

(2018) 06 KAR CK 0024

In the Karnataka High Court

Case No : Criminal Petition No.100819 of 2018

Anand Balkrishna Appugol @APPELLANT@Hash Nana Dhondiba Desai and Anr

Date of Decision : 20-06-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Karnataka Protection of Interest of Depositors in Financial Establishment Act, 2004 — Section 2(4), 3, 4, 6, 7, 8, 9, 18
Karnataka Co-operative Societies Act, 1959 — Section 2A(6), 28A
Maharashtra Protection of Interests of Depositors in Financial Establishments Act, 1999
Banking Regulation Act, 1949 — Section 5(c)
Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 — Section 2(c)
Kerala Co-operative Societies Act — Section 9, 27, 28
Himachal Pradesh Co-operative Societies Act, 1968 — Section 9

Citation : (2018) 06 KAR CK 0024

Hon'ble Judges : H.B. PRABHAKARA SASTRY, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The petitioner has filed this petition under Section 482 of Code of Criminal Procedure (henceforth for brevity referred to as "Cr.P.C.")

seeking to quash the proceedings pending before the Principal District and Sessions Judge, Belagavi (henceforth for brevity referred to as "Special

Court") in Special Case No.14 of 2018 for the offence punishable under Sections 3, 4, 6, 7, 8 and 9 of the Karnataka Protection of Interest of

Depositors in Financial Establishment Act, 2004 (henceforth for brevity referred to as "KPID Act").

2. The summary of the case which has lead the present petitioner to file this petition is that, the present petitioner is said to be the Chairman of Sri.

Krantiveera Sangolli Rayanna Co-operative Society Ltd., a Co-operative Society

registered under the provisions of Karnataka Co- operative Societies

Act, 1959 (henceforth for brevity referred to as 'KCS Act') and governed by the provisions of the said Act and bye-laws framed under it.

3. The present respondent, as a complainant, has filed a private complaint under Section 18 of KPID Act before the Special Court for the offence

punishable under Sections 3, 4, 6, 7, 8 and 9 of the said Act alleging that the present petitioner, who is in charge of Krantiveera Sangolli Rayanna

Credit Co-operative Society Ltd., and also Gajaraj Credit Co-operative Society has failed to refund a sum of `66,27,282/-to the various depositors who

had deposited the said amount with the said Co-operative Societies. It is further alleged in the complaint that the present petitioner, who is the accused

before the Special Court has invested the money of the depositors, collected by him, in real estate business said to have been run by him. Thus, he has

cheated the general public/investors by misappropriation of the fund deposited by them. The Special Court took the cognizance of the said private

complaint under Section 18 of the KPID Act and issued summons to the accused mentioned therein including the present petitioner. It is the said act

of the Special Court in taking cognizance of the matter, the present petitioner has challenged with a prayer to quash the entire proceedings pending

before the Special Court.

4. The 1st respondent is appearing as a party in person. The 2nd respondent/ State is being represented by the learned High Court Government

Pleader.

5. Though this matter was listed in the admission list, however with the consent from both sides, the matter is taken for its final disposal.

6. Heard the arguments from both sides.

7. Learned counsel appearing for the petitioner in his arguments mainly canvassed a single point that the definition of 'Financial Establishment'

as defined under Section 2(4) of the KPID Act excludes Co-operative Society controlled by the State. Since the Societies of the present petitioner are

controlled by the State, KPID Act is not applicable. As such, entire proceedings pending before the Special Court deserves to be quashed.

8. Sri.Nana Dhondiba Desai, respondent No.1, who is appearing as a party-in-person, in his submissions submitted that there are no material to show

that the petitioner-Society is being controlled by the State. Further in the State

of Maharashtra, similar to KPID Act a law by name Maharashtra

Protection of Interests of Depositors in Financial Establishments Act, 1999 (henceforth for brevity referred to as "MPID ACT") is in force,

which is identical in its provisions with that of KPID Act in the Karnataka. As such Co-operative Societies in Maharashtra come within the purview

of MPID Act. However he did not place any material to show that a Co-operative Society is not excluded from MPID Act.

9. Learned High Court Government Pleader in his arguments submitted that the Co-operative Society of the petitioner is admittedly registered under

KCS Act, 1959. Under the said Act though the said society is required to be registered under it, but the said registration and the supervision of its

activities by the Registrar of the Co-operative Societies through his office cannot be called as a control exercised by the State with respect to the

registered Co-operative Society. He further submitted that admittedly the petitioner Society is not an assisted Society. As such also, it cannot be said

that it is controlled by the State. Therefore, KPID Act does not exclude from its ambit the petitioner's Society.

Â Preamble of KPID Act reads as below :

Â"An Act to provide for protection of interest of depositors in financial establishments and matters relating thereto.

Â Whereas, it is expedient to provide for protection of interest of the depositors in financial establishments and the matters relating thereto and for the

purpose hereinafter appearing.Â"

Â Section 2(4) of the KPID Act defines "Financial Establishment" as below :

Section 2(4) "FINANCIAL ESTABLISHMENT" means any person or a group of individuals accepting deposit under any scheme or

arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the

Central Government or a banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (Central Act 10 of 1949) ;Â"

10. A reading of the above definition shows that the definition of the term "Financial Establishment" does not include a Co-operative Society

which is either owned or controlled by State Government or the Central Government. In the instant case, what is to be looked into is whether the

petitioner Society which is said to be a Co-operative Society registered under

KCS Act is a Society controlled by the State.

11. Learned counsel for the petitioner in his arguments relied upon two judgments of Honâ??ble Apex Court in his support.

12. In *Soma Suresh Kumar v. Government of Andhra Pradesh and Others* reported in (2013) 10 SCC 677 at para 17, to which the attention of this

Court was drawn the Honâ??ble Apex Court was pleased to observe as below :

â??17. The learned counsel for the petitioner raised a further contention that Vasavi Cooperative Bank Ltd. does not come within the definition of

â??financial establishmentâ? under Section 2(C) of the Andhra Act. We find it difficult to accept that contention. What has been excluded from that

definition is a company registered under the Companies Act or a corporation or a cooperative society owned and controlled by any State Government

or the Central Government. The society in question does not fall in that category. Consequently, the Co-operative Bank in question is also governed by

the provisions of the Andhra Act.â??

13. A reading of the above judgment go to show that though the provisions of Andhra Pradesh Protection of Depositors of Financial Establishments

Act, 1999 in its definition of â??Financial Establishmentâ?? under Section 2(c) though had excluded from its ambit, a Co-operative Society owned and

controlled by State Government or the Central Government, but the question before their Lordship was not whether the appellant before it was a Co-

operative Society.

Â Admittedly, it was a Co-operative Bank. As such, the Honâ??ble Apex Court has observed that Vasavi Co-operative Bank Ltd., being a Co-

operative Bank it comes within the ambit of definition of Section 2(c) of Andhra Pradesh Protection of Depositors of Financial Establishments Act,

1999. Therefore since the question of what is â??control by a State of a Co-operative Societyâ? being not a question before the Honâ??ble Apex

Court in the *Soma Suresh Kumar*â??s case (*supra*) the same would not enure benefit of the petitioner.

14. In the second judgment relied upon by the learned counsel for the petitioner in *Balmer Lawrie & Company Limited and Others vs. Partha Sarathi*

Sen Roy and Others reported in (2013) 8 SCC 345, the question before their Lordship was to decide whether the appellant Company which is said to

be a Government Company was falling within the term stated under Article 12 of

the Constitution of India. In that regard, at paragraph 24, their Lordship was pleased to observe as below :

24. When we discuss "pervasive control", the term "control" is taken to mean check, restraint or influence. Control is intended to regulate, and to hold in check, or to restrain from action. The word "regulate", would mean to control or to adjust by rule, or to subject to governing principles.

15. Taking the analogy of the above judgment in *Balmer Lawrie & Company Limited* (supra), the learned counsel for the petitioner submitted that in the case on hand also since the petitioner Society is registered under KCS Act and is required to submit its audited report to the Registrar, Co-operative Societies and shall run its business as per the law prescribed under KCS Act, 1959, the petitioner-society is required to be considered as a Co-operative Society controlled by the State Government. As such, it is excluded from the definition of Financial Establishments under Section 2(4) of the KPID Act.

16. It is not in dispute that the petitioner Society is a registered Co-operative Society under KCS Act, 1959. Admittedly, the petitioner-Society is not an assisted Society under the KCS Act. Even though the petitioner Society is required to file its audit returns to the Registrar of Co-operative Societies and with respect to its accounts, it is subject to the provision and control of the Registrar of Co-operative Societies under Section 2A(6) of the KCS Act. Still it cannot be ignored of the fact that the society would have its own management to run its business and its entire management would vest in the Board constituted under Section 28A of the KCS Act. The Society would run its activities as per the bye-law framed by it. As such, the Society will frame the bye-law though on par the model bye-law, to conduct its business in the manner recognized under the law. Its internal management and affairs will be governed and controlled by the Board of Management constituted under Section 28(A) of the KCS Act. Merely because the society is required to be registered under a particular statute or that it is required to submit its audited report to the particular Department of the Government annually, would by itself not make the society as the one under the direct control of the State. In this regard, I rely upon a judgment of the Hon'ble Apex Court in *Thalappalam Ser. Co-op Bank Ltd. and others v. State of Kerala*

and others reported in AIR 2013 SC (Supp) 437, wherein at paragraph Nos.15, 17 and 18 the Honâ??ble Apex Court was pleased to observe as below :

â??15. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after having come into existence, is governed in accordance with the provisions of a Statute. Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Co-operative Societies or State Government.

17. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the â??Stateâ? or instrumentality of the State. Above principle has been approved by this Court in S.S.Rana v. Registrar, Co-operative Societies and another (2006) 11 SCC 634 : (2006) AIR SCW 3723). In that case this Court was dealing with the maintainability of the writ petition against the Kangra Central Co-operative Society Bank Limited, a society registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. After examining various provisions of the H.P Co-operative Societies Act this Court held as follows : (para 9 of AIR SCW)

â??9. It is not in dispute that the Society has not been constituted under an Act.

Its functions like any other co-operative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society.

Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of

the co-operative society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr. Vijay Kumar, does not contain

any provision in terms whereof any legal right as such is conferred upon an officer of the Society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive

control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the

State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving

at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered,

namely, (1) How was the Society created ? (2) Whether it enjoys any monopoly character ? (3) Do the functions of the Society partake to statutory

functions or public functions ? And (4) Can it be characterized as public authority ?

11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control thereover would

mean that the same satisfies the tests laid down by this Court in *Ajay Hasia v. Khalid Mujib Sehravardi* (AIR 1981 SC 487). [See *Zoroastrian Co-op.*

Housing Society Ltd. v. Distt. Registrar, Co-op. Societies (Urban) (2005 AIR SCW 2317).]

12. It is well settled that general regulations under an Act, like the Companies Act or the Co-operative Societies Act, would not render the activities of

a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of

the society and the State or statutory authorities would have nothing to do with its day-to-day functions.â??

18. We have, on facts, found that the Co-operative Societies, with which we are concerned in these appeals, will not fall within the expression

State or instrumentalities of the State within the meaning of Article 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution. We may, however, come across situations where a body or organization though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of Section 2(h) of the Act, an aspect which we may discuss in the later part of this Judgment.

17. A reading of the above observation makes it very clear that even though the present petitioner Society is also a Body Corporate, but under KCS Act, the final Authority of the said Society vests in the General Body of its members and under Section 28A of the KCS Act. The Societies managed by the Managing Committee constituted in terms of the bye-laws. Final Authority so far as the petitioner-Society is the general body and not the Registrar of Co-operative Societies or State Government. Therefore, merely because the petitioner-Society is regulated in its activities by the Registrar or Joint Registrar of Co-operative Societies, but the same cannot be said that the said regulatory act is by any means a direct or indirect control over the affairs of the Society bringing it within the ambit of the definition of Section 2(4) of KPID Act as the Co-operative Society controlled by the State. Thus, it is clear that even though the petitioner-Society is a Co-operative Society, but it is not controlled by the State Government or the Central Government, thus excluding it from the definition of Financial Establishment under Section 2(4) of KPID Act, as such the only contention taken up by the petitioner in his petition that the Act of taking cognizance by the Special Court was bad in the eye of law in view of the alleged non application of KPID Act to the petitioner Society is not acceptable. Accordingly I do not find any merit in the petition. As such the petition stands dismissed as not fit for admission.

18. In view of the main petition, IA No.1 of 2018 does not survive for consideration.