(1995) 02 KL CK 0012

In the High Court Of Kerala

Case No : O.P. No. 2014 of 1995 M

Feroke Service Co-Operative Bank Ltd. APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 28-02-1995

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1995) 02 KL CK 0012

Hon'ble Judges : V.V. Kamat, J

Bench : Single Bench

Advocate : M.K. Damodaran, for the Appellant; E.S.M. Kabeer, Government Pleader for Respondent 3 and T.R. Ramachandran Nair, for Respondent 4, for the Respondent

Final Decision : Dismissed

Judgement

V.V. Kamat, J.—This is a petition by the existing and functioning society posing a challenge to the Government notification (Ext. P-5) permitting application for registration of Anr. society (Respondent No. 4) in exercise of powers u/s 101 of the Co-operative Societies Act which is in the nature of an exemption from the provisions of Section 7(1)(c) of the said Act.

2. The powers relating to the registration of a co-operative society are based on certain situations of satisfaction, one of them being specified u/s (7)(1)(c) of the Act that the area of operation of the proposed society and the area of operation of Anr. society of similar type do not overlap. It is this requirement that is sought to be exempted by the impugned notification issued under the powers of exemption u/s 101 of the said Act. The said provision pre-supposes the satisfaction of the Government relating to the exemption being necessary in the public interest for reasons to exempt any provisions of the Act which are required to be followed under the Act. The question that is posed before this Court on the factual matrix well laid over by the averments of the petition, statement of Respondent No. 3 and counter-affidavit of Respondent No. 4 as well as the

replies of the Petitioner thereto in a separate manner.

3. Apart therefrom through the submissions of the learned Counsel the legal position is also more or less crystallised. this Court had an occasion to consider this power of exemption u/s 101 of the Act for more than once that occasions and reasons and consistently the powers have not been doubted with reference to the purposes for which it was sought to be exercised. It is consistently maintained and justifiably in my judgment that the power has to be in consonance with the objects and provisions of the Act and its exercise should not be a permanent circumvention of the said provisions, clarifying at the same time that the exercise of the power should be a need for the occasion which requires its exercise in the public interest with reference to the individual occasion. this Court 1994 (1) KLT 603, Joint Registrar v. M.R. Cherian considered the power in relation to the term of the administrator as are specified in Section 28(1A) of the Act and in the context observed that such modification has to be understood within the frame work of the Act. It is additionally emphasised that the provision Section (101) empowers the Government to grant exemptions from the provisions of the Act by issuing notification that the provisions shall apply subject to such modifications and changes. In the context reference is made to the constitutional validity and justification otherwise of the said provision. Yet for a different occasion the same provision came up for consideration for apt and important observation in the context. This Court 1986 KLT 921- Pampady Rural Co-operative Housing Society v. Joint Registrar has some apt and terse observations to offer in the context. The working of a statute creates problems or difficulties unanticipated in character which speaks for justification and necessity for enabling the provisions to get over such unexpected and unforeseen problems and difficulties. To seek a legislative cure is a time consuming process making it virtually impossible to expect and to await for a suitable legislative amendment to tide over such situations, when public interest demands and justifies an immediate departure from the existing situation. It is for these reasons that the power to exempt would have to be considered as a necessary power, keeping inbuilt checks in regard to its abuse and in the process this power to be given to the Government concerned is also a way of checking the possible abuse instead of conferring it on the executive authorities. The second aspect of check is that such a power is scotched and hedged by the conditions, that its exercise could be understood and justified in the demand of public interest necessary for the occasion. These provisions have been understood in the above approach.

4. These principles have been considered in regard to their logical extension in the matters of the importance of the principles of natural justice, the rights of the concerned society to approach this Court and the justification of such powers being provided legislatively. In such illustrative occasions this Court has extended the spirit of the above observations. Although certain other decisions 1971 KLT 350- Kunju Kunju v. State of Kerala 1976 KLT 437- Kasaragod Co-operative Land Mortgage Bank v. State of Kerala have been cited by the learned Counsel, it

would be of benefit not to burden this judgment with duplicative character.

5. In other words, what is required to be considered from the material available on record is to find out, both from the intrinsic source as well as from the material placed on record by the parties at issue, as to whether the exemption that is given to the provisions of Section 7(1)(c) of the Act would need interference by this Court under extraordinary jurisdiction under Article 226 of the Constitution of India.

6. It would be no doubt true that the perusal of the said provision u/s 101 of the Act empowers the State Government to exempt any society or class of societies from any of the provisions of this Act if it is found necessary to do so in the public interest. Public interest has to be interest in terms of the reference to the situation, emphasis being on the word ''public'' than on the word ''interest'' and therefore it is for this reason that the court has to consider as to whether the Petitioner has approached this Court in the interest of the society which is functioning as against the interest of the society which is being permitted by reason of the powers of exemption.

7. The notification in question (Ext. P-5) supplies intrinsic material for which the Government has exercised powers u/s 101 of the Act. It is observed that the Registrar has reported that the existing Feroke Service Co-operative Bank Ltd. functioning in the area comprising of Feroke, Cheruvannur and Nallalam Panchayats of Kozhikode Taluk is unable to function effectively for the benefit of the people of Feroke Panchayat due to its unwieldy area of operation. It is also mentioned that the Registrar has also expressed his opinion that the registration of the proposed Karuvanthuruthy Service Co-operative Bank, by exempting it from the provisions of Section 7(1)(c) will certainly be more beneficial to the people of Feroke Panchayat.

8. In addition the material is also available recording that the existing bank fails to serve effectively the people of Feroke Panchayat as its present area of operation is too unwieldy.

9. These reasons have been spelt out in the affidavit of Respondent No. 4 wherein certain aspects have been illustratively placed on record.

10. It is seen that as against the population of 52000 of Feroke Panchayat, there are only 4000 members of the Petitioner bank.

11. Secondly it is also placed on record that the services of the bank are not made available to the areas like Karuvanthuruthy, Pottekkad and Perumugham which are predominantly agricultural areas. Certain other particulars are also placed on record. It is averred that the main business is granting of loans for industrial purposes and business loans to the traders, and in the context it is placed on record that this village Karuvanthuruthy has a population around 25000.

12. Factually it is placed on record on affirmation that the society (Respondent

No. 4) is granted registration on January 31st 1995 and has started functioning from February 1st 1995 with its head office at Karuvanthuruthy. The particulars of the functioning have also been placed on record and it is stated that about 265 members have been admitted in pursuance of resolution No. 6 and the society is proceeding, by resolution No. 7, for the election on April 9, 1995. The financial activity is also referred to and in that connection it is placed on record that there is share amount of Rs. 68,950, savings bank deposit to the tune of Rs. 3,73,950 and fixed deposit of Rs. 76,000.

13. Additionally in the context it is also submitted that the Petitioner bank has only two branches apart from the head office and in the process by reference to details it is averred that out of the total membership of the Respondent No. 4, only one-fourth are from Feroke Panchayat urging consequently that unhealthy competition is not within the site.

14. At the other end there is a statement of Respondent No. 3 clarifying certain situations in the context. Reference is made to the earlier litigation in O.P. 12373/1992 regarding deletion of Feroke Panchayat from the area of operation of the bank, emphasising the difference in the situation in the context of the registration of Respondent No. 4. It is placed on record that there was a representation from the residents of Feroke Panchayat for granting exemption u/s 7(1)(c) for registration of a new bank (Respondent No. 4) because its area of operation became unwieldy. This is resulted in paragraph 5 of the statement to place on record that the area of operation of the Petitioner bank consists of three panchayats viz. Cheruvannur, Nallalam and Feroke. There are about 18638 members of the Petitioner bank out of a total population of 95050 and that too on the basis of 1991 census. It is placed on record that in this District itself there are panchayats in which more than one service co-operative bank is working as viable units. Illustratively reference is made to as many as 11 panchayats and it is only after recording that the Petitioner bank has failed to cater to the needs of the situation leaving outside atleast 80 per cent of the total population in their area of operation in public interest resort to Section 101 of the Act had to be taken.

15. I have already stated that the counter and statement have been replied separately by the affidavits of the Petitioner.

16. Referring to the material, it must be borne in mind that the function of this Court is to find out as to whether there is material to resort to the provisions of Section 101 of the Act leaving aside the question of its weighment as the perfect domain of the State Government. Apart therefrom, it would also be the function of this Court to find out as to whether there is intrinsic material to issue the notification in question. I have already pointed out that reference to the notification in question that the reason is the unwieldy character to the area with reference to the operating capacity of the Petitioner bank. The other material which is placed on record is in the nature of an aid to enable this Court to consider the question for exercise of extraordinary powers. The material that has

been referred to would show by reason of his own capacity to aid the court to reach the conclusion in the context.

17. The petition has its own overload of political toning, in the shape of an attempt to connect the earlier litigation as a process of continuation of the same reasons. Reading the petition, it would not be possible to agree with the line of approach. Several aspects that are placed on record would show that the State Government has considered the question of public interest and although it is not for this Court to sit in judgment in regard thereto or even have a peeping view in relation to that, taking into consideration the entire material on record, it is not possible even to whisper that the power has been unjustifiably resorted to in the context.

For the above reasons the petition stands dismissed. There shall be no order as to costs.