(2023) 03 KL CK 0284

In the High Court Of Kerala

Case No : Writ Petition (C). No.3990 of 2023

Nizamudheen P — APPELLANT

Vs

Union Of India — RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Banking Regulations Act, 1949 — Section 22(3)(e)

Citation : (2023) 03 KL CK 0284

Hon'ble Judges : Shaji P. Chaly, J

Bench : Single Bench

Advocate : Ashik K.Mohamed Ali, Ramseena N., K.K.Chandran Pillai, Ambily.S

Final Decision : Disposed Of

Judgement

Shaji P.Chaly, J

1. This writ petition is filed by the petitioner, a student, who got admission for LLM course in a foreign university, seeking to quash Exhibit P19 communication of the State Bank of India, Koduvally Branch, Kozhikode District; whereby the loan application submitted by the petitioner was directed to be rectified, assigning the following reasons; and for other related & consequential reliefs, including a direction for releasing education loan to the petitioner:

1. LOS ID of the application not found.

2. If the applicant is eligible for Government of India Subsidy under Dr.Ambedkar Central Sector Scheme of interest subsidy on Education Loan for Overseas Studies for Other Backward Classes (OBCs), the applicant should apply through Jansamarth Portal and acknowledgement to be submitted. As proof of Family income, Income Certificate issued by Village Officer to be submitted. If the student is not willing to avail the subsidy, Affidavit for the same may be produced.

3.Application-All fields to be filled. Any correction in the application to be duly authenticated by the applicants.

4. Copy of PAN card of the applicant duly verified by the branch official not on record.

5. As per CIBIL report of Mr.Nizamudheen P with control number 5362992955 dated 12.01.2023, the following irregularities are observed:

• The CIBIL score of the applicant Mr.Nizamudheen P is 632. As per the extant instructions of the Bank, in unsecured loans, CIBIL score should be -1 or more than 685.

• Overdue observed in 3 personal loans, one auto loan and one consumer loan availed from other financial institutions. As the asset category of the loans are unavailable & DPD is observed in the said loans, statement of account and letter mentioning account status from the concerned financial institution to be obtained.

6. As per CIBIL report of Mr.Shoukhathali P with control number 5359910973 dated 11.1.2023, the following irregularities are observed:

• The CIBIL score of the applicant Mr.Shoukhathali P is 637. As per the extant instructions of the Bank, in unsecured loans CIBIL score should be -1 or more than 685.

• Overdue of Rs.21,95,780/- observed in Housing loan availed from financial institutions. Statement of account and letter mentioning account status from the concerned financial institution to be obtained.

• Personal loans, in loss asset category availed from a financial institution found. Statement of account and letter mentioning account status from the concerned financial institution to be obtained.

• Multiple DPD observed in two commercial vehicle loans and auto loan availed from a financial institution.

If the CIBIL score of the Co-applicant Mr.Shoukhathall P upgrades to more than 685, based on the amount of Overdue and DPD, Deviation approval from the appropriate authority may be obtained. In case, the co-borrower/guarantor is not eligible due to poor credit score as prescribed, he/she can be substituted in order of priority (other parents, spouse, parent-in-law, grandparents, Brother, relatives or a 3rd Party with good financial standing as a co-borrower)

7 . As cost of study which includes Tuition fees and living expenses is higher than the loan amount applied, margin as stipulated in the loan document/agreement to be contributed on a pro-rata basis during each disbursement.

8. Affidavits as per extant instructions to be obtained.

9 . Telegraphic Transfer statement & statement of account to be produced for considering the fees paid (GBP 3000).

2. Brief material facts for the disposal of the writ petition are as follows: According to the petitioner, he is an Advocate by profession and obtained admission for LLM in Intellectual Property at Bournemouth University, United Kingdom and the course would start on 23-01-2023. It is submitted that petitioner made partial payment towards the tuition fee as per Exhibit P4. According to the petitioner, Exhibits P1, P2, P3, P5 to P7 will show that the petitioner is meritorious and eligible to get an education loan as per Clause 2 of Exhibit P8 Scheme notified by the Government of India, Ministry of Human Resource Development, New Delhi. Accordingly, the petitioner applied for an education loan before the State Bank of India, Koduvally Branch, Kozhikode – the 4th respondent Bank, said to be with all relevant documents through email, evident from Exhibit P9. Along with the email, petitioner also produced Exhibits P11 and P12 judgments of this Court, wherein the significance of granting education loan to students is highlighted.

3. According to the petitioner, on 13.12.2022, the 4th respondent bank, by way of e-mail intimated the petitioner to produce the documents physically and on the same day itself, the petitioner produced physical copy of all documents and the same was intimated to the 4th respondent bank by way of email also, true copy of the said email communication is produced as Exhibit P14. Later, all the documents were transferred to the 5th respondent Bank. Thus, petitioner contacted the 5th respondent bank and forwarded the request as well as documents on 16.12.2022 to the 5th respondent bank by way of e-mail, evident from Exhibit P15.

4. According to the petitioner, since there was no effective response from the 5th respondent bank, petitioner filed W.P.(C) No.694 of 2023 before this Court. After filing of the writ petition, the 5th respondent informed the petitioner that it was forwarded to the State Bank of India, Retail Assets Central Processing Centre, Kozhikode – the 6th respondent, for consideration. During the pendency of the writ petition, on getting instructions from respondent Nos.5 & 6, the learned Standing Counsel for State Bank of India, submitted that the application would be considered properly, if certain defects are cured. Recording the same, the said writ petition was disposed of on 13.01.2023, evident from Exhibit P18. Immediately thereafter, the petitioner was served with a copy of Exhibit P19 letter dated 12.1.2023 issued by the 6th respondent, wherein it is stated that the Bank has not considered the education loan application of the petitioner under the Credit Guarantee Fund Scheme for Educational Loans but under a different Scheme with different guidelines.

5. The paramount contention advanced by the petitioner is that Exhibit P19 communication of the bank is erroneous, unjustified and unreasonable. It is also contended that the respondent bank has not considered the education loan application of the petitioner under Exhibit P8 Credit Guarantee Fund Scheme for Education Loans issued by the Ministry of Human Resource Development, New Delhi dated 16th September, 2015. It is further contended that the application

submitted by the petitioner was considered under a different scheme with different guidelines and therefore, Exhibit P19 is illegal and arbitrary, liable to be interfered with by this Court.

6. It is further contended that it is the absolute right of a customer to choose the scheme under which the application is to be submitted based on the law prevailing for the purpose. It is further submitted that as per clause 2 of Exhibit P8 scheme launched by the Ministry of Human Resource Development, an amount of Rs.7.5 lakhs is liable to be released by the bank towards the education loan without any collateral security and third party guarantee. Therefore, according to the petitioner, petitioner has applied only for Rs.7.5 lakhs, which is below the maximum limit under the scheme and accordingly, the bank is not entitled to insist for any collateral security and third party guarantee. It is also contended that as per clause 5(iii) of Exhibit P8 scheme, an eligible borrower is defined to mean, a new or existing borrower with Indian Nationality, who meets eligibility criteria prescribed under "IBA Model Educational Loan Scheme for pursuing Higher Education in India and Abroad" and executed loan documents with the lending institution to avail education loan and for which, parents/ guardians will be the co-borrowers/joint borrowers; in case of a married person, joint borrower can be either spouse or the parents(s)/parents-in-law.

7. Paramount contentions are advanced by the petitioner relying upon the notification issued by the Ministry of Human Resource Development dated 16th September, 2015 and it is further contended that, that by itself is a scheme launched by the Government of India, for granting loans by banks and lending institutions. Therefore, it is contended that a bank functioning under the Reserve Bank of India cannot turn around and say that the notification issued by the Ministry is not applicable to them.

8. It is also submitted that as per section 22(3)(e) of the Banking Regulations Act, 1949, the banking licence has been given to the State Bank of India for the due performance of the public interest while carrying on banking business. Accordingly, it is contended that there is no justification for treating the education loan application of the petitioner under a different scheme, that requires a guarantee from the third party too; and other similar contentions are also raised.

9. A statement is filed for and on behalf of the bank and its officials viz., respondents 4 to 6, refuting the claims and demands raised by the petitioner and reiterating the stand that Exhibit P19 communication issued by the bank is in accordance with law. It is further pointed out that as per Exhibit P19, the bank advised the petitioner to take adequate steps in order to process the loan application submitted by the petitioner in accordance with the procedure prescribed by the bank. It is further submitted that Exhibit P8 notification issued by the Ministry of Human Resource Department cannot override any of the statutory provisions/rules/regulations framed by the statutory authorities and approved by the Parliament. It is also submitted that as per clause (5)(v) of

Exhibit P8 notification, education loan is defined to mean, any financial assistance by way of loan, extended by the lending institution to the eligible borrower for higher education as per 'IBA Model Educational Loan Scheme'.

10. It is further contended that Chapter II of Exhibit P8 scheme refers to the scope and extent of the scheme and clause 6 of Chapter II of the scheme specifies that subject to other provisions of the scheme, the National Credit Guarantee Trustee Company undertakes, in relation to education loans upto Rs.7.5 lakhs extended to an eligible borrower by a member lending institution, which has entered into necessary agreement for this purpose with the National Credit Guarantee Trustee Company to provide guarantee against the default in repayment of the loan extended by the lending institutions.

11. It is also the contention of the bank that the scheme clearly provides in clause (7) that the Credit Guarantee fund set up by the Government of India with the purpose of guaranteeing payment against the default in education loans extended by the member lending institutions to the eligible borrowers, shall cover education loan extended by member lending institutions without any collateral security and/third party guarantee. According to the bank, the said clause is subject to the condition that the lending institutions apply for guarantee cover in respect of education loans sanctioned as per the procedure prescribed by the National Credit Guarantee Trustee Company.

12. Therefore, the sum and substance of the contention advanced by the bank is that the scheme is published by the Government of India for giving guarantee to the member lending institutions, who granted education loans to the eligible borrowers upto Rs.7.5 lakhs without any guarantee, in case the borrower commits default. Therefore, for that purpose, after extending the facility and taking loan agreement from the borrower, the bank should apply to the fund as defined in clause 5(vi) of Exhibit P8 scheme. It is further submitted that Exhibit P8 scheme is not an independent education scheme but it only intends to guarantee the lending institutions as regards education loan granted by them to the eligible borrower for protecting their interest, in case the borrower commits default.

13. It is also stated that a reading of the scheme will further show that sanctioning and releasing education loans are to be done by the lending institutions as per their lending policy and as per the educational loan scheme framed by the Indians Bank Association as provided in clause 10 of the Scheme. It is the further contention of the bank that as per clause 10 of Exhibit P8 scheme, it is clear that the payment of guarantee claimed by the lending institution by the National Credit Guarantee Trustee Company does not in any way take away the responsibility of the lending institution to recover the entire outstanding amount from the borrower with interest. Other clauses contained under Exhibit P8 are narrated in the statement to establish that the Exhibit P8 scheme issued by the Government of India is not an independent scheme apart from the rules, guidelines and regulations applied by the respondent bank for

grant of education loans.

14. I have heard learned counsel for the petitioner - Sri.Ashik K. Mohamed Ali, learned Senior Counsel appearing for the bank - Sri.K.K.Chandran Pillai, assisted by Adv.S.Ambily and perused the pleadings and material on record.

15. Respective counsel has advanced arguments in accordance with the pleadings discussed above. The primary question to be considered is whether any interference is required to Exhibit P19 communication issued by the respondent bank dated 12.1.2023 requesting the petitioner to rectify the loan application ? As I have pointed out above, the said communication issued to the petitioner is only notifying to the petitioner that there are certain defects in the application submitted by the petitioner. The defects noted, as extracted above, would show that the requirement of the petitioner for extending the education loan to the petitioner, is unable to be granted by the bank consequent to the framework and the guidelines issued by the bank in the matter of granting education loans.

16. According to the learned Senior Counsel for the bank, the bank has a definite policy in the matter of granting education loan and unless and until the said requirements are satisfied by an applicant, the bank cannot release education loan to the applicant. It is also the contention of the learned Senior Counsel for the bank that Exhibit P8 notification issued by the Government is a Credit Guarantee Fund Scheme for education loans and that by itself cannot be treated as a guideline or order issued by the Ministry of Human Resource Development Department, to grant loans to the applicants overlooking the law framed for granting education loans by the lending institutions.

17. On the other hand, learned counsel for the petitioner vehemently contended that the bank being an instrumentality functioning under the Government of India, the terms and conditions contained under the Credit Guarantee Fund Scheme for education loans is strictly applicable to the respondent bank; and therefore, the bank has no option than to grant the education loan without any security, if the maximum amount of loan applied for is Rs.7.5 lakhs. Therefore, in a nutshell, the case developed by the petitioner is that he is not liable to provide any security for the release of the loan amount on the basis of the provisions of Exhibit P8 notification issued by the Ministry of Human Resource Development dated 16th September, 2015.

18. Being so, in order to have a proper appreciation of the said contention, it is better that the relevant provisions of Exhibit P8 notification are referred to. Clause 1 deals with title and date of commencement; sub-clause (1) states that the scheme shall be known as the credit guarantee fund scheme for education loans; sub-clause (ii) thereto states that it shall come into force from the date of notification by the Government of India; and sub clause (iii) specifies that new education loans sanctioned on or after the date of notification of the scheme with features as under will be eligible for the coverage under the scheme; clause 2

dealing with loan limit states that the maximum loan limit under the scheme is Rs.7.5 lakhs without any collateral security and third party guarantee; however, the Fund reserves the right to revise the loan limit as and when required; clause 5 deals with definitions and sub-clause (iii) thereto defines, 'an eligible borrower' to mean, new or existing borrower with Indian Nationality who meets eligibility criteria prescribed under 'IBA Model Educational Loan Scheme for pursuing higher education in India and abroad' and executed loan documents with the lending institution to avail education loan; parents/guardians will be the co-borrower/joint borrowers; in case of a married person, joint borrower can be either spouse or the parent(s)/parents-in-law.

19. It is important to note that the said notification defines 'collateral security' under sub-clause (iv) to mean, the security provided in addition to personal obligation of a borrower/co-borrower; 'education loan' is defined under clause (v) to mean, any financial assistance by way of loan, extended by the lending institution to the eligible borrower for higher education as per 'IBA Model Educational Loan Scheme; 'fund' is defined in sub-clause (vi) to mean, the Credit Guarantee Fund for education loans set up by Government of India with the purpose of guaranteeing payment against default in education loan extended by the Member Lending Institution(s) to the eligible borrowers; 'guarantor' is defined under sub-clause (vii) to mean, a person acceptable to the bank, who guarantees to repay the education loan in the event of failure of the borrower to repay; sub-clause (viii) defines the 'guarantee' cover to mean, maximum cover (i.e., 75%) available per eligible borrower of the amount in default in respect of the credit facility extended by the lending institution. The 'lending institution(s)' is defined in sub-clause (ix) to mean, all public sector banks, private sector banks and foreign banks which are members of IBA; sub-clause (xiii) defines 'the National Credit Guarantee Trustee Company' to mean, the said company set upon March 28, 2014 by the Government of India under the Companies Act, 1956 to act as a trustee to operate the credit guarantee funds for education loans, skill development loans and any other funds to be set up by Government of India from time to time.

20. Therefore, in my considered opinion, the aforementioned provisions of the notification issued by the Government of India make it clear that the intention of the said notification is to provide credit guarantee to the lending institutions, if and when the education loans are defaulted. It is also clear that the notification takes into account collateral security, guarantee etc. in the matter of granting loans by the banks. Chapter II of the notification deals with scope and extent of the scheme; clause 6(i) specifies that subject to other provisions of the scheme, the National Credit Guarantee Trustee Company (NCGTC) undertakes in relation to education loans up to Rs.7.5 lakhs extended to an eligible borrower by a member lending institution, which has entered into the necessary agreement for this purpose with NCGTC, to provide guarantee against default in repayment of education loans extended by the lending institutions; clause 6(ii) clearly states that NCGTC reserves the right to accept or reject any proposal referred to it by

the lending institution, which otherwise satisfies the norms of the scheme; clause 7 deals with education loan eligible under the scheme; sub-clause (I) of clause 7 specifies that the fund shall cover education loans extended by member lending institution(s) to an eligible borrower as per IBA scheme, on or after entering into an agreement with NCGTC without any collateral security and/or third-party guarantee, provided that the lending institution applies for guarantee cover in respect of education loans so sanctioned within such time period and as per the procedures prescribed by NCGTC for the purpose.

21. On a conjoint reading of clauses 6 & 7, it is clear that merely because the Government of India has issued the said notification, the provisions of the said notification would not come into play automatically, and immediately apply to all lending institutions defined under the notification. But it envisages and contemplates further procedural action from the side of the lending institutions in order to guarantee the education loans advanced by it after the date of the notification. It is also clear from the said provisions that the lending institution is at liberty to apply its own criteria in terms of the IBA Model Educational Loan Scheme. This would be more clear from clause 9 of the notification dealing with the agreement to be executed by the lending institution; which states that a member lending institution shall be entitled to a guarantee in respect of eligible education loans granted by it, after it has entered into an agreement with NCGTC in such form as specified by NCGTC; chapter III deals with guarantee fee; chapter IV deals with extent of guarantee and Chapter V deals with the procedure to be followed in the matter of claims, invocation of guarantee, etc.

22. Therefore, from the overall analysis of the provisions of the notification, it is clear that, that by itself is not a scheme for advancing education loans to the applicants by any lending institution. But the Government of India has issued the said notification with the intention of protecting the banks by providing a guarantee cover to the education loans granted by any lending institutions without any guarantee, if the lending institutions enter into an agreement with the National Credit Guarantee Trustee Company. Furthermore as per clause 10 of the notification, the lending institution has the responsibility to recover the loan amount irrespective of the guarantee satisfied as per the notification. In my view, Exhibit P8 notification is not a composite document for granting and releasing, and guaranteeing an education loan; but intended only to cover education loans granted without securing adequate security, by the member lending institutions.

23. To put it otherwise, any lending institution has the liberty or choice not to join the scheme, but to proceed ahead with the formulations framed by it or the IBA Scheme in order to provide the education loan. Therefore, taking into account the facts and figures and the features of the notification of the Government of India, I am of the view that the contention advanced by the petitioner relying upon the notification, that the respondent bank is liable to grant education loan upto Rs.7.5 lakhs without any guarantee, collateral security

etc., cannot be sustained under law. Therefore, if and when the bank has a policy in the matter of granting and releasing education loans, necessarily, an applicant has to follow the same. There is also no case for the petitioner that the conditions streamlined by the bank for grant and release of education loans is in any way illegal or void, or otherwise than the terms and conditions contained in the notification issued by the Government of India dated 16th September, 2015. I am of the view that since the bank and its officials are discharging a public duty even while granting and releasing education loans, they are duty-bound to follow the procedure and the guidelines fixed for the purpose, in larger public interest, and to protect the interest of the bank, especially in the matter of repayment. Moreover, whenever a decision is taken by the bank in the matter of granting and releasing loans, it is a policy decision of the bank; which can only be interfered with by this Court exercising the powers of discretionary relief conferred under article 226 of the Constitution of India ,only if the writ petitioner was able to establish that the policy formulated by the bank is illegal, arbitrary, irrational or mala fide. There is no case for the petitioner that the policy of the bank suffers from any such vice.

24. Therefore, the reliefs sought for by the petitioner to quash Exhibit P19 communication of the bank and consequential direction to the bank to release the loan amount cannot be sustained under law. Therefore, the reliefs sought for by the petitioner are declined; however, I make it clear that if the petitioner is approaching the respondent bank with a proper application, satisfying the requirements pointed out by the bank in Exhibit P19 communication dated 12.1.2023, it shall be considered by the bank, in accordance with law, at the earliest possible time.