
(2002) 02 SC CK 0011
In the Supreme Court Of India
Case No : 443 Of 2000

N.K. Rajan

APPELLANT

Vs

S. Padma and Others

RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 80(3A)

Citation : (2002) 1 JT 133 Supp

Hon'ble Judges : S. Rajendra Babu, J;P. Venkatarama Reddi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

C. A. No. 443/2000

1. The recruitment to the posts of clerks on the establishment of Alleppey District Co-operative Bank Ltd. (hereinafter referred to as the 'Bank') was commenced in the year 1987-88. However, a notification was issued in June 1990 inviting applications for the same. On 2.12.1990 written test was conducted as a result of which selections were made and appointment orders were also issued. The joint registrar of cooperative societies in exercise of his powers under relevant statute issued show cause notice. O.P. No. 6781/1992 was filed before the High Court challenging the orders of the joint registrar.

2. The High Court by an order made on 27.1.1992 directed the joint registrar to proceed with the inquiry after notice to the bank and to the concerned parties. The joint registrar was also directed to scrutinize the records relating to the selection of the candidates and to pass final orders after inquiry within a particular stipulated time. In O.P. No. 15848/1992 filed by the bank, it was permitted to proceed with the interview provided a committee consisting of five persons named in exhibit-P-7 constituted the interview board. Writ appeal No. 345/1992 was preferred against that order and the division bench of the High Court granted interim order staying further selections which stood sine die.

Subsequently, the said writ appeal was dismissed by an order made on 24.1.1995. Thus there was no impediment for the society to continue with the process of selection commenced by it earlier in terms of the order made by the High Court in O.P. No. 6781/1992. In the meanwhile , an ordinance known as Kerala Co-operative Societies (Amendment) Ordinance, 1995 was issued which came into effect from 25.4.1995 which by sub-section (3-A) Section 80 provided as under:

"(3-A) Notwithstanding anything contained in this Act or rules made or order issued thereunder or in the bye-laws of any society relating to the recruitment and conditions of service of officers and servants of societies, all appointment of officers and servants of the societies mentioned in the schedule for which direct recruitment is resorted to shall be made from a select list of candidates furnished by the Kerala Public Service Commission."

3. It is brought to our notice that a circular had been issued not to make any selection except in terms of the ordinance issued by the government. Thereafter, another order had been issued to cancel the appointments that have been made pursuant to the selections that had been effected. Thereafter, two writ petitions were filed before the High Court OP. No. 10361/1995 and O.P. No. 7003/1995. One of them sought for a mandamus directing the respondents to proceed with the selection process forthwith and a further direction to continue the selection process from the stage it had been stopped. In another petition, the petitioner sought for quashing of the ordinance and also to declare the said provisions of Section 80 (3-A) of the Kerala Cooperative Societies Act as unconstitutional and also to direct the bank to proceed with the recruitment process as directed by the full bench to which we have adverted earlier. The High Court proceeded to dispose of the matters by noticing various provisions of the Act and the hardship that had been caused to the bank in the matter of non selection of the candidates for the posts to be filled up and, therefore, disposed of the original petitions with a direction to bank to proceed with the selection and appointment of required number of employees as per the work load in accordance with the rules and procedures that existed prior to the ordinance. This order is in appeal before us by special leave.

4. Pursuant to the selection made as per the order of the High Court dated 16.6.1998, selection were made and 30 employees from the primary societies and 23 direct recruits were appointed on 23.7.1998. The registrar of cooperative societies made an order on 17.11.2001 directing the bank to terminate the services of the employees in the light of the decision of the High Court in O.P. No. 12574/ 1998 and 12735/1998. It is brought to our notice that the division bench of the High Court in O.P. 25 161/1998 - Thomas Philip & Ors. v. The President, Kottayam District Co-operative Bank Ltd. disposed of on 17.1.2001, considered the effect of the Act replacing the ordinance and explained the legal position therein. The High Court was of the view that the appointments have to be made only in terms of Section 80 (3A) of the Kerala Cooperative Societies Act and only

from a list furnished by the Kerala Public Service Commission in respect of vacancies that have arisen prior to 25.4.1995 or subsequent to 25.4.1995. That order was followed in another decision of the High Court in O.P. 12574/1998 and O.P. 12735/1998. That matter is also brought up before this Court by way of special leave.

5. The District Cooperative Bank is also challenging the order made by the High Court in O.P. 12574/1998 and 12735/1998.

6. The first aspect that arises for consideration in this case is that the selection process that had been commenced as early as 1990 was interrupted by one proceeding or the other either by the registrar of the cooperative societies or by the High Court and the process of selection could not be completed even at the time when the full bench of the High Court disposed of the matter or thereafter because of the circulars issued by the authorities by reason of the ordinance that was issued later on or the enactment thereof. The fact remains that there is an order of the High Court to the effect made in O.P. 15848/ 1992., that the selection should be made by an independent panel and that panel should consist of 5 persons whose names were suggested to the court. The court stated that the bank should be permitted to go ahead with the interview provided 5 gentlemen named in exhibit P7 of the petition constitute the interview board and actually interview the candidates. This is the order that became final by reason of the dismissal of the writ appeal filed against the same by the full bench. This order thus has become final. If that is so, the bank did get right to go ahead with the interview and make selections as directed by the High Court. Whether that order is affected by the ordinance or amendments to the Cooperative Societies Act, is sought to be canvassed. We have set out the provisions of Section 80 (3A) of the Act which do not indicate that it will affect any judgement or decree. In that event, the clear position would be that the interview could be held pursuant to the order made by the High Court and that was exactly what has been done in the present case. In that background, the division bench of the High Court in disposing of the petitions took the view that process could be completed and appointments as required could be made and no exception can be taken thereto. However, Mr. K Sukumaran, learned senior advocate and Mr. L Nageswar Rao, learned senior advocate for the appellants strongly contended that the settled law of this Court is that no right flows to another candidate as a result of any selection made and in this case, process of selection was never completed and therefore, no infallible right flows to any one of the candidates. If that is the position, it was certainly open to the authority concerned or the government which has control over cooperative societies to alter the policy of recruitment and that policy as reflected in the amended Act being that selections should be made to the posts only through the public service commission, no exception should be taken thereto and the order made by the High Court in the earlier petition which have adverted and the directions issued therein will not come in the way of formulating proper policy since no right flows to any of the parties from that judgment.

7. The position in law is settled by this Court in Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, in which it was noticed as follows:

"The judgement given by the Calcutta High Court which is relied upon by the petitioners is not a mere declaratory judgment holding an impost or tax to be invalid so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. It is a judgment giving effect to the right of the petitioners to annual cash bonus under the settlement by issuing a writ of mandamus directing the LIC to pay the amount. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the LIC. Therefore, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the LIC is bound to obey the writ of mandamus issued by the Calcutta High Court and pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to the class 111 and class IV employees."

8. We are not looking at the matter from the point of view of the candidates to be selected. The arguments advanced by Mr. L. Nageswar Rao and Mr. K. Sukumaran, learned senior advocates have been from the point of view of the candidates. What is to be seen is whether the bank had any right to make selection in terms of the orders made by the High Court. If the bank has such a right, nothing can stop it, particularly, when the ordinance not in so many words has affected such an order at all. In that view of the matter, we think the action directed by the High Court is perfectly correct and no interference is called for. Therefore, this appeal shall stand dismissed.

Civil Appeal Nos. 1451-1452/2002 (@ SLP(C) 22647-22648/2001)

Civil Appeal Nos. 1453-1454/2002 (@ SLP (C) 22104-22105/2001)

9. Leave granted.

10. In these cases the High Court merely referred to the decision rendered by it in O.P. 25161/1998 which was related to the Kottayam District Cooperative Bank. The special facts and features arising in the present case to which we have advanced in the course of order made in C.A. 443/2000, were not adverted to nor considered by the High Court. The order made by the High Court in these matters shall stand set aside. As a result thereto , it is needless to say that the registrar's orders cannot be given effect to because he relied upon the order made by the High Court in O.P. 10361/ 1995. The appeals are allowed accordingly.