

(1977) 06 KL CK 0033
In the High Court Of Kerala
Case No : O.P. No. 1750 of 1974

A.P. Balakrishnan Nair and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-06-1977

Acts Referred:

Constitution of India, 1950 — Article 14, 228A

Citation : AIR 1978 Ker 30

Hon'ble Judges : George Abraham Vadakkal, J

Bench : Single Bench

Advocate : N. Raghava Kurup, M.S. Narayana Pillai and P.S. Chandrasekharan Nair, for the Appellant; P.B. Radhakrishnan, G.P., for the Respondent

Final Decision : Dismissed

Judgement

George Vadakkal, J.—The petitioners are the Secretary, Accountant, Senior Clerk and Junior Clerk of the 4th respondent Society and they impugn here the classification of Banking Co-operative Societies with working capital between Rs. 5 lakhs and 10 lakhs into Urban Banks coming under the Banking Regulation Act and Credit Societies for the purpose of regulating the qualification, remuneration, allowances and other conditions of service of officers and servants as contained in Appendix III to the Co-operative Societies Rules, 1969,

2. Section 80(1) of the Kerala Cooperative Societies Act, 1969 enables the Government to classify the societies governed by the Act according to their type and financial position. Sub-section (3) therein enables the Government to make rules regulating the qualification, remuneration, allowances and other conditions of service of the Officers and servants of different classes of Societies specified in Sub-section (1). Sub-section (2) of the section enables the Government to fix or alter the number and designation of the Officers and servants of different classes of societies specified in Sub-section (1). Pursuant to the aforesaid enabling provisions the Government has made rules which are contained in Chap. XV of the Co-operative Societies Rules, 1969. Rule 182 says that:

"For the purpose of Sub-section (1) of Section 80, the societies in the State shall be classified as shown in Appendix III". Turning to Appendix III to the rules it appears that the Co-operative Banks have been broadly classified into three, viz., (a) Apex Banks, (b) Central Co-operative Banks and (c) other Banks. The third category of Banks consists of (i) Urban Banks, (ii) Primary Land Mortgage Banks and Credit Societies. In the sub-classification captioned "Urban Banks" there are four classes of Banks. The fourth class consists of Banks having working capital below Rs. 10 lakhs. The classification appears to be as is seen from the several columns in the Appendix on the basis of financial position. The banks coming in the 4th class therein can have a Secretary, an Accountant, two Cashiers/Senior Clerks/Accountants, one Junior Clerk and two Peons. The Secretary's scale of pay is fixed in the appendix as Rs. 225-20-325-25-450; Accountant's Rs. 175-15-250-20-350; the Senior Clerk's scale of pay as per Appendix III is Rs. 150-10-200-15-275; and that of a Junior Clerk Rs. 130-10-190-15-250.

3. Credit Societies as per the Appendix consist of six classes. On the basis of financial position Class V therein takes in societies with working capital of Rs. 5 lakhs and above but below Rs. 10 lakhs, and loan outstanding above Rs. 3 lakhs but below 7.5 lakhs. Such a Society can have a Secretary, a Senior Clerk, a Junior Clerk and an Attendant as its employees. The Secretary's pay scale in such a society is fixed as per Appendix III as Rs. 125-8-165-10-195; the Senior Clerk's Rs. 90-5-130; and the Junior Clerk's as Rs. 80-5-120.

4. It is the case of the petitioner that there is no basis for fixing different scales of pay for the several employees of a Class V Society coming under the category of Credit Societies and the employees of a Class IV Urban Bank having a working capital of below Rs. 10 lakhs. It is contended that there is no nexus between the classification and the object of the classification. It is on that basis that the petitioners seek quashing of the classification as aforesaid.

5. All the petitioners are at present admittedly drawing a pay scale higher than that fixed by Appendix III for Class V Credit Societies. Chapter XV of the Rules framed u/s 86 of the Act came into force only on 27-9-1973 after the petitioners have entered service of the 4th respondent-Bank. Rule 200 of the Rules saves the higher scale of pay obtained before Chapter XV came into force. Therefore if the classification is quashed, the result would only be that the petitioner will be entitled to get the pay at the scale of pay at which they were getting prior to the coming into force of the rules which they are drawing even after the rules came into force. In that view it can be said that the petitioners are not aggrieved persons.

6. I am also not inclined to accept the contention that the classification is without any basis and that the same is arbitrary. At this juncture I should notice the contention urged on behalf of the petitioners that in view of Article 228-A of the Constitution this question cannot be decided by a single Judge. The contention is that it can be decided only by a constitution Bench consisting of five Judges. It appears to me that the scheme of Cls. (2), (3) and (4) of Article 228-A is that

no State law shall be declared "to be constitutionally invalid" except by the majority decision of a constitution Bench. Clause (2) provides that the High Court may determine questions relating to constitutional validity of State laws; Clause (3) says that the minimum number of Judges who shall sit for the purpose of determining any question as to the constitutional validity of any State law shall be five; Clause (4) says that a State law shall not be declared to be constitutionally invalid by the High Court except in the manner stated in Sub-clauses (a) and (b) of that clause. The scheme as a whole is that the said provisions proceed on the basis that a State law, as long as the same has not been invalidated in the manner stated therein, is valid and that this Court can proceed on the basis that the same is valid. All legislative enactments have to be assumed to be constitutionally valid till a competent court determines and declares the same to be not so. In that view unless the petitioners establish that the same is liable to be invalidated this Court will have to proceed on the basis that the law is valid. Therefore, I do not think that unless I come to the conclusion that the law is liable to be invalidated the matter has to be referred for decision by a constitution Bench. In other words, it appears to me that there is no inhibition against a single Judge examining the question of constitutional validity of a State law and holding that it is constitutionally valid.

7. As earlier said the averments in the counter-affidavit clearly show that there is a distinction between Agricultural Credit Societies to which class the 4th respondent Co-operative Society belongs and Urban Banks and Co-operative Banks mentioned in the Appendix III. It is pointed out in the counter-affidavit that Urban Banks mentioned in the appendix are carrying on banking activities like collection of cheques, discounting of bills etc., whereas the Agricultural Credit Societies are not engaged in such activities. It is also averred in the counter-affidavit that the main income of Agricultural Credit Societies is the margin in the interest-rates between borrowings and lendings and this generally is 2 1/4% of the lending whereas in the case of Urban Banks they depend on their own funds including deposits and as such they get a higher margin of profits at or about 5 to 6 per cent of the lendings. It is also averred in the counter-affidavit that there are vast differences in the function, source of income and financial position of Co-operative Banks and Credit Societies. It is also the case of the respondents as is seen from the counter-affidavit that the credit societies have to depend upon loans obtained from the Central Land Mortgage Bank whereas the Urban Banks with their multi-banking activities are in a better position to raise funds by several kinds of deposits. It is further averred in the counter-affidavit that the classification is not only according to the type of the Societies but also according to the financial position of the societies and the same is warranted by Section 80 of the Act which provides that the government may classify the societies according to their types and financial position. In view of the averment as aforesaid it cannot be said that the classification is in any way constitutionally invalid or hit by Article 14 of the Constitution. I am not prepared to say that the classification is liable to be held constitutionally invalid.

8. In view of what is stated above, there is no merit in this Original Petition. The same is dismissed. However, in the circumstances of the case, there will be no order as to costs.