
(1996) 04 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 17517 of 1994 etc.

Purushothaman

APPELLANT

Vs

Registrar

RESPONDENT

Date of Decision : 16-04-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 161, 34, 409, 465

Citation : (1996) 3 ILR (Ker) 171 : (1997) 1 LLJ 88

Hon'ble Judges : K. Sreedharan, Acting C.J.; J.B. Koshy, J

Bench : Division Bench

Advocate : M.K. Damodaran, P.N.K. Achan and M. Ramesh Chander, for the Appellant; T.P.K. Nambiar, for the Respondent

Judgement

Sreedharan, Ag. C.J.

1. These original Petitions have come before us on a reference made by a learned single Judge of this Court. The issue referred is whether the Joint Registrar of Co-operative Societies while rescinding resolution of the society appointing members in its staff should afford hearing to those members who will be sent out of employment.

2. Before dealing with the facts of the case, it is worthwhile to note that all persons who got appointment to the various posts in the Kasaragod District Co-operative Bank Ltd., and who are now thrown out on account of the Joint Registrar's decision to rescind the resolution are before this Court either as respondents in O.P. No. 17823/94 or as petitioners in the other O.Ps.

3. The facts necessary for the disposal of these Original Petitions, which as agreed to by learned counsel appearing on either side in these matters, can be disposed of by a common judgment, are as follows :- Kasaragod District Co-operative Bank is the Central Bank for Kasaragod District, hereinafter referred to as the Bank. The Managing Committee of the Bank resolved to appoint additional staff for carrying on its business. Pursuant to the decision, they approached the

Registrar of Co-operative Societies for sanction to the creation of additional posts. By order No. CB(3) 38114 of 1994 dated November 24, 1994, Registrar of Cooperative Societies accorded sanction for the creation of 95 additional posts over and above the existing staff strength. Even before above sanction was accorded by the Registrar, the Bank issued Notification dated October 10, 1994 inviting applications for various posts. Number of vacancies in each category was not specified in the notification. Nor was there any stipulation as to the number of vacancies reserved for each sector. A large number of candidates applied for various posts. Various circulars issued by the Registrar of Co-operative Societies contained detailed procedure to be followed in the recruitment and selection of candidates to the various posts in the Co-operative Societies. It is alleged that the Bank did not comply with the provisions of those circulars. One retired Joint Registrar of Co- operative Societies was appointed as outside agency for setting the question papers to conduct the examination and to value the answer scripts. The said Joint Registrar Sri V.C. Gangadharan Nambiar was formerly the Administrator of the Bank prior to the election of the present Managing Committee. He was assisted by Sri Narayanan Nambiar, a retired Assistant Registrar of Co-op. Societies who was the Enquiry Officer of the Bank in disciplinary proceedings against its employees. Therefore, it is urged that Sri V.C. Gangadharan Nambiar and Sri Narayanan Nambiar are not independent agencies to be entrusted with, the responsibility of selection of candidates as they are persons having substantial interest in the Bank. Written test for selecting the candidates who applied in pursuance of the Notification was held on December 18, 1994. It is averred that the question papers for the test was set by Sri Pavithran the Superintendent of the Bank. As per the averments in O.P. No. 17823 of 1994, no secrecy was maintained in setting the question papers conducting the written examination and valuing the answer scripts. It is specifically averred that huge amounts upto Rs. 2 lakhs changed hands as gratification for appointment to the post of Clerks. To facilitate the appointment to such candidates, question papers were supplied earlier, the answer books were allowed to be substituted and all types of mal-practices were alleged to have been conducted in preparing the select list.

4. Prior to the decision to appoint additional staff in the Bank, it had a staff strength of 131 members. Registrar accorded sanction for creation of 95 additional posts at the request of the Bank. The Bank did not take any step to get that order of the Registrar varied for increasing the number of the staff to be appointed. But the Bank appointed 108 Clerks/Cashiers as per its proceedings dated January 21, 1995. Again by another proceeding of the same date namely January 21, 1995, the Bank appointed 12 peons/Guest Room Boys. The appointments made under these two proceedings were, it is contended in violation of all norms relating to the selection and appointment to the staff of the Bank.

5. Sri V.K. Raveendran, Vice President of the Bank filed a complaint before the Superintendent of Police, Kasaragod on February 2, 1995 alleging fraud,

manipulations and bribery on the part of the members of the Managing Committee in conducting the test, selecting the candidates and in giving appointments to the various candidates. Some of the Directors of the Bank also filed petitions before the Joint Registrar regarding the manipulations committed by the Bank. Joint Registrar called for the explanation from the President and other office bearers of the Bank on the complaint received by him. It was alleged therein that the rank list approved and signed by the Governing Body members on January 21, 1995 was a fake rank list, that appointments were made in excess of the permitted post, that in the matter of appointments, the reservation policy envisaged by Section 80(4) of the Kerala Co-operative Societies Act and the Registrar's circulars were not followed and that the appointments effected by the Bank are likely to affect the growth and good name of the Bank. Consequently, the President and the Governing Body members were called upon to show cause why the rank list prepared and the appointments made therefrom should not be cancelled. Directors of the Bank and the General Manager gave their written explanations. The President of the Bank did not respond to the notice. Some of the members of the Managing Committee asked for personal hearing. The Joint Registrar fixed 1 P.M. on February 25, 1995 for personally hearing those members. But they did not turn up. Thereafter by proceeding No. CRP. No. 426 of 1995 dated March 1, 1995, the Joint Registrar rescinded the resolutions dated January 21, 1995 invoking his powers under Rule 176 of the Co-operative Societies Rules. The three reasons mentioned for rescinding the resolution were :-

(1) Applications were invited from the candidates for the posts of Clerk/Cashier, Typist, Steno-typist, Peon/Guest Room Boy, Lift Operator and Driver as per the Notification dated October 10, 1994 without specifying the number of vacancies in each category.

(2) The Board did not pass specific resolution to appoint outside agency to conduct the written test of the candidates. Instead the Board authorised the Executive Committee for that and that Executive Committee in its turn authorised two Directors to appoint outside agency. The outside agency thus appointed is against the Rules and Circulars; and

(3) Registrar accorded sanction on November 24, 1994 for the creation of 95 additional posts in different categories. The total number of posts in the Bank was fixed at as 226. But as per resolution No. 1 dated January 21, 1995, the Bank appointed 123 persons, 108 Clerks/Cashier, 3 typists and 12 peons. Though 123 persons were appointed, only 10 SC/ST candidates were appointed. Besides the 50% reservation for the institutional candidates has not been complied with. Accordingly, the appointment made is in excess of the permitted vacancies and without following the reservation rules. As a result of the said order of the Joint Registrar rescinding the resolution the Bank was compelled to take further actions to cancel the appointments immediately.

6. Joint Registrar rescinded resolution passed by the Bank on the ground that the

appointments to the various posts made pursuant to the resolution are against the provisions of the Act, Rules, directions and instructions issued by the Department. As a consequence of this decision, persons who got appointment under the Bank are thrown out of employment. They are not afforded an opportunity of being heard before the decision was taken by the Joint Registrar. The decision of the Joint Registrar has resulted in adverse civil consequences. In such a situation, it is contended that the Joint Registrar was bound to issue notice to those persons and then and then alone he could have issued the order rescinding the resolutions.

7. The ordinary Rule which regulates all procedures is that persons who are likely to be affected by the proposed action must be afforded an opportunity or being heard as to why that action should not be taken. The hearing is to be given depending upon the facts and circumstances of each situation. As observed by the Constitution Bench of the Supreme Court in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, the proposition that notice need not be given of a proposed action because there can possibly be no answer to it, is contrary to the well-recognised understanding of the real import of the rule of hearing. Their Lordships went on to state that it is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done. Procedural objections are often raised by unmeritorious parties. Judges may then be tempted to refuse relief on the ground that a fair hearing could have made no difference to the result. As observed by H.W.R. Wade in 7th Edition of *Administrative Law*, in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudiced unfairly. The learned authors quoted the following observation made by Lord Wright in *General Medical Council v. Spackman* 1943 AC 627.

"If the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision".

8. Rule 176 of the Co-operative Societies Rules reads :-

"Notwithstanding anything contained in the Bye-laws of a Registered Society, it shall be competent for the Registrar to rescind any resolution of any meeting of any Society or of the Committee of any Society, if it appears to him that such resolutions are ultra vires of the objects of the Society, or is against the provisions of the Act. Rules, Bye-laws or of any direction or instructions issued by the Department, or calculated to disturb the peaceful and orderly working of the Society or its contrary to the better interest of the Society"

On an analysis of this provision, it can be seen that Registrar can rescind a resolution only on the existence of one of the four circumstances, (1) If it appears to the Registrar that it is ultra vires the objects of the Society, (2) If it is

against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department or (3) If it is calculated to disturb the peaceful and orderly working of the Society and (4) If it is contrary to the better interest of the Society. This power to rescind the resolution is notwithstanding anything contained in the bye-laws of the Society. If by rescinding a resolution the consequence will result in violation of the provisions of the Act or the Rules, then such a decision can be taken only after hearing the parties who are affected thereby. In such cases if the rescission of the resolution will result in breach of statutory provisions, the principles of natural justice must be taken as in-built in the power of the Registrar. One instance of that type can be the cancellation of a resolution by which persons admitted to the membership of the Society. When the resolution is rescinded, the members will be thrown out. Deprivation of membership consequent on the rescission of the resolution will result in expulsion of those members from the membership of the Society. For expelling one from membership, provisions are made in the Act and the Rules. In such a situation, persons who are likely to be expelled from membership should be afforded an opportunity of being heard in the matter.

9. Resolution passed by the Society admitting members to the staff if rescinded will result in adverse civil consequence to those persons. No provision in the Co-operative Societies Act or the Rules made thereunder deal with the termination of service of a member of the staff of the Society. So it may appear that the Registrar's decision to rescind the resolution will not have the effect of violating the provisions of the Act or the Rules. But as a consequence of his decision under Rule 176, the person who got the appointment will have to be thrown out of employment and that will necessarily result in adverse civil consequence. Viewed in this light, whenever Registrar takes decision under Rule 176 to rescind a resolution passed by the society giving appointment to its staff, the person who will be thrown out should be afforded an opportunity of being heard in the matter. Any contrary view will be violative of the principles of natural justice because the person who got the appointment is deprived of the rights thereunder, without being afforded a responsible opportunity of being heard. A person whose rights are affected must have a reasonable notice of the case he is to face. So also the said person must have reasonable and adequate opportunity to put forth his defence. When the Registrar takes a decision having such a consequence, even if the members of the Managing Committee of the Bank are given the hearing, the person who is affected thereby is denied the opportunity to put-forth his defence. In the instant case, it is admitted case that the Joint Registrar, before rescinding the resolution dated January 21, 1995 did not give any notice to the persons who are sent out of employment. Some have resigned their prior employment and joined the Bank. Their civil rights have been adversely affected and they are thrown out of employment as a result of the decision taken by the Joint Registrar in exercise of his power under Rule 176. The decision so taken is therefore violative of the principle of natural justice.

10. The facts in this case have a different picture. As stated earlier, charges of

corruption, fraud and malpractices were alleged against the Managing Committee in conducting the test and making the selection. On the complaint of one of the members of the Director Board Crime 81/85 on the file of the Kasaragod Police Station was registered on February 3, 1995 for offences under Sections 161, 409 and 465 read with Section 34 of the Penal Code. The Superintendent of Police, Kasaragod, who was in charge of the investigation of the case, was directed by this Court in O.P.No. 17823 of 1994 to file a detailed report regarding the result of the investigation so far conducted by him. In compliance with the direction, the Superintendent of Police filed report dated June 24, 1995. That report gives a vivid picture of the malpractices carried out by the members of the Managing Committee of the Bank, the so-called independent agency, which conducted the examination and the manner in which selections happened to be made on payment of huge amounts. A reading of the report filed by the Superintendent shocks the conscience of this Court. Persons who got appointments actually purchased the same by paying amounts to the tune of two and odd lakhs of rupees. This malpractice was carried out by the Bank by violating the specific directions given by the Registrar in the various circulars governing the matter. One of the provisions contained in Circular No. 18 of 1994 dated June 8, 1994 is that the Apex and Central Societies, with large volume of business should engage agencies like Institute of Management in Government, Thiruvananthapuram, Institute of Co-operative Management, Thiruvananthapuram or other reputed autonomous institutions for conducting the written test for direct recruitment. It is also stated that the person or agencies so appointed shall be made responsible for setting the question papers, conducting the written test, invigilation, valuation and preparation of the mark list. After preparation of mark list, the records of the test shall be handed over to the society in a sealed cover. The mark list also should be entrusted to the society in a separate cover. Only after completing the interview of candidates and awarding them marks for the interview, the sealed cover containing the mark list is to be opened for the purpose of tabulating the aggregate marks secured by the candidates for preparing the rank list. This is to ensure that persons conducting the interview are not aware of the marks secured by the candidates in the written test. No such step was taken by the management of the Bank. It shows that persons who got the appointment secured the appointment through back door methods. Are they to be afforded an opportunity of being heard by the Joint Registrar before he takes decision to rescind resolution?

11. In *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, , Justice V.R. Krishna Iyer speaking on behalf of the Bench observed :-

"Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice,

without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt-that is the conscience of the matter".

In Krishan Yadav and another Vs. State of Haryana and others, the Supreme Court had to consider whether persons who got selection to a post by illegal methods is entitled to a hearing before they are thrown out of employment. Their Lordships found that appointment to the post of Taxation Inspectors in Excise and Taxation Department was stinking, conceived in fraud and delivered in deceit. In view of the said finding, Their Lordships had no hesitation in cancelling the appointment of all the selected candidates. Their Lordships observed at pages 83 - 84 :-

"In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "Fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly, we hereby set aside the selection of Taxation Inspectors".

The effect of setting aside the selection would mean the appointments held by these 96 candidates (including the respondents) will have no right to go to the Office. Normally speaking, we should require them to disgorge the benefit of these ill-gotten gains. That means they will have to repay the entire salary and perks which they have received from the said Office. But, here we show a streak of sympathy. For more than 4 years, they were enjoying the benefit of "Office". The proper lesson would be learnt by them if their appointments are set aside teaching them that dishonesty could never pay.

An almost identical situation came up before Their Lordships in Union of India v. Anand Kumar Pandey 1995 II LLJ25 . In that case, Railway Recruitment Board decided to deny appointment to candidates who took the qualifying examination from one particular centre when it was found that large scale copying at that particular centre took place in the written examination. While tackling the question as to whether principles of natural justice should have been complied with before denying the selection to the persons who took the test at that Centre, Their Lordships observed at p.27 :-

"This Court has repeatedly held that the rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation".

In this case, Their Lordships did not interfere with the decision taken by the Railway Authorities because of the large scale copying that took place at the particular centre. In the instant case, it has virtually come out that large scale

manipulations, fraud and payment of money took place in giving the appointment. Candidates were selected by adopting back door methods. In such a circumstance, principles of natural justice cannot be pressed by the candidates who were parties to the fraud. Further all those persons who are affected by the decision taken by the Registrar under Rule 176 are before this Court. They have been heard in full. No argument was advanced by any counsel representing them disputing the correctness of the report filed by the Superintendent of Police pursuant to the direction given by this Court. Be that as it may, whatever is stated in that report or in this judgment will not be taken as a finding approved or made by this Court to the prejudice of parties to defend themselves in the criminal proceedings. In such a situation, even though the Courts are to zealously uphold the principles of natural justice, the Courts are not to issue futile writs. When it has come out that majority of the appointments were effected on account of manipulations and on payment of money, any direction to comply with the principles of natural justice in the sense to afford them a hearing will only be a futile exercise of power. Persons who got the orders of appointment by resort to back door methods should be sent out through backdoor itself. In this regard, we feel that the following observation made by the Supreme Court in *S.L. Kapoor Vs. Jagmohan and Others*, is apposite to the case on hand.

"As we said earlier where on the admitted or undisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because Courts do not issue futile writs".

In the instant case, if we direct the Joint Registrar to pass fresh order after issuing notices to persons who are likely to be thrown out of employment, it will be futile exercise. We do not venture to adopt such a course.

12. As a consequence of the resolution dated January 21, 1995, nearly 123 persons were appointed to the various categories of posts in the Bank. Their appointments were illgotten gains. They continued to hold "Office" from the date of appointment till date by virtue of interim order passed by this Court. When we uphold the decision taken by the Joint Registrar in rescinding the said resolution, what should be done with those persons who got the benefit under the resolution dated January 21, 1995. As has been done by Their Lordships in *Krishan Yadav and another Vs. State of Haryana and others*, , they should be sent out teaching them that dishonesty could never pay. During the period they discharged the duties attached to the post to which they were appointed, they are to get the salary. They cannot be given any other benefit. The pay and allowance received by them are not to be recovered from them.

In view of what has been stated above, we find no reason to interfere with the decision taken by the Joint Registrar rescinding the resolution passed by the Bank making appointments to various posts in its staff. The said decision is confirmed.

Original petitions are disposed of in the above terms.