
(2009) 06 KL CK 0147
In the High Court Of Kerala
Case No : W.A. No's. 2160 of 2008

Joint Registrar

APPELLANT

Vs

Triruvalla East Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 19-06-2009

Acts Referred:

Citation : (2009) 3 KLT 185

Hon'ble Judges : K. Balakrishnan Nair, J;C.T. Ravikumar, J

Bench : Division Bench

Advocate : A.G. Aneetha, Spl. Government Pleader, S. Subash Chand and M.P. Mary, for the Appellant; P. Ravindran Anil Sivaraman, D. Somasundaram, V.G. Arun, T.R. Harikumar and P.U. Shailajan, S. Subash Chand and M.P. Mary, for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair, J.

W.A. Nos. 2160 of 2008 & 184 of 2009

1. The point that arises for decision in these appeals is whether the provision of Rule 182(4)(v) of the Kerala Co-operative Societies Rules (hereinafter referred to as "the Rule") are mandatory or directory. W.A. No. 2160/2008 is filed, by the Joint Registrar of Co-operative Societies, Pathanamthitta, against the judgment in W.P. (C) No. 3170/2008 : reported in 2008 (4) KLT 220 filed by the Thiruvalla East Co-operative Bank Ltd. No. 3260 (hereinafter referred to as "the Bank"). W.A. No. 184/2009 is filed, by the Registrar of the Co-operative Societies, Trivandrum, against the judgment in W.P.(C) No. 20128/2008 filed by a candidate, who applied for appointment to the post of Junior Clerk in Thiruvalla East Co-operative Bank Ltd.

2. W.A. No. 2160/2008 is treated as the main case for the purpose of referring to exhibits. The brief facts of the case are the following:

The Thiruvalla East Co-operative Bank Ltd. reported 15 vacancies of Junior Clerks to the Co-operative Service Examination Board (hereinafter referred to as the Board). Pursuant to the said intimation, the Board invited applications for appointment to the post of Junior Clerk in the Bank and also for appointment in 34 other Co-operative Societies, which have similarly moved the Board, reporting vacancies of Junior Clerks in the respective Societies. The Board published the notification inviting applications on 10.10.2006. A written test for the candidates, who applied pursuant to the said notification, was held on 9.9.2007. The results of the test were published on 24.11.2007. 695 candidates cleared the written test. The Board by Ext.P2 communication dated 29.11.2007 forwarded the list of candidates to the Bank for conducting interview and for sending the marks obtained by the candidates in the interview to it. The outer time limit for sending the marks after holding the interview was 28.1.2008. At the relevant time, a superseded Managing Committee was in power, which was continuing in office on the strength of the interim order passed by this Court in W.P.(C) No. 27925/2007. . While moving the Writ Petition, challenging the supersession order before this Court, an undertaking was given on behalf of the Managing Committee that they will not make any appointments. In view of the said undertaking, the Managing Committee could not hold the interview within the stipulated time limit. So, it passed Ext.P3 resolution requesting the Board to grant extension of time for the interview. It was followed by Ext.P4 request praying for grant of further time. The Board considered the request of the Bank and issued Ext.P5 communication rejecting the prayer for extension of time. Ext.P6 is an interlocutory application filed in W.P.(C) No. 27925/2007 by the President of the Bank, praying for permission of this Court to conduct the interview for appointment of 15 Junior Clerks in the Bank. Since the said petition was opposed by the respondents, no order was passed on it and therefore, it was not possible to hold the interview in time. In the above factual background, feeling aggrieved by the stand taken by the Board in Ext.P5, the Writ Petition was filed praying to quash Ext.P5.

3. The Bank also prayed for a declaration that Rule 182(4)(v) of the Rules to the extent it requires conduct of interview by the Managing Committee, within two months from the date of receipt of the list of candidates from the Board, is only directory and not mandatory. The Bank prayed for a mandamus directing the Board to extend the time limit for the conduct of the interview as requested in Exts.P3 and P4.

4. The respondents in the Writ Petition resisted the prayers therein, contending that the provisions of the Rule 182(4)(v) are mandatory and therefore, there cannot be any extension of time. Interview held after the time limit was illegal. The learned Single Judge considered the rival submissions and held that in exceptional circumstances the time limit for interview provided under Rule 182(4)(v) could be extended. The learned Single Judge took the view that the case on hand is one where extension of time should be granted. It was noticed that the delay was occasioned in this case for bona fide reasons. It was ordered that the

Managing Committee can conduct interview within 45 days from the date of receipt of a copy of this judgment and in that event the Examination Board shall recognise and act upon the list forwarded by the Bank within two weeks followed by the interview. Feeling aggrieved by the said judgment, the 2nd respondent in the Writ Petition, the Joint Registrar of Co-operative Societies, has filed W.A. No. 2160/2008.

5. We heard the learned Counsel on both sides. Smt. Aneetha, learned Special Government Pleader, who appeared for the appellant, submitted that going by the scheme of the Kerala Co-operative Societies Rules, the time limit prescribed under Rule 182(4)(v) has to be held as mandatory. Any other interpretation will defeat the very purpose of the Rule. We also had the benefit of hearing Mr. Subhash Chand, who appeared for the appellant in W.A. Nos. 255 & 256/2009. The learned counsel took us through the relevant provisions of Rule 182 and submitted that the time limit prescribed for conducting the interview is intended to maintain the confidentiality of the marks obtained in the written test by the candidates. After the time limit given to various Co-operative Societies for conducting the interview is over, the list of candidates, which will disclose the marks obtained in the written test, will be sent to Co-operative Societies by the Examination Board under Clause (vi) of Rule 182(4) of the Rule. If interview in one Society is conducted after the details of the marks have reached another Co-operative Society, the Managing Committee members of the relevant Society can obtain the marks of the candidates and modulate the awarding of marks to favour candidates of their choice. So, it should be held that the relevant provisions contained under Clause (v) of Rule 182(4) should be interpreted as mandatory, it is submitted.

6. The learned Government Pleader and learned counsel for the appellants in the connected cases, relied on the following decisions in support of their submissions:

Visitor and Others Vs. K.S. Misra, , Madhavan v. Excise Inspector 2000 (1) KLT 311, Mohan Singh and Others Vs. International Airport Authority of India and Others, , Balwant Singh v. Anand Kumar Sharma JT 2000 (3) SC 1637 and District Executive Officer Vs. Abel, .

7. We heard the learned senior counsel, Sri. P. Raveendran, who appeared for the bank and also the learned Standing Counsel for the Examination Board. The Examination Board in fact supported the appellants. The learned senior counsel for the Bank submitted that the provisions of Rule 182(4) govern the procedure regarding selection and appointment, Normally, such provisions governing procedure are interpreted as directory only. If statutory provisions governing public functions of statutory authorities are held to be mandatory, the same will cause serious prejudice to third parties, who have no control over the actions of such authorities. In this case, the Co-operative Society is an authority discharging statutory functions and if its actions are held to be mandatory, the same will seriously prejudice the candidates involved in the selection. The learned Counsel also submitted that by the violation of the relevant provisions,

no prejudice has been caused to anyone. There is no complaint from any quarters on this point. The appellants do not have any such case in their pleadings. The learned Senior Counsel also submitted that during the pendency of the appeal, as allowed by the learned Single Judge, interview was held and the list was forwarded to the Examination Board, which in turn has sent back the consolidated list and from that list, 14 candidates were already appointed. None of them is before this Court. Therefore, the Writ Appeal is not maintainable. The learned senior counsel also relied on the following decisions in support of his submission that the relevant provision should be interpreted as directory only: Balwant Singh and Others Vs. Anand Kumar Sharma and Others, , P.T. Rajan Vs. T.P.M. Sahir and Others, and U.P. State Electricity Board Vs. Shri Shiv Mohan Singh and Another, .

8. We considered the rival submissions made at the Bar and also perused the pleadings and materials on record. Before going to the merits of the case, first, we will deal with the contention of the learned senior counsel, Mr. P. Raveendran, for the Bank that the appointees should have been impleaded and they should have been given an opportunity of being heard. It is common case that the appointments were made subject to the result of the appeals. The candidates were also informed accordingly, as evident from one of the appointment orders, placed on record in this batch of the cases. It cannot be contended that judgment of the learned single Judge cannot be reversed, for the reason that it has been implemented during the pendency of the appeal. Its implementation and all other orders passed are dependent orders and they will collapse, if the judgment under appeal is reversed. So, the said contention cannot be accepted.

9. Going by the decisions cited at the Bar by both sides, the following principles emerge:- If an administrative action is impugned contending that the same has been taken in violation of a statutory provision, the Court has to ascertain whether the relevant statutory provision is mandatory or directory in nature. The general principle is that when the statutory provisions provide that something shall be done in a particular manner, it should be done in that manner only. If the literal meaning of the above principle is followed, then all actions in violation of statutory provisions should be held to be invalid. But, the said general principle is subject to the exception that the action will become invalid, if only the injunction of the Statute is found to be mandatory. If the provision is found to be directory in nature, it has to be further ascertained whether any prejudice has been caused, making it necessary to nullify the action. This being the undisputed and settled legal position evident from the decisions cited, we do not propose to refer the each decision separately.

10. Now, we will deal with the merits of the main contention urged before us, that is, whether the concerned provision is mandatory or directory. It is settled position in law that normally procedural provisions should be interpreted only as directory in nature. Further, in the matter of appointment to the Co-operative Society, the Managing Committee is discharging a statutory function of

interviewing the candidates and forwarding the marks obtained by each candidate to the Co-operative Examination Board. So, the general principle that provisions concerning public functions of an authority "should normally be held to be directory to avoid inconvenience to persons, who have no control over the actions of such authorities is applicable here. If the interview is delayed by one day or forwarding of the mark list of the interview is, for some reason, delayed for one or two days and if the provision is held to be mandatory, the selection process has to be re-done again. There should be atleast fresh written test for candidates who have already applied. The candidates, therefore, will be put to irreparable injury and hardship, if we hold that the provisions of Clause (v) mentioned above is mandatory. The interest of the Society will also be adversely affected. So, we hold that the time limit prescribed in Rule 182(4)(v) is only directory. Going by the scheme of the Rule, we are of the view that there will be substantial compliance with the provisions of the Rule, if interview is held and the list is send to the Board within a reasonable time limit, even if, the same is beyond the time limit fixed under the Rules. Going by the decisions cited by both sides, we are of the view that this is the only possible view that could be taken on the facts of the case and the scheme of the relevant rules. So, for the violation simplicitor of the time limit prescribed in Clause (v), the result of the interview need not be cancelled or the Managing Committee need not be prevented from commencing or proceeding with the interview already started.

11. But, the point to be decided is what will be the reasonable time limit within which the interview has to be completed. Sub-rule (4) of Rule 182 reads as follows:

182(4). In respect of recruitment to societies covered by Section 80B of the Act, the following procedure shall be followed:

(i) The Society shall report the vacancy to the Co-operative Service Examination Board and the applications for appointment shall be invited by the Co-operative Examination Board, by notification in two vernacular dailies, having wide circulation in the area. The notification shall include the details of number of vacancies, qualifications required for the post, age and reservation, if any, the mode of application, method of appointment and other required details. The Co-operative Service Examination Board my collect application fee along with the application at the rate fixed by the Registrar of Co-operative Societies from time to time. The Examination Board shall process the applications and prepare the list of candidates to be called for the written test. One copy of the prepared list shall be published in the notice Board of the Examination Board and one copy shall be sent to the society for publication in its notice board. The society shall publish it in the notice board and copies thereof in the branch offices of the society. The arrangements for the written test shall be made by the Examination Board.

(ii) The Examination Board shall conduct the written examination of the candidates and furnish a list of eligible candidates to be interviewed to the

committee of the society within a period of three months from the date of requisition by the society. The list so furnished shall not contain the mark secured by the candidates;

(emphasis supplied)

(iii) The maximum marks for written examination shall be 80 and those who secure 40% of the marks shall only be eligible to be included in the list for interview;

Provided that in case of candidates belonging to Scheduled Caste or Scheduled Tribe, those who secure 30% of marks and above shall be included in the list.

(iv) The maximum marks for interview shall be 15; Provided that the minimum marks for interview shall be 3.

(iv A) Candidates of home district shall be awarded 5 marks over and above the marks for interview as grace marks.

(v) On receipt of the list from the Examination Board, the committee shall conduct interview of the candidates within two months from the date of such receipt and return the list to the Examination Board noting the marks secured by each candidates, in the interview within a period of two weeks;

(vi) On receipt of the list from the society, the Examination Board shall note down the marks secured by each of the candidate in written examination and return consolidated list with the total marks obtained by each candidate. This shall be done within a period of one week.

(vii) On the basis of the consolidated list so received from the Examination Board, the committee shall prepare the rank list of candidates and publish the same in the notice board of the society. The society shall send one copy of the rank list so published to the Examination Board also. The Board shall examine the correctness of such rank list and report to foe Registrar, foe irregularities, if any. The list shall be valid for a period of two years from the date of publication of the same by foe society.

(emphasis supplied)

(viii) All appointments to the vacancies shall be made by the committee from the select list so published; within one month from the date of such publication and shall be reported to the Examination Board.

(ix) Expenses, if any, incurred over and above the fees collected by the Examination Board, shall be borne by the society concerned.

12. The scheme of the Rules would show that it is designed in such a way as to prevent the interviewers from knowing the marks of the candidates beforehand. If they know the marks, the award of the marks in the interview can be appropriately manipulated, so that the candidates of their choice get higher ranks and their rivals get lesser marks. To avoid this, Clause (ii) of Rule 182(4)

says "the list so furnished shall not contain the mark secured by the candidates".

13. Sub-rule (2) of Rule 182A provides that the Board shall be responsible to maintain the secrecy in the preparation of question paper, valuation, preparation of list of candidates to be interviewed and preparation of consolidated list to be furnished finally to the societies concerned. So, if the Society is allowed to wait till the list of the candidates with consolidated marks are sent by the Board to other Co-operative societies, the members of the Managing Committee will be able to know the marks secured by the candidates in the list. This happens because many of the candidates apply for appointment to several societies pursuant to the common notification. In the case of such candidates, the consolidated marks including the marks of the written test will be sent to all those Societies opted by them. That means after a particular point of time, the marks of candidate A, who applied for appointment in the 1st respondent Bank, will be available with several other Societies, if he has applied for appointment in those Societies also.

14. In this case, we notice that the last date fixed for completing the interview and sending the marks of interview was 28.1.2008. The Examination Board consolidated the marks sent by various Societies and returned the list of candidates to those societies covered by the common notification on 16.2.2008. On receipt of the said list, most of the Societies made appointments in March 2008 itself. The possibility of the marks of the candidates in the written test being made public starts from 16.2.2008, the date on which the Examination Board sent the list of candidates to various Societies. In this case, in one of the connected Writ Appeals, the consolidated list of candidates showing the marks in the written test and interview sent by the Examination Board to Pannivizha Service Co-operative Bank Ltd. No. 891, Pathanamthitta, is on record, as part of the pleadings. The said list would reveal the marks of the candidates secured by them in the written test. The possibility of the marks in the written test of the candidates who applied for appointment in other Societies also, being known to the members of the Managing Committee of Thiruvalla East Co-operative Bank Ltd. No. 3260 cannot be ruled out. Whether they have received the marks or not is not relevant. The chances of the members of the Managing Committee, receiving the list containing the marks, itself will vitiate the interview, in view of the scheme of the Rules, many of which are designed to prevent the interviewers from getting marks in the written test before the interview is over. So, in this case, prejudice has been caused to the interest of the Bank, its members, the candidates and the public. The secrecy of the procedure designed to prevent manipulation has been breached in this case. The contention of the appellant that no one has come forward complaining about the prejudice etc. to the Bank cannot be accepted. The Registrar and Joint Registrar concerned, who are the appellants in this case, can legitimately point out the above aspect in public interest and seek nullification of the interview. So, we are of the view that in this case, this Court should not have allowed the Managing Committee to hold the interview by the judgment, which was rendered on 16.9.2008, within 45 days of

the receipt of the copy of this judgment. It can be safely presumed that by that time everyone knew what were the marks of the candidates concerned. In view of the above finding, the judgment under appeal is reversed. The Co-operative Examination Board shall take steps to hold fresh written test for the candidates, who applied for the post in the 1st respondent Bank, as expeditiously as possible, and continue the selection process from the stage of holding the written test.

15. Having regard to the facts of the case, the 14 candidates already appointed, subject to the result of the Writ Appeal, shall be allowed to continue, provisionally, till the selection process is completed, provided there are vacancies to accommodate them in the Bank. Upon completion of the selection process, when regular hands are appointed, the 14 provisional appointees shall be retrenched to give place to the regular hands, unless they are also selected for appointment along with other successful candidates.

The Writ Appeals are allowed as above.

W.A. Nos. 255 & 256 of 2009:

In view of the above judgment in Writ Appeal Nos. 2160/2008 and 184/2009, no separate orders are required in these cases. Accordingly, they are closed.