

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 20561 of 2015 (U)

PETITIONERS:

1. OMANA K.S.,W/O. CHANDRAN, PARAPPURATH HOUSE,
MUNDATHIKODE WEST POST, THRISSUR DISTRICT.
2. SUGU K. ITTIYESAN, SECRETARY, DISTRICT COMMITTEE
OF KERALA CO-OPERATIVE EMPLOYEES UNION,
POTTAYIL LANE, THRISSUR - 4.

BY ADVS.SRI.M.SASINDRAN
SRI.V.VENUGOPAL

RESPONDENTS:

1. THE THRISSUR DISTRICT CO-OPERATIVE BANK LTD.,
THRISSUR, KOVILAKATHUMPADAM,
THRISSUR 680 022 REP. BY ITS GENERAL MANAGER.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,(GENERAL),
THIRUVANANTHAPURAM 695 001.

R1 BY ADV. SRI.GEORGE POONTHOTTAM
R2 BY SPL. GOVT. PLEADER SRI.D.SOMASUNDARAM
BY GOVT. PLEADER SRI.G.GOPAKUMAR
SRI.D.SREEKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 20561 of 2015 (U)

PETITIONER'S EXHIBITS:

EXHIBIT P1 A TRUE COPY OF THE ORDER DATED 31-10-2011 ISSUED BY THE PERINGANDUR SERVICE CO-OPERATIVE BANK, APPOINTING THE PETITIONER AS PART TIME SWEEPER

EXHIBIT P2 A TRUE COPY OF THE NOTIFICATION DATED 21-05-2015 PUBLISHED IN MATHRUBHOOMI DAILY DATED 21-05-2015

EXHIBIT P2(a) A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P2

EXHIBIT P3 A TRUE COPY OF THE NOTICE ISSUED TO A CANDIDATE APPLIED FOR THE APPOINTMENT

EXHIBIT P3(a) A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P3

EXHIBIT P4 A TRUE COPY OF THE NOTIFICATION DATED 15-03-2014 FOR CATEGORY NO.20/2014 ISSUED FOR DIRECT RECRUITMENT QUOTA FOR APPOINTMENT TO THE POST OF CLERK/CASHIER

EXHIBIT P5 A TRUE COPY OF THE NOTIFICATION DATED 15-03-2014 FOR CATEGORY NO.21/2014 ISSUED FOR SERVICE QUOTA

RESPONDENT'S EXHIBITS:

EXT. R1(a) TRUE COPY OF THE NOTIFICATION ISSUED IN 2010 WITH ITS ENGLISH TRANSLATION

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.20561 of 2015

Dated this the 7th day of August, 2015

JUDGMENT

The issue in this writ petition is as regards the manner of notifying the vacancies by supplying the necessary information or details in an explicit manner, especially concerning the rule of reservation in statutory terms for different streams of eligible candidates.

2. The facts in brief are that the respondent Bank is a District Co-operative Bank in which nine vacancies of Part-time Sweepers have been notified through Exhibit P2. The appointment is by way of direct recruitment from the open market; that is what, at least, the notification reads.

3. The candidates to be recruited can be from two streams or sources: 50% from the open market and 50% from among the eligible employees of the member societies.

4. Exhibit P2 notification issued on 21.05.2015 has not, according to the petitioners, spelt out in detail the

entitlement of the employees of the member societies to apply for the post of Part-time Sweeper in the respondent Bank. Accordingly, ventilating their grievance the petitioners have filed the present writ petition.

5. As can be seen, the validity of Exhibit P2 recruitment notification has been challenged on the ground of vagueness as well as it being in violation of Rule 187 of the Kerala Co-operative Societies Rules ('the Rules' for brevity). In other words, in the face of the apparent vagueness in Exhibit P2 notification, many in-service candidates have not applied for the post of Part-time Sweeper in the respondent Bank. The issue boils down to a singular aspect: Many in-service candidates, including the first petitioner, could not apply for the post as the notification did not spell out whether it was meant for them also.

Summary of Submissions:

Petitioners' Submissions:

6. In the above factual backdrop, the learned counsel

for the petitioners has submitted that Exhibit P2 notification clearly suffers from the vice of vagueness. He has further contended that the respondent Bank has notified through Exhibit P2 all nine posts, mentioning therein that the rule of reservation applies as per the Kerala Co-operative Societies Act and the Rules; neither more nor less. It is the singular contention of the learned counsel for the petitioners that Exhibit P2 has not even remotely been suggestive of the fact that the recruitment includes both the streams in the open category: (1) From the open market and (2) from among the eligible in-service candidates of the member societies.

7. In elaboration of his submissions, the learned counsel would contend that the scale of pay being much higher for the post of a Part-time Sweeper in the respondent Bank, the in-service candidates from the member societies holding not only the post of the same rank but also that of the higher ranks will apply. According to the

learned counsel, there can be several applicants for the post of Part-time Sweeper from different ranks in the respondent Bank. He has further submitted that owing to the vagueness in Exhibit P2 notification, the first petitioner could not apply though he was qualified in every respect.

8. The learned counsel has finally drawn my attention to Exhibits P4 and P5 notifications issued by the Kerala Public Service Commission (PSC) under identical circumstance. With reference to them, the learned counsel has contended that there ought to have been a specific mention about the recruitment of the in-service candidates, apart from direct recruitment, and their entitlement to apply therefor, if not two distinct notifications having been simultaneously issued.

9. Summing up his submissions, the learned counsel has urged this Court to set aside Exhibit P2 with a consequential direction to the respondent Bank to issue two

different notifications for direct recruitment and for the recruitment of in-service candidates, to express explicitly in the same notification about the two streams of recruitment, as has been done in Exhibits P4 and P5 by the Public Service Commission.

Respondents' Submissions:

10. Per contra, the learned counsel for the respondent Bank, at the outset, has submitted that the writ petition is wanting in bona fides, and the petitioners do not have the necessary locus standi. In elaboration of his submissions, the learned counsel has submitted that Exhibit P2 notification was issued on 21.05.2015. Exhibit P3(a) notice was displayed conspicuously on 24.06.2015 intimating the candidates that the interviews would be held on 08.07.2015. All through having remained quiet, the petitioners, contends the learned counsel for the respondent Bank, have approached this Court seeking

interdiction of the whole process on 07.07.2015, just one day prior to the commencement of the interviews.

11. The learned counsel has strenuously contended that whatever be the merit of the cause espoused by the petitioners, if there are laches in their approach or, in the alternative, if their approach lacks bona fides, this Court under Article 226 of the Constitution of India may not entertain their plea.

12. The learned counsel, drawing my attention to Exhibit P2 notification, has submitted that Exhibit P2 only exemplifies the uniform practice of the respondent Bank in notifying the vacancies. According to the learned counsel, since the notification is a unified one for both the streams of direct recruitment, namely open category and in-service candidates from the affiliated member societies, it does not require, as per the statute, separate notifications. In this regard, the learned counsel has drawn my attention to the

specific mention in Exhibit P2 that reservation shall be followed as per the Kerala Co-operative Societies Act and the Rules.

13. The learned counsel has drawn my further attention to Exhibit R1(a), a previous notification, which, in the words of the learned counsel, is identical with Exhibit P2 notification. In sum and substance, it is the specific contention of the learned counsel for the respondent Bank that Exhibit P2 notification is in strict statutory compliance, and there is no suppression of information or misdirection on the part of the respondent Bank.

14. The learned counsel has taken me through Rules 186 and 187 of the Kerala Co-operative Societies Rules, 1969, to contend that once there are no sufficient candidates available from the stream of the in-service candidates, the respondent Bank is empowered to fill up the vacancies by selecting more candidates from the stream of

the direct recruitment. Thus justifies the learned counsel the cryptic unified notification. In support of his submissions, the learned counsel has placed reliance on **Benny v. Registrar of Co-operative Societies**¹.

15. The learned counsel has also submitted that it is not the case of the first petitioner that any prejudice has been caused to her owing to the alleged vagueness in Exhibit P2 notification. According to the learned counsel, already a sufficient number of candidates from the second stream, namely in-service candidates, have already applied, and that at this stage interdicting the process of recruitment is not in the public interest.

16. Eventually, the learned counsel has submitted that Rule 186 of the Rules underwent an amendment on 19.01.2013, whereby the post of Part-time Sweeper has been introduced in the staff pattern. In the light of the stipulation in Rule 186 that a candidate is required to have

¹ 1998 (1) KLT 858

three years service, none of the employees working in any member society could meet the said criteria. Accordingly, the alternative submission of the learned counsel is that if there were to be any vagueness in Exhibit P2, that would not certainly affect the interests of any of the prospective candidates, including the first petitioner. In the end, the learned counsel for the respondent Bank has urged this Court to dismiss the writ petition.

Reply Submissions:

17. The learned counsel for the petitioners, in reply, has submitted that the first petitioner joined the service as a Part-time Sweeper in 2011, as is evident from Exhibit P1. He has further submitted that since the pay scale of Part-time Sweeper in the respondent Bank is higher than that of even the superior posts in the member societies, not only the Part-time Sweepers but also those in higher category would have applied. He has lastly contended that the

respondent has not specified whether any candidates have applied from the stream of in-service candidates and, if applied, how many candidates have applied.

18. Heard the learned counsel for the petitioners and the learned counsel for the respondent Bank, apart from perusing the record.

Issue:

Whether Exhibit P2 notification is in terms of statutory requirements? In the alternative, does Exhibit P2 suffer from any vice of vagueness, causing manifest injustice to the eligible employees of the member societies?

Discussion:

19. The cornerstone of the controversy is Exhibit P2 notification; it being cryptic, it is desirable to have it quoted in extenso:

PART TIME SWEEPERS REQUIRED

Applications are invited from the eligible candidate who satisfies the age requirement and qualifications as per Section 80 of the Kerala Co-operative Societies Act 1969 and the rules, for appointment to the category of part-time

sweeper in ht existing vacancies and the future vacancies.

Number of vacancies	9 (existing)
Pay Scale	5,790-13,330
Age	Should complete 18 years and shall not exceed 40 years as on 1.1.2015. (SC/ST-45 years, OBC/Ex-Serviceman-43 years)
Qualification	Should have physical fitness for sweeping work, shall not pass SSLC or equivalent examination

Those who intend to apply, shall prepare the application in the white paper and affix a new passport size photo and shall write on the envelope “application for the post of part-time sweeper” and submitting the below mentioned address. Along with the application the attested copies of the certificates to prove, name, address, age, caste and educational qualification shall be submitted. Reservation shall be followed as per the Kerala Co-operative Societies Act and Rules. The list that may be published after the interview, for appointment will be valid for a period of two years from the date of publication.

(emphasis supplied)

20. Indeed, the above notification reads to the effect that the eligible candidates who satisfy the age requirement and qualifications as per Section 80 of the Act and the Rules made thereunder shall apply, the vacancies being nine.

Apart from mentioning the age and qualification, the notification further reads to the effect that reservation shall be followed as per the Kerala Co-operative Societies Act and the Rules.

21. Exhibit P2 notification is as justified as this Court either allowing or dismissing the present writ petition, after narrating the facts, with the following reasoning, if it can be called one: “The writ petition is allowed (or dismissed) in accordance with the law.” It is, then, for the parties aggrieved to ascertain what the law is and how it has been applied. If we can call it proper adjudication, so can we call Exhibit P2 notification an instance of proper administration.

22. Statutorily speaking, Rule 186(1)(vi) prescribes, for the post of Part-time Sweeper, the qualification of not passing SSLC or equivalent examination, apart from mandating that the candidate must have the physical fitness for sweeping work. In this context, we may refer to Rule

187 that prescribes the method of filling up the vacancies in the Apex or Central Society. It reads as follows:

“187. Vacancies in Apex Society or Central Societies.- Notwithstanding anything contained in Rule 186, in appointments to apex societies or central societies, 50% of the vacancies shall be reserved to the employees of similar or higher categories of the member societies, of the respective apex society or central society as the case may be, having a minimum regular service of 3 years and having the required qualification for the notified posts in the apex society or central society.

Provided that out of the above, 50% vacancies shall be reserved for the posts of Peon/Watchman/Lift Operator of the member societies of the District Co-operative Banks, and 10% of such vacancies may be filled up by promotion from among the qualified Part-time Contingent Employees of the District Co-operative Banks recruited as per rules who completed 7 years of service in the bank.

Provided further that the reservation as stipulated in rule 187 shall be applicable to those employees who should be in the service of the member society not only on the date of application but also on the date of appointment.

Provided also that the requirement that the employees should be in the service of the member society even on the date of appointment will not be applicable to those who were recruited through the Public Service Commission to a post in the Apex/Central Societies reserved for the employees of the affiliated primary co-operative/member societies, provided they are continuing in service in that Apex/Central Society.

(emphasis supplied)

23. As can be seen from the above statutory provision, 50% of the vacancies shall be reserved for the employees in similar or higher categories of the member societies of the Apex or the Central Society, as the case may be. Indeed, there is a specific mention that those candidates shall have a minimum of three years of regular service, apart from the required qualification.

24. The justification on the part of the respondent Bank is that it is the consistent practice of the respondent Bank to notify in a unified manner—in a cryptic format, though—calling upon the candidates from both the streams, namely direct recruitees and the in-service candidates, by specifying that the reservation shall apply in terms of the statute. The justification finds support, as a matter of past practice, in Exhibit R1(a). On the other hand, it is the specific contention of the learned counsel for the petitioners that the post is that of a Part-time Sweeper, and the

qualification is minimal, i.e. not passing SSLC. It is, accordingly, well-nigh impossible for the candidates to understand the statutory implications or to know that the notification is open for them also, in the first place.

25. It is difficult, according to the learned counsel for the petitioners, to expect candidates of minimal education to ascertain the statutory position and then apply for the post. In this context, Exhibits P4 and P5 notifications (in fact, they are two parts of the same notification) issued by the PSC to recruit candidates for the post of Clerk-cum-Cashier in the District Co-operative Banks, which include the respondent Bank as well, need to be examined. They, in my view, clearly spell out the proper procedure to be followed.

26. We may examine in detail Exhibits P4 and P5, especially the latter. The notification issued by the PSC for the post of Clerk/Casher in District Co-operative Banks. The

notification, extracted in parts to the extent relevant, reads thus:

“Gazette Date: 15.03.2014
Last Date: 16.04.2014
Category No.20/2014

PART – I (Direct Recruitment)

x x x

PART II – (Society Quota)

x x x

50% of the vacancies if any reported from each District Co-operative Bank for Direct Recruitment will be filled up by selection from eligible employees of affiliated member societies of the respective banks. 50% of the total vacancies for the above post reported during the pendency of the Ranked List will also be filled up from this Category.

I. . . .

II. . . .

III. . . .

I. As per G.O (P) No. 1/13/SJD dated 3.1.13 3% of vacancies of this post is reserved for eligible PH candidates (Locomotor disability/cerebral Palsy/Hearing impairment).

Method of appointment	: x x x
Age	: x x x
7. Qualifications:-	: x x x

x x x

(iii) The eligible employees of affiliated Member Society/Primary Co-Operative Societies who apply for the above post should note at the top of the applications as "Appointment from among employees of affiliated Member Societies/Primary Societies". They should obtain the Service Certificate from the Assistant Registrar (General) showing the details of service of the applicant which render them eligible to apply for the post and shall be produced when required by the Commission. The Service certificate should contain the following details.

Service Certificates

x x x"

27. What cannot be lost sight of is the fact that the post notified for is that of a Part-time Sweeper. Predictably, the candidates who apply for the said post are required to possess, rather not allowed to possess beyond, the minimal qualification. Given the pay scale, not only the candidates working in the same rank but also those who are working in the higher ranks in the member societies will apply. The notification issued very laconically has just specified that reservation will apply in accordance with the law. It does not, I am afraid, serve the statutory purpose. There is every

possibility that the stipulation would be misunderstood, with justification, that the rule of reservation concerns the direct recruitees from the open market alone. There is no whisper in Exhibit P2 notification that it also applies to the eligible employees working in member societies. Though it is, broadly speaking, a direct recruitment, the sources of recruitment are entirely different. Exhibits P4 and P5 present entirely a different, and correct, picture.

28. Any administrative action has to pass the muster of being non-arbitrary and non-discriminatory, apart from being reasonable. The requirement of reasonableness is tested on the touchstone of a person of ordinary prudence. A statutory provision may give the administrator the power of discretion in giving effect to the said statutory provision. Discretion never runs in narrow confines; it flows expansively, but still bounds there are—the bounds of reasonableness.

29. The decision of the administrative authority must be related to the purpose of the enabling provisions of the rules or statutes, as the case may be. If they are manifestly unjust or outrageous or directed to an unauthorised end, such decisions can be set aside as arbitrary and unreasonable. (vide **Vinod Kumar v. State of Haryana**²).

30. Article 226 of the Constitution is designed to ensure that each and every authority in the State, including the very State, acts bona fide and within the limits of its power. However, the scope of judicial review in administrative matters has always been a subject-matter of debate despite a plethora of case-law on the issue. Time and again attempts have been made by the courts to devise or craft some norms, which may be employed to assess whether an administrative action is justiciable or not. But no uniform rule has been or can be evolved to test the validity of an administrative action or decision because the

² (2013) 16 SCC 293

extent and scope of judicial scrutiny depends upon a host of factors, like the nature of the subject-matter, the nature of the right affected, the character of the legal and constitutional provisions applicable, etc. While appreciating the inherent limitations in exercise of the power of judicial review, the judicial quest has been to find and maintain a right and delicate balance between the administrative discretion and the need to remedy alleged unfairness in the exercise of such discretion. (vide **Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel**³).

31. Indisputably, the respondent bank has the power to notify the posts; no particular format has been prescribed for notifying the vacancies. To ensure the participation of the maximum number of candidates from whichever stream, be it the open category or the in-service category of other entities, the respondent Bank has to notify the posts by way of wide publicity and with explicit details. Fairness in

³ (2006) 8 SCC 200

administrative action is a sine qua non to save the said action from being branded as arbitrary. Discretion conferred on an executive is required to be used in such a manner as to achieve the desired objective. If the action falls short of achieving the objective, it is definitely indicative of the fact that the administrative power exercised thus has failed to measure up to the statutory intent.

32. An action of an administrator need not, always, be bad to be branded mala fide. Malice, therefore, need not be in fact; it can be even in law. In the execution of a task by exercising the administrative power, if the authority fails to meet the legitimate expectations of the beneficiaries or the very action suffers from the vice of vagueness resulting in the obfuscation or stultification of the objective, such action as has been complained against is to be interfered with and judicially interdicted.

33. Further, the persons like the first petitioner can legitimately expect that the notification to be issued for recruiting to any particular post from different streams should specify or spell out the details explicitly. That issues are being dealt with in accordance with the law may be a statement politically correct, but not administratively. God is in the detail, goes the saying; the administrative fairness, too. Brevity may be the soul of wit, but must have life in it. What is embryonic only gets aborted, if it is sought to be kept brief, at all costs. Exhibit P2, by any reckoning, is embryonic. It has thus not met the legitimate expectations of the petitioner and his ilk in properly propagating the issue of recruitment from the stream the first petitioner has belonged to.

34. As to vagueness, in my considered view, no person of ordinary prudence would ever construe Exhibit P2 notification as revealingly informing the discerning reader

that the notification, in fact, invites applications from the eligible in-service candidates as well. Thus suffers Exhibit P2 from the vice of vagueness. As can be seen from Exhibits P4 and P5, the Public Service Commission, even while notifying for higher posts, has ensured that all the details have been spelt out. The logic of the respondent Bank's contention is that 'reservations in accordance with law' is more than a sufficient indicator regarding the eligibility of the in-service candidates. If it to be accepted, it leads, I am afraid, to very startling and unintended consequences. At best, it is an argument *reductio ad absurdum*. Indeed, the gnomic pronouncement of Oliver Wendell Holmes Jr. that the life of the law has not been logic; it has been experience rings true.

35. Going by the settled rule of reasonableness, I am of the considered opinion that Exhibit P2 is a notification that conceals more than it reveals. It is a product of

unreasonable, if not arbitrary, exercise of power by the authorities of the respondent Bank resulting in the stultification of a statutory objective and obligation, as well.

36. It is the contention of the learned counsel for the respondent Bank that the petitioners have approached this Court very belatedly, just one day prior to the date of interviews. If we chronologically examine, the notification was published on 21.05.2015; the date of interviews (as there was no written test) was circulated and displayed on the premises of the member societies on 24.06.2015. The petitioners filed the writ petition on 07.07.2015, i.e. about two weeks from the date of Exhibit P3(a) communication to a candidate regarding the date of the interview. By that reckoning, I do not see any negligence or severe laches on the part of the petitioners disentitling them to a public law remedy under Article 226 of the Constitution. As such, the plea of the respondent Bank in that regard, too, cannot be

countenanced.

37. Regarding Exhibit R1(a), which is the previous notification admittedly identical with Exhibit P2, it can only be said that two wrongs cannot make one right. As such, the alleged past practice is not a licence to the respondent Bank to flout the statutory mandate.

38. The learned counsel, having placed reliance on Benny (supra), has justified the issuance of a unified notification. Indeed, the Apex Court has interpreted both Rules 186 and 187 and concluded that there is no water-tight demarcation of 50% posts of two streams each. According to their Lordships, once the employer does not find sufficient candidates from one stream, it can as well fill up the remaining posts from the other stream. To my mind, issuance of a unified notification is not a contentious issue; on the contrary, lack of particulars thereof is.

39. When the respondent Bank is entitled to fill up the vacancies from the stream of direct recruitees in the absence of sufficient number of eligible candidates from the stream of in-service candidates, it is all the more essential for the respondent Bank to spell out in detail the method of recruitment, the conditions that apply for both streams and other particulars as have been mentioned in the notification of Public Service Commission, a part of which already stands extracted above. At any rate, the learned counsel for the petitioners has also submitted that in the wake of Benny (supra), Rule 187 has already undergone an amendment. Since I am not on the issue of justification of a unified notification, it is not necessary to elucidate on that aspect.

40. At this juncture, the learned counsel for the respondent Bank has submitted that the petitioners, having not submitted an application in response to Exhibit P2 notification, do not have the necessary locus standi to stall

the whole process of recruitment, thereby affecting the interest of other persons. Conversely viewed, had the first petitioner applied in response to Exhibit P2 notification, he would have been estopped from questioning it. As such I do not find any merit in the said submission.

In the facts and circumstances, I am of the considered opinion that Exhibit P2 notification cannot be sustained and is, accordingly, set aside. As a consequence, the writ petition is allowed. This Court further directs the respondent Bank to notify the posts of Part-time Sweeper spelling out in detail the streams of recruitment and the essential features thereof and continue with the recruitment process without any further hindrance, and delay, if it desires.

Dama Seshadri Naidu, Judge

tkv

'C.R.'