
(2002) 01 KL CK 0049

In the High Court Of Kerala

Case No : W.A. No"s. 1631, 1632 etc. of 2000

Pothanicad Farmers Co-op. Bank Ltd.

APPELLANT

Vs

Joint Registrar

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2002) 01 KL CK 0049

Hon'ble Judges : K.S. Radhakrishnan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : T.P. Kelu Nambiar, A. Vijayakumar, E. Subramani and Mathew John, for the Appellant; P.P. Jacob and M.A. Thomaskutty, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Dispute in these cases relates to the appointments effected in the Pothanicad Farmers Co-op. Bank Ltd. All the appointments were sought to be annulled by the present Board of Directors of the Bank on the ground that the appointments were effected in violation of the various provisions of the Co-operative Societies Rules and Circulars issued by the Registrar of Co-operative Societies. Notice was accordingly issued to all those appointees. Aggrieved by the same they have preferred O.P. 28346/99. Learned Single Judge allowed the Writ Petition. Aggrieved by the same the President of the Bank has preferred W.A. 1632/2000. O.P. 10823/99 was preferred challenging the selection procedure by which the petitioners in O.P. 28346/99 were appointed, which was dismissed, against which W.A. 1654/2000 was preferred. O.P. 28503/99 was preferred seeking a direction to the Bank to conduct fresh selection in compliance with Circular Nos. 46/89 and 18/91. O.P. was dismissed. Aggrieved by the same W.A. 1633/2000 was preferred. The Board of Directors of the Bank had also filed O.P. 14154/2000 challenging the order passed by the Joint Registrar in rescinding the resolution of the Bank for reduction of salary of the appointees. O.P. was

dismissed. Aggrieved by the same Board of Directors has preferred W.A. 1631/2000. Since common issues arise in all these cases we propose to dispose of these matters by a common judgment. We may refer to the facts in O.P. 28346/99.

2. Pothanicad Farmers Co-op. Bank is a primary credit society engaged in banking business having branch offices. Joint Registrar of Co-operative Societies sanctioned certain posts of Junior Clerk, Typist, Depot Manager, Driver, Peon etc. vide his order dated 18.11.1998. The Managing Director of the Bank then published a notification dated 20.12.1998 inviting application for filling up of those posts. Bank received several applications including application from the petitioners. Written test was conducted on 30th and 31st of January 1999. After conducting written test as well as interview 11 candidates were appointed, out of which one was reserved for Scheduled Castes and Scheduled Tribes. The Managing Committee had decided on 27.4.1999 to publish the rank list and on the basis of rank list petitioners were appointed.

3. Complaining that while selecting candidates as well as effecting appointments norms laid down by the Registrar of Co-operative Societies by circular No. 46/89 were not followed, O.P. 24284/98 was filed. O.P. was disposed of by this Court on 7.12.1998 directing the Joint Registrar to look into the complaint raised by the writ petitioners therein. It was pointed out that while effecting appointment proper representation was not given to members of Scheduled Castes and Scheduled Tribes. Consequently it was urged that the resolution to effect appointment in the bank be rescinded. Joint Registrar of Co-operative Societies then conducted an enquiry through Assistant Registrar who submitted a report dated 23.12.1998. Based on the report Joint Registrar was pleased to dismiss the complaint holding that the selection was not violation of Circular No. 46/89. Appeal was preferred against the order of the Joint Registrar before the Government u/s 83 of the Co-operative Societies Act. The same was dismissed by the Government by order dated 15.6.1999 holding that selection was conducted in accordance with Circular No. 46/89. Subsequently the Bank published the rank list.

4. In the meantime two Writ Petitioners, O.P. 11196/99 and O.P. 11346/99 were filed challenging the manner in which written test and interview were conducted. In O.P. 11346/99 a counter affidavit was filed by the Managing Director of the Bank stating that the selection was conducted strictly in accordance with the circular issued by Registrar by engaging an outside agency. Bank therefore contended that there is no basis in challenging the selection process.

5. The petitioners were subsequently appointed and they are continuing in various posts. Election was conducted to the Board Directors of the Bank on 27.6.99 and the result was declared on 30.6.99 and new elected board took charge. We may in this connection point out that 4th petitioner who was on maternity leave was not permitted to rejoin duty by the new Board of Directors. Consequently she moved the Joint Registrar of Co-operative Societies who

passed an order on 11.9.99 directing the Bank to allow her to join duty. Matter was taken up by the Board of Directors before the Government by filing appeal. The first respondent however took a decision to reduce the salary of the petitioner. Petitioners challenged the said action of the Bank and approached the Joint Registrar. The Joint Registrar rescind the decision taken by the Bank in reducing salary and also the action taken for payment of consolidated amount. In the meantime, President of the bank issued notice dated 10.11.1999 to the writ petitioners. Petitioners were called upon to submit options in writing agreeing to continue in the service of the Bank for a period of three months or till the fresh selection is conducted to the 11 posts failing which it was ordered that their services would be terminated without further notice. Challenging those notices O.P. 28345/99 was filed. When the matter came up for hearing we heard counsel for the petitioners Sri. E. Subramani, Sri. Mathew John as well as the senior counsel Sri. T.P. Kelu Nambiar and Sri. P.P. Jacob who appealed for the respondents.

6. Counsel appearing for the bank raised a preliminary objection that O.P. 28346/99 is not maintainable since challenge is against the notice issued by the President of the Bank. Counsel placed reliance on the decision of this Court in *Bhaskaran v. Addl. Secretary* 1987 (2) KLT 903 and also the decision of the Apex Court in *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, . Counsel also submitted that the Bank is justified in cancelling earlier selection after having found that the Board of Directors violated circular No. 46/89. It was pointed out that the decision was taken by the bank to cancel the earlier selection based on an enquiry report submitted by the Secretary of the Bank. Counsel appearing for the writ petitioner Sri. Subramani submitted that Ext. P9 notice was issued with mala fide intention. Counsel submitted selection was challenged before this court as well as Joint Registrar and the Government and all the authorities found there is no irregularity in the conduct of selection. Counsel submitted in view of the earlier orders passed by the Joint Registrar of Co-operative Societies and the Government, Ext. P9 notice has no legal sanctity and consequently this court has got jurisdiction to declare Ext. P9 as null and void and unenforceable as against the writ petitioners in view of the orders passed by Joint Registrar, Government as well as this Court.

7. We have to test the validity or otherwise of Ext. P9 notice issued by the President of the Co-operative Bank in the light of the earlier orders passed by the Joint Registrar dated 14.1.1999 and the Government dated 15.6.1999 as well as the stand taken by the Managing Director of the Bank in O.P. 11346/99. We find that Ext. P9 notice is contrary to the earlier orders passed by the Joint Registrar, Government as well as the stand taken by the bank before this Court in O.P. 11346/99. We are of the view of this Court under Article 226 of the Constitution of India is justified in quashing Ext. P9. A Full Bench of this Court in *Bhaskaran v. Addl. Secretary* 1987 (2) KLT 903 while examining the power of the High Court under Article 226 of the Constitution of India in interfering with the orders passed by the Co-operative Society held as follows:

"The Co-operative Societies are not created by the Co-operative Societies Act and they are not statutory bodies. They are only functioning in accordance with the provisions of the Act. These institutions would have legal existence even if the Co-operative Societies Act was not in force. Moreover, the Government has no shares in the Co-operative Societies. There is no deep and pervasive State control. The management of the societies does not vest in the Government or in the representatives of the Government. The management is under the effective control of a committee elected by the members of the societies. The statutory regulation or restriction in the functioning of the societies is not "an imprint of State under Article 12. We, therefore, hold that no writ will lie against a Co-operative Society governed by the Kerala Co-operative Societies Act and these Writ Petitions will have to be dismissed on that score".

We fully endorse the general proposition laid down by the Full Bench. A Writ Petition would not lie against each and every action taken by the Co-operative Society. A Co-operative Society is not a State within the meaning of Article 12 of the Constitution of India. But a Co-operative Society cannot act mala fide by violating the Circular and directions issued by Joint Registrar and Government on the plea that the decision is by a corporate body. The question whether the previous Board of Directors had violated circular No. 46/89, circular No. 18/91 etc. were in issue earlier. The selection process was also challenged in O.P. 11346/99. Managing Director of the Bank had filed counter affidavit before this Court. It is appropriate we may refer to some of the portions of the counter affidavit which reads as follows:

"The allegation raised in the Original Petition that the written test as well as the interview was conducted in order to help some of the candidates is totally denied hereunder. No favourism has been shown by the bank either for the conduct of written test or for the interview. The written test was conducted as strictly in accordance with the circular instructions issued by the Registrar of Co-operative Societies after engaging an outside agency for the conduct of the written test.

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The sole attempts of the petitioner in the above Original Petition as well as the petitioner in O.P. 11196/99 is to delay the proceedings of the appointment by staying some more other reasons and by filing repeatedly petitions before the first respondent. Since the Joint Registrar has already considered the earlier petitions raised before him there is no meaning in again directing the Joint Registrar to consider and pass orders. The ranking given in the final rank list published is strictly observing the directions issued by the Registrar of Co-operative Societies.

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The attempt of the petitioner, it seems to delay the proceedings. The Bank has incurred huge amount for the conduct of the written test and for the related matters. In the event of the bank is not permitted to make appointment the

interest of the bank will be affected. While sanctioning 11 new posts the Joint Registrar considered all these relevant matters and only due to the urgency sanctioned 11 posts. The Bank is suffering considerable difficulties due to shortage of staff".

We are of the view Ext. P9 notices dated 10.11.1999 issued by the President of the Co-operative Bank is contrary to the order passed by the Joint Registrar dated 14.1.1999 and the order of the Government dated 15.6.1999 as well as against the counter affidavit filed by the bank before this Court. When the society acts in violation of the orders passed by the Registrar of Co-operative Societies under Co-operative Societies Act as well as the orders issued by the Government under the Co-operative Societies Act this Court under Article 226 of the Constitution of India could see whether the Co-operative Societies follow those circulars and orders. In such a situation they cannot take shelter under the Full Bench decision of this Court in Bhaskaran's case (supra). Full Bench decision in Bhaskaran's case would apply only when there is direct challenge against various decisions taken by the Co-operative Society. What is challenged in this case is that by issuing the present notice society was violating the earlier orders issued by the Joint Registrar, Government as well as contrary to the affidavit filed by them before this Court. In such situation we are of the view the principle laid down by the Apex Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, would apply. Apex court held as follows:

"If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to Mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied.

xxx xxx xxx xxx Article 226 confers wide powers on the High Court to issue writs in the nature of prerogative writs. This is a striking departure from the English Law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

xxx xxx xxx xxx The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12.....

xxx xxx xxx xxx What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied".

It may be pointed out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the

requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226. Apex Court again had occasion to consider the maintainability of Writ Petition against a private educational institution in *K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another*, . That was a case where employees sought parity of pay scale with the employees of Government Institutions based on certain Government instructions. High Court took the view the remedy available to them is under the Industrial Disputes Act. Allowing the appeal the Apex Court held:

"In view of the long line of decisions of this Court holding that when there is an interest created Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education, get an element of public interest in the performance of their duties. As a consequence, the element of public interest requires regulation of the conditions of service of those employees on a par with Government employees.

xxx xxx xxx xxx The private institutions cater to the need of providing educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226, the jurisdiction part is very wide. It would be different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly, we hold that the Writ Petition is maintainable. They are entitled to equal pay so as to be on a par with Government employees under Article 39(d) of the Constitution."

The power of the High Court under Article 226 of the Constitution of India to issue writ of mandamus came up for consideration before the Apex Court in *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, . In that case Supreme Court found that the U.P. State Co-operative Land Development Bank Ltd. is an instrumentality of the State and consequently Writ Petition would be maintainable. After an exhaustive survey of various decisions on the point the court held as follows:

"The Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Court to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made

might confer upon him. But then the power conferred upon the High Court under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self imposed limitations have been put there subject to which the High Court would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "but in a china shop" in the exercise of its jurisdiction under Article 226."

We are of the view in this case the Co-operative Bank is statutorily bound by the order of the Joint Registrar dated 14.4.1989 as well as Government order dated 15.6.1989. We have already extracted the stand of the bank before this Court in O.P. 11346/99. They cannot wriggle out of the said stand. We therefore declare that Ext. P9 is contrary to order passed by the Joint Registrar as well as Government and the affidavit filed by the Bank before this Court. The same is declared as null and void.

Since we have found that appointments were validly made the appointees are entitled to get all service benefits including salary, allowances etc. under the Co-operative Societies Act and Rules. The resolution issued in reducing the salary is held illegal. Writ Appeal 1632/2000 would therefore stand dismissed. In view of the findings in W.A. 1632/2000 all other Writ Appeals are only to be dismissed. We do so.