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Court : Kerala

Decided On : Apr-12-2011

Reported in : 2011(2)ILR(Ker)709; 2011(2)KLT922; 2011(3)KLJ83; 2011(2)KHC575

Judge : P.R. Ramachandra Menon

Appeal No. : W.P.(C).No.21484 of 2009(E)

Appellant : Jiby John and Another

Respondent : State Bank of India Represented by Its Chief General Manager, State of India and Others

Judgement :

1. 'Vidyadhanam sarvadhanal pradhanam' is the age old adage in Sanskrit. So has our Nation accepted 'Education' as of national priority and is taking every effort to promote the same through various means and measures, with intent to see that any investment in the field of Education identifying, promoting and developing talents, virtually contributes to the building of the Nation as a whole. National and State level policies are being framed to ensure this basic requirement; more so, when the scope of education has widened both in India and abroad, covering new courses in diversified areas. It is accordingly that priority has been fixed as well,

with the endeavor that no deserving student is denied of any opportunity to pursue the higher education for want of financial support.

2. So as to come to the rescue of the meritorious students in their pursuit for higher education, in spite of their penury, the Banks in India, especially the respondents 1 and 2 and other scheduled Banks have a major role to play in promoting and fulfilling the above national objective by giving effect to the various Schemes formulated by the Government and sought to be implemented through the Reserve Bank of India (RBI) and such other machinery, providing a helping hand to the needy general public. Whether respondent State Bank of India (SBI) is justified in showing 'Nelsons' eye' to the petitioners, asking them to approach some other Bank situated nearer to their residence, has to be analysed and appreciated in the above circumstance.

3. The first petitioner is the son of the second petitioner and is undergoing studies for the B.Tech course in the 6th respondent's institution. The petitioners are stated as belonging to the lower strata of the society, being below the poverty line and it is with the intent to pursue the studies as above, that the petitioners approached the second respondent for providing an educational loan, which is stated as turned down asking the petitioners to approach either the Federal Bank Ltd or Catholic Syrian Bank Ltd which are stated as having branches more close to the residence of the petitioners. The petitioners contend that the stand taken by the respondent Bank is contrary to the national objective/policy, besides being arbitrary and illegal in all respects and that the 'rate of interest' being realised by the scheduled banks in the private sector is much on the higher side, which made the petitioners to approach the second respondent bank, which is stated as the nearest branch of the 'SBI' and the only nationalised bank in the entire Panchayat.

4. The claim of the petitioners is sought to be resisted by the respondents 1 and 2, on behalf of whom, a statement has been filed through their Standing Counsel. It is contended that the action pursued by the Bank is in conformity with Annexure-1 guidelines issued by the RBI and in tune with Annexure-II norms fixed and circulated pursuant to the meeting of the Chief Executives of the Public Sector Banks held on 18.11.2005. The petitioners got the writ petition amended,

incorporating an additional ground/relief, seeking for a declaration to the effect that Annexure- I/II cannot stand in the way of the petitioners in claiming for and obtaining the benefits under the particular Educational Loan Scheme.

5. Normally, there cannot be any direction by way of a writ of mandamus to provide a loan to a particular party/borrower, which essentially comes within the realm of contract. The proposal when accepted, is put into shape as an agreement, followed by consequential steps, granting the loan subject to the agreement to have it repaid with interest in the manner specified. Whether a person is eligible to obtain the loan, what should be the extent of the loan, what should be the terms; whether any security is to be collected and if so, to what extent; what are the parameters to be observed, particularly when such loans are pursuant to specific Schemes formulated by the Government (sought to be implemented as part of national objective) giving appropriate directions through the RBI etc are to be considered by the contracting parties, i.e., borrower and bank. But the matter may require some judicial scrutiny if there is a challenge as to any deviation being made by the concerned banks, contrary to the mandate/directives given by the RBI in promotion/implementation of the national objective/policy/scheme. The case of the petitioners is that the stand taken by the respondent Bank (SBI), refusing to extend the benefit of educational loan to the petitioners is quite contrary to the scheme and policy, which hence is required to be probed with a proper magnifying glass.

6. Going by the contents of Annexure-I, which is a copy of the instructions issued by the RBI to the Chairmen/Managing Directors of Scheduled Commercial Banks including the respondent Bank, the scope and object of the 'Educational Loan Scheme' mooted by the Central Government and announced in the Union Budget for the year 2001-02, is reflected from the Model Scheme prepared by the Indian Banks Association, subject to the modifications made by the Government of India, Ministry of Finance. The modifications as aforesaid made by the Government are the following:

"(i) The condition of minimum qualifying marks in the last examination may be dropped

(ii) No margin may be insisted upon for loans upto Rs.4 lakh. However, for loans of higher amounts the margin requirement may be 5% for inland studies and 15% for studies abroad.

(iii) No security may be insisted upon for loans upto Rs.4 lakh. However, for loans above this amount collateral security of suitable value or co-obligation of parents/guardians/third party alongwith the assignment of future income of the student for payment of instalments may be obtained.

(iv) Loans upto Rs.4 lakh may be advanced at interest rate not exceeding PLR of the bank. Above Rs.4 lakh the interest rate may be PLR + 1%."

Para 3 of Annexure-I says that the RBI has forwarded the same to all the Public Sector Banks forthwith, so that its benefits are made available to all the students from the very same academic session itself; simultaneously making it clear in the next paragraph that the Scheme contemplated therein was a separate scheme and not in supersession of the earlier scheme circulated by the RBI pursuant to the orders of the Supreme Court vide Circular RPCD SP BC.10/09 dated 07.01.1999-2000 dated 31.07.1999.

7. The Model Educational Loan Scheme forming part of the Annexure-I speaks about the objective of the Scheme, recognising the role of the Banks for implementing the national objective. Para 3 of the 'Model Scheme' pointing out the applicability of the scheme reads as follows:

"The scheme detailed below could be adopted by all Commercial Banks. 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 suiting to the convenience of the students /parents to make it more customer friendly."

The above stipulation clearly suggests that it is a 'guideline' issued to the Banks and discretion is conferred on the implementing Bank to make changes suiting to the convenience of the students/parents to make it more customer friendly. It is in the above background, that the stipulation under para 9 observing that the loan to

be sanctioned as per delegation of the powers preferably by the branch nearest to the place of domicile has to be appreciated.

8. The full text of para 9 of the said Scheme reads as follows:

“The loan to be sanctioned as per delegation of powers preferably by the branch nearest to the place of domicile.

No application for educational loan received should be rejected without concurrence of the next higher authority.

The loan to be disbursed in stages as per the requirement/demand directly to the Institutions/Vendors of books/equipments/instruments to the extent possible.”

9. The term 'preferably' is of considerable significance, which clearly shows that the said stipulation is not absolute. That apart, it has to be read and understood in the light of applicability of the Scheme given in para 3, giving discretionary power to the Bank to make changes so as to suit the convenience of the students/parents and to make it more customer friendly. In other words, the stipulation under clause 9 to provide loan by nearest 'branch' alerts the duty of the nearest branch (of Every Bank) to provide the facility to the prospective customer without driving him away. It does not suggest any condition to the contrary, as now propounded/contended by the respondents 1 and 2, to hold that it puts a bar on other Banks/branches from entertaining the application for educational loan.

10. There is no case for the respondent Bank that they are having any other branch nearer to the residence of the petitioners. The petitioners are not bound to avail the facility from any particular Bank and it is not for the respondent Bank to dictate such terms to the general public as to the facility that is being extended in implementation of the national objective. So also, the specific averment of the petitioners that the 'rate of interest' that is being charged by the 'private sector commercial banks' situated near the residence of the petitioners is on the higher side stands unrebutted. The stipulation under para 9 of Annexure-I cannot be read and understood, as done and sought to be interpreted by the respondent bank; as if it were to suggest that they can get absolved from meeting the requirement in

providing the educational loan, if any other Bank is situated near the residence of the petitioners. The stand taken by the respondent Bank (SBI), who boasts quite often as the largest Bank in the world having reportedly more than 10,000/- branches, cannot but be deprecated in the strongest possible words, for taking refuge under Annexure-I and Annexure-II not to consider the loan application preferred by the petitioners making them to run from pillar to post. This is more so, when the petitioners have already been permitted to open an account in the second respondent branch as borne by Ext.P1 and there was no case for the respondent bank that no such account could be opened or that, the account, if at all to be opened, could only be in the nearest bank viz., Federal Bank or Catholic Syrian Bank.

11. There is yet another contention for the respondent Bank that the petitioners have given a wrong declaration that they have not availed any loan from any other bank and hence that the bank has 'lost confidence' in them. There is no case for the respondent bank that the first petitioner student has availed any other loan from any other Bank. The contention appears to be that, another son of the second petitioner has obtained an educational loan. The cause of action of the first petitioner student is of course different from the cause of action of his brother or sister in connection with the desired intention to pursue higher studies. It is nowhere contemplated by the Government, RBI or such other authorities that the benefit of the Scheme will stand confined only to one member of a family. The basic objective of the national policy and the Scheme formulated, accepted and sought to be implemented by the Government is to identify the talented/meritorious candidates, who do not have necessary financial infrastructure to pursue higher studies and to make available necessary funds to promote the cause of Education. This is applicable to every citizen. If all the children of a poor parent are highly meritorious and are securing admission for higher studies, each one deserves a helping hand to bring them to the main stream providing a more solid educational foundation, in turn leading to better economic development of the society at large. This social objective behind the Scheme ought not to have been forgotten by all concerned including the respondent Bank, while seeking to give a restricted or arbitrary interpretation to the contents of Annexure-I/II and to deny the benefit of educational loan to the poor.

12. The respondent Bank contends that the second petitioner has already approached and availed an educational loan from the Federal Bank for another child and if another loan is to be taken for the first petitioner in connection with the proposed studies of the first petitioner from the very same bank, the total figure will take the liability to above Rs.4 lakhs, in turn necessitating to furnish collateral security and it is to avoid the same that the petitioners have approached the respondent Bank.

13. As mentioned herein before every child/student is having a separate cause of action and is eligible to obtain the loan under the Scheme if the eligibility norms to the extent as specified are satisfied. To put it more clear, the loan availed by a brother or sister of the first petitioner is not liable to be clubbed together with the loan sought for by the first petitioner, so as to take the total figure to be more than Rs.4 lakhs and in turn, to demand collateral security. This is quite alien to the very concept and objective of the Scheme and the National Policy. This Court declares that each individual like the first petitioner is entitled to have the benefit of loan under the particular educational loan scheme, for obtaining an amount upto Rs.4 lakhs without security (if above Rs.4 lakhs, with security as clearly stipulated in Annexure-I), pursuant to the modification made by the Government to the Model Scheme originally provided by the Indian Banks Association. This was a conscious decision made by the Central Government with clear objective in mind, as to the scope of the Scheme and the requirements to be satisfied, which is not liable to be watered down by the Banks, particularly the State Bank of India, which is said as the largest Bank in India and is supposed to stand as 'icon' in all respects.

14. It is discernible from Annexure-I itself that, it was with a social objective to provide better facilities to have higher education to the needy poor, meritorious students, that a meeting of the Chief Executives of the Public Sector Banks was convened, highlighting the role of Commercial Banks in contributing to this cause. It was accordingly, that a team was constituted under the chairmanship of the then Chairman and Managing Director of Canara Bank to examine the issue and the Model Scheme was prepared based on the recommendations contained in the report submitted by the said Committee in August 2000. Instead of the clear stipulation in para 3 of Annexure-I to provide more convenience to the

students/parents and to make the Scheme 'more customer friendly', the course pursued by the respondent Bank has rather made it hostile, which is diametrically opposite to the scope and intent of the Scheme. The course pursued by the respondents 1 and 2 appears to be rather with an intent to avoid or reduce the instances of granting loan in the educational sector, where no collateral security could be insisted, which is never intended by the Government or RBI and is liable to be deprecated.

15. In the above circumstance, this Court declares that Annexures-I and II produced by the respondents 1 and 2 along with the statement cannot bar the way of the petitioners in getting Ext.P1 application for the educational loan considered by the respondents 1 and 2 and to have the benefits thereunder. Accordingly, the said respondents are directed to consider Ext. P1 application for educational loan submitted by the petitioners and to disburse the due amount to them, if the application is otherwise in order, which shall be done, as expeditiously as possible at any rate within one month from the date of receipt of a copy of the judgment.

The writ petition is allowed. No cost.

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