

## Thenhipalam Service Co-operative Bank Ltd. Vs Jayaprakash P.K.

**Court:** High Court Of Kerala

**Date of Decision:** June 9, 2014

**Acts Referred:** Kerala Co-operative Societies Act, 1969 " Section 80(5)

**Citation:** (2014) LabIC 2948 : (2014) 4 LLJ 373 : (2014) 4 LLN 671

**Hon'ble Judges:** Antony Dominic, J; Alexander Thomas, J

**Bench:** Division Bench

**Advocate:** George Poonthottam, Advocate for the Appellant; P.C. Sasidharan, Spl. Govt. Pleader and Somasundaram, Advocate for the Respondent

### Judgement

Antony Dominic, J.

This appeal is filed by respondents 2 and 3 in Writ Petition No. 18840/2013. The Writ Petition was filed by the first

respondent herein, seeking to quash Exhibits P3, P4 and P5, notifications issued by the appellants for filling up three posts of Peons (of which one

is a reserved post) and another post of Salesman. A direction to the appellants to comply with the mandate of Section 80(5) of the Co-operative

Societies Act and to provide reservation to physically handicapped persons was also sought for.

2. According to the first respondent, in view of the provisions contained in Section 80(5) of the Act, the Society had the obligation to reserve at

least one identified post to be filled up from among physically handicapped persons and that while issuing Exhibits P3, P4 and P5 notifications, that

requirement of the Act was not complied with. It was on that basis, the aforesaid prayers were sought for. The learned Judge rejected the

objections of the appellants and accepting the contention of the first respondent held the notifications to be bad for non-compliance of Section

80(5) and ordered that the appellants cannot proceed with the selection and recruitment as proposed in the notifications. It was also ordered that

the appellants shall bring out the notification providing reservation for the disabled also. It is aggrieved by this judgment, the appeal is filed.

3. We heard the learned counsel appearing for the appellants, learned counsel appearing for the first respondent and the learned Special

Government Pleader appearing for the second respondent.

4. The first contention raised by the learned counsel for the appellants was that, if the provisions of Section 80(5) are interpreted giving due

meaning to the words used by the legislature, the obligation of the employer to make appointment commences once the cadre strength exceeds 10

and this obligation crystalizes into a duty only when the cadre strength reaches 33. According to him, even going by Exhibit P2 proceedings of the

Joint Registrar, there are only 18 sanctioned posts in the Society and therefore, as at present, the Society does not have the obligation to provide

reservation for the physically handicapped. He also contended that even if the said contention is negated, the Society still has the freedom to

choose the identified post to be reserved and therefore the learned Judge erred in ordering that the Society shall reserve one post of Peon. The

counsel pointed out that the Society has subsequently passed a resolution reserving one post of Clerk which is also a post identified to be reserved

for physically handicapped persons, as per Circular No. 54/2011 dated 14-07-2011. On these two grounds, counsel contended that the judgment

of the learned single Judge is illegal and unsustainable.

5. However, learned counsel for the first respondent, relied on the Apex Court judgment in Union of India (UOI) and Another Vs. National

Federation of the Blind and Others, , contended that if the arguments are accepted, the very object and purpose of reservation would be defeated.

6. We have considered the submissions made by the counsel on both sides. The first contention raised by the learned counsel for the appellants is

that the Society has the duty to provide reservation only when the cadre strength reaches 33. This contention has to be answered with reference to

Section 80(5) of the Co-operative Societies Act, which reads thus:

(5) Notwithstanding anything contained in sub-section (1) or (2), three percent of the total posts of employees of every society shall be reserved

for physically handicapped persons having disability of forty percent or above, as certified by the medical board and the procedure of appointment

shall be such as may be prescribed:

Provided that in societies where there are more than ten and less than thirty three employees including cadre and sanctioned posts, there shall be

reserved a minimum of one employee belonging to physically handicapped persons"".

7. While sub-section (5) provides that three percent of the total posts of employees of every Society shall be reserved for physically handicapped

persons having disability of 40% and above, proviso to the said section states that in cases where there are more than 10 and less than 33

employees, there shall be reservation of minimum of one employee belonging to physically handicapped persons. This, therefore, means that if a

Society has employees in excess of 10, it has the duty to appoint a minimum of one physically handicapped person. This position will continue until

the strength reaches 33 and if that is exceeded, then the obligation to provide 3% reservation is attracted. This therefore makes it clear that the

liability to provide reservation to a minimum of one person is attracted the moment the cadre strength of the Society exceeds 10 and the language

of the provision does not justify, the interpretation advanced by the learned counsel for the appellants that the duty of the Society to make

appointment arises only when the cadre strength reaches 33. Therefore, the first contention raised by the learned counsel deserves to be rejected

and we do so. The second contention raised by the learned counsel is that even if it is held that the Society has the obligation to make appointment

under Section 80(5), the freedom to choose identified post in which reservation is to be provided, is that of the employer. Therefore, he contends

that the learned single Judge ought not have directed that reservation should be provided in the post of Peon. Though this contention would appear

to be attractive, insofar as the facts of this case are concerned, we are not prepared to accept it. A case is decided based on the facts pleaded and

the issues canvassed in Court. Insofar as this case is concerned, the Writ Petition was filed impugning Exhibits P3, P4 and P5, where the Society

proposed to fill up three posts of Peons and one post of Salesman. Among the posts notified by the Society, the only identified post is that of

Peon. Going by the principles enunciated by the Apex Court in the judgment in Union of India (UOI) and Another Vs. National Federation of the

Blind and Others, , the purpose of the reservation provided is to improve the condition of the differently abled. If such purpose is to be achieved,

the benefit of reservation should be extended to the physically handicapped at the earliest point of time. As we have already held, the obligation of

the Society to make appointment commences once the cadre strength exceeds 10. Even going by the averments made by the Society, the actual

strength now available is 10. This means that when the impugned notifications were issued, the Society had the obligation under Section 80(5) of

the Act and a vacancy of an identified post was also available. Therefore, the next appointment to the 11th post has to be made against an

identified post which is now notified by the Society. It was therefore that the learned single Judge ordered that the Society should reserve one post

of Peon and on that basis, proceed with the recruitment by issuing necessary paper notification. That conclusion of the learned single Judge, in the

light of the facts that were canvassed, does not suffer from any infirmity. The submission that later the Society has resolved to reserve a post of

Clerk and that therefore the Society should be allowed to proceed with the recruitment of Peons also cannot be accepted. As we have already

seen the vacancy of an identified post that arose immediately after the cadre strength reached 10, was that of Peon and not Clerk. In such a case,

the reservation provided is to be of the post of Peon only and that requirement cannot be satisfied by the Society by appointing a Clerk, which

vacancy arose far later. We, therefore, do not find any reason to modify the conclusion of the learned single Judge.

Writ Appeal fails and it is therefore dismissed.