K. Anitha Vs. The Branch Manager, Oriental Bank of Commerce, Madurai

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Court : Chennai Madurai

Decided On : Aug-03-2016

Judge : M. Venugopal

Appeal No. : W.P(MD)No. 12503 of 2016

Appellant : K. Anitha

Respondent : The Branch Manager, Oriental Bank of Commerce, Madurai

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondent to provide the educational loan amount of Rs.2,00,000/-(Rupees Two Lakhs only) to meet out the expenses pertaining to the Petitioner's B.E(Electrical and Electronics Engineering) studies at the K.L.N.College of Information Technology, Madurai based on the Petitioner's application dated 11.11.2014 and the subsequent representation dated 4.7.2016 within the time stipulated by this Court.)

1. Heard both sides.

2. By consent of both sides, the main Writ Petition itself is taken up for final disposal.

3. No counter is filed on behalf of the Respondents.

4. According to the Petitioner, she had completed S.S.L.C at TVS Higher Secondary School, Madurai and scored 480 marks. Subsequently, she had completed +2 examination in the year March 2014 and she secured 1058 marks. She also attended the counselling and secured admission to Bachelor of Engineering(Electrical and Electronics Engineering) during the year 2014 at K.L.N.College of Information and Technology, Madurai. The said college is recognized by the Anna University, Chennai.

5. The grievance of the Petitioner is that her family is facing economic crisis and she applied for educational loan with the Respondent/Bank. In fact, the Respondent/Bank directed her parents to open a new account for pursuing the educational loan at their end. In reality, her father opened a new account on 11.11.2014 and the Account No. is 06122191014612. Likewise, her mother also opened a new account and the Account No. is 06122191014605. Later, the Respondent/Bank received her application and assured to provide educational loan amount of Rs.4 lakhs.

6. The real grievance of the Petitioner is that after receiving the application, the Respondent/Bank refused to process the application for sanctioning the loan amount. In the meanwhile, her parents pledged their gold ornaments and obtained loan with exorbitant interest and paid the first year college fee and transport fee for her studies. Thereafter, she sent a representation on 16.09.2015 to the Respondent/Bank and requested to sanction the educational loan amount for pursuing education at Engineering College. Thereafter, on 1.7.2016, she and her parents requested in person for educational loan of Rs.2 lakhs for completing the remaining two years. Subsequently on 4.7.2016 she sent a representation, which was acknowledged by the Respondent/Bank on 5.7.2016. Further, the Respondent/Bank had not considered her representations.

7. At this stage, the Learned Counsel for the Petitioner submits that the Government has to provide assistance financially to promote poor students and Right to Education is one of the fundamental rights enshrined in the Constitution of India. Inasmuch as the representations of the Petitioner have not met with any positive response in the hands of the Respondent/Bank, the Petitioner has filed

the present Writ Petition for the relief as stated supra.

8. At this stage, the Learned Counsel for the Respondent/Bank brings it to the notice of this Court that on 26.05.2015, a message was sent to all Bank Branches in Madurai City on the subject of Educational Loans whereby and where-under it is mentioned as follows:

There is no service area concept for education loans as per RBI guidelines. However, in the earlier years for easy approach of students/parents, as per the decision taken in the Bankers Meeting (DLRC), wards were allocated to each Bank Branch.

Now in Madurai City there are 100 wards with around 217 Bank Branches. Many wards have more than one Bank Branches. Many Banks have shifted their Branches in main locality even though the Branch license is for different area. In the past year our office received more complaints through District Collectorate. CM Cell and also directly from parents regarding non sanction of/delay in sanctioning education loans. Few parents gone to Ombudsman, RBI and few filed Writ Petition in High Court -Madurai Bench. We also observed from the quarterly reports submitted by Bankers that some of the Bankers did not consider education loan during last year.

As the admission process to colleges has been started, in the DCC Meeting the matter has been discussed and following decision have been made:

1. All Banks other than specialised branches like SME Branch in the ward (Private /Nationalized) should consider education loan.

2. The applicant in the area can approach/select the Bank nearer to his residence/locality and the Banker should not refuse to consider the loan.

3. Target will be given to each Bank Branches.

4. If the applicant approach Lead Bank Office, the application will be entered in a register and sent to Bank Branch of the area.

5. Any refusal/non sanction/rejection without valid reasons will be taken up with appropriate authority of RBI, We request all District Co-ordinators of Banks to note the same and inform to all of your Branches in Madurai City. Please note that there should not be any complaint from parents/students for non issue/receipt of educational applications when they approach the Branches. Any pending application, at present, with the Branches have to be considered by them only.

R.Muruga Prabhu

Lead District Divisional Manager

Madurai 94890 46285.

9. Even on 21.01.2016, a Master Circular-Oriental Education Loan Scheme in Circular No.HO:Retail:56:2015-16:831 was issued whereby and where-under it is mentioned as follows:

MASTER CIRCULAR -ORIENTAL EDUCATION LOAN SCHEME

1. BACKGROUND

Master Circular on Education Loan Scheme was communicated vide Circular No.HO.63:2014-15:1029, dated 31.3.2015. The under-noted Circulars have been ssued on the subject scheme.

S.No.	Title	Circular No. and Date
1	Master Circular: Oriental Education Loan Scheme	HO:Retail:63:2014-15:1029 dated 31.3.2015
2	Oriental Education Loan Scheme. Clarification for Appraisal/sanction/disbursement branches for Category A and B Institutions	HO:Retail:09:2015-16:121 dated 13.5.2015

3	Oriental Education Loan Scheme-Modification in Primary Security/Co-Obligation terms in A :Category institutions	HO:Retail:11:2015-16:222 dated .17.6.2015
4	Oriental Education Loan Scheme-Modification in scheme	HO:Retail:13:2015-16:252 dated 29.6.2015
5	Education Loan -Classification of IIT Patna in Category A institutes	HO:Retail:26:2015-16:378 dated 17.08.2015
6	Oriental Education Loan Scheme Modification in Scheme	HO:Retail:55:2015-16:820 dated 19.1.2016

Circulars related to Skill Loan Scheme

S.No.	Title	Circular No. and Date
1	Oriental Skill Loan Scheme	HO:Retail:36:2015-16:538 dated 7.10.2015

2. Consideration of scheme

To obviate frequent references, the instructions advised through aforesaid Circulars containing guidelines on 'Oriental Education Loan Scheme' have been consolidated. The scheme will supersede all the previous circulars. The following schemes are annexed to the circular.

Education loan scheme: Master Circular

INDEX:

A) IBA MODEL SCHEME FOR STUDY IN INDIA AND ABROAD

B) SALIENT FEATURES OF CATEGORY A and B INSTITUTIONS.

C) EDUCATION LOAN SCHEME FOR WORKING PROFESSIONALS FOR PART TIME COURSES

D) EDUCATION LOAN SCHEME FOR NIIT IMPERIA

E) ORIENTAL SKILL LOAN SCHEME

3. ACTION TO BE TAKEN AT FIELD LEVEL AND CONTROLLING OFFICES

3.1 All the field functionaries are advised to ensure meticulous compliance of the above guidelines

3.2 The contents of this circular be got noted from all the staff members at the Branches/Regional Offices.

3.3 All Inspecting officials from the Inspection and Control Department at Head Office as well as the Regional Inspectorates should verify the compliance of the above during their visits to Branches/Regional Offices.

10. Apart from the above, the Learned Counsel for the Petitioner contends that the Petitioner had not submitted any filled up loan application before the Respondent/Bank, which fact is disputed on the side of the Petitioner.

11. It is to be borne-in-mind that 'Education is a National Wealth'. As a matter of fact, the Educational Loan Scheme Circular For Pursuing Higher Education in India and Abroad, July 2015, wherein at S.No.2,3,4 and 5, it is observed as follows:

2./- OBJECTIVES OF THE SCHEME

The Educational Loan Scheme outlined below aims at providing financial support from the banking system to meritorious students for pursuing higher education in India and abroad: The main emphasis is that a 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.

APPLICABILITY OF THE SCHEME The scheme detailed below could be adopted by all member banks of the Association or other banks and financial institutions as may be advised by the Reserve Bank of India. The scheme provides broad guidelines to the banks for operationalising the educational loan scheme and the implementing bank will have the discretion to make changes as deemed fit.

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.

Note:

It would be in order for banks to consider a meritorious student (who qualifies for a seat under merit quota) eligible for loan under this scheme even if the student chooses to pursue a course under Management Quota.

4.2 Design elements for classification of education loans It is proposed to classify the education loan portfolio into three categories viz.

Loans to students admitted to top rated institutions

Loans to students admitted to other domestic institutions

Loans to students seeking studies abroad.

It is expected that depending upon risk perception, reputation of the institution and employability of the students banks will be able to fine tune their terms and conditions of sanction suitably to these categories.

The guidance note attached to the scheme gives elaboration of design elements for classifying educational loans

5. COURSES ELIGIBLE

5.1. Studies in India: (Indicative list)

Approved courses leading to graduate/ post graduate degree and P G diplomas conducted by recognized colleges/ universities recognized by UGC/ Government/ AICTE/ AIBMS/ ICMR etc.

Courses like ICWA, CA, CFA etc.

Courses conducted by IlMs, IlTs, IISC, XLRI. NIFT,NID etc.

Regular Degree/Diploma courses like Aeronautical, pilot training, shipping, degree/diploma in nursing or any other discipline approved by Director General of Civil Aviation/Shipping/Indian Nursing Council or any other regulatory body as the case may be, if the course is pursued in India. Approved courses offered in India by reputed foreign universities.

Note:

I. The above list is indicative in nature. Banks may approve other job oriented courses leading to technical/ professional degrees, post graduate degrees/diplomas offered by recognized institutions under this scheme.

2. Courses other than the above offered by reputed institutions may also be considered on the basis of employability.

Reference : www.ugc.acin www.educanon.nic.in www.aicte.orgin

5.2 Studies Abroad

Graduation : For job oriented professional/ technical courses offered by reputed universities.

Post-graduation: MCA, MBA, MS, etc.

Courses conducted by CIMA- London, CPA in USA etc.

Degree/diploma courses like aeronautical, pilot training, shipping etc

provided these are recognized by competent regulatory bodies in India/abroad for the purpose of employment in India/abroad.

Reference: www.webonsetrics.info (indicative only)

5.3. Expenses considered for loanr

i. Fee payable to college++/ school/ hostel*

ii. Examination/ Library/ Laboratory fee

iii. Travel expenses/ passage money for studies abroad

iv. Insurance premium for student borrower, if applicable

v. Caution deposit, Building fund / refundable deposit supported by

vi. Institution bills/receipts. **

vi. Purchase of books/ equipments/instruments! uniforms***

vii. Purchase of computer at reasonable cost, if required for completion of the course***

viii. Any other expense required to complete the course - like study tours, project work, thesis, etc.***

ix. While computing loan required, scholarships, fee waiver etc., if any available to the student borrower may be taken into account.

x. If the scholarship component is included in the loan assessment, it may be ensured that the scholarship amount gets credited to the loan account when received from the Government.

Notes:

++ For courses under Management quota seats considered under the scheme, fees as approved by the State Government/Government approved regulatory body for payment seats will be taken, subject to viability of repayment.

* Reasonable lodging and boarding charges will be considered in case the student chooses/is required to opt for outside accommodation.

** These expenses could be considered subject to the condition that the amount does not exceed 10% of the total tuition fees for the entire course.

*** It is likely that expenditure under Item Nos. vi, vii and viii above may not be available in the schedule of fees and charges prescribed by the college authorities. Therefore, a realistic assessment may be made of the requirement under these heads. However, the maximum expenses included under vi, vii and viii may be capped at 20% of the total tuition fees payable for completion of the course.

12. Apart from the above, the aforesaid guidelines at S.Nos.7 and 8 under the caption Margin and Security, reads as under:

7. MARGIN

-Upto 4 lakhs Nil

Above 4 lakhs Studies in India 5%

Studies Abroad 15%

However, upto 7.5 lakhs, margin will be if loan is eligible for the Credit Guarante.

Scholarship/ assistantship to be included in margin. Margin may be brought-in on year-to-year basis as and when disbursements are made on a pro-rata basis.

8. SECURITY

Upto 4 lakhs

No security

Parents to be joint borrower(s). However, banks will have discretion to waive this clause.

Above 4 lakhs and up to fl.5 lakhs

Besides the parent(s) executing the documents as joint borrower(s), collateral security in the form of suitable Third party guarantee will be taken. The bank may, at its discretion, in exceptional cases, waive third party guarantee if satisfied with the net-worth / means of parent/s who would be executing the document as joint borrower(s).

However, third party guarantee will be waived if the loan is eligible for Credit Guarantee coverage.

Above 7.5 lakhs Parent(s) to be joint borrower(s) Tangible collateral security of suitable value acceptable to bank, along with the assigment of future income of the student for payment of instalments.

Note:

*The Loan documents should be executed by the student and the parent/guardian as joint borrower.

*The security can be in the form of land/building/Government securities/Public Sector Bonds/Units of UTI, NSC, KVP, life policy, gold and shares/mutual fund units/debentures/ bank deposit in the name of student/parent/guardian/any other third party or any other tangible security acceptable to the bank with suitable margin.

*Wherever the land/building is already mortgaged, the unencumbered portion can be taken as security on second charge basis provided it covers the required loan amount.

13. In the afore-said guidelines of Indian Banks Association 2015, at S.No.9 Rate of Interest, speaks as under:

9. RATE OF INTEREST

Interest to be charged at rates linked to the Base rate as decided by individual banks.

Banks may charge differential interest rates for collateralized and non-collateralized loans.

*Simple interest to be charged during the study period and up to commencement of repayment. Simple interest may be charged even during any subsequent moratorium considered.

Note:-

Servicing of interest during study period and the moratorium period till commencement of repayment is optional for students. Accrued interest will be added to the principal amount borrowed while fixing EMI for repayment.

14. Also in S.No.11 of the guidelines under the heading of 'Repayment', enjoins as follows:

11. REPAYMENT

Repayment Holiday / Moratorium Course period + 1 year. Banks may also provision for moratorium taking into account spells of under-employment/unemployment, say two or three times (maximum of 6 months at a time) during the life cycle of the loan. Banks may also encourage student borrowers who wants to set up start-up units by giving moratorium on repayment of principal and interest during incubation period which may be considered unto 2 years.

If the student is not able to complete the course within the scheduled time, extension of time for completion of course may be permitted for a maximum period of 2 years. If the student is not able to complete the course for reasons beyond his control, sanctioning authority may at his discretion consider such extensions as may be deemed necessary to complete the course. In case the student discontinues the course midway,appropriate repayment schedule will be worked out by the bank in consultation with the student/parent

The accrued interest during the repayment holiday period to be added to the principal and repayment in Equated Monthly Installments (EMI) fixed. 1% interest concession may be provided by the bank, if interest is serviced during the study period and subsequent moratorium period prior to commencement of repayment.

Repayment of the loan will be in equated monthly instalments for a period of 15 years for all categories.

While EMI based repayment is the generally accepted practice, many times the salary levels at the start of the career may not facilitate comfortable payment of EMI in certain cases (e.g. professionals like Doctors). Telescoping of repayment with stepped up installments with passage of time may be considered in such cases.

15. In this Connection this Court aptly points out Article 46 of the Constitution of India, which runs to the following effect:

"The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Cases and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

16. Also Article 41 of the Constitution of India enjoins:

Right to Work, to education and to public assistance in certain cases.- The State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education.

to the needy and deserving and the educational loan is to be provided and in this regard, the scheme of the Central Government governs the field.

17. As far as the present case is concerned, the Petitioner had reportedly paid her first year fee in B.E.(Electrical and Electronics Engineering) by her parents by pledging their gold ornaments and reportedly availing the said loan with an exorbitant interest rate, to be paid by them. Now, the Petitioner is reportedly

studying in third year. From the year 2014, namely 11.11.2014, she had applied for the educational loan before the Respondent/Bank, which is not accepted by the Respondent/Bank.

18. It cannot be gain-said that upto a limit of Rs.4 lakhs, even a security is not required to be obtained from the petitioner by the Respondent/Bank, as per the Educational Loan Scheme(for the year 2015, issued by the Indian Banks Association).

19. Be that as it may, considering the fact that the petitioner is only seeking educational loan of Rs.2 lakhs to meet out the expenses relating to her study in B.E.(Electrical and Electronics Engineering) at K.L.N College of Information Technology, Madurai based on her application, dated 11.11.2014, at this stage, this Court, without precipitating the matter any further and also not prolonging the issue on any basis, on equity, good conscience and even as a matter of prudence, directs the Petitioner to submit her Educational Loan Application in proper format before the Respondent/Bank and in this regard the Branch Manager of the Respondent/Bank is to lend his assistance and co-operation to the Petitioner. Further, the Respondent/Bank is to help the Petitioner for filling up the required columns of educational loan application, in case, the Petitioner is in need of the service of the Respondent/Bank in this regard. The Respondent/Bank after receiving the educational loan application from the Petitioner in proper format is to consider the said loan application in a sympathetic and humane fashion and also keeping in mind of the periodical Circulars/Instructions/Guidelines issued by the Reserve Bank of India to the constituent Banks, as per the Banking Regulations etc. In any event, the Respondent/Bank is to pass necessary orders on the educational loan application of the Petitioner within a period of two weeks. In case, if the Respondent/Bank is in requirement of the relevant documents/records from the Petitioner, then it is incumbent upon the Respondent/Bank to secure the said documents from the custody of the Petitioner by issuing necessary memorandum to that effect. Soon after the receipt of any memo or notice from the Respondent/Bank concerned in this regard, then it is incumbent on the part of the Petitioner/applicant to comply with the request made by the Respondent/Bank, so as to enable the Respondent/Bank to do the needful to her within the time

determined by this Court. The Petitioner is directed to lend her assistance and co-operation to the Respondent Bank in the subject-matter in issue.

20. Before parting with the case, this Court makes it abundantly clear that it is open to the Respondent/Bank to take an undertaking/signature fro, the co-applicant/Co-Obligant, in case, if the loan sought for at any point of time exceeds Rs.4 lakhs.

21. With the aforesaid observation(s) and direction(s), the Writ Petition stands disposed of. No costs.