BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.12.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.S. SUNDAR
W.P.(MD).No.21595 of 2016

C.Raju .. Petitioner

Vs.

1.The Branch Manager,
Union Bank of India,
Nachandhupatti Branch,
Nachadhupatti Post,
Thirumayam Taluk,
Pudukkottai District 622 404

2.The Regional Manager,
Union Bank of India,
No.72, P.T.Rajan Road,
Bibikulam,Narimedu,
Madurai 625 002. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of Certiorarified Mandamus to quash the impugned order, dated 29.08.2016 issued by the 1st respondent and to direct the respondents 1 and 2 to consider the petitioner's application, dated 10.06.2016 to sanction the loan of Rs.5,00,000/- (Rupees Five Lakhs only) by the respondents 1 and 2.

For Petitioner : Mr.S.Muthuvel
For Respondents : Mr.N.Dilip Kumar

ORDER

This writ petition has been filed by the petitioner for issuance of Certiorarified Mandamus to quash the impugned order, dated 29.08.2016 issued by the 1st respondent and to direct the respondents 1 and 2 to consider the petitioner's application, dated 10.06.2016, to sanction the loan of Rs.5,00,000/- (Rupees Five Lakhs only) by the respondents 1 and 2.

2.By the impugned order, the first respondent has returned the loan application filed by the petitioner for a project promoted under PNEGP scheme.

3.The petitioner applied for a loan of Rs.5 lakhs for a project under Prime Ministers Employment Generation Programme (PMEGP). The Assistant Director of Khadi and Village Industries, Pudukkottai has forwarded the loan proposal to first respondent on 18.07.2014. It is also stated by the petitioner that he was sponsored by the first respondent for undergoing training. The petitioner further states that he has successfully completed his training from 06.04.2015 to 17.04.2015, conducted at Pudukkottai

District by the Indian Overseas Bank, Village Self Employment Training Centre. The petitioner further states that for undergoing training, he lost his income of Rs.1,000/- per day. The loan application was returned by the first respondent by the impugned order, which reads as follows:

> *"1.The applicant has already availed professional and self employed loan of Rs.10,000/- in our branch in 2008 vide a/c. no.575106150000019. The applicant was highly irregular in paying the monthly dues. Subsequently, the a/c became NPA on 08.08.2011. The loan was in NPA category for a period of more than 3 years. The customer finally closed the a/c only in Aug. 2014. Hence at the time applying for loan under KVIC, the applicant should not be a defaulter and also he should not be having any loan with any bank. But the applicant has not conveyed the same to the district task force committee for KVIC chaired by the District Collector and he has given his loan application. Hence, he is a willful defaulter and hence he cannot be entertained as a good borrower in the process of due diligence. Also the bank at any point of time can cancel the procedure of sanctioning the loan to any borrower if has been a defaulter in the past, though he may have completed the EDP training. We have also informed the same to you many times and also we have returned your application to KVIC."*

Challenging the order returning the loan application filed by the petitioner, the above writ petition is filed.

4.The learned counsel for the petitioner submitted that the petitioner has made a representation, based on his eligibility to avail subsidy from the Central Bank. It is also stated that the petitioner underwent training only on the recommendation of the Bank and that the Bank cannot return the application after the completion of training to get the loan and subsidy. Learned counsel for the petitioner further submitted that the first respondent is the only Bank in the village and the petitioner cannot approach any other bank except the first respondent and that therefore the first respondent is bound to sanction the proposed loan to the petitioner.

5.Learned counsel for the respondent filed a counter affidavit and reiterated the same reasons that was cited by the first respondent for rejecting the loan application of the petitioner. The petitioner is not a new customer to the respondent Bank. In view of the conduct of petitioner, the respondent appears to have taken a decision not to sanction the loan. When the petitioner is a defaulter who failed repay a small amount. When the petitioner is a existing borrower under NPA category, who failed to clear the earlier loan, despite repeated request made by the Bank, he cannot be treated like any other person who comes with a successful project. Since the petitioner's application was turned down for reasons, the learned counsel for the respondent further stated that the decision taken by the Bank in its interest cannot be challenged before this Court under Article 226 of Constitution of India in view of the scope of judicial review in these matters.

6.The learned counsel for the respondent relied upon a judgment of Bombay High Court in ***Minhas Steel Limited and another Vs. Punjab and Sind Bank and others*** reported in ***1998 (1) BC 651.*** The scope of jurisdiction under Article 226 in relation to advancing public fund to parties has been considered by Bombay High Court in the said judgment. The relevant portion reads as follows:

> *"13.Before examining the rival contentions it is necessary to bear in mind the limits of the writ jurisdiction under Article 226, particularly, in the context of the contractual powers of the financial institutions and Banks. It cannot be gainsaid that the respondent No.1 Bank is essentially a business establishment that safeguards public money and uses it for advancing loans to people. Whether in a particular case loan should or should not be advanced, or to what extent such loan should be granted and how such loan should be secured are essentially the matters within the discretion of the Bank and it is not possible for the Court to determine such question because such determination would require examination of various facets involving financial implications. Apart from the fact that the Court is hardly equipped to do so, it would not be desirable either. Where the decision of the Bank is mala fide or arbitrary, the Court would certainly interfere. But it is not the function of the Court as to act as a superboard or an appellate authority substituting its judgment for that of the Bank. It is necessary for the Courts to leave some discretion in favour of the Bank or other financial institutions in taking decisions which are essentially commercial decisions based on intricate financial considerations. The Court should be extremely slow in forcing Banks and other financial institutions to advance public funds to private parties. The discretion exercised by them is not to be lightly interfered unless such exercise of discretion is made with an oblique motive or for extraneous purposes."*

7.Almost in a similar case, the learned single judge of this Court in ***V.M.Karthika Vs. The Chief Manager, Educational Loan Section, Indian Bank and others*** reported in ***2012 (5) CTC 512*** has observed that the conduct of parties were also relevant criteria to the Bank to disburse loan amount.

8.As it was held by the Bombay High Court, the Bank enjoys an absolute discretion in the matter of advancing loan. However, such decision based on economic policy of the individual Bank is an Administrative decision. Unless the decision is arbitrary or irrational or malafide, it cannot be challenged under Article 226 of Constitution of India. Banks are expected to consider the loan application based on the economic policy taken by the Bank which are in tune with Banking Regulations, Reserve Bank guidelines and other factors. When a decision is taken in relation to a particular loan application, the Bank has absolute any discretion and authority whether or not to enter into a contract. The court cannot compel the Bank either to advance loan or to sanction loan. The Court is not an expert to deal with various factors involving financial implications as it is observed by the Bombay High Court. It is not desirable for this Court to entertain such writ petition only on the ground that the individual borrower is dis-appointed or put to inconvenience.

9.Having regard to the various judicial precedents in the matter of judicial review in relation to contractual matters, this Court is unable to entertain this writ petition. Going by the contents of the impugned order, this Court has no reason to compel the Bank to advance loan to the petitioner.

10.Hence, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

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Sub Assistant Registrar(CS)

TM

+1 CC to M/s.S.MUTHUVEL, Advocate (SR-104373[F]

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-104476[F]

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