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Court : Chennai

Decided On : Oct-16-2012

Judge : The Honourable Mr.Justice D. Hariparanthaman

Appeal No. : W.P.NO.16003 OF 2012

Appellant : S. Indra

Respondent : The Regional Manager Indian Bank Near C.M.C. Vellore and Another

Advocate for Pet/Ap. : For the Petitioner : D. Balaji, Advocate. For the Respondents : M. Balachandar, Advocate.

Judgement :

(PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to sanction the educational loan to the petitioner.)

The petitioner has filed the Writ Petition, praying for issuance of a Writ of Mandamus, to direct the respondents to sanction the educational loan to her.

2.The petitioner joined the Diploma Course in Nursing at Arun School of Nursing, Vellore, for the academic year 2011-12. The duration of the course is four years.

She hails from a poor family and her father is a coolie. The family has no sufficient means to meet the various expenses of her studies. The petitioner has to pay Rs.1,92,500/- for the entire course. She has given the break-up details of the fees structure for four years in her affidavit. She has approached the respondent bank for sanction of loan. But she was not even provided with the loan application. Thereafter, the father of the petitioner has approached the District Collector, Vellore in this regard and on 08.08.2011, a petition was submitted by him to the District Collector, Vellore for educational loan. On the same day, the District Collector, Vellore forwarded the request of the petitioner to the second respondent bank recommending for grant of educational loan. Thereafter only, the second respondent has issued the loan application to the petitioner and she sent the filled up loan application with all required documents on 27.04.2012. The petitioner has also sent a representation dated 23.05.2012 through RPAD requesting the respondent bank to sanction educational loan to her. But, there was no reply from the respondent bank. Hence, the petitioner has approached this Court by way of filing this Writ Petition to direct the respondent bank to sanction educational loan to her.

3.The respondents filed counter affidavit stating that admission of the petitioner is under Management Quota. As per the guidelines issued in the circular dated 16.09.2011 of Rural Banking Department, students, who secure admission under the Management Quota, are not eligible to avail educational loan under IBA Scheme.

4.The learned counsel for the petitioner has submitted that the petitioner belongs to Scheduled Caste and she hails from a poor family. He has submitted that the father of the petitioner is a coolie and an illiterate person. The petitioner with great difficulty and in a poverty-stricken poor condition, passed higher secondary education. He has further submitted that the petitioner cannot be deprived of educational loan as the very purpose of the scheme is to help the pupils of this nature.

5.On the other hand, the learned counsel for the respondents has submitted that the students who get admission under Management Quota are not eligible for

sanction of educational loan since they do not come under the purview of IBA Educational Loan Scheme. However, the bank has Non IBA Scheme for students who are admitted in the Management Quota, but they should have obtained at least 60% of marks to avail educational loan and since the petitioner has obtained only 46% of marks in her higher secondary education, she is not eligible to avail educational loan in Non IBA Scheme also.

6.The learned counsel for the respondents has relied on a Division Bench Common Judgment of this Court dated 20.04.2012 rendered in W.A.(MD) No.1629 of 2011 and W.P. Batch cases.

7.I have considered the submissions made on either side.

8.It is categorically averred that the petitioner's father is a coolie and the family has no sufficient means to assist the petitioner to continue her higher education after completing Plus Two Course. The petitioner has enclosed income certificate from Tahsildar, Walajah Taluk, Vellore District dated 29.04.2011 indicating that her father is a coolie whose annual income is only Rs.24,000/-. The petitioner has also enclosed community certificate that she belongs to Hindu Adi Dravida Community / Scheduled Caste. It is submitted that the petitioner's father is an illiterate person and with great difficulty and in utter poverty, the petitioner has passed the higher secondary course.

9.At this juncture, it is pertinent to point out that earlier, higher education was fully imparted by the State Institutions or by the State Aided Institutions. The Constitution Bench in the case of **UNNIKRIISHNAN VS. STATE OF ANDHRA PRADESH [1993 (1) SCC 645]** held that the State alone cannot cater to the educational needs of the society and private parties also can be permitted. In the said case, a scheme of free and payment seat was devised. The judgment made it clear that admission of students both under free seat and payment seat shall be strictly based on merit.

10.Later, a 11 Judge Bench in **T.M.A. PAI FOUNDATION VS. STATE OF KARNATAKA [2002 (8) SCC 481]** over-ruled the decision of **Unnikrishnan's case** (cited supra) and held that it is inequitable for the students under payment

seat to bear the expenses of free seat students. Thus, after the judgment of the **T.M.A. Pai's case** (cited supra), all the students have to bear educational expenses.

11. After the decision in **T.M.A. Pai's case** (cited supra), 7 Judges Bench in **P.A. Inamdar and others Vs. State of Maharashtra and others [2005 (6) SCC 537]** held that the State cannot interfere with the admission of students in the self financing educational institutions except to the extent of ensuring that the admission of students are made based on merits and to the extent of preventing those institutions from collecting capitation fee and collecting exorbitant fees thereby making profiteering. For the said purpose, two Committees each headed by a retired High Court Judge was constituted, one Committee is to ensure admission of students are made purely on merit and the second Committee is to fix fee for various courses for each self financing educational institutions. The self financing colleges on their own may surrender some percentage of seats to Government to fill those seats. This is popularly called Government quota. The Government fill up those seats based on merit. Thus, the admission of students under the Government quota or under the Management quota, the admission shall be solely based on merit as per the law laid down by the Supreme Court.

12. Therefore, the respondents cannot make any distinction between students who are admitted under Government quota or Management quota, since all are admitted based on merit alone, as per the law laid down by the Supreme Court.

13. In the light of the decision in **T.M.A. Pai's case** (cited supra), 7 Judges Bench in **P.A. Inamdar and others Vs. State of Maharashtra and others [2005 (6) SCC 537]** held that all the seats both under Government Quota and Management Quota, shall be filled based on merit alone. The Apex Court has also constituted a committee headed by a retired High Court Judge to monitor the admissions in the professional colleges. Therefore, both the admissions made either under Government Quota or Management Quota shall be based on merit alone. In this case, no one who has got admission with more marks has come to this Court questioning the admission of the petitioner in B.Sc., Nursing Course. The Committee headed by a retired High Court Judge also or the Government did not

find fault with the admission of students made by the College wherein the petitioner got admission. Therefore, the respondent Bank cannot deny educational loan to the students admitted under Management Quota.

14. In the Division Bench judgment of this Court dated **20.04.2012 in W.A.(MD) No.1629 of 2011 and W.P.(MD) No.8214 of 2012 and etc., batch cases**, relied on by the respondent Bank, arguments were not addressed as to whether any distinction can be made for grant of educational loan between the students got admission under the Government quota and Management quota, particularly when both the admissions are based on merit in terms of the judgment of the Supreme Court in **T.M.A. Pai's case** (cited supra) and **P.A. Inamdar's case** (cited supra). Hence, the respondent Bank cannot rely upon the Division Bench judgment to deny educational loan for the petitioner.

15. Further, in **M.ABDUL NABI VS. CANARA BANK AND ANOTHER (W.P.(MD) NO.2716 OF 2012 - DECIDED ON 03.08.2012)**, I have considered the grant of educational loan to the petitioner therein in the light of the development in the field of higher education and issued direction to grant educational loan. Paras 10 and 11 of the said judgment are extracted hereunder:

"10. Initially, when more private colleges came into the field of education, the Constitution Bench in Unni Krishnan Vs. State of Andhra Pradesh reported in 1993 (1) SCC 645 has devised a scheme providing 50% of the seat as "free seat" and another 50% as "payment seat". Both the free seat and payment seat are to be filled up solely based on merit as per the said judgment of the Constitution Bench. Unni Krishnan case was reversed by the Larger Bench of the Honourable Apex Court in TMA PAI case. In TMA PAI case it has been held that there cannot be any free seat, that is, there cannot be any free seat after the judgment of the Honourable Apex Court in TMA PAI case. Thereafter, the students are classified as Government quota and Management quota. Both the students, who are admitted under Government quota and Management quota, should be admitted on merits alone. Even the students under management quota cannot be admitted without merits. Therefore, the Bank cannot say that the students admitted under Management quota cannot be considered for educational loan.

11.In fact, I have considered the issue relating to the grant of educational loan in detail in the order dated 16.09.2010 in S.Maran Vs. The Branch Manager, State Bank of Travancore, Chennai (W.P.No.556 of 2010) and held that the criteria for granting educational loan, particularly, after commercialization of education, is as to whether the applicant, who joined the B.E. Course, was eligible to join the course, as per the norms prescribed by AICTE / University / Government. Since there is no free seat after the judgment of the Apex Court in TMA PAI case, poor cannot have recourse to education, if educational loan is deprived on one ground or other. The application for educational loan shall not be considered, as seeking loan for commercial purpose. The student is not approaching the Bank for commercial purpose. The student is also not making a claim for scholarship, where the merit shall be the criteria."

16.In **S.MARAN VS. THE BRANCH MANAGER, STATE BANK OF TRAVANCORE, CHENNAI (W.P.NO.556 OF 2010-DECIDED ON 16.09.2010)**, referred to in para 11 of the judgment in **M.ABDUL NABI VS. CANARA BANK AND ANOTHER (W.P.(MD) NO.2716 OF 2012 - DECIDED ON 03.08.2012)**, I have noted that Dr.Ambedkar who belongs to Scheduled Caste was given educational aid by the Baroda King. If the Baroda King had not given aid to Dr.Ambedkar to acquire higher education, we would not have got an eminent scholar, since Dr.Ambedkar obtained only 38% marks in the matriculation examinations. I have noted that Public Sector banks shall behave better than the Baroda king.

17.Here, the petitioner wants only Rs.1,92,500/- as educational loan for the entire course. The bank is not justified in refusing the same. I am of the considered view that the petitioner is entitled to succeed.

18.In the result, the Writ Petition is allowed and the respondent bank is directed to sanction the educational loan to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

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