

Jacob Vs. State of Kerala

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Court : Kerala

Decided On : Feb-20-2014

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Jacob

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN THURSDAY, THE 20TH DAY OF FEBRUARY 2014 1ST PHALGUNA, 1935 WP(C).No. 10864 of 2010 (G)

----- PETITIONER : ----- JACOB S/O. KURIAN, THOTTATHIL HOUSE, ADICHANELLOOR.P.O., KOLLAM DISTRICT. BY ADV. SRI. ANCHAL C.VIJAYAN RESPONDENT(S): ----- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO GOVERNMENT DEPARTMENT OF CO-OPERATION, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM.

3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, (GENERAL) KOLLAM.

4. THE ADICHANELLOOR FARMERS CO-OPERATIVE BANK LTD. NO.2609, ADICHANELLOOR.P.O., KOLLAM, REPRESENTED BY ITS, SECRETARY. R1 TO R3 BY SPL.GOVERNMENT PLEADER SRI.JAMES MATHEW KADAVAN R4 BY ADV. SRI.G.D.PANICKER SMT.JEENA JOSEPH THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 2002-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts WP(C)NO.10864/2010 APPENDIX PETITIONER'S EXHIBITS: P1 COPY OF THE

ORDER

NO.CRP652304 DATED 25/1/2005 ISSUED BY THE 3D RESPONDENT P2 COPY OF THE PETITION DATED 16/09/2009 SUBMITTED BY THE PETITION TO THE 2D AND 3D RESPONDENT P3 COPY OF THE RECEIPT NO.7077/09 ISSUED FROM THE OFFICE OF THE 3D RESPONDENT P4 COPY OF THE NOTICE PUBLISHED IN THE DESHABHIMANI DAILY NEWS PAPER DATED 5/2/2010 P5 COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE 3D RESPONDENT DATED 26/3/2010 RESPONDENT'S EXHIBITS: R4(A) COPY OF THE ADVERTISEMENT PUBLISHED IN DESHABHIMANI. R4(B) COPY OF THE AUDIT CERTIFICATE OF THE YEARS 2004-2005 R4(C) COPY OF THE AUDIT CERTIFICATES OF THE YEARS 2005-2006 /TRUE COPY/ P.A.TO.JUDGE sts K. VINOD CHANDRAN, J.

===== W.P.(C) No. 10864 of 2010
===== Dated this the 20th day of 2014

JUDGMENT

The petitioner is a member of the 4th respondent Bank and is aggrieved, with the selection process said to have been undertaken by the Bank to appoint a peon and a watchman; as also the inaction in completing proceedings under Section 65 of the Kerala Co-operative Societies Act, 1969 (for brevity 'the Act'). The said proceedings are said to have been initiated against the Managing Committee of the 4th respondent Bank. Ext. P1 is said to be an enquiry initiated in the year 2005 under Section 65 of the Act. The Writ Petition itself is filed in the year 2010. The 4th respondent Bank has filed a counter affidavit wherein it is contended that they had replied to the notice Ext. P1 and no further proceedings have been taken.

2. The 4th respondent contends that the order produced by the petitioner itself indicates that the enquiry report has to be submitted within 16 days. The only assumption W.P.(C) No. 10864 of 2010 2 possible according to the 4th respondent is that the report was favourable to the Managing Committee of the 4th respondent Bank and hence no further proceedings were taken. In any event, it has to be noticed that the petitioner has approached this Court with a Writ Petition in the year 2010 for concluding proceedings initiated in the year 2005. Necessarily there would have been elections conducted to the Managing Committee and there would be change in the constitution of such Managing Committee also, by now. The petitioner if at all aggrieved, ought to have moved this Court at the proper time.

3. The next contention is with respect to the selection conducted to the post of peon and a watchman. The petitioner's contention is that, the selection itself was conducted without proper publication and that the same is against the dictum laid down in Mannady Service Co- operative Bank Ltd. v. Krishna Kumar and Another in [2011(2) KHC361(DB)] and in Mohanan and others v. State of Kerala and others in 2010 (3) KHC634 4. It is also submitted that the Society being a loss W.P.(C) No. 10864 of 2010 3 making one, cannot make appointments going by the dictum laid down in Mohanan (supra). Mohanan (supra) was a case in which an attempt to make appointments was challenged inter alia on the ground that it is a loss making Society. True it was found that, the losses made by a Society is a relevant factor when a decision is taken to make appointments. It was of course found that the Managing Committee has not taken into consideration the relevant aspect of the financial stability of the Society while proceeding to make appointments. But however, that was not the ground on which the appointments attempted to be made therein, was interdicted. With respect to the procedure followed, it was found that though the Managing Committee had stated that the written test was conducted by an outside agency, no details of such agency was disclosed in the counter affidavit. Neither were any details supplied subsequently; sufficient to form a definite opinion about the nature and constitution of such outside agency. The procedure hence was found to be incorrect and improper. The selection was set aside on that basis and the W.P.(C) No. 10864 of 2010 4 Joint Registrar was directed to look into the aspect of whether the Society had financial viability to

make appointments.

5. Mannady Service Co-operative Bank Ltd. (supra) was relied on to contend that the publication was not in newspapers which had wide circulation. The findings of the learned single Judge that the publication was not made in newspapers which had wide circulation found favour with the Division Bench, more so, for reason of the limited number of applications received; which was considered to be intrinsic evidence of lack of publicity. Therein the Co-operative Society which was a Bank, on account of accumulated losses had lost two positions in the classification and classification of the Bank at that point of time; did not entitle the Society to make appointments to the post for which the impugned notification was issued. The outside agency to which the selection was entrusted, in that case also, was found to be a bogus body. In both the said cases, though the outside agency was said to be appointed; there was a cloud over the nature and W.P.(C) No. 10864 of 2010 5 constitution of such agency, putforth in both the said cases. The outside agency's involvement was also glaringly absent, insofar as the answer papers and the mark lists did not contain the seal of such agencies.

6. None of the above grounds are available in the instant case. The petitioner contends himself, with making bland allegations, which are not substantiated. The only grounds raised in the Writ Petition, are with respect to the losses suffered by the Bank, as also an enquiry initiated under Section 65 of the Act. As was noticed earlier, the enquiry initiated under Section 65 of the Act was way back in 2005 and the petitioner woke up to the fact of, nothing have been transpired in the enquiry, only at the stage when the Bank issued notification, to make appointments.

7. As to the financial stability; it is also to be noticed that the counter affidavit of the Bank specifically indicates that in the year 2004-2005 and 2005-2006, the Profit and Loss Account of the Bank clearly discloses a profit in the said years. The subsequent negative results in the Balance Sheet, according to the Bank was only due to the funds set W.P.(C) No. 10864 of 2010 6 apart for reserves; and the book results does not really indicate a loss as such.

8. What is to be noticed in the present case is that, the 4th respondent Bank contends on affidavit that publication was made in two newspapers being

Deshabhimani and Janayugam having wide circulation in the area. There is no ground raised against that being insufficient, in the Writ Petition. It is also pertinent that the petitioner, but for raising a challenge against the selection procedure, has not been diligent enough to implead the persons, who have been selected in the said process. The respondent Bank contends that the selections were concluded and two persons appointed on 07.07.2010. No orders could be passed against the selection process without hearing the affected parties.

9. It is also of significant import that the petitioner herein, was an employee of the respondent Bank, who was retrenched on a sales depot being closed down. The petitioner had received the full compensation eligible on retrenchment and had then raised a dispute before the W.P.(C) No. 10864 of 2010 7 Labour Court. The Labour Court having answered the dispute in favour of the petitioner, on further appeal before this Court, the award was set aside. It is also stated that the petitioner has filed the above Writ Petition merely to settle scores against the Managing Committee of the respondent Bank and not to further the interest of the respondent Bank. The specific averments made on this respect, having not been controverted by the petitioner, that too cannot be discounted. For all the above reasons, the Writ Petition is found to be devoid of merit and the same is dismissed, leaving the parties to suffer their respective costs. Sd/- K. VINOD CHANDRAN, JUDGE SB

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