



IN THE HIGH COURT OF KARNATAKA AT BENGALURU



DATED THIS THE 8TH DAY OF NOVEMBER, 2023

PRESENT

THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT APPEAL NO. 708 OF 2023 (GM-CC)

BETWEEN:

SRI. DEVARAJ P R,

...APPELLANT

(BY SRI.J PRASHANTH., ADVOCATE)

AND:

KARNATAKA CO OPERATIVE MILK
PRODUCERS FEDERATION LIMITED
REPRESENTED BY ITS MANAGING DIRECTOR,
D R COLLEGE POST, DR M H MARIGOWDA ROAD
BENGALURU-29.

...RESPONDENT

(BY SRI.S S NAGANAND., SENIOR ADVOCATE FOR
SMT. SUMANA NAGANAND., ADVOCATE FOR C/R-1)

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO A) SET ASIDE THE
ORDER DATED 14/03/2023 PASSED BY THE LEARNED SINGLE
JUDGE IN WP NO.2753/2023 AND ETC.,

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
ORDERS, THIS DAY, **CHIEF JUSTICE** PRONOUNCED THE
FOLLOWING:

Digitally signed
by SHARADA
VANI B.
Location: HIGH
COURT OF
KARNATAKA





JUDGMENT

This intra-Court Appeal calls in question a learned Single Judge's order dated 14.02.2023, whereby Appellant's W.P.No.2753/2023 essentially challenging his non-selection for appointment to the post in question has been negated on the ground that, "*the information uploaded by the Petitioner is incomplete and illegible, and therefore, there is no infirmity in the Endorsement issued by the Respondent – Federation...*"

2. Learned counsel for the Appellant vehemently argues that the impugned Endorsement of the Respondent – Cooperative Federation, which is an Entity answering the description of State under Article 12 of the Constitution of India, is contrary to the norms of recruitment; the same is absolutely bereft of elements of justice; the Federation ought to have given an opportunity to rectify the error by calling upon the Appellant to upload a legible copy of his Social Status Certificate and not doing the same is unfair & unreasonable. He further argues that these aspects



having not been duly considered by the learned Single Judge, the impugned order is liable to be voided and Writ Petition needs to be favoured, by allowing the Appeal.

3. Learned Senior Advocate, Sri S.S.Naganand representing the Respondent – Co-operative Federation vociferously opposes the Appeal making submission in justification of the order of the learned Single Judge and the reasons on which the same is structured. The thrust of his contention is: the very terms of Recruitment Notification dated 20.10.2022 more particularly Condition stipulated at (xi) therein provides for rejection of the Online Applications *inter alia* on the ground of unclear/vague document; thousands of candidates staking their claim, no individual opportunity is feasible to be given to the non-compliant candidates. He presses into service certain Rulings.

4. Having heard the learned counsel for the parties and having perused the Appeal papers, we are



inclined to grant indulgence in the matter for the following reasons:

a. The Respondent – Co-operative Federation answers the description of State under Article 12 of the Constitution in the light of the decision of Apex Court in **R.D.SHETTY vs. INTERNATIONAL AIRPORT AUTHORITY OF INDIA, AIR 1979 SC 1628** and therefore, it has to conduct all its affairs in a just & reasonable way. Any act of Article 12 Entity that is not animated with the elements of fairness runs the risk of invalidation at the hands of Writ Court, ours being a Welfare State as constitutionally Ordained. The action of the Federation in shunting the Appellant to the General Category merely because the Certificate of Social Status which he had uploaded was not clearly visible or that it was illegible, is absolutely unfair, to say the least. A simple intimation to the candidate of the so called defect, would have been made the impugned action compliant with the principles of natural justice. No explanation is offered for not undertaking such an innocuous exercise.



This falls militantly short of the fairness standards, as rightly argued by learned counsel for the Appellant.

b. It is not the case of Respondent – Co-operative Federation that the subject Certificate of Social Status is spurious or otherwise inadmissible. What is contended is that the same was not legible when web-hosted. But, what we fail to understand is, what heavens would have fallen down had the Federation asked the Appellant to web-host a legible Certificate. Learned Sr. Advocate appearing for the Respondent – Cooperative Federation contended that the instructions contained in the subject Recruitment Notification not only do not provide for such a course of action but, prescribe automatic rejection of the very Application of the candidate concerned. He invokes General Instruction No.(xi) which has the following text in the colloquial language:

“xi) ಅಭ್ಯರ್ಥಿಗಳು ಆನ್‌ಲೈನ್ ಮೂಲಕ ಸಲ್ಲಿಸುವ ಅರ್ಜಿಗಳಲ್ಲಿ ಅಪೂರ್ಣ ಹಾಗೂ ಅಸ್ಪಷ್ಟ ದಾಖಲೆಗಳನ್ನು ಅಥವಾ ಮಾಹಿತಿಗಳನ್ನು ನೀಡಿದ್ದಲ್ಲಿ. ಅಂತಹ ಅರ್ಜಿಗಳನ್ನು ತಿರಸ್ಕರಿಸಲಾಗುವುದು.”



This Instruction in our opinion, cannot be construed to exclude the principles of natural justice which are at times treated as part of Article 14 of the Constitution. It has been a settled position of law that even in statutory instruments, the principles of natural justice should be read into as an inbuilt mechanism unless excluded expressly or by necessary implication. Law Reports are replete with such a proposition.

5. Learned counsel appearing for the Appellant is more than justified in drawing our attention to another Instruction in the very same Notification which at internal page No.35 reads as under:

“ಅಭ್ಯರ್ಥಿಗಳು On-Line ಮೂಲಕ ಅರ್ಜಿ ಸಲ್ಲಿಸುವಾಗ ಕಡ್ಡಾಯವಾಗಿ ಹಾಜರುಪಡಿಸಬೇಕಾದ ಪ್ರಮಾಣ ಪತ್ರಗಳ ಪ್ರತಿಯನ್ನು ಸ್ವಯಂ ದೃಢೀಕರಿಸಿ ಅಪ್‌ಲೋಡ್ ಮಾಡತಕ್ಕದ್ದು. ಆದರೆ ಈ ಕೆಳಕಂಡ ಪ್ರಮಾಣ ಪತ್ರಗಳನ್ನು/ದಾಖಲಾತಿಗಳನ್ನು ಅರ್ಜಿ ಸಲ್ಲಿಸಲು ನಿಗದಿಪಡಿಸಿರುವ ಕೊನೆಯ ದಿನಾಂಕದೊಳಗೆ ಅಂದರೆ ದಿನಾಂಕ: 19-11-2022 ರೊಳಗೆ ಪಡೆದಿರಬೇಕು ಇಲ್ಲವೇ ಸಿಂಧುವಾಗಿರಬೇಕು ಹಾಗೂ ಮಹಾಮಂಡಳವು ಪರಿಶೀಲನೆಗಾಗಿ ಹಾಜರುಪಡಿಸಲು ಸೂಚಿಸಿದಾಗ ಅರ್ಜಿಯಲ್ಲಿ ನಮೂದಿಸಿರುವ ಮೀಸಲಾತಿಯ ಪ್ರಮಾಣ ಪತ್ರಗಳ ಮೂಲ ಪ್ರತಿಗಳನ್ನು ತಪ್ಪದೇ ಹಾಜರುಪಡಿಸತಕ್ಕದ್ದು. ತಪ್ಪಿದಲ್ಲಿ ಕೆಳಕಂಡಂತೆ ಕ್ರಮ ಕೈಗೊಳ್ಳಲಾಗುವುದು.”

The above text makes it abundantly clear that the Federation could have asked the Appellant to again upload



or to produce the original document for verification. The High Court of Delhi in **AHIRE AJINKYA SHANKAR VS. INDIAN COAST GUARD, (2023) SCC OnLine Del 5726**, in more or less matachable fact matrix has observed at paragraph 13 as under:

"13. We need not reiterate that the purpose of document verification is to ensure that there is no impersonation, misleading or incorrect documents furnished to seek enlistment. The aforesaid alleged mismatch cannot be, by any stretch of imagination, labeled as discrepancy or furnishing of any false information.... Moreover, the alleged mismatch is not such an error which could have led to rejection of the candidature of the petitioner, particularly, in view of the fact that there is nothing which may even remotely indicate that these are forged or procured documents. The caste certificate ought to have been read in conjunction with other documents. A holistic view of the matter would not suggest that the petitioner is not a bonafide candidate."

6. Learned Sr. Advocate, Sri S.S.Naganand placed reliance on **STATE OF TAMIL NADU VS. G.HEMALATHAA, (2020) 19 SCC 430** to contend that the instructions in the recruitment notification are mandatory. We find some difficulty in agreeing with this



broad proposition and reasons are not far to seek: firstly, the case involved the instructions issued by the Public Service Commission relating to recruitment to the post of Civil Judge. These instructions were having force of law since they were relatable to Statutory Recruitment Rules unlike the General Instructions that are pressed into service. Secondly, the recruitment to the post of Civil Judge to 320 posts of Civil Judges and not some ordinary appointments. Thirdly, the candidate had in gross violation of the statutory instructions underlined her a portion of her answer sheet; it is obvious that the same would give scope for identification of the candidate and of seeking favour. That is not the case here. The other decision is **UMESH CHANDRA SHUKLA VS. UNION OF INDIA, (1985) 3 SCC 721**. This again was a case of recruitment to the posts of Subordinate Judges under Delhi Judicial Service Rules, 1970. The same reasons avail for not permitting the invocation of this decision too. The third decision is **BINIMIL K.G VS. K.P.S.C., (1997) SCC OnLine Ker 323**. Para 4 of the decision makes it clear



that it was a recruitment undertaken by the Public Service Commission whose proceedings are governed by the Rules promulgated under Article 309 of the Constitution. Apparently, the application for appointment was submitted beyond the period stipulated in the Recruitment Notification. Thus, facts of this case are miles away from the Appellant's. It hardly needs to be stated that a decision is an Authority for the proposition rendered in a given set of facts and not for all that which logically follows from what has been so rendered vide **QUINN VS. LEATHEM, (1901) AC 495.**

7. The last contention of learned Sr. Advocate, Sri S.S.Naganand that after accomplishing the task, the Selection Committee is dissolved and therefore, a *de novo* consideration of Appellant's candidature cannot be undertaken, does not merit acceptance, *ubi jus ibi remedium* i.e., where there is a right, there is a remedy too, being a foundational guiding principle. In



DHANNALAL vs. KALAWATIBAI, (2002) 6 SCC 16, it

is observed:

"Ubi jus ibi remedium — there is no wrong without a remedy. Where there is a right there is a forum for its enforcement. According to Broom's Legal Maxims (10th Edn., pp. 118-19), the maxim has been considered so valuable that it led to the invention of the form of action called an action on the case. Where no precedent of a writ can be produced, the Clerks in Chancery shall agree in forming a new one".

It is pertinent to advert to the wise words of a great jurist Prof. A.V.Dicey from his *magnum opus* 'Introduction to the study of the Law of the Constitution' VII Edn. 1908 at page 199:

"There runs through the English constitution that inseparable connection between the means of enforcing the right and the right to be enforced which is the strength of judicial legislation. The saw ubi jus ibi remedium, becomes from this point of view something much more important than a mere tautological proposition. In its bearing upon constitutional law, it means that the Englishmen whose labors gradually formed the complicated set of laws and institutions which we call the Constitution, fixed their minds far more intently on providing remedies for the enforcement of particular rights or for averting definite wrongs, than upon any declarations of the Rights of Man or Englishmen..."



The Apex Court in **SARDAR AMARJIT SINGH KALRA vs. PRAMOD GUPTA, (2002) SCC Online 307** has observed as under:

"As far as possible, courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby tender the rights themselves etiose, "ubi jus ibi remedium" (where there is a right, there is a remedy) being a basic principle of jurisprudence. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice".

8. As already mentioned above, the genuineness or validity of the Caste Certificate of the petitioner is not in dispute; it was uploaded on the official website of the respondent in time, is admitted, but it was illegible, is the complaint. The Appellant has successfully faced the Written Examination by scoring 114 marks. Despite granting adjournment on request, the Co-operative Federation has not disclosed the marks secured by the selected candidate in the category concerned, and therefore we may presume it to be lower than Appellant's. Of course, we do not intend to make this aspect



conclusive, and therefore leave it for the *de novo* exercise. The Appellant had immediately rushed to the writ court brooking no delay whatsoever. He had also obtained the interim order dated 06.02.2023, which reads as under:

"If viva voce is concluded today, it shall be conducted in favour of the petitioner, as the denial is completely contrary to law albeit prima facie, as the allegations that the caste certificate is not enclosed properly, on the face of it, it is a curable defect." (Emphasis is ours)

The above being the position, contention of the kind does not merit acceptance.

9. It hardly needs to be stated that when the recruiting entity is an instrumentality of the State under Article 12, the persons in the fray have a fundamental right to have their candidature considered vide Article 16 of the Constitution. If the error is attributable to such an agency, it cannot ordinarily be permitted to argue the difficulty of undertaking its rectification, the error being plainly curable. Otherwise, illegalities in the recruitment process despite challenge would go with impunity and the right thinking people in the society will not approve it.



Turning away a deserving job aspirant is not a happy thing to happen in a Welfare State. Courts in general and Writ Courts in particular cannot deny justice to a citizen who has brought a worthy cause to their portal, by quoting some jurisprudential theories. **Justice Oliver Wendell Holmes**, a century ago has said in **DAVIS vs. MILLS, 194 U.S. 451 (1904)**:

"Constitutions are intended to preserve practical and substantial rights, not to maintain theories...".

In the above circumstances, this Appeal succeeds and impugned order is set at naught; Appellant's W.P.No.2753/2023 having been favoured, the Endorsement impugned therein is quashed.

A Writ of Mandamus issues to the Respondent to accept the original Caste Certificate/Social Status Certificate that shall be produced by the Appellant within two weeks and consider his candidature for selection and appointment to the post in question under the Reserved



Category within four weeks next following, by creating a supernumerary post.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Snb, Bsv, Kps