(2015) 04 KL CK 0044

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 6687 and 13298 of 2014

All Kerala Co-operative Agricultural and Rural Development Bank Employees Association	APPELLANT
Vs	
The Deputy Registrar (Administration) and Others	RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:
Kerala Co-operative Societies Act, 1969 — Section 2(oc), 28(1D)

Citation : (2015) 04 KL CK 0044

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : V.G. Arun and T.R. Harikumar, for the Appellant; D. Somasundaram, Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Ramakrishna Pillai, J.—The decision dated 3.7.2013 taken in a meeting presided over by the Minister for Corporation authorizing two officials of the co-operative department to assess the assets and liabilities of the Thrissur Primary Co-operative Agricultural and Rural Development Bank Ltd. No. 329 (for short, Thrissur PCARDB), Thalappilly Primary Co-operative Agricultural and Rural Development Bank Ltd. No. R 1354 (for short, Thalappilly PCARDB) and Chavakkad Primary Cooperative Agricultural and Rural Development Bank Ltd. No. R 1355 (for short, Chavakkad PCARDB), which were formed after bifurcation of Cochin Co-operative Agricultural and Rural Development Bank as well as the consequential order dated 27.7.2013 issued by the Registrar of Co-operative Societies Act are under challenge in these writ petitions.

2. The petitioner in W.P.(C) No. 6687/2014 is the Thrissur taluk committee of the all Kerala Co-operative Agricultural and Rural Development Bank Employees Association. The petitioners in W.P. (C) No. 13298/2014 are the members of the erstwhile Cochin Cooperative Land Mortgage Bank Ltd. No. 329. The petitioners'' case in nut shell is as follows.

3. After the enactment of Kerala Co-operative Societies Act, 1969 (for short, the KCS Act), the Cochin Co-operative Agricultural and Rural Development Bank became the Primary Co-operative Agricultural and Rural Development Bank (for short, the PCARD bank). The area of operation of the said bank comprised of Thrissur, Thalappilly and Chavakkad taluks. The definition of PCARD Bank in Section 2(oc) was amended by Ordinance 45 of 2011 followed by Act 13 of 2012. In view of the amendment, all PCARD Banks having more than one taluk as its area of operation had to be bifurcated.

4. The Registrar of Co-operative Societies issued communication to all PCARD Banks having more than one taluk as its area of operation, prescribing the procedure to be followed for bifurcating the assets and liabilities of the existing banks so as to have one PCARD Bank for each taluk. In terms of that direction, the general body of Cochin CARD Bank met and formulated a scheme for bifurcation of the assets and liabilities into three banks, namely, Thrissur PCARDB, Thalappilly PCARDB and Chavakkad PCARDB. The parent bank, i.e., Cochin CARD Bank was renamed as Thrissur PCARD Bank retaining Thrissur taluk as its area of operation. The other two banks i.e. Thalappilly PCARDB and Chavakkad PCARDB would be registered with Thalappilly and Chavakkad as their area of operation.

5. The petitioners point out that the assets and liabilities were divided among the Thalappilly, Thrissur and Chavakkad PCARD Banks in the ratio 9:3:2. As per the scheme of bifurcation, the property where the head office of the parent bank is situated was to continue as property of the Thrissur PCARDB and the value of the property has to be shared between the three banks proportionately; it is alleged. The petitioners further allege that the scheme of bifurcation was accepted and acted upon. The erstwhile Cochin CARD Bank was renamed and its area of operation was confined to Thrissur taluk and the other two banks were registered with Thalappilly and Chavakkad taluks respectively as its area of operation.

6. The grievance of the petitioner in W.P.(C) No. 6687/2014 is that after the scheme of bifurcation came into effect and the two individual banks commenced functioning, the President of the Thalappilly PCARDB filed a complaint before the Minister of Cooperation pointing out that an illegality has been committed in fixing the value of the property owned by the Thrissur PCARDB at the price at which the property was purchased. Based on the complaint, a meeting was convened on 3.7.2013 in the Cambers of the Minister.

7. The petitioner points out that contrary to the scheme of bifurcation, a decision was taken in the meeting that after setting apart 25 cents of land for construction of head office building for the Thrissur PCARDB, the balance 1.25 acres would be divided among the Thalappilly, Thrissur and Chavakkad PCARD banks in the ratio of 9:3:2. It was also decided that since the Chavakkad PCARDB did not have its own building, the Thrissur PCARDB should contribute Rs. 25 lakhs and the Thalappilly PCARDB should contribute Rs. 15 lakhs so as to help the Chavakkad PCARDB to acquire the building of its own. Based on the said

decision, the Registrar of Cooperative Societies issued a direction dated 27.7.2013 to the Deputy Registrar (Administration), Thrissur requiring him to bifurcate the assets and liabilities among the three banks in accordance with the decision taken in the meeting. The grievance of the petitioners in W.P.(C) No. 6687/2014 is that the erosion of the assets of the Thrissur PCARDB Bank would adversely affect its members and employees.

8. In W.P.(C) No. 13298/2014, the petitioners would allege that the CARD Bank Act, 1984 (Act 20 of 1984) has got the assent of the President of India on 30.7.1984 as a special law which would prevail over the Kerala Co-operative Societies Act. According to the petitioners, in view of the special provisions contained in Section 51 of the CARD Bank Act, 1984, the assets and rights of the Cochin Co-operative Land Mortgage Bank Ltd. cannot be bifurcated by any scheme prepared by the Registrar of Co-operative Societies.

9. The Thalappilly PCARDB has filed separate detailed counter affidavits in both the writ petitions justifying the decision taken in the meeting headed by the Minister for Co-operation as well as the consequential direction issued by the Registrar of Co-operative Societies. The Joint Registrar of the Co-operative Societies have filed separate statements through the learned Special Government Pleader justifying the stand taken by the co-operative department.

10. Arguments have been heard.

11. It was argued by Sri. V.G. Arun, the learned counsel for the petitioner in W.P.(C) No. 6687/2014 that the bifurcation had been effected by the general body of the parent bank in the manner provided under the ordinance and the draft scheme. Therefore, no modification can be brought about without the consent and concurrence of the general body. The learned counsel would point out that once the general body had taken the decision and the same has been approved by the authority concerned, the same cannot be modified later. It was argued that as per the ratio for bifurcation, major portion of the assets of the parent bank has already been transferred to the Thalappilly PCARDB and it has started functioning in its own building. Therefore, at the instance of the Thalappilly PCARDB, the property which was purchased by the Thrissur PCARDB cannot be bifurcated.

12. It was further pointed out that the head office of the Thrissur PCARDD is functioning in the property in question. Therefore, according to Sri. V.G. Arun, transfer of a portion of the property to Thalappilly PCARDB and Chavakkad PCARDB would amount to encroachment into the area of operation of the Thrissur PCARDB. It was further argued that going by Section 2(oc), the area of operation of PCARD Bank should be confined to one taluk. If the Thalappilly PCARD and Chavakkad PCARD banks commence activity in the portion of the property allotted to them, that would be violation of Section 2(oc); so submitted Sri. V.G. Arun.

13. Mr. P.N. Mohanan, the learned counsel for the petitioners in W.P.(C) No.

13298/2014 also submitted arguments against the bifurcation. Sri. P.N. Mohanan point out that as the CARD Bank Act, 1984 under which the banks were originally established, being a special enactment, has overriding effect over the Co-operative Societies Act. Therefore, in view of Section 51, the assets and liabilities of the Thrissur CARD cannot be bifurcated by any scheme prepared by the Registrar.

14. Mr. George Poonthottam, the learned counsel appearing for the Thalappilly PCARDB would submit that consequent to the enactment of KSC Act in the year 1969, all co-operative societies registered and functioning until then have become societies registered in terms of the KCS Act. According to him, the Thalappilly CARD is a primary society affiliated to Kerala State Co-operative Agricultural and Rural Development Bank (KSCARD Bank), the Apex Bank, registered in terms of the KCS Act. It was further pointed out that in terms of Section 2(oc) of the Act, PCARD Bank is defined and the operation of such bank is required to restrict its function in one taluk.

15. As per the proviso amended through Act 13 of 2012, no primary agricultural and rural development bank should be registered without the bifurcation of assets and liabilities of the existing societies having the area of operation in more than one taluk and the societies should restrict their operation in the area of the respective societies on such bifurcation. As rightly submitted by Mr. George Poonthottam, by the operation of law, primary cooperative agricultural and rural development bank is required to restrict its operation in one taluk by bifurcation of area and dividing its assets.

16. It was further pointed out that the parent bank, i.e., Thrissur PCARD bank was having its area of operation in three taluks and, therefore, the society was required to restrict its operation in one taluk in terms of the provisions contained in the KCS Act. It is crucial to note that the constitutional validity of Section 2(oc) as inserted by Act 1 of 2000 and the proviso amended through Act 13 of 2013 are not under challenge in these cases. There is a reason for not challenging the vires of the said provision. This Court in Irinjalakuda Co-operative Agricultural and Rural development Bank Ltd. Vs. Kerala State Co-operative Agricultural and Rural Development Bank Ltd. and Others, (2009) 1 KLJ 729 , considered the constitutional validity of Section 2(oc) and its related questions and the challenge was negatived.

17. The argument that the parent bank is deemed to have been registered when the Land Mortgage Act was enacted, is on account of the mis-conception. When KCS Act has been enacted, all co-operative societies which were registered under various enactments have become societies registered in terms of the KCS Act. The legislation in relation to co-operative societies, its function and activities are matters within the domain of the State Legislature. Therefore, the societies are required to function within the frame work of State Legislation. Crowning all these, the provisions of Act 20 of 1984 are in no way connected or related to the registration of co-operative societies as the provisions are meant for achieving

certain objectives, as can be seen from the provisions of the said Act. One special reason pointed out by Mr. P.N. Mohanan is that Act 20 of 1984 has obtained the assent of the President of India. However, as rightly pointed out by the learned Special Government Pleader, the KCS Act also has obtained assent of the President of India. It is also relevant to note that there is no repugnancy between these two statues.

18. Here, bifurcation was effected on account of the command of Section 28(1D) of the KCS Act. It is relevant to note that there is no provision in Act 20 of 1984 in relation to the internal business and administration of PCARD Bank as claimed by the petitioners.

19. The general body of the parent bank had accepted the bifurcation in terms of Section 2(oc) of the KCS Act as per Ext. P5 minutes. The Joint Registrar has approved the same as per Ext. P6 order. As the bifurcation of the area of operation of the society and the distribution of assets and liabilities has been accepted by the general body and statutory approval has been given by the Joint Registrar, in terms of the said bifurcation, the petitioners who are only members or employees of the parent bank cannot speak independently in relation to the matters of the bank.

20. The legislative competence of the State to have legislation in respect of PCARD bank, its area of operation and matters related to assets and liabilities to be divided in terms of Section 14 of the Act will not be curtailned by Act 20 of 1984. There is no legal inhibition in dividing the area of operation of the parent bank and further transferring the assets and liabilities to the respective societies on registration. In fact, the said proposal has been duly placed before the general body of the parent bank and the same has been approved by the general body as well. The Registrar has given statutory approval for the said resolution.

21. Mr. George Poonthottam as well as Mr. D. Somasundaram would point out that in terms of clause 25 of Ext. R6(a) (Ext. P5) which is the true copy of the proceedings of the general body convened on 30.11.2011, the matter was required to be resolved and, therefore, the meeting was convened by the Minister for Cooperation. There were 23 participants who were all persons representing the department of co-operation, Apex Bank, Presidents of all the co-operative societies and officers of the cooperative department at the district level. The meeting was required to be convened to resolve the disputes regarding the property of the parent bank as provided in clause 25 of Ext. R6(a). It was pointed out that the decision of the meeting headed by the Minister was only the initiative taken at the Government level and proceedings issued by the Registrar was to give effect to the decisions thus taken. This, according to the learned counsel for the respondents, was only to give effect to the decision taken as per Ext. R6(a). I see valid force in the said submission

22. The learned counsel for the respondents also pointed out the difficulties faced by the concerned banks in proceeding with the business unless the bifurcation is

not allowed to be completed. Since the bifurcation process is not over, the audit in respect of three banks also remain unattended. Without completing the audit and giving the audit certificate, the primary banks are not in a position to get financial assistance provided by NABARD which is channelised through KSCARD Bank. It was pointed out that the interim order passed by this Court in W.P.(C) No. 6687 of 2014 has prevented the finalisation of the bifurcation proceedings. I see valid force in the said submission.

23. As per the present proposal, 25 cents of land is set apart for the Thrissur PCARDB and the remaining property is divided among the three banks in a particular ratio. Therefore, the learned Special Government Pleader would point out that the Thrissur PARDB is at an advantageous position. Though the Act restricts the area of operation to one taluk, it does not prohibit a PCARDB from holding assets at another place.

24. On a consideration of the entire materials placed on record, this court is of the definite view that the petitioners are not entitled to succeed.

In the result, the writ petitions fail and accordingly, they are dismissed.