(2011) 08 MAD CK 0423

In the Madras High Court

Case No : Writ Petition No. 6286 of 2011

Miss. S. Hannah Dotris APPELLANT

Vs

Assistant General Manager, State Bank of Mysore RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2011) 08 MAD CK 0423

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : S.R. Shanmuga Doss, for the Appellant; S. Sethuraman, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—With the consent of the learned Counsel appearing for the Petitioner and learned Counsel appearing for the Respondent bank, the main writ petition itself is taken up for disposal.

2. The writ petition has been filed, challenging the order passed by the Respondent bank, dated 28.02.2011, in and by which, the application made by the Petitioner''s father for educational loan for the Petitioner was refused, on the ground that the Petitioner''s father is a defaulter.

3. The case of the Petitioner is that after completing her higher secondary course, she applied for selection for engineering course and was allotted a seat in the Government quota for B.Tech (Information Technology) course in the Sastha Institute of Engineering and Technology, Chennai. The college directed the Petitioner to pay the course fee of Rs. 75,000/-per year and since the Petitioner''s father is working in a private company with a meager salary and the Petitioner''s mother being a house wife, her father did not have sufficient income to support the Petitioner''s education for the entire course. It is stated that with great difficulty, the Petitioner''s parents were able to pay the fees for the first

year, by obtaining the loan from third parities. At present, Petitioner is undergoing second year course and she is required to pay the fees of Rs. 75,000/-. Therefore, the Petitioner through her father approached the Respondent bank during February 2011 and submitted an application for sanction of education loan. The Respondent bank, by the impugned communication dated 28.02.2011, informed the Petitioner''s father that the loan cannot be extended, since as per the Credit Investigation Bureau of India Ltd (CIBIL) report, the Petitioner''s father being a co-borrower was a defaulter in respect of another transaction. Challenging the said order, the Petitioner has approached this Court by way of this writ petition.

4. The learned Counsel appearing for the Petitioner submitted that there is No. clause in the scheme announced by the Central Government that if the co-borrower has taken a loan for other than education purpose, the education loan applied for the ward will not be sanctioned. It is further submitted that the denial of education loan is arbitrary and unreasonable and violative of Article 14 & 21 of the Constitution of India. The learned Counsel placed reliance on a decision of this Court in W.P. No. 17507 of 2010, dated 28.10.2010, [G.Dhivya v. The Branch Manager, Canara Bank].

5. The learned Counsel appearing for the Respondent bank by relying upon the counter affidavit submitted that RBI has formulated the educational loan scheme and issued guidelines, based on which, individual banks have framed its own policy in granting education loans. It is further submitted that on verification of the CIBIL report, it was found that the Petitioner''s father is a defaulter of a loan granted by the bank and as per the circular issued by the Head office of the Respondent bank, the loan proposal cannot be entertained. It is further submitted that the status of the previous loan obtained by the Petitioner''s father was ascertained, based on a discrete enquiry through CIBIL. On the above grounds, the learned Counsel for the Respondent bank, prayed for dismissal of the writ petition.

6. Heard the learned Counsel appearing for the Petitioner as well as the learned Counsel appearing for the Respondent bank and perused the materials available on record.

7. The issue, which has to be decided is as to whether, the Petitioner can be denied education loan on the ground that her father was defaulter in another transaction with the Respondent bank. Before we examine the rival claims, it is necessary to have a broad view about the policy decision taken by the Government in this regard.

8. Based on the policy decision of Government of India, the Model Education Loan Scheme was announced during the month of November 2007. Under the scheme, it has been stated that Education is central to the Human Resources Development and empowerment in any country. National and State level policies are framed to ensure that this basic need of the population is met through

appropriate public and private sector initiatives. While government endeavour to provide primary education to all on a universal basis, higher education is progressively moving into the domain of private sector. With a gradual reduction in government subsidies higher education is getting more and more costly and hence the need for institutional funding in this area. It has been further stated that the scope of education has widened both in India and abroad covering new courses in diversified areas. Development of human capital is a national priority and it should be the endeavour of all that No. deserving student is denied opportunity to pursue higher education for want of financial support. Loans for education should be seen as an investments for economic development and prosperity. Knowledge and information would be the driving force for economic growth in the coming years. It has also been stated that based on recommendations made by a study Group, IBA had prepared a Model Educational Loan Scheme in the year 2001 which was advised to banks for implementation by Reserve Bank of India vide circular No. RPCD.PLNFS.BC. No. 83/06.12.05/2000-01 dated April 28, 2001 along with certain modifications suggested by the Government of India. In line with the announcement made by the Hon''ble Finance Minister in his Budget Speech for the year 2004-05, IBA had communicated certain changes in the security norms applicable to educational loans with limits above Rs. 4 lakhs and up to Rs. 7.5 lakhs.

9. With the above mentioned avowed object, the Model Scheme was prepared based on the suggestions of the Study Group. The object of the scheme was that every 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.

10. The scheme could be adopted by all commercial Banks. It is further stated that the scheme only 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.

11. Admittedly, the principal borrower insofar as the education loan is concerned is the student, who avails the loan. It is brought to the notice of this Court by the learned Counsel for the Petitioner that it is the Petitioner, who has to repay the loan after the completion of her course of study and the bank gives moratorium for the repayment of the loan. Therefore, it is contended that the position of the co-obligant / co-borrower is hardly a factor, which could be basis for rejection of an application. Identical issue as in this case came up for consideration before this Court in W.P. No. 12432 of 2011 [R.Sahana v. The manager, Oriental Bank of Commerce and others] and the learned Judge (Justice D.Hariparanthaman), while considering the similar case, where the student''s father was a defaulter in respect of a loan availed by him, after analyzing the scheme relating to the education loan, which was produced by the Respondent bank therein held as follows:

10. According to the Bank, since the Petitioner''s parents became defaulters and their loan accounts became NPA, the Bank could not disburse the educational loan to the Petitioner.

11. In my view, the educational loan could not come within the purview of the loan that is mentioned in the Loan Policy Review and Modification (2009-10) produced by the Respondents Bank. If the Petitioner''s parents want the disbursal of any loan amount even after they became defaulters, the Bank could refuse to disburse the amount. In this case, it is not the request of the Petitioner to disburse the loan to her parents. On the other hand, it is her case that the sanctioned educational loan should be disbursed to her and the same cannot be stopped citing that her parents became defaulters. In my view, the submissions made by the learned Counsel for the Petitioner is well founded and the Respondents Bank could not stop the educational loan that too for the final year. If the arguments of the Bank is accepted, the same could not advance the object of the scheme providing assistance by way of educational loan. If the Bank refuses to disburse the loan for the 4th year, that would frustrate the very purpose of the scheme and if the Petitioner discontinues her studies at the final year, the loan amount so far paid without security could become sticky. Even for the interest of the Bank, they should see that the loanee student completes education so that the Bank could get back the loan advanced. Though the parents are to be made as co-applicants, it is stated in the scheme that irrespective of their means, loan upto Rs. 4,00,000/-should be sanctioned without any security. Further, as per the scheme, repayment has to be made by the Petitioner student. Repayment clause states that repayment has to be made twelve months after completion of the course or six months after getting job, whichever is earlier. The clause relevant to the repayment is extracted herender:

Repayment In 84 months in Equated Monthly

Installments.

Moratorium Period

12 months after completion of the course or 6 months after getting the job, whichever is earlier.

Regional Heads are empowered to permit extension in study period upto a maximum of two years, in cases where the student isnot able to complete the course/ study for reasons beyond his/ her control after examining the facts and genuineness of the case.

Note: In the cases where loan has been sanctioned for the two/ dual courses, moratorium period may be considered after completion of the studies as per the extant guidelines.

12. Therefore, the Bank is not justified in refusing to disburse loan to the Petitioner for the final year on the ground that her parents became defaulters. Hence, I am inclined to direct the Respondent Bank, to forthwith disburse of the

loan to the 3rd Respondent college payable for the final year B.Tech Course of the Petitioner The writ petition is disposed of in the above terms. No. costs.

12. In the instant case, it is stated that the Petitioner has been able to remit the fee for the first year and if the second year fee is not remitted the Petitioner would not be allowed to continue the course. In my view, the bank should adopt a more reasonable and pragmatic approach to the entire issue bearing in mind that the repayment shall be made by the student concerned, who avails loan and such repayment commences after completion of her course of study. Further, it is seen that though the parent of the loanee student is made as co-obligant to the loan, No. security is required for loans upto Rs. 4,00,000/-. Therefore, this is a fit case, where the Respondent bank should be directed to sanction the loan sought for by the Petitioner on the usual terms and conditions.

13. In the result, the writ petition is allowed, the impugned order is set aside and the Petitioner is directed to submit a fresh application to the Respondent bank, requesting for education loan enclosing the requisite particulars. On such submission, the same shall be considered and the loan be sanctioned by the Respondent bank, as expeditiously as possible, preferably within a period of three weeks from the date of receipt of the submission of the application by the Petitioner. No. costs.