

**Kumar Vs. The Branch Manager, Indian Bank and Another**

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**Court :** Chennai Madurai

**Decided On :** Jul-27-2016

**Judge :** M. Venugopal

**Appeal No. :** W. P(MD)No. 6367 of 2016

**Appellant :** Kumar

**Respondent :** The Branch Manager, Indian Bank and Another

**Judgement :**

(Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to sanction the educational loan of Rs.4,00,000/- applied for the Petitioner's daughter namely Sindhuja, B.E. Electronic Communication Engineering Course for the period of 2015-2019 in Hindusthan College of Engineering and Technology, Coimbatore.)

1. Heard both sides.
2. By consent of both sides, the main Writ Petition itself is taken up for final disposal.
3. According to the Petitioner, his daughter Sindhuja had completed her Higher Secondary Education during the month of March 2015 and she secured 880/1200 marks through SMB Matriculation Higher Secondary School, Dindigul. After completing her Higher Secondary Course in the year 2015, she aspired to joint the

course in B.E. Electronic Communication Engineering and hence she joined the Hindusthan College of Engineering and Technology, Coimbatore.

4. The stand of the Petitioner is that he belongs to Backward Class Community and his daughter Sindhuja is the first person in his family to be a graduate and the Petitioner hails from a poor economic back ground and therefore intended to apply for educational loan from the Bank to complete his daughter's studies. In fact, the fees structure works out to Rs.4 lakhs for four years. Therefore, he had submitted a loan application before the First Respondent/Indian Bank, Alagar Koil Street, Melur, Madurai District. However, the First Respondent Bank insisted upon him to furnish a collateral security for education loan purpose. In fact, the Second Respondent/The Regional Manager, Indian Bank, East Marrant Veethi, Madurai had instructed the Petitioner to obtain 'No Objection Certificate' from various town and village Banks and the Petitioner spent ten days to obtain 'No Objection Certificate' from various banks. The Second Respondent also had instructed to obtain legal opinion of the collateral property from the Bank Panel Lawyer and also received Valuation Certificate from the Bank Panel Engineer.

5. It comes to be known that in the Valuation Report, the Valuer has opined that the Petitioner's property value is Rs.1,30,000/- and further, the realisable sale value was mentioned as Rs.1,26,000/- Indeed, the Second Respondent/The Regional Manager, Indian Bank, East Marrant Veethi, Madurai had stated that it is not enough against the loan amount and demanded some more property as an additional security.

6. In fact, the Petitioner is having only a residential house and there is no other property. The plea of the Petitioner is that with great difficulties, his daughter had completed first year and he finds it difficult to pay the college fee and other incidental fees for continuing her course. Hence he has filed the present Writ Petition for passing of an order in directing the Respondents to sanction the education loan of Rs.4 lakhs applied for the Petitioner's daughter namely, Sindhuja, B.E. Electronic Communication Engineering Course for the period 2015-2019 in Hindusthan College of Engineering and Technology, Coimbatore.

7. Per contra, it is the submission of the learned Standing Counsel appearing on behalf of the Respondents No.1 and 2/Bank that the Bank had considered the education loan application of the Petitioner to sanction a sum of Rs.4 lakhs under non IBA scheme as she was not selected under 'single window system'. Further, she had accepted to the terms and conditions of the Bank and in compliance with such conditions, the Petitioner's daughter had agreed to offer immovable property, worth Rs.4 lakhs. Also a legal opinion, dated 24.2.2016 from the Banks Panel Lawyer was obtained. Added further, she had obtained a Valuation Report from the Panel Valuer, Er.Pandiaraj, dated 26.2.2016 and the Bank had scrutinized the same. The value of the property runs as under:

Market Value : Rs. 1,33,000/-

Realisable Sale Value : Rs . 1,26,000/-

Comparable value : Rs . 1,30,000/-

Guideline value : Rs. 1,02,000/-

8. The Learned counsel for the Respondents 1 and 2/Bank submits that realisable value is only Rs.1,26,000/- and the bank had requested to provide additional security. Further it is projected on the side of the Respondents/Bank that the Bank is dealing with public money and it is guided by various circulars. In fact, the circular dated 11.09.2014, at Page No.5, runs as under:"Sanction of loans to applicants who got admission under "Management

Quota" is to be considered outside the purview of IBA educational loan scheme except where students who originally secured admission through State Government Agency conducted counselling and are not able to join the college/course due to the reasons of non-suitability of the course offered, but choose to get admission under Management Quota for the desired course are eligible for educational loan under IBA scheme. And in such cases student has to submit proof for having undergone certain selection process for admission in a recognized institution for an approved course, the application can be considered under IBA Scheme and minimum cut off marks is not required."

9. The prime contention advanced on behalf of the Respondents /Bank is that in the Division Bench decision of this Court reported in 2012 WLR 640 between A.Kasinathan .vs.The Branch Manager, Canara Bank, it was observed and inter-alia held that it was within the discretion of the Bank either to grant or not to grant education loan to students who secure admission on "Management Quota' on case to case basis, subject to their academic performance and the Court could not issue directions diluting policy/guidelines issued by IBA comprising body of experts and thus the guidelines had statutory force.

10. The Learned Counsel for the Respondents/Bank in the aforesaid decision refers to para Nos. 46 and 47, whereby and where-under, it is observed and inter-alia held as follows:

"46.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 objection 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.

47.Contending that the order of rejection of educational loans by various Banks is a non-speaking order and that those orders are vitiated by arbitrariness and therefore the writ petitioners seek for intervention of the Court. The above contentions may not be a ground to undo what was conceived as best in the interest of the Banks. It is the collective wisdom of IBA in issuing guidelines stipulating 60% marks for the students, who secured admission under "Management Quota" and it is not subject to judicial review. So long as its judgement as to the matters within the power of IBA. The Court cannot supplant

the guidelines framed by the experts by substituting its own values. In the result, the Writ Appeal and all the Writ Petitions are dismissed. However, there is no order as to costs. Connected Miscellaneous Petition is closed."

11. Apart from that, the Learned Counsel for the Respondents/Bank cites an order of the Learned Single Judge of this Court dated 1.11.2011 in W.P(MD)No.9382 of 2011 between V.Palanisamy .vs. The Branch Manager, State Bank of India, Vangal Branch, Karur District, wherein, it is observed at para 4 as under:

"4. Though the learned counsel for the Petitioner heavily relied upon a judgment of this Court in G.Dhivyha .vs. The Branch Manager, Canara Bank and others reported in 2011(1)CWC 843 that the loan application of the co- obligation cannot be a relevant factor and that the bank should not confuse itself with the loan availed by the father for his business purpose with reference to the loan to be availed by his son or daughter for the educational loan. However, this Court do not rely upon this judgement since no principle of law was laid down on this issue. It must be noted that though the scheme for grant of educational loan is considered by the Government of India and the banks were encouraged to grant such loan, such loans could be sanctioned only in terms of scheme framed by the bank and no writ petition will lie to enforce the loan application contrary to the scheme framed by any bank."

12. The Learned Counsel for the Respondents/Bank vehemently takes an emphatic stand that the Respondents/Bank is a Nationalized Bank and in fact, the Writ Petitioner will not lie to enforce the loan application contrary to the scheme framed by the Bank. Furthermore, it is also projected on the side of the Respondents/Bank that the Court of Law cannot supplant the guidelines framed by experts by substituting its own views.

13. In this connection, it is not out of place for this Court to make a significant mention that in the Division Bench decision between the Branch Manager, Indian Overseas Bank, 3/41, Sandaikadaithottam, Peramanallur, Tirupur .vs. A.S.Ravi and two others reported in 2014(4) CTC 363, it is observed and held that:

"...on perusal of recommendation of Indian Bank Associations' eligibility criteria, it is very clear that there is no minimum pass percentage required for availing Bank Loan. Therefore, Appellant cannot refuse Bank Loan to 1st Respondent/Petitioner on ground that he has secured only 59%."

14. At this stage, this Court very pertinently points out that the education loan scheme was formulated in November 2004 on the basis of IBA guidelines as per Government of India directives. In fact, the model education loan scheme was revised by IBA in November 2007 and forwarded to the member Banks for its implementation besides that IBA had also advised few changes subsequently, which are incorporated in the scheme. 15. At this stage, this Court worth re-calls and re-collects the guidelines of Revised Educational Loans Scheme July 2012/Revised Model Educational Loan Scheme For Pursing Higher Education in India and Abroad)(Education Loan Task Force(ELTF) in and by which at S.No.7, it is mentioned as under:

7. SECURITY Upto 4 lakhs Parents to be joint borrower(s) Above 4 lakhs and Upto 7.5 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). Above 7.5 lakhs Parent(s) to be joint borrower(s) of suitable value acceptable to bank, along with the assignment of future income of the student for payment of installments.

Note:-

The loan documents should be executed by both the student and the parent/guardian as joint borrower. The security can be in the form of land/building/Govt.Securities/public Sector Bonds/Units of UTI, NSC,KVP, Life Policy, gold, 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.."

16. Also at S.No.15 of the said Loan Scheme July 2012, it is mentioned that on existence of earlier education loan to the brother(s) and/or sister(s) will not affect the eligibility of another meritorious student from the same family obtaining education loan as per this scheme from the Bank and in fact at 15.4, under the caption 'Joint Borrower', it is mentioned as follows:

#### 15.4. Joint Borrower

The Joint borrower should normally be parent(s)/guardian of the student borrower. In case of a married person, joint borrower can be either spouse or the parent(s)/parents-in-law.

17. Apart from that in the said Revised Educational Loan Scheme July 2012, it is categorically mentioned that the loan applications have to be disposed of in the normal course within a period of 15 days to one month but not exceeding the time norms stipulated for disposing of loan applications under priority sector lending. Also at Clause 10 of Repayment - Repayment/Holiday/Moratorium, it is mentioned that the Course period + 1 year or 6 months after getting job, whichever is earlier. In fact, Clause 8 of the Revised Education Loan Scheme-July 2012 deals with "Rate of Interest which runs as under:

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

Simple interest to be charged during the study period and up to commencement of repayment. 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.

18. Be that as it may, as far as the present case is concerned , the Petitioner seeks sanction of education loan of Rs.4 lakhs applied for his daughter namely, Sindhuja studying in B.E. Electronic Communication Engineering Course for the period from 2015-2019. It is not in dispute that the First Respondent/Bank had instructed the Petitioner to obtain No Objection Certificate from various in and around town and village Banks and also the Petitioner had obtained No Objection

Certificate from various Banks. Also, the Second Respondent/Bank, had instructed the Petitioner to obtain legal opinion of the collateral property from the Panel Lawyer and the same was also furnished by the Petitioner. Equally, there is no dispute that the Valuation Report of the Petitioner's property indicates latently and plately that the value of the property is Rs.1,30,000/-.Even though the Second Respondent, according to the Petitioner had orally stated to the Petitioner that it was not enough against the loan amount and demanded some other property. The fact of the matter is that the Petitioner, as father of his daughter, namely Sindhuja is not possessing any other property. As such, it is not possible for the Petitioner to furnish any other property as collateral security for the education loan in question, concerning his daughter. In this connection, this Court is of the opinion that for loans upto Rs.4 lakhs, the requirement is that the co-obligant of parents and no security is required and in this connection this Court refers to the order passed on 27.11.2014 in W.P(MD)No. 17060 of 2014 between S.Veerakarhikeyan .vs. The Branch Manager, State Bank of India, Theni Branch,S.Tharaikudi via, Sayalkudi, Ramanathapuram District and another, wherein at para 11, the said aspect was mentioned of in lucid terms.

11.According to the First Respondent/Bank, as per Circular, the Student Eligibility is as under:

STUDENT ELIGIBILITY is Should be an Indian NationalSecured admission to Professional/Technical courses through Entrance Test/selection process #\* Secured admission to foreign university/Institutions.#\*No minimum qualifying marks stipulated in the last qualifying examination.\*Education Loans may also be considered for students getting admissions to Colleges/Institutions on Management Quota \*Loan proposals from students who have failed in the last qualifying examination including class XII and subsequently cleared, discontinued studies and resumed again may be considered after satisfying the reasons for the same.

\*The sanctioning authority may consider loan proposals from students in cases where the parent/guardian is defaulter after satisfying about the background of the student and if the margins and security norms etc are met by the student and de-

lined from such defaulter/co-borrower and replaced by another co-borrower.

\*Presently, our scheme does not prescribe any age limit for the students availing the loan. Wherever parents/guardians are not there the branches may consider grant parent as co-borrower to the loan taking into account their net worth.

\*Note:(1)In certain cases, the student/parents are required to deposit a part of the admission fee etc. on the day they go for counseling. It becomes difficult for them to raise funds in the absence of a firm admission letter. In such cases, the sanctioning authority will be authorized to sanction and release the loan in the name of the institution, provided a)the admission is sought in cases where the results of the entrance test e.g., All India Engineering Entrance Examination(AIEEE), has been announced and

b) the student has secured a good position in the merit list and will be in a position to secure admission in a reputed institution after counselling/finalization of the admissions.

The payment will be released in the name of the institution only.\*Note(II) Several foreign universities require students to deposit a part of the fee before the admission is formally granted. They enforce such a condition as students simultaneously apply to a number of universities and then choose the best option on the basis of their preference and availability of scholarship from the institution. In such cases, the sanctioning authority, not below the rank of an Assistant General Manager, will be authorized to sanction and release the loan in the name of the educational institution provided:

a) Admission is sought to a reputed Business School/reputed educational institution or

b) Tangible collateral security equal to full value of the loan has been provided."

THE SECURITY FOR THE GRANT OF LOAN;Security -For loans upto Rs.10 lacs for studies in India and upto Rs.20 lacs for studies abroad.

a) upto Rs.4 lacs

\*Co-obligation of parents

\*No security

b)Above Rs.4 lacs and upto Rs.7,50 lacs.

\*Co-obligation of parents together with collateral security in the form of suitable third party guarantee. 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 documents as "joint borrower".

c)Above Rs.7.5 lacs

\*Co-obligation of parents together with tangible collateral security of suitable value, along with the assignment of future income of the student for payment of installments.

\*The documents should be executed by both the student and the parent/guardian as joint -borrower. We clarify that if the student is a minor, the documents will be signed by the guardian acting 'for self' as well as 'for and on behalf of the minor'.

\*The Law Department opined that for the purpose of Education Loan the guardian is defined as under:

\*"Natural guardian, the legal guardian I.e., a guardian appointed by any authority, or a person in charge of the care of the person and property of the student who intends to avail such loan facility...\*The Co-obligator should be parent(s)/guardian of the student borrower. In case of married person, co-obligator can be spouse or the parent(s)/parents-in-law".

19.Admittedly, the Central Bank/Reserve Bank of India is empowered to issue necessary directions considering the welfare and interest of public at large. The Circulars/instructions issued by the Reserve Bank of India will govern those squarely come within its ambit. In reality, the 'Education Loan Scheme' of IBA is approved by the Government and circulated to the Banks through proper channel.

20. At this stage, one cannot brush aside the important fact that Article 21-A of the Constitution of India enjoins the State to provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by Law, determine. Further, Article 41 deals with '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. Article 45 of the Constitution of India enjoins Provision for yearly childhood care and education to children below the age of six years. More importantly, Article 46 of the Constitution of India states as under:

"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 Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

21. Admittedly, 'Education' is a National Wealth' and that the Respondents/Bank is to follow the scheme and policy framed by the Central Government and the benefit ought to reach the deserving and needy persons. If the Respondents/Bank are permitted to adopt a approach that would defeat the scheme introduced by the Central and State Governments, then, such act of the Respondents/Bank may border or infringe upon the tenor and spirit of Article 14 of the Constitution of India. Viewed in that perspective, this Court comes to an inescapable resultant conclusion that the Petitioner's daughter viz., Sindhuja studying in B.E. Electronic Communication Engineering Course(now in second year) is in need of 'Education Loan' (for the period from 2015-2019) and since the Petitioner's father is working as a coolie(on Daily Wage) and also coming from a poor economic background(belonging to Backward Class) and also this Court taking note of yet another vital fact that the Petitioner's daughter is said to be a first graduate in the family, this Court, at this stage, simpliciter, in the interest of justice, fair play, equity, good conscience and even as a matter of prudence, directs the First Respondent/The Branch Manager, Indian Bank, Alagar Kovil Street, Melur, Madurai District to consider the application of the Petitioner(already submitted by him) for sanctioning of educational loan to his daughter sindhuja within a period of three weeks from the date of receipt of a copy of this order(of course in

accordance with the policy of Central Government as well as the Scheme framed by the Reserve Bank of India) as held by the Division Bench judgement of this Court in W.A.No.144 of 2009, dated 12.10.2009 and to dispose of the same bearing in mind the plight of the Petitioner, the educational interest and the well-being of study career of Petitioner's daughter Sindhuja.

22. With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs.

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