

A.Kasinathan Vs. the Branch Manager

A.Kasinathan Vs. the Branch Manager

SooperKanoon Citation : sooperkanoon.com/923552

Court : Chennai

Decided On : Dec-12-2011

Judge : V. Ramasubramanian, J.

Acts : [Banking Regulation Act, 1949](#); Sections 21, 35-A

Appeal No. : W.P.(MD)No.10425 of 2011

Appellant : A.Kasinathan

Respondent : The Branch Manager

Advocate for Def. : Mr..C.Jawahar Ravindran, Adv.

Advocate for Pet/Ap. : Mr.A.Haja Mohideen, Adv.

Judgement :

The petitioner has come up with the above writ petition, seeking a Mandamus, to direct the respondent to sanction educational loan of Rs.1,43,000/- .

2. I have heard Mr.A.Haja Mohideen, learned counsel for the petitioner, Mr.C.Jawahar Ravindran, learned Standing Counsel for the respondent-Bank.

3. The petitioner passed BBA course from the American College, Madurai in the year 2007. In the year 2010, he got admission to the MBA course in NPR College of Engineering and Technology, Natham, Dindigul District under the management quota. After completion of the first year and after joining the second year of the

course, the petitioner gave a representation to the respondent-Bank for the grant of an educational loan. Since there was no response, the petitioner has come up with the above writ petition.

4. The respondent has filed a counter affidavit contending that the petitioner had secured only 48.4% marks in BBA Examination. As per the revised guidelines for the Model Education Loan Scheme, formulated by the Indian Banks' Association, the Head Office of the respondent-Bank had issued a Circular bearing No.83/2011 dated 17.3.2011. As per the Circular, only those students who had secured 60% marks in the Board Examination are entitled for the grant of loan, if they have secured admission under the management quota. Therefore, the respondent has taken a stand that the petitioner is not eligible.

5. Mr.A.Haja Mohideen, learned counsel for the petitioner raised two contentions. The first is that the purpose of grant of educational loan is to encourage poor students to pursue higher education without being handicapped by the lack of financial resources. The petitioner has secured 77% marks in the first year MBA Examination and hence, the respondent could consider the grant of loan to the petitioner. The second contention of the learned counsel for the petitioner is that the Circular relied upon by the respondent applies only to Under Graduate Courses and not to Post Graduate Courses, since the reference to 60% marks is in respect of Board Examinations. The learned counsel for the petitioner also relies upon the judgment of a Division Bench of this Court in W.A.(MD) No.23 of 2011 dated 11.1.2011.

6. I have carefully considered the submissions on both sides.

7. It is seen from Circular bearing No.83 of 2011 issued on 17.3.2011 by the Head Office of the Canara Bank that the Bank Started implementing the Model Educational Loan Scheme formulated by the Indian Banks' Association, pursuant to the advise issued by the Reserve Bank of India vide Circular No.RPCD.PLNFS.BC.No.83/06.12.05/2000-01 dated 28.4.2001. The relevant portion of the Circular dated 17.3.2011 issued by the Head Office of the respondent-Bank is as follows:-

S.No.

Issues/Existing guidelines

Revised guidelines

1.

Stipulation of minimum marks in qualifying examination for students who secure admission under 'Management Quota'

In case of students who have secured admission under 'Management Quota', Educational Loan can be considered only if students have secured 60% marks in the Board Examination.

However, students who secured admission under State selection process but opt for 'Management Quota' for a different Branch/stream can be considered under IBA Scheme.

8. The purpose of the above prescription appears to be to ensure that the Scheme for the grant of educational loans benefits only meritorious, but poor students. It is but common knowledge that many of the self-financing institutions flourish only on the basis of the seats filled up under the management quota and that therefore merit takes a back seat in the matter of admission of students under the management quota. Therefore the prescription of 60% marks in the qualifying examination, for a student admitted under the management quota, to be eligible for the grant of educational loan, cannot be found fault with.

9. The Indian Banks' Association has also issued a Circular bearing No.CE/159 dated 30.8.2011, modifying their original Scheme, with regard educational loans for pursuing higher education in India and abroad. In the letter dated 30.8.2011, enclosed to the Scheme, it is stated by the Indian Banks' Association, as follows:-

“The operational difficulties in implementing the 'IBA Model Educational Loan Scheme' had been receiving serious attention for quiet some time. A view was expressed that the Model Educational Loan Scheme should be revised and simplified, to ensure that ground level disputes arising out of differing

interpretations about the scope of the Scheme, student eligibility etc., are minimised. Accordingly, a Sub-Committee was formed under the Chairmanship of Mr.T.M.Bhasin, CMD, Indian Bank, for a comprehensive review and redrafting of the Scheme to remove any ambiguity. The revised Scheme had attempted to address the concerns expressed by the Bankers and the operational difficulties being faced by the branches. The salient aspects are:-

Merit as the sole criteria for eligibility.

Admission under management quota kept outside the scope of the Scheme. The quantum of loan to be justified by the employment potential. Extension of repayment period to reduce burden on the beneficiaries. The revised Scheme as above was sent to Government of India, Ministry of Finance, Department of Financial Services for their perusal and suggestions. Taking into account the modifications suggested by the DFS, the matter was placed before the IBA Managing Committee at its meeting held on 23rd August, 2011. The Managing Committee decided to circulate the modified Scheme together with the Guidance Notes and FAQs to all the Member Banks of the IBA for adoption and implementation. Accordingly, we place below a copy of the modified IBA Scheme alongwith the Guidance Notes and FAQs. Member Banks may like to adopt and implement the modified Scheme.”

10. The Guidance Notes enclosed to the Circular, requires reproduction, since there is some amount of confusion in the minds of the public about the right of a person to secure education loans. Therefore, the Guidance Notes are extracted in full:-

“Guidance Notes on Model Educational Loan Scheme for pursuing Higher Education in India and Abroad

I. Introduction

Educational Loan Scheme is a socially and economically relevant loan scheme from the Indian banking industry. Rightly, the RBI has included education loans as part of the priority sector lending of banks. It aims to provide need-based finance

to meritorious student for taking up higher education. In any commercial lending decision, credit worthiness of the borrower and the viability of the scheme are important. The student borrower has no credit history and as such he is assumed to be creditworthy as this is a futuristic loan. However, it is likely that the joint borrower for the loan has a credit history and any adverse features could have a bearing on the assessment of credit risk. If the joint borrower has a loan account with the bank and the loan is treated as non-performing asset, the bank runs the risk of having to consider the student loan also as NPA ab-initio. To overcome this, the bank may, as a prudent measure insist on a joint borrower acceptable to the bank, in case of adverse credit history of the parent/guardian of the student.

II. Objectives of the scheme

The educational loan scheme is meant to provide need-based assistance to meritorious students in pursuing higher education. Since the word “meritorious” is a relative term it would be necessary for banks to specify parameters for defining the term meritorious. The following approach is suggested: If the student has obtained admission to an eligible course through a merit based selection process, he/she could be considered a meritorious student. Generally, admission to professional and technical courses are through common entrance tests and those who get admission through this process could be considered meritorious. Where the admission is purely based on the marks scored in qualifying examinations, the bank may fix cut-off marks (percentage) for loan eligibility.

Very often enquiries are made whether the model scheme covers students who are getting admission against management quota. Management seats or management quota refers to the seats in private education institutions for which the management has discretion to give admission on factors other than merit. Usually, out of permitted seats for the batch, a certain percentage is earmarked to be filled from State level merit list and the rest are allowed to be filled by the management at their discretion.

Usually for the management seats the only requirement would be passing of the qualifying examination with certain minimum stipulated marks. It is logical to interpret that these seats do not qualify for being called “meritorious” Banks have

reported certain cases where the employment potential would not justify the fee structure for management seats from the point of repayment of the loan being sought. Hence, any loan considered by banks for students getting admission under management quota would be outside the model scheme. Banks may fix appropriate terms and conditions for such loans.

III. Applicability of the Scheme

The Model Scheme has been developed for the benefit of the member banks of the Association. However, other banks and financial institutions can also adopt the model without reference to the Association.

IV. Eligibility Criteria

IV.i. Student Eligibility

For the purpose of this scheme higher education is defined as studies taken up after completion of higher secondary school i.e. Ten plus two stage. The need for bank loan scheme came for discussion in the country for meeting higher levels of fees charged by private managements for technical and professional courses consequent to ban on capitation fee. However, in the model scheme a generalized definition has been adopted for higher studies for wider coverage. It is expected that the banks will decide on the courses for which they will be giving student loans based on employability and consequent ability to repay the loan. References are often made about the eligibility of students pursuing employment oriented courses like teachers training courses and 3-year technical diploma courses in polytechnic institutions after completion of 10th standard. It is clarified that banks are free to include such employment- oriented courses as eligible course provided they are offered by approved/recognized colleges/institutions.

It need to be noted that while the Central Sector Interest Subsidy Scheme of Mo HRD is based on 'IBA Model Educational Loan Scheme', the subsidy is applicable only for loans given for Professional and Technical courses (after 12th standard) in India.”

11. A perusal of the Guidance Notes, extracted above, would show that the very purpose of grant of educational loan is to provide need based assistance to meritorious students in pursuing higher education. The emphasis of the Scheme is on merit and need. As pointed out in para-II of the Guidance Notes extracted above, the seats under the management quota can be filled up with anyone who has passed the qualifying examination. It can hardly be said that the Banks have no right to prescribe a cut of mark even for those who gained seats under the management quota. Banks, both Nationalised and Scheduled, become amenable to the writ jurisdiction of this Court in the matter of grant of educational loans, primarily on account of two things viz., (i) that while granting educational loans they perform a public duty, which they have been ordained to perform by the Central Government and (ii) that they grant these loans in accordance with the guidelines issued by the Reserve Bank of India (RBI), which have statutory force. If we keep these two principles in mind, it will be clear as to the extent to which a Court can go in directing the Banks to grant educational loans, left, right and centre.

12. The [Banking Regulation Act, 1949](#) empowers the Reserve Bank of India to determine the policy in relation to advances to be followed by Banking Companies, if RBI is satisfied that it is necessary or expedient in public interest to do so. The matters in respect of which the RBI may give directions to Banking Companies, are enlisted in clauses (a) to (e) of sub-section (2) of Section 21. They are (i) the purposes for which advances may or may not be made (ii) the margins to be maintained in respect of secured advances (iii) the maximum amount of advances that may be made to any one Company, Firm or Association (iv) the maximum amount upto which guarantees may be given by a Bank on behalf of an individual and (v) the rate of interest and other terms and conditions. Under sub-section (3) of Section 21, every Banking Company shall be bound to comply with any directions given to it under this Section.

13. Section 35-A also empowers the Reserve Bank to issue necessary directions to Banking Companies, if such directions are necessary in public interest or in the interest of banking policy or to secure the proper management of the Banking Company.

14. In ICICI Bank Ltd vs. A.P.S. Star Industries Ltd {2010 (10) SCC 1}, the Supreme Court pointed out that in view of the various provisions of the [Banking Regulation Act, 1949](#), RBI is empowered to regulate the business of Banking Companies. The Act, it was pointed out by the Supreme Court, is an open ended Act. The Court also pointed out that when a delegate is empowered by Parliament to enact a policy and to issue directions which have statutory force and when the delegatee viz., RBI issued such guidelines, they have statutory force and they have to be read as supplement to the provisions of the [Banking Regulation Act, 1949](#).

15. Interestingly, if we have a look at the genesis of this educational loan scheme, it could be seen that the idea was first mooted in an interim order passed by a 3 member Bench of the Supreme Court in T.M.A. Pai Foundation vs. State of Karnataka {1995 (5) SCC 220}. Though the said case had nothing to do with the grant of educational loan, but arose out of an attempt at re-visiting the decision of the Constitution Bench in Unni Krishnan {1993 (1) SCC 645}, the Supreme Court issued notice to the Reserve Bank of India and after hearing its views, the Supreme Court issued the following direction in paragraphs 28(C), 29 and 30 of the report:-

“(C) The Reserve Bank of India is directed to evolve a scheme for extending study loans to the students studying in medical and dental colleges in private professional colleges. This direction is made after hearing Shri Harish Salve, for the Reserve Bank of India, to whom we had given a notice for this purpose. For this purpose, the study loans shall be deemed to be in the priority sector and shall be dealt with as a category under “Differential Rate Interest”. Pending the evolving of such a scheme, the following direction is made for this academic year and the Reserve Bank of India is requested to issue appropriate directions to nationalised banks forthwith, not later than ten days.

29. So far as free/merit students are concerned, they shall be given a loan of rupees fifteen thousand for the Academic Year 1995-96 on production of (i) a certificate from the medical/dental college concerned that he is admitted against a free seat, (ii) an affidavit by the student and his father (in the absence of the father,

by mother or other near relative) that the total annual income of the student's family does not exceed rupees fifty thousand a year and (iii) a bond executed by the student (and in case he is a minor, by his father/mother or the guardian) undertaking to repay the loan in five equal instalments commencing from two years after completion of the course he is studying, or within one year of his obtaining employment, whichever is earlier. No security need be insisted upon. The amount of loan shall be remitted directly to the college concerned. The free/merit students shall pay the fees now fixed or the difference between the existing fee and the fee now fixed within one month of their admission.

30. So far as payment students are concerned, a loan up to rupees fifty thousand may be extended to them on the same terms but on further condition that they furnish adequate security to the satisfaction of the bank for the loan advanced.”

16. Subsequently, it appears that the Government of India impressed upon the Public Sector Banks, in a meeting that the Finance Minister had on 13.6.2000 with their Chief Executives, the role of Commercial Banks in facilitating pursuit of higher education by poor, but meritorious students. In pursuance thereof, the Indian Banks' Association constituted a study group under the Chairmanship of Shri R.J.Kamath, Chairman and Managing Director of Canara Bank to examine the issue in detail. Based upon the recommendations of the study group, a Model Educational Loan Scheme was prepared by IBA. The Government accepted the Scheme with a few modifications and this led to the issue of the letter RPCD.PLNFS.BC.No.83/06.12.05/2000-01 dated 28.4.2001 by the Reserve Bank of India.

17. Paragraph 2 of the Model Educational Loan Scheme circulated by the RBI indicated the objectives of the Scheme in the following words:- “In short, the scheme aims at providing financial assistance on reasonable terms:

- To the poor and needy to undertake basic education. - To the meritorious students to pursue higher/professional/ technical education.”

The portion of the Circular extracted above, would show that the scheme divided the beneficiaries into two categories viz., (i) those who wanted to undertake basic

education and (ii) those who wanted to pursue higher/ professional/technical education. In respect of the former, the scheme approved by the Government used the expression “the poor and needy”. In respect of the latter, the scheme used the expression “meritorious students”. Therefore, it is clear that the Reserve Bank did not insist upon merit, as an important criteria, in so far as basic education is concerned. But in so far as higher education is concerned, the RBI insisted upon merit. We must keep this distinction in mind before proceeding further.

18. In the website of the Reserve Bank of India, they have now published “RTI disclosures of Common Interest”. The information sought on several issues by the members of the public under the Right to Information Act, has been publicised now by the Reserve Bank, to the extent that such information is of common interest. It is seen from the information furnished therein by the Reserve Bank itself on 21.6.2006, in response to the query in RIA 718/05-06 RPCD that the Scheme formulated by IBA and circulated by RBI merely provides broad guidelines to the Banks and that the implementing Bank will have the discretion to make changes suiting to the convenience of students/parents etc. Therefore, the question as to whether these guidelines can be taken to have any statutory force in terms of Sections 21(2) and 35-A, is itself in great doubt. While the directions issued by RBI have statutory force in view of Sections 21 and 35-A of the [Banking Regulation Act, 1949](#), the directives issued by IBA, have no such force. Even assuming without admitting that these guidelines have statutory force, it has been clarified by the Reserve Bank that the guidelines only provide the broad frame work and that the implementing Bank will have the discretion to make changes. Therefore, if the IBA has taken a decision to fix the cut off mark as 60%, for those who secured admission under the management quota, this Court sitting in writ jurisdiction, cannot issue a direction to the respondents to dilute the said policy.

19. The object of providing educational loan is to ensure that the lack of financial resources does not dissuade poor, but meritorious students from pursuing higher education. In simple terms, the Scheme attempts to remove only the financial handicap for otherwise meritorious students. If the Bank considers that the student has any other handicap, such as lack of merit, it is open to the Bank to refuse to advance loan. After all, the Scheme envisages the recovery of the loan after the

completion of studies and after the student takes up employment. In a Society like ours, the employability of a person depends upon various factors, one of which is certainly the academic performance. The Court cannot presume that every failed student may hit a jackpot like Steve Jobs of Apple Inc. Out of hundreds of students who perform poorly, one may turn out to be successful in life. His success story may be a source of inspiration for many, but not for the bank to gamble with public money. The prescription of a minimum percentage of mark for students admitted under the management quota is to ensure that the student has employment potential. If the student has employment potential, the loan may not become a non-performing asset. But a student, who is not meritorious, may himself turned out to be a non-performing asset both to his parents and to the Bank. Therefore, no direction can be issued to the Bank to grant loan to the petitioner in violation of the policy framed by the IBA to fix cut off marks as 60%, for those who secured admission under the management quota, to be eligible for the grant of educational loan. Hence, this writ petition is dismissed. There will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com