(2006) 05 KL CK 0023

In the High Court Of Kerala

Case No : W.A. No. 752 of 2003

Cherukode Co-op. Rural Bank Ltd. APPELLANT

Vs

Parur Service Co-op. Bank RESPONDENT

Date of Decision : 24-05-2006

Acts Referred:

Banking Laws (Amendment) Act, 1983 — Section 42
Banking Laws (Amendment) Act, 1984 — Section 42
Banking Regulation Act, 1949 — Section 2, 21, 22, 23, 24
Constitution of India, 1950 — Article 19, 246

Citation : (2006) 2 ILR (Ker) 687 : (2006) 3 KLT 38

Hon'ble Judges : V.K. Bali, C.J;J.B. Koshy, J

Bench : Division Bench

Advocate : K.P. Dandapani, for the Appellant; B.S. Swathikumar, Spl. Government Pleader, P. Jacob Varghese and K. Anand, for the Respondent

Judgement

J.B. Koshy, J.—In these group of cases, the main question to be decided is whether Co-operative banks are liable to comply with the directions of the Reserve Bank of India issued from time to time. W.A.No. 707 of 2003 was filed by Wandoor Service Co-operative Bank Limited against the judgment of the learned single Judge in O.P.No. 26589 of 2002. The above O.P. was filed for a declaration that the registration of Wandoor Co-operative Rural Bank Ltd., fourth respondent in the O.P. in violation of the provisions of the Banking Regulation Act, 1949 (in short B. R. Act) and not to permit the fourth respondent to function as a Rural Bank. The learned single Judge found that the fourth respondent was not a primary agricultural credit co-operative society as defined u/s 2(c) of the Co-operative Societies Act as the bye-laws would show that it was for providing credit facilities for industry, education, trade and employment and the above Rural Cooperative Bank is, in fact, an Urban Co-operative Bank and licence from the Reserve Bank of India was necessary for functioning of the above bank. As per Section 22 read with Section 56 of the Banking Regulation Act (for short ''the Act''), no co-operative society shall carry on banking business unless it is a primary credit society or is a cooperative bank and holds licence issued in that behalf. The learned Judge also referred to Circular No. 4 of 2003 issued by the Registrar wherein the following directions were issued:

1. All registered unlicensed urban co-operative Banks are directed to stop any violation of Banking Regulation Act based on the common judgment of the Hon''ble High Court of Kerala.

2. All the existing unlicensed Urban Co-operative Banks are directed to change their names as Urban Co-operative Societies by making corresponding changes in the clauses of the bye-laws within two months from the date of this Circular.

Since the provisions of the Act were not complied with, registration granted by the Joint Registrar was set aside and the Joint Registrar was directed to consider the matter afresh in the light of Circular No. 4 of 2003 issued by the Registrar of Cooperative Societies after giving opportunity to fourth respondent of being heard. Aggrieved by the above order, fourth respondent filed W.A.No. 707 of 2003. W.A.No. 752 of 2003 was filed against the judgment passed by the learned single Judge in O.P.No. 26588 of 2002. The above O.P. was filed by the Parur Service Cooperative Bank Ltd. which was holding proper licence issued as per the B.R. Act for a declaration that fourth respondent therein, namely, Cherukode Co-operative Rural Bank Ltd, was granted registration to do banking business without proper consideration of the matter. The learned single Judge set aside the registration and directed to reconsider the matter and fourth respondent Cherukode Co-operative Rural Bank Ltd. filed W.A.No. 752 of 2003.0.P.No. 440 of 2002 is filed by members of Kottakkal Co-operative Urban Bank Ltd. which has got licence issued by fifth respondent Reserve Bank u/s 56(p) of the B.R. Act. According to the petitioners, the second respondent Janakeeya Co-operative Urban Bank Limited was granted registration illegally as licence was not granted to it by the Reserve Bank of India. It was also submitted that the above bank started functioning in the area allotted to the petitioners against the provisions of Co-operative Societies Act and Reserve Bank of India is entitled to issue directions as per Section 35A of the Act read with Section 56 (10) and it cannot function as an unlicensed bank. Even though a detailed counter affidavit was filed showing that it was granted registration as a co-operative society, it is not stated that the above bank got any licence to do banking business.

2. O.P.No. 4383 of 2003 is filed by representatives of various urban co-operative banks contending that registration has been granted by the Registrar of the Co-operative Societies Act and their banks are functioning in a legally perfectly manner consistent with the Kerala Co-operative Societies Act and Rules made thereunder. While so, a learned single Judge of this Court, by judgment dated 29-11-2002 in O.P.No. 29908 of 2001 and connected cases directed the Registrar and Reserve Bank of India to take appropriate action as functioning of urban co-operative banks can be done only with licence and as per the direction of Reserve Bank of India following which Ext.P3 Circular No. 4 of 2003 was issued by the Registrar (quoted earlier), Petitioners in the O.P. want to quash the above circular

as, according to the petitioners, the direction of the Reserve Bank need not be complied with and the Central Government or the Reserve Bank has no power with regard to societies registered under the Co-operative Societies Act and provisions of the B.R. Act contending that the above are unconstitutional. But, Union of India was not made a party in the Writ Petition. By way of amendment, a prayer was incorporated for issuance of a writ or direction forbearing the Reserve Bank of India from interfering in any manner with the functioning of the petitioner co-operative societies and in the State of Kerala registered under the provisions of the Kerala Co-operative Societies Act. O.P.No. 4632 of 2003 is filed by a member of the Tanur Co-operative Urban Bank, third respondent therein, contending that the above bank is not functioning properly and for directing the fifth respondent Registrar of Co-operative Societies to take action for reviving the same and also for directing the second respondent Reserve Bank of India not to cancel its licence. A counter affidavit is filed by the part-time administrator of the bank stating that the bank is functioning well and steps are taken for renewing the licence. W.P.(C) No. 21956 of 2004 is filed by Perambra Co-operative Urban Bank Ltd. for directing the Reserve Bank of India to grant licence to the petitioner bank. W.P.(C) No. 30009 of 2005 is filed by Janakeeya Co-operative Bank Ltd., (contesting respondent in O.P.No. 440 of 2002) contending that Part V of the Banking Regulation Act inserted by Central Act No. 23 of 1965 extending the Act to Co-operative Societies Act is unconstitutional as beyond the legislative competence of the Union of India. It also contended that Circular No. 4 of 2003 dated 23-1-2003 is illegal and Reserve Bank of India is not entitled to interfere in any manner with the functioning of the petitioner cooperative society and a banking business. Even though there was a prayer for declaring Part V of the Banking Regulation Act as unconstitutional, the Union of India is not made a party to the above O.P. also and as such, petitioner cannot successfully challenge the above provision.

3. Application of Banking Regulation Act, 1949 in the banks functioning under the co-operative sector is the main bone of contention. We may first analyse the provisions of the B.R. Act. The above Act was incorporated to consolidate and amend the laws relating to banking in India. The relevant provisions of the above Act which are required for decision in this case are quoted below:

2. Application of other laws not barred:--The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Companies Act, 1956, and any other law for the time being in force.

3. Act to apply to co-operative societies in certain cases:- Nothing in this Act shall apply to--

(a) a primary agricultural credit society;

(b) a co-operative land mortgage bank; and

(c) any other co-operative society, except in the manner and to the extent specified in Part V.

The terms ''banking'' and ''banking company'' are defined u/s 5 of the Act as follows:

5. Interpretation:-- In this Act, unless there is anything repugnant in the subject or context,--

XXX XXX XXX

(b) ''banking'' means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;

(c) ''banking company'' means any company which transacts the business of banking in India;

Explanation:-- Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trade shall not be deemed to transact the business of banking within the meaning of this clause;

In view of Section 3, the Act is applicable to Co-operative Banks only to the extent specified in Part V and the Act is not applicable to primary agricultural credit societies.

4. We may now skip through to the provisions in Part V. Section 56 of the Act is quoted below:

56. Act to apply to co-operative subject to modifications:-- The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to banking companies subject to the following modifications, namely:-

(a) Throughout this Act, unless the context otherwise requires,--

(i) references to a ''a banking company'' or ''the company'' or ''such company'' shall be construed as references to a co-operative bank;

(ii) references to ''commencement of this Act'' shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965(23 of 1965);

(b) in Section 2, the words and figures ''the Companies Act, 1956 (1 of 1956) and shall be omitted;

(c) in Section 5,--

(i) after Clause (cc), the following clauses shall be inserted, namely:-

(cci) ''Co-operative bank'' means a State co-operative bank, a central co-operative bank and a primary co-operative bank;

(ccii) ''co-operative credit society'' means a co-operative society, the primary object of which is to provide financial accommodation to its members and includes a cooperative land mortgage bank;

(cciia) ''co-operative society'' means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State cooperative societies, or any other Central or State law relating to co-operative societies for the time being in force;

(cciii) ''director'' in relation to a co-operative society, includes a member of any committee or body for the time being vested with the management of the affairs of that society;

(cciiia) ''multi-State co-operative bank'' means a multi-State co-operative society (which is a primary co-operative bank;

(cciiib) ''multi-State co-operative society'' means a multi-State co-operative society registered as such under any Central Act for the time being in force relating to the multi-State co-operative societies but does not include a national co-operative society and a federal co-operative;

(cciv) ''primary agricultural credit society'' means a co-operative society,-

(1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops); and

(2) the bye-laws of which do not permit admission of any other co-operative society as member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative society out of funds provided by the State Government for the purpose;

(ccv) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit society,--

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are not less than one lakh of rupees; and

(3) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such cooperative society out of funds provided by the State Government for the purpose;

(ccvi) "primary credit society" means a co-operative society, other than a primary agricultural credit society,-

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are less than one lakh of rupees; and

(3) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such cooperative society out of funds provided by the State Government for the purpose.

Explanation:-- If any dispute arises as to the primary object or principal business of any co-operative society referred to in Clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final;

(ccvii) "central co-operative bank", "primary rural credit society" and "State co-operative bank" shall have the meaning respectively assigned to them in the National Bank for Agriculture and Rural Development Act, 1981;

(ii) Clauses (ff), (h) and (nb) shall be omitted;

(d) for Section 5A the following section shall be substituted, namely:-

5A. Act to override bye-laws, etc.- (1) The provisions of this Act shall have effect, notwithstanding anything to the contrary contained in the bye-laws of a co-operative society, or in any agreement executed by it, or in any resolution passed by it in general meeting, or by its Board of Directors or other body entrusted with the management of its affairs, whether the same be registered, executed or passed; as the case may be before or after the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965).

(2) Any provision contained in the bye-laws, agreement or resolution aforesaid shall; to the extent to which it is repugnant to the provisions of this Act, become or be void, as case may be.

(e) in Section 6 in Sub-section (1),

(i) in Clause (b), the words "but excluding the business of a managing agent or secretary and treasurer of a company" shall be omitted;

(ii) in Clause (d), after the word "company", the words "co-operative society" shall be inserted;

(iii) in Clause (m), after the word "company", the words "or co-operative society" shall be inserted;

(f) for Section 7, the following section shall be substituted, namely:--

7. Use of words "bank", "banker" or "banking".-(1) No co-operative society other than a co-operative bank shall use as part of its name or in connection with its business any of the words "bank", "banker" or "banking", and no co-operative society shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

(2) Nothing in this section shall apply to--

(a) a primary credit society, or

(b) a co-operative society formed for the protection of the mutual interest of co-operative banks or co-operative land mortgage banks, or

(c) any co-operative society, not being a primary credit society, formed by the employees of-

(i) a banking company or the State Bank of India or a corresponding new bank or a subsidiary bank of such banking company, State Bank of India or a corresponding new bank, or

(ii) a co-operative bank or a primary credit society or a co-operative land mortgage bank in so far as the words "bank", "banker" or "banking" appears as part of the name of the employer "bank", or as the case may be, of the bank, whose subsidiary the employer bank is,") (a) Substituted for Clause (f) by the Banking Laws (Amendment) Act (1 of 1984), Section 42(ii)(15-2-1984).

((fi) in Section 8, for the proviso, the following proviso shall be substituted, namely:-"Provided that this section shall, not apply-

(a) to any such business as aforesaid which was in the course of being transacted on the commencement of Clause (iii) of Section 42 of the Banking Laws (Amendment) Act, 1983, so, however, that the said business shall be completed before the expiry of one year from such commencement; or

(b) to any business as is specified in pursuance of Clause (o) of Sub-section (1) of Section 6;;

(fii) in Section 9, for the second proviso, the following provisos shall be substituted, namely:-

Provided further that in the case of a primary credit society which becomes a primary co-operative bank after the commencement of Clause (iii) of Section 42 of the Banking Laws (Amendment) Act, 1983, the period of seven years shall commence from the day it so becomes a primary co-operative bank;

Provided also that the Reserve Bank may, in any particular case, extend the aforesaid period of seven years by such period as it may consider necessary where it is satisfied that such extension would be in the interests of the depositors of the co-operative ''bank''.)

Rest of the section also shows that detailed provisions are made in the Act regarding minimum paid-up capital, reserves, restrictions regarding loan and advances etc. A reading of the provisions would show that the provisions in B.R. Act are intended to avoid defrauding of the public by doing business of banking by any body including cooperative banks. The contention that since the co-operative societies are registered under the Co-operative Societies Act, the provisions of the Banking Regulation Act cannot be applicable appears to be untenable. It is true that provisions regarding incorporation and winding up of Corporation other than those specified in List I and Co-operative Societies are coming under List II of item 32, Item No. 32 of List II is as follows:

32. Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literacy, scientific, religious and other societies and associations; co-operative societies.

"Banking" comes under the exclusive jurisdiction of Central Government covered under List I item 45 - (See Article 246 of the Constitution and Seventh Schedule). When a conflict between two Acts are alleged, a harmonious construction is also required. In this case, there is no conflict. With regard to the registration, winding up of administration etc. provisions of the Co-operative Societies Act are applicable, as State Legislature is competent to legislate, But, in so far as Co-operative Societies are doing the business of banking, the Act and Regulations framed by the Central is applicable and Central Government has got full jurisdiction to regulate the banking business and, hence, provisions under the B.R. Act regulating the banking business done by Co-operative Societies are not unconstitutional when Parliament is the competent body to pass legislation on banking. There is no unconstitutionality about the same. There is no prohibition of doing business by Co-operative Societies in the banking sector. It cannot be stated that Article 19 is violative by making reasonable restriction in doing banking business in the Government Circular. It requires licence and to obey the directions of the Reserve Bank of India issued from time to time with regard to banking business. Only reasonable restrictions are imposed and no grounds are made out to show that Part V of the Banking Regulation Act, 1949 (Central Act No. 23 of 1965) to the extent it regulates the banking business done under the Co-operative Societies Act is unconstitutional and beyond legislative competence of the Parliament.

5. As clearly stated in Section 2 of the Act, Banking Regulation Act is applicable in addition to and not in derogation of other law for the time being in force. The matter was considered by the Supreme Court in Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited, . It was held by the Apex Court that the provisions of the Indian Companies Act are applicable to winding up of a banking company even after amendment of Banking Companies Act. The provisions of the Co-operative Societies Act are applicable to societies registered under the Act, but, when they are doing banking business, such societies are bound to obey the provisions under the B.R. Act. The contention that urban co-operative societies which are doing banking business and use the name ''bank'' as part of their

name need not obtain licence and need not obey the direction of the Reserve Bank of India are untenable. In Corporation Bank Vs. D.S. Gowda and Another, , the Apex Court held as follows:

As pointed out earlier, under the Banking Regulation Act wide powers are conferred on the Reserve Bank to enable it to exercise effective control over all banks,

In Canara Bank Vs. P.R.N. Upadhyaya and Others, the Supreme Court held that the circulars issued by the Reserve Bank of India u/s 21 to 35 of the Banking Regulation Act, 1949 are statutory in nature. Section 25 deals with the power of the Reserve Bank to control advances to co-operative banks and Section 35 inspection. It is true that if a co-operative society, without using the name ''bank'', accepts deposits from the members only or gives loans to the members, the provisions of the Act are not applicable, but, the question is different when it use the name ''bank'' when it accepts deposits from the public and gives loans to public and non-members. u/s 7 of the Act, no cooperative society other than a co-operative bank shall use, as part of its name or in connection with its business, any of the words ''bank'', ''banker'' or ''banking'' and no co-operative society shall carry on the business of banking in India unless it uses, as part of its name, at least one of such words. Only primary co-operative credit societies and societies mentioned in Section 7(2) have got exemption and share capital and reserves of such societies shall be less than Rs. One lakh. All co-operative societies doing the business of banking which use the name ''bank'' as part of its name cannot work without licence and we see nothing wrong in the Circular No. 4 of 2003 issued by the Registrar of Co-operative Societies. Full exemption from the provisions the B.R.Act is given only to ''primary agricultural credit societies'' as defined u/s 56(cciv). In Muhammed Usman Vs. Registrar of Co-operative Societies, it was observed as follows:

Barring a primary credit society and a savings bank scheme run by the Government, only a co-operative bank, the Reserve Bank and the State Bank of India and any other banking institution or firm or other person notified by the State Government in this behalf on the recommendation of the Reserve Bank shall accept from the public deposits of money withdrawable by cheque. If any person, let alone a co-operative society, contravenes the said provision or any provisions under the Banking Regulation Act it is the duty and function of the Reserve Bank of India to protect the gullible public in public interest.

We fully agree with the above observation.

6. In W.P.(C) No. 21956 of 2004, it is the submission of the petitioners that they want to dispose of Ext.PIO representation and also dispose of their application for licence sent to the Registrar of Co-operative Societies on 24-11-2003. We direct the Reserve Bank of India to dispose of the licence application filed by Perambra Cooperative Urban Bank Ltd., petitioner in W.P.(C) No. 21956 of 2004, according to law, with notice to them, as expeditiously as possible, in any event, within

three months from the date of receipt of a copy of this judgment, if the application is not already disposed of.

7. Since we have held that no co-operative banks other than specifically exempted societies can function without licence from the Reserve Bank, we see no ground to interfere in the impugned judgment in W.A.Nos.707 and 52 of 2003. If they are not getting any licence, it is for the appellant/banks to change the name and delete the provisions regarding dealing with public banking system from the bye-laws or try to obtain licence from the Reserve Bank of India. In the above circumstances, W.A.Nos.707 and 752 of 2003 are dismissed. All other Writ Petitions are disposed of with the declaration that none of the co-operative banks other than primary credit societies as indicated earlier can do banking business or use the name ''bank'' in their title without getting licence and without following the regulations under the Banking Regulation Act, 1949. However, if they are taking deposits from the members only and gives loans to the members and not dealing with the public, they can function without using the name ''bank'' in their title and if they do banking business violating the provisions of the Banking Regulation Act, they are liable for appropriate action including penal action as provided under the Banking Regulation Act and it is for the parties to take up the matter. The Reserve Bank of India is entitled to issue directions as empowered u/s 35A of the Banking Regulation Act read with Section 56 (10) and the Co-operative Societies can do banking business or even start the business only with the permission of the Reserve Bank of India. Primary co-operative banks also (primary credit society is exempted for purpose of Section 7 and primary agricultural credit societies and land mortgage co-operative banks are exempted u/s 3) will come u/s 56. We make it clear that the Reserve Bank directions are applicable to primary cooperative banks also, apart from the urban co-operative banks and we hold that there is no infirmity in the Circular No. 4 of 2003 dated 23-1-2003 issued by the Registrar of Co-operative Societies.

8. Contention of the petitioners in Crl.M.C.No. 2854 of 2005 is that they have obeyed Circular No. 4 of 2003 issued by the Registrar of Co-operative Societies and amended their bye-laws and also deleted the word ''bank'' from their title and they are not doing banking business even though they are granting loans and accepting deposits only from the members. It is also stated that after the judgment of this Court in 2003 (1) KLT 69 decision taken by the Registrar of the Co-operative Societies and Deputy General Manager, Reserve Bank of India, as can be seen from Annexure VI and they have changed the bye-laws and deleted the name ''bank'' and they are functioning only as primary co-operative societies. Since this was done on the basis of the agreement, the criminal case pending against them be quashed. Annexure IV would show that the bye-law was amended and Joint Registrar has approved the bye-laws. Annexure V is the name of the society shown as Urban Co-operative Societies Act and not as Urban Co-operative Bank. The Registrar of Co-operative Societies also found that functioning of the societies is according to the Co-operative Societies Act and the Rules framed thereunder. In view of the above, we are of the view that the

criminal proceedings filed in C.C.No. 173 of 2003 on the file of the Judicial Magistrate of the First Class, Taliparamba be quashed and Crl.M.C.No. 2854 of 2005 is allowed without prejudice to the right of the Reserve Bank of India to conduct fresh inspection and if they do banking business with the public violating the provisions of the Banking Regulation Act, with freedom to take fresh prosecution.

9. The petitioner in, Crl.M.C.No. 413 of 2005 also submitted that their name Kozhikode Town Co-operative Urban Bank Limited was changed in accordance with the Circular of the Registrar of Co-operative Societies to Kozhikode Town Urban Cooperative Society Ltd. and also deleted the provisions in the bye-laws enabling them to do banking business. In the above circumstances, complaint in S.T.No. 1849 of 2004 on the file of the Judicial First Class Magistrate''s Court, Kozhikode is also quashed without prejudice to the right of the Reserve Bank of India to take fresh action, if they still violate the provisions of the Banking Regulation Act.

C.M.P.No. 2187/2003 in W.A.No. 707/2002, C.M.RNo. 2311/2003 in W. A.No. 752/ 2003, C.M.P.Nos.740 & 8001/2002 in O.P.No. 440/2002, C.M.P.No. 7685/2003 in O.P.No. 4383/2003,1. A.No. 13887/2004 in W.P.(C)No. 21956/2004, Crl.M.A.No. 10979/ 2005 in Crl.M.C.No. 2854/2005 Crl.M.A.No. 1112/2005 & 6439/2005 in Crl.M.C.No. 413/2005 do not survive.

