
(1995) 08 KL CK 0052
In the High Court Of Kerala
Case No : W.A. No. 444 of 1995

Board of Directors of Feroke SCB

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 10-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 08 KL CK 0052

Hon'ble Judges : M.M. Pareed Pillay, C.J;P. Shanmugam, J

Bench : Division Bench

Advocate : M.K. Damodran, for the Appellant; T.R. Ramachandran Nair, George Poonthottam and Government Pleader (N. Sankara Menon), for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, C.J.—Appellant is the petitioner in O.P. No. 2014 of 1995. Appellant - Feroke Service Co-operative Bank Ltd. filed the original petition to quash Ext.P5 notification. Learned Single Judge dismissed the original petition holding that the State Government has considered the question of Public interest in passing Ext.P5 notification and therefore this is not a case to be interfered with under Article 226 of the Constitution of India. Appellant is a registered Society functioning from 1942 onwards. Contention of the appellant is that it has been functioning very well for all these years, that it has 18628 members at present and deposits of Rs. 4,78,00,000/-, that its working capital is Rs. 5,5200,000/- that loans have been advanced to members amounting to Rs. 5,24,00,000/- and that it is running on profit basis. As per Ext. P 2 that Joint Register of Co-operative Societies, Kozhikode (3rd respondent) informed the appellant that a proposal was received in his office for formation of the Feroke Panchayat Service Co-operative Bank with the Panchayat area as its area of operation, and accepting the recognised policy of one Co-operative Bank for one Panchayat, the appellant was directed to take all necessary steps for excluding Feroke Panchayat area from the area of operation of the Bank and report

compliance. After receipt of Ext.P2 appellant passed a resolution on 16-5-1993 stating that the general body has expressed its anxiety regarding the proposal for registration of another society within the area of operation of the appellant - Society, which would weaken its functions and requested the third respondent to withdraw Ext.P2. It is thereafter that Ext.P5 notification was issued by the first respondent. In Ext. P 5 it is stated that in public interest it has become necessary to exempt the proposed Karuvanthuruthy Service Co-operative Bank from the provisions of clause (c) of sub-section (1) of Section 7 of the Kerala Co-operative Societies Act so as to enable the Registrar for giving registration to the proposed bank in Feroke Panchayat. Accordingly the State Government exempted the proposed Karuvanthuruthy Service Co-operative Bank from Section 7(1)(c) of the Act. In the explanatory note it is stated that the Registrar of Co-operative Societies is of opinion that the appellant-Society with its area of operation comprising of Feroke, Cheruvannur and Nallalam Panchayats often failed to serve effectively the people of Feroke Panchayat as its present area of operation is too unwieldy and so the Registrar has recommended that the proposed Karuvanthuruthy Service Co-operative. Bank with the Feroke Panchayat as the area of operation can be given registration by exempting it from the provisions of Section 7 (1) (c) of the Act.

2. The main contention of the appellant is that Ext. P5 is patently violative of Section 7 (1)(c) of the Act. Section 7(1)(c) specifically states that the area of operation of the proposed society and the area of operation of another society of similar type should not overlap and if it does so proposed society cannot be registered by the Registrar. Appellant's contention is that this provision has been completely overlooked by the third respondent. According to the appellant, Government can exercise the powers u/s 101 of the Act only to exempt an existing society from the rigour of any of the provisions of the Act, when it cause any hardship to the working or workability of the society or creates any hurdle to its workability and that power cannot be exercised to enable the Registration of a new society in the area of operation of an already existing society. Ext P5 notification is assailed as one without jurisdiction and a colourable exercise of power.

3. Learned Government Pleader and counsel for the 4th respondent contended that the appellant's contention is devoid of merit as Ext. P 5 notification which is issued u/s 101 of the Act has taken into account the public interest involved in the matter and therefore it cannot be assailed on the ground that it goes contra to what has been provided u/s 7(1)(c).

4. Section 7 empowers the Registrar to deny registration if he is satisfied.

i) that the application does not comply with the provisions of the Act and the Rules;

ii) that the objects of the proposed society are not in accordance with Section 4;

iii) that the area of operation of the proposed society and the area of operation of

another society of similar type do not overlap;

iv) that the proposed bye-laws are contrary to the provisions of the Act and the Rules; and

v) that the proposed society does not comply with the requirements of sound business.

The proposed action of the Government is opposed chiefly on the ground that the Registrar has overlooked Section 7(1)(c).

5. Section 101 of the Act empowers the Government to exempt any society or any class of societies from any of provisions of the Act on the basis of public interest. Section 101 provides that the Government may, if they are satisfied that it is necessary to do so in the public interest by general or special order for reasons to be recorded, exempt any society or any class of societies from any of the provisions of the Act or direct that such provisions shall apply to such society or class of societies subject to such modifications as may be specified in the order. From a reading of Section 101 it can be discerned that the Government in order to safeguard public interest can exempt any society or any class of societies from any of the provisions of the Act. Section 60 of the Madras Co operative Societies Act is similar to Section 101 of the Kerala Co-operative Societies Act. While dealing with Section 60 of the Madras Service Co-operative Societies Act in Registrar, The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others, the Supreme Court held that the Section has been provided to relax the occasional rigour of the provisions of the Act and to advance the object of the Act. The Supreme Court further observed that Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modification. As the power given to the Government u/s 101 of the Kerala Co-operative Societies Act can very well be exercised by the Government to advance the policy and objects of the Act and to safeguard public interest, it is not possible for us to hold that the power u/s 101 is in any way limited or curtailed by Section 7(1)(c) of the Act. As wide power is give to the Government under this Section taking into consideration the overall public interest it cannot be held that in a particular situation where public interest demands Section 7(1)(c) cannot be relaxed. However, we make it clear that the power u/s 101 cannot be used by the Government in a whimsical or arbitrary manner. Only in such cases where public interest demands that the said power can be exercised.

6. As the Government considered that in the working of the appellant Society it is unable to function effectively for the benefit of the people of Feroke Panchayat due to its unwieldy area of operation and as public interest necessitated exemption to the proposed Karuvanthuruthy Service Co-operative Bank from the provisions of Section 7(1)(c) Ext. P 5 notification was issued u/s 101 of the Act. As that has been done in public interest and as there is no material to hold that

this is actuated by mala fides we hold that the learned Single Judge was justified in dismissing the original petition. The appellant has also sought for a writ of mandamus directing the respondents to sanction the proposal to open a Evening Branch at Feroke as recommended in Eyt.P6. It is open to the appellant to pursue the remedies available to it in that regard. We express no opinion about it.

The writ appeal is dismissed.