the same on the basis of scheme formulated by the State of Bihar for facilitating the grant of loans to poor and needy students.

9. This Court does not find any merit in the present Writ Petition, which warrants the grant of any relief sought by the petitioner and the same is accordingly **dismissed**.

(A. Abhishek Reddy , J)

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