(2022) 04 KL CK 0035

In the High Court Of Kerala

Case No : Writ Petition (C) No.1246 Of 2022

Fathima Marry T R — APPELLANT

Vs

Union Of India — RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2022) 04 KL CK 0035

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : R.K.Prasanth, T.P.Pradeep, K.Ramachandran, Bindumol Joseph, Pushkarakshan V.P, Srividya K, S. Manu

Final Decision : Dismissed

Judgement

N. Nagaresh, J.

1. The petitioner, a retired Head Nurse now aged 69 years, is before this Court seeking to quash Ext.P3 and to direct the 3rd respondent-Manager, State Bank of India to consider her loan application irrespective of Suit filed or Wilful default or One Time Settlement by the daughter in relation to her education loan.

2. The petitioner retired as Head Nurse after rendering 23 years of service and is in receipt of monthly pension of ☐ 24,212/-. She has undergone Cardiac Surgery. Her husband had suffered a stroke. He is unable to walk without assistance. The petitioner's daughter is a divorcee. The petitioner and her husband require ☐ 3 lakhs for their immediate treatment. The petitioner hence submitted an application for pension loan under the SBI Pension Loan Scheme.

3. The application was rejected stating that as per Bank's policy, loan cannot be sanctioned as there is a Suit pending / Wilful default / Settled account, in her Credit Report. The petitioner's daughter had availed an educational loan from Punjab National Bank, of an amount of ☐ 1,60,720/-, for studying B.Ed Course. The petitioner stood as a guarantor. The petitioner's daughter did not get

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adequate employment after her studies to repay the amount. There were defaults in the said education loan. Ultimately, the loan was settled for ☐ 2 lakhs under a One Time Settlement Scheme on 27.10.2020.

4. The petitioner states that she was compelled to stand as a guarantor to her daughter's educational loan, even though it was not a mandatory requirement. The SBI Pension Loan Scheme is a beneficial scheme for the Central and State Government pensioners. The petitioner is holding a savings account for the last more than 40 years with the Bank. The pension is linked with this account only. The petitioner is ready to abide by any conditions for grant of loan. The denial of pension loan to the petitioner during this pandemic period and that too for the purpose of emergency medical treatment, is highly illegal, unjustified and arbitrary, contended the petitioner.

5. The 3rd respondent resisted the writ petition filing a counter affidavit. Sanctioning or refusal of loan is a commercial decision taken by the Bank. Loan will be sanctioned taking into consideration various factors including creditworthiness and CIBIL Report of the loan applicant. The CIBIL Report of the petitioner revealed an overdue amount of ☐ 1,83,906/- in an educational loan sanction/disbursal in the year 2006. As per Ext.R3(a) Master Circular, loan application of borrowers whose account status in the CIBIL Report is settled, should be rejected. As per the Master Circular, the petitioner will become eligible to apply for pension loan only after five years from 06.11.2020.

6. The learned counsel for the petitioner argued that for availing educational loan from the Punjab National Bank, a personal guarantor was not required since the loan availed was an educational loan of less than ☐ 4 lakhs. Therefore, the petitioner ought not have been made a guarantor in the said loan. If that be so, settlement of the said educational loan account under a One Time Settlement Scheme cannot bring down the credit rating of the petitioner.

7. The counsel for the petitioner further submitted that what was availed from the Punjab National Bank was an educational loan. The petitioner’s daughter was the borrower. The petitioner only stood as a guarantor. Ext.R3(a) Master Circular of the State Bank of India would show that even when the account has a negative account status in the credit information report, the condition as to the credit score can be waived by the Bank. In the facts of the petitioner's case, the 3rd respondent is bound to waive the condition.

8. The petitioner is a cardiac patient. Her husband is a Cancer patient now on wheelchair. The 3rd respondent is an instrumentality of the State. The 3rd respondent has to consider the exceptional case of the petitioner and grant her the loan applied for, urged the counsel for the petitioner.

9. The learned counsel for the petitioner relied on the judgment of the Apex Court in Ashwani Kumar (Dr.) v. Union of India and others [(2019) 2 SCC 636] to contend that the Hon'ble Apex Court has held that the court should take care of enforcement of rights of elderly persons. Relying on the judgment of the Hon'ble

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Apex Court in Regional Transport Authority v. Shaju [2022 (2) KLT 351], the learned counsel for the petitioner argued that when the Master Circular of the Bank gives discretion to the respondent to waive the condition as to the credit score, the said discretion should be exercised wherever necessary so as to render the exercise of discretion, reasonable, fair and non-arbitrary.

10. The learned Standing Counsel for the 3rd respondent, on the other hand, submitted that a writ petition is not maintainable for getting a loan sanctioned. The pension loan is not a priority sector loan. The banks can therefore frame their own rules and criteria for consideration of loan applications. Such rules are framed keeping in mind prudent business principles and commercial practices. This Court cannot exercise its extraordinary jurisdiction in order to compel the Bank to sanction a loan to the petitioner.

11. I have heard the learned counsel for the petitioner and the learned Standing Counsel representing the respondents. I have also heard the Assistant Solicitor General of India representing the 1st respondent.

12. The petitioner has applied for pension loan under a Pension Loan Scheme of the 3rd respondent. It is not a priority sector loan. The banks are entitled to frame their own criteria for sanction of loans. As long as the criteria does not violate any provisions of the Banking Regulation Act or Reserve Bank of India Act and the Regulations made by the Reserve Bank and as long as such criteria does not offend any of the provisions of Part III of the Constitution of India, the scope for interference by this Court in exercise of Article 226 is limited.

13. Ext.R3(a) Master Circular of the Bank specifically provides that if the account status for a secured loan / unsecured loan / Credit Card is (i) Suit filed, (ii) Wilful default, (iii) Suit filed (Wilful default), (iv) Suit filed & written off, (v) Wilful default & written-off or (vi) Suit filed (Wilful default) and written off, the applicant's proposal should be rejected. The Bank can waive the Class iv applicants who have such negative account status in their Credit Information Report more than five years old and have since maintained a satisfactory credit history without any further default.

14. In the case of the petitioner, the Punjab National Bank had filed O.S. No.85/2017 in the Munsiff's Court, Kalpetta for recovery of money in which the petitioner was the 3rd respondent. Furthermore, when the loan was settled under the One Time Settlement Scheme, the petitioner was informed that settlement of the loan under One Time Settlement Scheme is likely to affect the Credit Score of the petitioner. Therefore, it is clear that the petitioner was aware of the consequences of settling a loan account under OTS Scheme.

15. The Hon'ble Apex Court has held in Ashwani Kumar (supra) that rights of elderly persons should be strictly enforced. The issues relating to elders should be looked at from a humanitarian point of view as well. But, the said judgment was delivered in the context of claim for pension and shelter to the elders. The Apex Court delivered the judgment in Regional Transport Authority (supra) in the

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context of Motor Vehicles Act. The said judgments will not be of any avail to the petitioner.

For the aforesaid reasons, this Court does not find any legally enforceable right of the petitioner for grant of loan. The writ petition fails and it is consequently dismissed.

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