

Benny T. D. and Others

Vs

Registrar of Cooperative Societies and Another

Civil Appeals Nos. 2554 to 2564 of 1998

(S. Saghir Ahmed, G. B. Pattnaik)

04.05.1998

JUDGMENT

G. B. PATTANAİK, J. -

1. Leave granted in all the SLPs.

2. These 12 appeals are directed against the judgment dated 9-4-1997 of the Division Bench of the Kerala High Court in Writ Appeal No. 37 of 1997. The appeals titled as Benny T. D. v. Registrar of Coop. Societies and State of Kerala v. K. O. Sherly relate to recruitment to the post of Clerk in Thrissur Bank, Kerala. Appeals titled as P. J. Jose v. Registrar of Coop. Societies and Binu I v. Registrar of Coop. Societies relate to recruitment to the post of Clerk in the District Cooperative Bank, Kottayam. Apart from these appeals Trichur District Cooperative Bank also had preferred special leave petition against the same judgment of the Kerala High Court but withdrew the same at the time of hearing.

3. In case of Thrissur Bank, an advertisement was issued on 9-11-1995 indicating the probable vacancies in the grade of Clerk as 85 and inviting applications for filling up of the said posts. The advertisement indicated the qualification for being eligible to apply and also indicated that 10% of the vacancies was reserved for Scheduled Castes/Scheduled Tribes. Pursuant to the said advertisement, 2466 General Category candidates, 432 in-service candidates, who are already serving in different primary societies and 87 Scheduled Caste/Scheduled Tribe candidates applied. The Bank conducted a written test to adjudge the suitability of the applicants for being appointed as Clerks and on the basis of the result in the written test, those of the candidates, who secured the prescribed minimum marks were called for interview. It may be stated that 221 General Category candidates, 75 in-service candidates and 6 Scheduled Caste/Scheduled Tribe candidates were called for the interview. On the basis of their performance in the interview, the Bank authorities prepared a panel of 154 candidates and out of the said panel decided to appoint 116 persons by resolution of the Bank dated 5-2-1995. It is to be noticed that though the probable vacancies as per the advertisement were 85 but before the selection process started, the vacancies came to 116 and as such resolution was passed to appoint 116 persons. Out of the said 116 persons, 87 persons belong to the General Category, 24 belong to the in-service category, who are the existing employees of different primary societies and 5 belong to the Scheduled Castes/Scheduled Tribes' reserved category. Some of the applicants who could not qualify in the test held by the Bank made a grievance before the Registrar, Cooperative Societies alleging irregularities in the selection process. In fact, initially, they filed a writ petition before the Kerala High Court but the High Court being of the opinion that a writ will not be maintainable against a cooperative society and that statutory remedies are available under the Kerala Cooperative Societies Act, 1969 (hereinafter referred to as "the Act") did not entertain the

writ petition. Against the decision of the learned Single Judge holding a writ petition to be not maintainable, a writ appeal was preferred and the said writ appeal is still pending in the Kerala High Court. But pursuant to the representations received by the Registrar alleging serious irregularities in the selection process, the Registrar invoked his jurisdiction and enquired into the matter. In course of inquiry by the Registrar, the Joint Registrar, Cooperative Societies, had informed that the selection made by the Thrissur District Cooperative Bank has been fairly made and there was no foul play in the selection process as alleged. The Registrar, Cooperative Societies, however, came to hold that the action of the Board of Directors of Thrissur District Cooperative Bank in appointing 116 Clerks by Resolution No. 2 dated 5-2-1995 and Resolution No. 10 dated 17-5-1995 is against the provisions of the Kerala Cooperative Societies Act, Rules, bye-laws and directions and instructions issued by the Department and it amounted to disturb the peaceful and orderly working of the Bank and it is contrary to its better interest. On the aforesaid conclusion the Registrar, in exercise of his power under Rule 176 of the Kerala Cooperative Societies Rules, 1969 (hereinafter referred to as "the Rules") rescinded the aforesaid two resolution of the Thrissur District Cooperative Bank.

4. In the case of District Cooperative Bank, Kottayam, the Registrar also invoked his power under Rule 176 of the Rules and issued a notice to the Board of Directors of the Bank indicating the allegations of irregularities committed by the Bank in selecting and appointing people to the post of Clerk and called upon the Bank to show cause as to why Resolutions Nos. 3 and 4 dated 13-4-1995 making appointments to the post of Clerk should not be rescinded. The Bank, in its turn, refuted the allegations made in the notice. But the Registrar finally by his order dated 24-10-1996 came to hold that the entire selection of candidates and appointments made by the Kottayam Cooperative Bank by Resolutions Nos. 3 and 4 dated 13-4-1995 are vitiated by non-compliance of the statutory provisions and large-scale tampering of answer-papers and marks-list in the written test and consequently rescinded the said resolutions dated 13-4-1995. The aforesaid two orders of the Registrar were challenged before the Kerala High Court by 9 original petitions, 5 of which are in respect of Thrissur District Cooperative Bank and 4 of which are in respect of Kottayam District Cooperative Bank. All these 9 original applications were disposed of by the learned Single Judge of the Kerala High Court by judgment dated 18-12-1996 and the learned Single Judge dismissed all the original petitions. Against the aforesaid judgment of the learned Single Judge, 9 appeals were carried to the Division Bench and the Division Bench disposed of those appeals by the impugned judgment dated 9-4-1997. In case of Kottayam Bank, the Division Bench confirmed the judgment of the learned Single Judge upholding the order of the Registrar and rescinding the resolution of the Bank. But in the case of Thrissur Bank, the Division Bench modified the order of the Single Judge as well as that of the Registrar and directed that the first 24 candidates in the General Category as well as 24 in-service candidates and 5 candidates from the Scheduled Castes/Scheduled Tribes' category may be retained in service and the appointment of rest of the persons under the two resolutions of the Bank, referred to earlier, must be held to be invalid. Against the aforesaid judgment of the Division Bench of the Kerala High Court, the first 3 appeals arising out of SLPs (C) Nos. 9350-9352 of 1997 are by the General Category candidates, who had been appointed by the resolution of the Bank but whose appointments now stand annulled by the order of the Registrar and affirmed by the Division Bench of the High Court. The appeals filed by the State of Kerala are against the modified decision of the Division Bench allowing 53 persons to be retained in service in Thrissur Bank. The appeal arising out of SLP (C) No. 9728 of 1997 is by the employees belonging to the primary society, who had been appointed as Clerks in the Kottayam Bank and whose appointments stood annulled by virtue of the decision of the Registrar and affirmed by the learned Single Judge and Division Bench of the Kerala High Court. The appeals arising out of SLPs (C) Nos. 10149-10150 of 1997 are by the direct

recruits who had been appointed as Clerks in the Kottayam Bank and whose appointments stood annulled by the aforesaid decisions of the Registrar and the High Court.

5. In the Thrissur Bank case, the Registrar formulated the following four issues :

1. Whether the Bank appointed staff in excess of the approved strength ?
2. Whether the advertisement was in accordance with the circular instructions of the Registrar of Cooperative Societies (No. 18 of 1991).
3. Whether the Bank followed the provisions of Section 80(4) of the Kerala Cooperative Societies Act and Circular Instructions Nos. 28 of 1986 and 18 of 1991.
4. Whether the Bank complied with Rule 187 of the Kerala Cooperative Societies Rules, 1969 in the selection of staff from the employees of affiliated primary societies.

and came to hold that material irregularities had taken place in the appointment and the Bank-appointed staff in excess of the staff strength approved by the Registrar of Cooperative Societies on Issue 1. On Issue 2, the Registrar came to hold that since the Bank had not specified in the advertisement that 50% of the vacancies shall be reserved for candidates from the employees of the affiliated primary societies, the same amounts to violation of the statutory provisions and is against the better interests of the Bank. On Issue 3, the Registrar came to hold that the Bank committed error in not giving lower cut-off marks for the reserved category candidates to ensure their representation as contemplated under Section 80(4) of the Act and the decision of the Bank avoiding selection of candidates from Scheduled Castes/Scheduled Tribes' category is against the provisions of Section 80(4) of the Act, which in turn, is contrary to the better interests of the Bank. On Issue 4, the Registrar came to hold that there has been a violation of Rule 187 of the Rules and the said Rule has not been strictly complied with inasmuch as while 50% of the vacancies was to be reserved for the in-service candidates serving in different primary societies but only 24 of them got appointed as against 87 General Category candidates.

6. In the case of Kottayam Bank, the Registrar also came to hold that there has been an infraction of Rule 187 of the Rules and sub-section (4) of Section 80 of the Act, as in the case of Thrissur Bank. In addition to the said infirmity, the Registrar also came to hold that there has been a large-scale tampering of the answer-papers and the marks-list and glaring instances of tampering in the marks have been given as is apparent from the report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission, who has directed for a detailed enquiry.

7. The learned Single Judge came to hold that the Bank has not given full effect to the provisions contained in Section 80(4) of the Act while making appointments and non-providing of lesser cut-off marks for the Scheduled Caste/Scheduled Tribe candidates is arbitrary and the subsequent attempt of the Bank to make recruitment by way of special recruitment for the reserved category candidates cannot cure the illegality as well as the mandate of sub-section (4) of Section 80. So far as infraction of Rule 187 is concerned, the learned Single Judge came to hold that under the Rule 50% of the vacancies arising in an apex society have to be filled up by candidates possessing the additional qualification meant in the Rule, and therefore, it must be held that 50% of the vacancies

is the quota meant for candidates who are working in the primary society. Consequently, there has been an infraction of Rule 187 of the Rules. With the aforesaid conclusion, the learned Single Judge did not interfere with the order of the Registrar rescinding the resolution of the Thrissur Bank appointing 116 persons to the post of Clerk. In Kottayam Bank case, the learned Single Judge also came to hold that there has been a violation of sub-section (4) of Section 80 of the Act as well as Rule 187 of the Rules, and therefore, the Registrar was justified in rescinding the resolution of the Bank making the appointments and the Registrar cannot be said to have exceeded his jurisdiction in interfering with the decisions of the Bank. So far as the finding of the Registrar on the alleged malpractices on the basis of the report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission is concerned, the learned Single Judge came to hold that the above report should not be relied upon by the Registrar since it was not put to the notice of the affected persons in the show-cause notice that has been issued under Rule 176 of the Rules. But yet the order of the Registrar rescinding the resolution of the Bank making the appointments cannot be interfered with because of the infraction of sub-section (4) of Section 80 of the Act as well as Rule 187 of the Rules.

8. The Division Bench in the impugned judgment affirmed the interpretation given by the learned Single Judge to sub-section (4) of Section 80 of the Act as well as Rule 187 of the Rules and further held that in the matter of appointments to the post of Clerk, there has been violation of sub-section (4) of Section 80 of the Act as well as Rule 187 of the Rules by both the Banks. In case of Kottayam Bank, the Division Bench relied upon the report prepared by the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission and further held that even if the said report had not been indicated in the notice that was issued under Rule 176 of the Rules and even if the said report had not been put to the employees whose appointments have been annulled by the Registrar, the High Court would be justified in relying upon the same in not exercising its extraordinary jurisdiction under Article 226 of the Constitution. The Division Bench, therefore, ultimately came to hold that in case of Kottayam Bank, even if the appellant may not have been guilty of any such malpractices, the entire process of selection was vitiated, and therefore, there was no other remedy than to cancel the appointments made. In case of Thrissur Bank, while it affirmed the views of the Registrar as well as that of the learned Single Judge that there has been an infraction of sub-section (4) of Section 80 of the Act as well as Rule 187 of the Rules, it held :

"In view of the peculiar circumstances of the case and having regard to the fact that the selection was not tainted with any illegality, we direct that the first 24 candidates in the general merit quota be allowed to be retained and 24 candidates who have been selected under the member Society also be allowed to be retained and 5 candidates from the list of Scheduled Caste/Scheduled Tribe candidates may be retained in service."

The order of the Registrar annulling the appointment of rest of the candidates, however, was affirmed.

9. Mr. F. S. Nariman, learned Senior Counsel appearing for the appellants Benny T.D. & Others contended, that under sub-section (4) of Section 80 of the Act, 10% of the posts of employees are required to be reserved for persons belonging to Scheduled Castes and Scheduled Tribes where the method of recruitment is by direct recruitment. Consequently, in case of Thrissur Bank, 11 posts were required to be filled up by the Scheduled Castes and Scheduled Tribes, but the said provision cannot be interpreted to mean that the employer-Bank is bound to recruit from amongst the applicants belonging to the said category, 11 persons irrespective of their suitability. The Bank

having found only 5 persons belonging to the said category suitable and having appointed them and further having made a fresh advertisement for 6 more persons belonging to the said category as a special recruitment, there has been no violation of sub-section (4) of Section 80. The Registrar as well as the High Court in the Single Judge Bench and the Division Bench committed gross error in interpreting sub-section (4) of Section 80 and in holding that the provisions of sub-section (4) of Section 80 had been infringed as the Bank did not take steps for having lesser cut-off marks for the reserved category and in not filling up all the 11 posts meant for the reserved category people. The aforesaid erroneous construction of the provisions of sub-section (4) of Section 80 vitiates the ultimate conclusion. The learned Senior Counsel further urged that the Registrar as well as the learned Single Judge and the Division Bench in appeal have misconstrued the provisions of Rule 187 of the Rules by interpreting the said provision to mean that there should be a reservation to the extent of 50% of vacancies for the people belonging to the primary society. According to Mr. Nariman, the learned Senior Counsel, the only logical conclusion that can be made of Rule 187 is that the experience of the in-service candidates serving in different primary societies has to be construed as an additional qualification to the extent of 50% of the vacancies. In other words, this can be treated to be an additional weightage for the in-service candidates serving in the primary society and by no stretch of imagination it can be construed to be a reservation to the extent of 50% in favour of in-service candidates serving in the primary societies. In this view of the matter, the Registrar as well as the learned Single Judge and the Division Bench of the High Court committed an error in coming to the conclusion that Rule 187 tantamounts to reservation of 50% of the vacancies in favour of candidates serving in the primary societies and since only 24 of this category were appointed as against 56 belonging to the General Category there has been an infraction of Rule 187 and ultimately the entire process of selection gets vitiated. Mr. Nariman, learned Senior Counsel also urged that the Registrar committed serious error of record in holding that the Bank appointed staff in excess of the staff strength approved by the Registrar, inasmuch as it was nobody's case that there did not exist 116 vacancies in the Bank on the date when the resolution was passed for appointment of 116 persons and the aforesaid conclusion of the Registrar is based upon no materials at all. According to learned Senior Counsel, if the aforesaid conclusion of the Registrar is based on the ground that the advertisement having indicated the probable number of vacancies to be 85 the recruitment could not have been made beyond the said advertisement, then it cannot be held that there was appointment of staff in excess of the staff strength. The advertisement merely indicates the probable vacancies but by the time selection is made and recruitment is made, all subsequent vacancies have to be taken into account and that is why appointments had been made in favour of 116 persons. The conclusion of the Registrar, therefore, on that score is wholly erroneous. Mr. Nariman, learned Senior Counsel also urged that the fact that 5 Scheduled Caste persons were recruited is not disputed and merely because the register of candidates did not show against the names that they were Scheduled Castes/Scheduled Tribes it cannot be said to be an infraction of sub-section (4) of Section 80. In the context of interpretation of Rule 187, Mr. Nariman urged that Circular No. 18 of 1991 on which the Registrar relied upon and the High Court has also relied upon nowhere indicates that there should be reservation to the extent of 50% of the vacancies in favour of the members of the primary societies for being recruited as Clerks in the apex bank and in that view of the matter by relying upon a wrong circular the ultimate conclusion is vitiated.

10. Mr. V. R. Reddy, learned Additional Solicitor General appearing for the Registrar of Cooperative Societies, however, strenuously urged that Rule 187 being an additional qualification for the purpose of appointment to the post of Clerk in the apex society, the said additional qualification should be treated as a part of Rule 186. According to Mr. Reddy, both these Rules should be read together and if Rule 187 is treated as a part of Rule 186, the conclusion becomes

irresistible that no person can be appointed to the extent of 50% of the vacancies excepting those possessing additional qualification mentioned in Rule 187. In other words, according to Mr. Reddy a conjoint reading of Rules 186 and 187 would mean that 50% of the vacancies have to be filled up by open candidates and other 50% of the vacancies have to be filled up by in-service candidates serving in different primary societies who possess the additional qualification. On such an interpretation being applied to the facts in hand, there cannot be any doubt that the bank authorities contravened Rule 187 in appointing only 24 in-service candidates whereas 87 open candidates were appointed and in this view of the matter the Registrar and the High Court was justified in cancelling the resolution of the Bank making the appointments.

11. Mr. K. N. Bhat, learned Additional Solicitor General appearing for the State of Kerala, further contended that the Division Bench was wholly in error in finding out a via media after coming to the conclusion that in the matter of appointments there has been a violation of sub-section (4) of Section 80 as well as Rule 187. According to the learned Additional Solicitor General, the recruitment to the post of Clerk in the Bank having been governed by statutory provisions and the bank authorities having contravened those statutory provisions, the entire selection process gets vitiated and, therefore, the Division Bench was not justified in sustaining the appointments of some in the aforesaid selection process.

12. Mr. Vaidyanathan, learned Senior Counsel appearing for the appellants in Kottayam Bank case, reiterated the contentions raised by Mr. Nariman so far as the interpretation of sub-section (4) of Section 80 of the Act and Rule 187 is concerned. He further urged that even if Rule 187 is to be treated as part of Rule 186, then the entire selection process cannot be set aside. According to learned Senior Counsel, the said Rule 187 can be held to be mere directory and not mandatory. On the conclusion of the Division Bench that the selection has been vitiated by illegality and malpractices like tampering of marks, Mr. Vaidyanathan contended that the said allegation neither was put to the Bank in the notice issued under Rule 176 nor had the report of the Public Enquiry Commission been supplied to the Bank or the affected party. Consequently, the Division Bench committed gross error of law in holding that the entire selection process gets vitiated on account of irregularities and malpractices adopted.

13. Mr. Sukumaran, learned Senior Counsel appearing for the Registrar in the said Kottayam Bank case, contended that when the selection made was not objective and fair and even the Public Enquiry Commission found tampering of marks in respect of several candidates, the dispute cannot be treated as purely adversarial as it involves public interest, and judged from that standpoint, the entire selection process must be held to have been vitiated and the High Court did not commit any error in annulling the resolution making appointments to the posts of Clerks. In support of this contention, the learned Senior Counsel placed reliance on a decision of this Court in *Pritpal Singh v. State of Haryana* ((1994) 5 SCC 695 : 1994 SCC (L&S) 1239 : (1994) 28 ATC 169).

14. In view of the rival submissions at the Bar, the first question that arises for consideration is : whether the conclusion of the High Court that there has been an infraction of sub-section (4) of Section 80 of the Act is at all correct. For a better appreciation of the point in issue, sub-section (4) of Section 80 of the Act is quoted hereinbelow in extenso :

"80. (4) Notwithstanding anything contained in sub-section (1) or subsection (2), ten per cent of the posts of employees of every society shall be reserved for appointment from persons belonging to the Scheduled Castes and Scheduled Tribes where the method of appointment to such posts is by direct recruitment."

15. A plain meaning of the aforesaid provision is that 10 per cent of the posts which are to be filled up by direct recruitment must be kept reserved for the Scheduled Caste and Scheduled Tribe people. In the case in hand, when the total number of posts to be filled up were 116, 10 per cent of the said posts would work out at 11. As has been stated earlier, pursuant to the advertisement issued in case of Thrissur Bank, 87 Scheduled Caste and Scheduled Tribe candidates had applied and after the written test, only six of them passed the minimum prescribed standard fixed by the employer. But one of them was disqualified for having filed a wrong declaration and five were appointed. It is an admitted case that for six posts meant for the aforesaid reserved category of Scheduled Caste/Scheduled Tribe persons a fresh advertisement had been issued to hold a special recruitment so as to fill up the quota of 11. There is neither any allegation nor any finding that the quota meant for Scheduled Caste/Scheduled Tribe candidates has been usurped either by General Category candidates or by candidates belonging to primary societies. In this view of the matter, we fail to understand how it can be held that there has been a violation of sub-section (4) of Section 80 of the Act. From the impugned judgment of the High Court, it appears that since the Bank did not give any relaxation in favour of Scheduled Caste/Scheduled Tribe candidates by fixing lower marks for passing, the Court has come to the conclusion that there has been a violation of sub-section (4) of Section 80 of the Act. In our considered opinion, the conclusion of the High Court on the aforesaid basis is wholly erroneous. Neither the Act nor the Rules made thereunder nor even the guidelines issued by the Registrar prescribing procedure for appointment to the post in the apex society anywhere even whisper that there should be a lesser standard of scrutiny for the Scheduled Caste/Scheduled Tribe candidates. It is well settled that when recruitment to posts is governed by statutory rules framed in exercise of power under proviso to Article 309 of the Constitution, the said Rules must be strictly adhered to or else the appointments would be struck down for not being in conformity with such statutory rules. Since the statutory rules of recruitment in the present case did not provide for a lower standard of scrutiny for the reserved Scheduled Caste/Scheduled Tribe category of candidates and even the Registrar had not issued any such direction, the Bank cannot be held liable for not having prescribed a lesser standard of scrutiny for reserved candidates nor on that ground can it be said that there has been a violation of sub-section (4) of Section 80 of the Act. In this view of the matter, the conclusion of the High Court with regard to alleged infraction of sub-section (4) of Section 80 of the Act is wholly unsustainable and the same must be quashed. It may be stated in this connection that though five of the candidates belonging to Scheduled Castes/Scheduled Tribes were appointed and this fact has not been denied, yet the High Court erroneously came to the conclusion that such appointments were made on the merit quota. This conclusion is based on the fact that against these candidates there has been no mentioning of Scheduled Castes or Scheduled Tribes. As it appears from the relevant materials produced, that the General Category candidates in whose favour appointments had been issued up to the 86th position and the Scheduled Caste/Scheduled Tribe candidates who were appointed had secured ranks much below, namely, 92, 93, 95 onwards. The conclusion of the High Court that they got the appointment from the merit quota is on the face of it erroneous.

16. The next question that arises for consideration is : whether the High Court was justified in coming to the conclusion that both the Banks, namely, Thrissur Bank as well as Kottayam Bank have violated the provisions of Rule 187 of the Rules. In view of the contentions raised by Mr. Reddy, the learned Additional Solicitor General, appearing for the Registrar in this connection and the reasoning on which the High Court came to hold that there has been a violation of Rule 187, it would be appropriate to extract Rules 186 and 187 in extenso :

"186. Qualifications. - (1) No person shall be eligible for appointment in any post unless he possesses the qualifications prescribed for the post as shown below :

(i) All posts other than those requiring technical qualifications, the starting pay of which is Rs. 250 and above :

A. A degree in Commerce or Master's degree in Arts of a recognised university, with Cooperation as special subject

OR

B. (i) B.A., B.Sc., or B.Com. degree of a recognised university and

(ii) Higher Diploma in Cooperation (HDC of State Cooperative Union of Kerala or HDC, and HDCM of the National Council for Cooperative Training) or successful completion of the Subordinate (Junior) Personnel Cooperative Training Course (Junior Diploma in Cooperation).

C. Diploma in Rural Services with Cooperation as optional subject.

OR

D. B.Sc. (Cooperation & Banking) degree of the Kerala Agricultural University.

(ii) Other supervisory and ministerial posts other than those requiring technical qualifications, the starting pay of which is below Rs. 250 :

SSLC or its equivalent and successful completion of Subordinate Personnel Cooperative Training Course (Junior Diploma in Cooperation).

(iii) Typist :

SSLC or its equivalent with Typewriting (Lower).

(iv) Stenographer :

SSLC or its equivalent with Typewriting (Lower)

(v) All other posts with starting pay below Rs. 100 :

Seventh Standard.

Note. - (1) Nothing in this Rule shall apply to the present incumbents for the present post they hold.

# \* \* \*##

187. Vacancies in apex society. - Notwithstanding anything contained in Rule 186 for appointments to 50% of the vacancies arising in the apex society or (other federal type society having other societies as its members) experience in the societies which are members of the respective apex society or federal type society, as the case may be, (shall be a necessary additional qualification)."

17. In the impugned judgment, the High Court, interpreting Rule 187 of the Rules recorded its

conclusion that 50% of the vacancies in an apex society must be filled up with persons having the additional qualification mentioned in Rule 187, which in turn, would mean that the quota for such candidates who are working in the member society is fixed at 50% of the vacancies. On a plain reading of Rule 187, by itself, it is difficult for us to accept the conclusion arrived at by the High Court to the effect that 50% of the vacancies are reserved for employees of primary cooperative societies affiliated to the Bank. A combined reading of Rules 186 and 187 would lead to the only conclusion that though the qualification for the posts of "Clerk" had been enumerated in Rule 186 but in respect of 50% of vacancies arising in the apex society, the in-service candidates serving in the primary societies will get the advantage as their experience would be treated as an additional qualification. In this view of the matter, it is difficult for us to hold that under Rule 187, 50% of the vacancies in the apex society are kept reserved for the in-service candidates serving in the primary societies. Mr. Reddy, the learned Additional Solicitor General appearing for the Registrar faced with this position urged that though under Rule 187 apparently there has been no reservation for in-service candidates but the said Rule should be read as a part of Rule 186, both the Rules being operative in the same field, namely, prescribing qualification for appointment to the post of "Clerk" and on such a construction being given, it would be logical to hold that no person would be eligible for appointment to the 50% of the vacancies arising in the apex society unless he possesses the necessary additional qualification as provided in Rule 187. Such a construction cannot be given to Rule 187 in view of the opening words of the said Rule starting with a non obstante clause. When a particular provision in a statute begins with a non obstante to the effect "notwithstanding anything contained", the idea is obvious that the provision embraced in the non obstante clause will not be an impediment for the operation of the enactment. It would, thus, be impermissible to construe Rule 187 in the manner as contended by Mr. Reddy, the learned Additional Solicitor General, nor is it possible for us to agree with the construction made by the High Court in coming to the conclusion that under Rule 187, 50% of the vacancies arising in the apex society have to be kept reserved for persons belonging to the primary societies. The construction put to Rule 187 by the High Court is wholly erroneous and the same cannot be sustained and consequently the ultimate conclusion that there has been an infraction of Rule 187 is unsustainable in law. From the assertions made by the Bank in the special leave petition which they had filed, it appears that the Bank had fixed 52 as the cut-off marks in the written test for the direct recruits both General and Scheduled Caste/Scheduled Tribe candidates and 44 for employees belonging to the primary societies and those candidates who secured more than 44 from amongst applicants belonging to the primary society had been called for interview and on the basis of the marks secured in interview the same being added to their marks in the written test, final selection was made. In case of Thrissur Bank, 432 candidates belonging to the primary society had applied and only 75 of them secured marks above 44 and were called for interview and finally 24 of them were found suitable and were appointed. Under the Rules as well as the guidelines issued by the Registrar providing the procedure for making recruitment the power of the employer to adjudge suitability has not been taken away in any manner. While, therefore, Rule 187 gives a leverage in favour of in-service candidates serving in the primary society for being considered for the posts of "Clerk" in the apex society by taking their experience as an additional qualification but such additional qualification even after being taken into account if a person is adjudged unsuitable there is no compulsion on the employer to appoint such unsuitable person. In the aforesaid premises, we are of the considered opinion that the High Court committed serious error of law by holding that there has been a violation of Rule 187 since 50% of the vacancies have not been filled up by the candidates serving in different primary societies.

18. Though the High Court dismissed the writ petition as well as the writ appeals preferred against the judgment of the learned Single Judge by coming to the conclusion that there has been violation

of sub-section (4) of Section 80 of the Act and Rule 187 of the Rules, the Registrar had annulled the resolutions of the Bank appointing persons to the post of Clerk on other grounds also and since the legality of the order of the Registrar invalidating the appointment made was challenged in the High Court by filing writ petitions, it is necessary to examine the other grounds also. A perusal of the order of the Registrar and the issues framed for consideration would indicate that the Registrar had also struck down the appointment on two other grounds, namely, the Bank had appointed staff in excess of the approved strength and secondly the advertisement was not in accordance with Circular Instruction No. 18 of 1991 of the Registrar of Cooperative Societies. Coming to the question as to whether appointment had been made in excess of the staff strength approved by the Registrar, it appears that apart from the above statement made by the Registrar in his order no material has been brought on to the record to support the aforesaid conclusion of the Registrar. Merely because in the advertisement issued by the Bank the probable number of vacancies had been indicated to be lesser than the number of persons finally appointed, one cannot jump to the conclusion that there has been an excess appointment beyond the staff strength approved by the Registrar. It is well known that during the time when an advertisement is issued and by the time when process of selection starts and ultimately appointment orders are issued, on account of several factors the number of posts may be increased, the factors being retirement of persons on attaining superannuation, death of several employees, promotion of the employees to higher posts and for variety of other grounds. In such contingencies, when appointments are made depending upon the vacancies available and in excess of the vacancies advertised, it cannot be said that the appointment has been made in excess of the strength of the cadre approved. There is neither any allegation nor any material to sustain the finding of the Registrar that in fact appointment has been made in excess of the posts approved by the Registrar. The said conclusion, therefore, must be held to be a conclusion based on no evidence and accordingly cannot be sustained.

19. The next question relates to Circular Instruction No. 18 of 1991 of the Registrar of Cooperative Societies. The said circular is dated 7-6-1991. It provides the procedure relating to recruitment for appointment of employees in cooperative institutions. We have carefully considered the aforesaid circular and we fail to understand how the Registrar could come to the conclusion that in the case of the two Banks, namely, the Thrissur District Cooperative Bank as well as the Kottayam Bank, appointments had been made contrary to the aforesaid circular. Clause 4(e) of the circular stipulates that the conditions with regard to age limit, qualifications, mode of appointment as laid down in the Rules framed under Section 80 such as Rules 183, 186, 187 of the Kerala Cooperative Societies Rules shall be strictly followed. In view of our earlier conclusion that there has been no violation of Rule 187 of the Rules, the conclusion of the Registrar that appointment has been made in contravention of the aforesaid Circular Instruction No. 18 of 1991 also falls through and the said conclusion cannot be sustained.

20. Apart from the aforesaid questions which are common in respect of recruitment in both the Banks, in case of Kottayam Bank, the Division Bench of the High Court had categorically found that the recruitment itself is vitiated on account of large-scale malpractice. It may be stated that the Registrar while issuing notice under Rule 176 of the Rules to the Board of Directors of Kottayam District Cooperative Bank by letter dated 24-7-1986 did not indicate about any large-scale malpractice adopted in the test conducted by the Bank excepting to the effect : "The marks awarded and the consolidated marks recorded are corrected and manipulated." Some of the candidates were given less marks and some others were given higher marks. But while considering the legality of the resolutions passed by the Bank appointing several persons, the Registrar took into consideration the so-called report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission who had directed for a detailed enquiry and on that basis came to the ultimate conclusion that the

appointment of candidates made by the Kottayam District Cooperative Bank is vitiated. The learned Single Judge came to the conclusion, and in our opinion rightly, that in the absence of any detailed particulars of the alleged irregularities in the notice issued to the Bank under Rule 176 and in the absence of the report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission being made available to the Bank or the persons appointed, it is not open to the Registrar to come to the conclusion about the irregularity and the said conclusion is vitiated on account of gross violation of the principle of natural justice. The Division Bench, however, disagreed with the conclusion of the learned Single Judge on this score and relied upon the report of the Commission and came to hold that the entire selection process was vitiated by illegality and irregularity and therefore there is no other option than to cancel the appointments of all the candidates. The Division Bench was conscious of the fact that the persons to be adversely affected by the impugned decision had not been given an opportunity inasmuch as the relevant documents had not been put to them nor even to the Bank who made recruitment but yet brushed aside the principle of natural justice and did not focus its attention to the same and on the other hand came to the conclusion that the process of selection got vitiated on account of alleged irregularity and illegality. In our considered opinion, the Division Bench patently committed an error in relying upon the report of the Commission and in recording a finding that irregularities have been committed in the selection notwithstanding the fact that the said report had not been made available to the Bank or to the affected parties. That apart, as stated earlier in the notice that was issued by the Registrar, there were no particulars given and on such vague assertions made, it was not permissible to record a conclusion that there has been any irregularity in the process of selection. The said conclusion of the Division Bench must accordingly be set aside.

21. Mr. Sukumaran, the learned Senior Counsel, relied upon the decision of this Court in *Pritpal Singh v. State of Haryana* ((1994) 5 SCC 695 : 1994 SCC (L&S) 1239 : (1994) 28 ATC 169) and urged that in view of the findings of the Public Inquiry Commission that there has been tampering of marks in respect of several candidates and as such there has been no fair and objective selection, the public interest demands annulment of the entire selection and a court should not shirk from its responsibility by directing annulment of selection on the mere technicality that the report of the said Public Inquiry Commission had not been given to the Bank or any of the persons to be affected. In the aforesaid case, selection made by the Haryana Subordinate Services Selection Board for appointment to the post of Assistant Sub-Inspectors of Police was annulled by this Court on coming to a conclusion that the selection made by the Board was not objective and fair. This Court held that the matter which involved public interest could not be treated as purely adversarial. But in the course of hearing, the Court being of the opinion that the problem to be resolved was much too serious to be dealt with on adversarial contentions and in view of glaring infirmities in the process of selection which the Court noticed, all the persons including those who had been selected and appointed were directed to be duly notified so that the Court could decide as to whether the entire selection process was infirm and quash the selection. To achieve the aforesaid objective, the Court had called upon the Chief Secretary to the State Government to furnish upon affidavit particulars regarding constitution of the Board, the names and qualification of its members and to produce the record and minutes of the Board's meeting. In other words, the Court complied with the principles of natural justice by giving notice to the affected parties of all the relevant materials and then on receiving explanations from those persons by way of affidavit in this Court and taking into account the contentions raised by those persons, ultimately decided the matter. The ratio of the aforesaid case will have no application to the present case inasmuch as neither the Bank nor any of the affected parties have been given a copy of the report of the Public Inquiry Commission on which report the Registrar had relied upon as well as the Division Bench of the High Court had relied upon

and came to a conclusion by relying upon such report without giving any opportunity to the parties concerned to give their submissions. It would tantamount to gross violation of the principle of natural justice which cannot be brushed aside on the ground that public interest demands annulment of the selection. In our opinion, the ratio of the aforesaid decision cannot be applied to the case in hand.

22. In view of our conclusions as aforesaid, we hold that the order of the Registrar in annulling the resolutions of the Thrissur District Cooperative Bank Limited as well as the resolution of the District Cooperative Bank, Kottayam is vitiated with manifest error and as such the said order of the Registrar cannot be sustained and we accordingly quash the same. The judgments of the High Court passed by the learned Single Judge as well as the Division Bench in writ appeal are also erroneous and the same are therefore set aside and the writ petitions filed by the respective petitioners stand allowed. Necessarily, therefore, the appointments made to the post of Clerk by Resolution No. 2 dated 5-2-1995 and Resolution No. 10 dated 17-5-1995 passed by the Board of Directors of Thrissur District Cooperative Bank is held to be valid and similarly appointment made to the post of Clerk by Resolutions Nos. 3 and 4 dated 13-4-1995 passed by the Board of Directors of District Cooperative Bank, Kottayam must be held to be valid. Civil appeals arising out of SLPs (C) Nos. 9350-9352 of 1997, civil appeal arising out of SLP (C) No. 9728 of 1997, civil appeals arising out of SLPs (C) Nos. 10149-10150 of 1997, stand allowed and civil appeals arising out of SLPs (C) Nos. 15444-15448 of 1997 filed by the State of Kerala stand dismissed but in the circumstances, there will be no order as to costs.