BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 01.10.2019
DATE OF DECISION : 15.10.2019
CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR
W.P.(MD) No.21008 of 2018

B.John Mickil ..Petitioner

Vs.

The Senior Manager / Branch Head,
Federal Bank Ltd.,
Kulasekharam Branch,
Kanyakumari District. .. Respondent

This writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the impugned order of rejection dated 30.8.2018 issued by the respondent and quash the same and consequently direct the respondent to sanction the education loan of Rs.3,82,200/- to the petitioner to pursue his B.Sc Nursing Course at Nightingale College of Nursing at Bangalore within a stipulated time fixed by this Hon'ble Court and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.M.Sankaralingam
for Mr.P.T.Ramesh Raja

For Respondents : Mr.S.Sureshkumar Isaac Paul
for Mr.R.Pandivel

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ORDER

Mr.M.Sankaralingam, learned counsel representing the counsel on record for writ petitioner and Mr.Sureshkumar Isaac Paul learned counsel representing the counsel on record for sole respondent are before this Court.

2 The main writ petition is taken up, heard out and is being disposed of.

3 Writ petitioner is a student who scored 458 out of 500 in X standard and 978 out of 1200 in XII standard in the State Board of School Examinations, Tamil Nadu, conducted by Department of Government Examinations, Chennai having studied in SDA Matric Higher Secondary School, Pulierranghy, Thiruvattar, Kanyakumari District.

4 There is no disputation or disagreement on the factual position that writ petitioner's father T.Babu Manoharan is a load

man and his total annual income is Rs.96,000/-. To be noted, writ petitioner's father's avocation has been described as 'Coolie' in the affidavit filed in support of the instant writ petition, but this Court chooses to use the term 'load man'. Be that as it may, there is also no disputation or disagreement that writ petitioner hails from an economically weak and severely disadvantaged family background.

5 After passing X standard in March 2015 and XII standard in March 2017 in the aforesaid manner, writ petitioner secured admission in B.Sc. Nursing Course (a 4 year programme) commencing from the academic year 2017-18 in 'Nightingale College of Nursing, Magadi Road, Bangalore-560 023' (hereinafter 'said college' for brevity).

6 Tuition fee and other fees payable for aforesaid four years course in the said college is Rs.3,91,500/- in all and the break up as can be culled out from the case file is as follows :

The fee Structure is as follows:-

First Year:

Tuition Fees	55,000/-
Registration, Transport & clinical Fees	15,000/-
Mess & Hostel Fees	31,000/-
Uniform Fee	2,500/-
Total	1,03,500/-

Second Year:

Tuition Fees	55,000/-
Mess & Hostel Fees	31,000/-
Transportation & Clinical	10,000/-
Total	96,000/-

Third Year:

Tuition Fees	55,000/-
Mess & Hostel Fees	31,000/-
Transportation & Clinical	10,000/-
Total	96,000/-

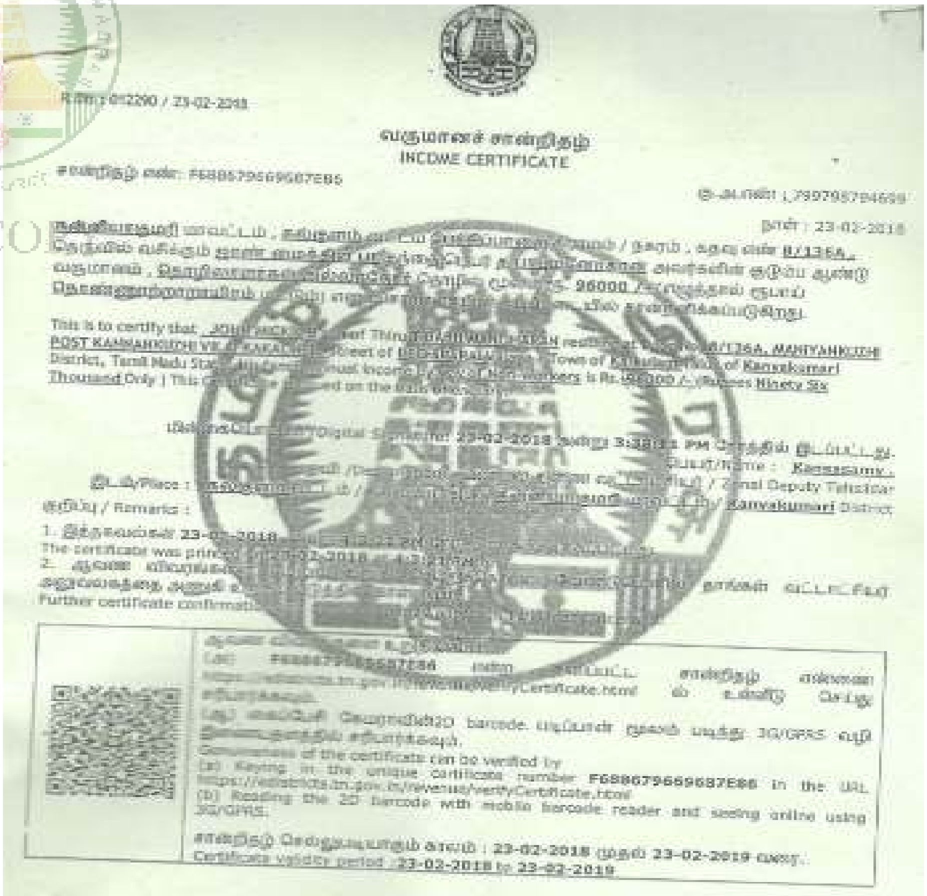
Fourth Year :

Tuition Fees	55,000/-
Mess & Hostel Fees	31,000/-
Transportation & Clinical	10,000/-
Total	96,000/-

7. On 10.7.2018, writ petitioner applied (through Vidya Lakshmi portal created by Government of India) and sought educational loan from the respondent Federal Bank Ltd., Kulasekharam Branch, Kanyakumari District (hereinafter 'said bank' for the sake of brevity, clarity and convenience). To be noted, the reference in this regard is No.000005162249392. Said bank sent a communication dated 30.8.2018 (hereinafter 'impugned order' for convenience and clarity) to the writ petitioner rejecting the writ petitioner's educational loan application dated 10.7.2018 stating that writ petitioner has not secured 85% marks and that writ petitioner has not taken Common Entrance Examinations conducted by certain entities mentioned in the impugned order.

8. Instant writ petition has been filed assailing the impugned order. Learned counsel for writ petitioner submitted that Vidya Lakshmi Portal itself was created by Government of India for students seeking education loan with the lofty objective of ensuring that young people in India are both educated and employable for the jobs of 21^{st} century. It was also pointed out that Vidya Lakshmi portal mentions about poor and middle class students being able to pursue higher education of their choice without constraint of funds inter-alia by monitoring scholarships as well as education loan schemes through Pradhan Mantri Vidya Lakshmi Karyakram. In this regard, a hardcopy of the download from the Vidya Lakshmi portal (https://www.egov-nsdl.co.in) has been placed before this Court as part of case file.

9. One other important aspect is the income certificate of writ petitioner's father issued by the appropriate / jurisdictional revenue authority of the Government of Tamil Nadu, namely Zonal Deputy Tahsildar has been placed before this court as part of case file and the same reads as follows :


INCOME CERTIFICATE

Certificate validity period : 23-02-2018 to 23-02-2019

10 It was argued by learned counsel for writ petitioner that the rejection of writ petitioner's education loan on the ground that writ petitioner has not scored 85% marks is completely untenable. Relevant portion qua this aspect in the impugned order reads as follows :

> "1.Minimum Marks Stipulation as per our bank norms is 85% marks for Graduation not met"

11 In response to this, learned Bank counsel who had filed typed set of papers dated 20.09.2019 (but not a counter affidavit) submitted that it is open to the respondent bank to prescribe its own criteria and parameters qua education loan applications. Adverting to what is the criteria according to said bank, learned counsel for said bank submitted that management seats are not eligible for consideration under Special Vidya Loan Scheme. It was also submitted by learned Bank counsel that the bank is entitled to rate the educational institutions and use the same as an assessment tool. In this regard, guidance notes on model educational loan scheme issued by the 'Indian Banks' Association' ('IBA' for brevity) was adverted to. It was submitted that this is the second reason for the second ground of rejection which in the impugned order reads as follows :

> "2.It is observed that the admission was obtained through Non – Merit case, as the student was not taken any Common Entrance Exams conducted by All India / State Govt. University / Like AICTE."

12 In the considered view of this court, aforesaid submission of counsel for said bank is no argument owing to the following reasons :

(a) There is nothing to show that education loan is akin to merit based scholarship;

(b) On a demurrer, even if ground No.1 is tested by applying well established principles of judicial review, ground No.1 as extracted and reproduced supra (as contained in the impugned order) is extremely vague. It does not mention with clarity (much less specificity) about which is the public examination in which student should score 85% marks, as it merely says '85% marks for graduation'. In this case, even on a demurrer if tested, writ petitioner has secured 91.6% in X standard and 81.5% in XII standard. If mean average is taken, it comes to 86.55% which is well above 85%.

(c) With regard to admission in said college, there is no disputation that admission is not through any competitive examination and therefore, ground No.2 in the impugned order (extracted and reproduced supra) also becomes untenable.

(d) As there is no competitive examination, such as NEET and it is not a prerequisite for admission in aforementioned course in said college, the second ground is clearly untenable.

13 With regard to learned Bank counsel adverting to guidance notes issued by IBA, there is no disputation that IBA is not a statutory body and it is merely an association of Banks. Be that as it may, even the guidance, to which attention of this court was drawn, merely talks about rating of educational institutions and using the same as a tool qua education loan applications. A plain reading of the impugned order makes it clear that there is no mention about rating of said college and it is not Bank's case in the impugned order that said college was rated and rating does not meet the requirements / bench mark of Bank. Law is too very well settled that the impugned order cannot be improved by way of counter affidavit much less by typed set of papers in response to writ petition.

14 Lastly, though there was no argument by Bank counsel on this point, this court deems it appropriate to examine whether respondent Bank will be amenable to writ jurisdiction in the factual setting of instant case. When this question was posed to learned counsel for writ petitioner, learned counsel for writ petitioner pressed into service ***V.Kannappan*** case being an order dated 26.11.2008 made by this Court in W.P.Nos.32502 of 2003, etc., which in turn has been made by placing reliance incidentally and inter-alia on Federal Bank case being ***Federal Bank Ltd. Vs. Sagar Thomas and others*** reported in ***AIR 2003 SC 4325***. Underlying principle in

Federal Bank case is when there is disregard and breach of public duty, a writ will lie qua private sector bank also. To be noted, this principle has been laid down in Ajay Hasia's case being ***Ajay Hasia Vs. Khalid Mujib Sehravardi*** reported in ***AIR 1981 SC 487***, which has also been referred to in 26.11.2008 ***V.Kannappan*** case (W.P.Nos.32502 of 2003, etc.,) order.

15 This order of our High court in ***V.Kannappan*** case (W.P.Nos.32502 of 2003, etc., dated 26.11.2008) also makes a reference to Binny Ltd. case, being ***Binny Ltd. and another Vs. V.Sadasivan and others*** reported in ***(2005) 6 SCC 657*** and relevant portion is contained in paragraph 11 of Binny Ltd. case and the same reads as follows :

> "11 ......It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. ....."

16 To be noted, in this ***V.Kannappan*** case (W.P.Nos.32502 of 2003, etc., dated 26.11.2008), this court was dealing with pension payable by a private sector bank to its employees. Therefore, in the light of the facts of this case, this court is convinced that the function of the respondent clearly falls in the category of 'participate in social or economic affairs in the public interest'. This being the expression used by Hon'ble Supreme Court in Binny Ltd. Case. This conclusion is also based on the contents of Vidya Lakshmi portal of Central Government which has been alluded to supra.

17 Therefore, in the light of discussion and dispositive reasoning supra, both grounds on which impugned order has been passed become untenable, owing to which it follows as an indisputable sequitur that impugned order is liable to be set aside.

18 Before this court does that, it is to be noted that under similar circumstances, High Court of Kerala in W.P.(C)No.27948 of 2013 vide order dated 07.04.2014 [***Runa Varghese Vs. Federal Bank***] has granted relief to a writ petitioner against said bank. There is nothing to show that this order was reversed.

19 One other significant aspect is another Hon'ble Single Judge of this Court vide order dated 31.7.2018 made in W.P.(MD) No.7796 of 2017 [***P.Sivasubramanian Vs. The Manager, Indian Overseas Bank, Achanpudur, Tirunelveli District***] has directed a Bank to sanction education loan for the very same B.Sc. Nursing course in an institution which goes by the name Sardar Rajas College of Nursing.

20 Therefore, viewed from any perspective, impugned order is untenable and the view of this court in this regard is supported by aforesaid two orders made by Hon'ble Single Judge of Kerala High Court and Hon'ble Single Judge of this Court.

21 To be noted, there is no disputation or disagreement before this court that writ petitioner's loan application stands fully processed / scrutinized and two reasons / grounds set out in the impugned order alone are impediments in granting education loan to the writ petitioner. In other words, other than the two grounds / reasons set out in the impugned order, there is no other obstacle for having the loan (sought for) approved, sanctioned and disbursed. To put it differently, absent these two grounds / reasons, writ petitioner's educational loan application which has been fully scrutinized stands sanctioned. Therefore, this court is inclined to pass the following order:

> (a) In the result, impugned order dated 30.8.2018 is set aside and respondent is directed to sanction and disburse loan in response to writ petitioner's education loan application dated 10.07.2018 (reference No.000005162249392) as expeditiously as possible and in any event, within a period of four weeks from the date of receipt of copy of this order.
>
> (b) This writ petition is allowed with the above direction. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

vvk

To

The Senior Manager / Branch Head,
Federal Bank Ltd.,
Kulasekharam Branch,
Kanyakumari District.

+1 CC to M/s.R.PANDIVEL, Advocate SR-91815.
+1 CC to M/s.P.T.RAMESH RAJA, Advocate SR-92050.

order in
W.P.(MD) No.21008 of 2018
15.10.2019

CS(24.10.2019) 7P 4C