
(1964) 08 KL CK 0037
In the High Court Of Kerala
Case No : O. S. No. 1 of 1963

Goodland Plantations (Private) Ltd.

APPELLANT

Vs

State Bank of Travancore

RESPONDENT

Date of Decision : 29-08-1964

Acts Referred:

Constitution of India, 1950 — Article 245

Citation : (1965) KLJ 359

Hon'ble Judges : P.T. Raman Nayar, J

Bench : Single Bench

Advocate : T.S. Krishnamoorthy Iyer, for the Appellant; K.V. Surianarayana Iyer, C.M. Devan, for the Respondent

Judgement

P.T. Raman Nayar, J.—This suit, instituted in the Munisiff's Court, Kottayam has been withdrawn to this Court under Art. 228 of the Constitution because the constitutionality of sub-section (10) of Section 45 of the Banking Companies Act is questioned. The plaintiff was a subscriber to a fifty month, 20,000 rupee, monthly chitty run by a banking Company known as the Kottayam Orient Bank, Ltd. as foreman. The conduct of the chitty was governed by the agreement, Ext. P. 1, variyola as it is called, entered into between the foreman bank and each individual subscriber, and by the provisions of the Travancore Chitties Act, the Chittics Act for short. The plaintiff prized the chitty for Rs. 11,075 at the fifth auction held on 10th December 1960--he had by then paid four installments of Rs. 400/- each. (The plaintiff is a company but it is more convenient to use the pronoun, "he" than "it"). But, before he could be paid the money, the Central Government granted the bank a moratorium u/s 45(2) of the Banking Companies Act on terms and conditions which made it impossible for it to pay the plaintiff or continue the chitty. This moratorium was in force up to 16th June 1961 and for this period, therefore, the conduct of the chitty had necessarily to be suspended. This, u/s 39(2) of the Chitties Act, amounted to a termination of the chitty and, both by reason of clause 14 of the variyola and Section 41 of the Act, the failure to conduct the chitty cast on the foreman bank the obligation to pay every non-

prized subscriber the contributions made by him. By Ext. P. 2, dated 16th May 1961 the Central Government, acting u/s 45(7) of the Banking Companies Act, sanctioned a scheme for the amalgamation of the Kottayam Orient Bank with the State Bank of Travancore, the defendant herein, by which all the assets and liabilities of the former bank were transferred to the latter with effect from 17th June 1961. This scheme provided in relation to chitties that:

If the transferor bank was acting immediately before the prescribed date as a foreman in respect of any kuri or chitty as defined in the Travancore Chitties Act (XXIV of 1120) or the Cochin Kuries Regulation (VII of 1107) the rights, duties and obligations in relation to the kuri or chitty shall be regulated in accordance with the following provisions, namely:

(1) the transferee bank shall become the foreman of the kuri or chitty and shall continue to exercise all powers and to do all such acts and things as would have been exercised or done by the transferor bank, in so far as they are not inconsistent with this scheme;

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By reason of this clause therefore the defendant bank was to continue the chitties that were being conducted by the Kottayan Orient Bank Ltd., but, there arose the difficulty that by reason of their suspension during the moratorium, the chitties had terminated so that what the defendant bank was left with was the obligation to pay the non-prized subscribers the contributions made by them. To remove this difficulty, the Central Government made the order, Ext. P. 3 dated 4th December 1961--called the Kottayam Orient Bank Ltd. (Amalgamation with the State Bank of Travancore) (Removal of Difficulties) Order, 1961-- u/s 45(10) of the Banking Companies Act by which (as amended by the order Ext, P. 4 dated 15th January 1962), notwithstanding anything contained in the Chitties Act, the suspension of any chitty for the period from 18th December 1960 to 31st March 1962 or any part thereof, and the consequent prolongation of the chitty was to have effect as though the articles in the variyola were altered for that purpose by special resolution of the subscribers and as though the relevant provisions of the Chitties Act were complied with. And, notwithstanding anything contained in the Chitties Act, failure of the foreman bank to conduct the chitty during the said period was not have the effect of having terminated the chitty. Notwithstanding anything contained in the variola, the period of the chitty was to be deemed to have been extended by the period aforementioned, and the defendant bank was, notwithstanding anything contained in the Chitties Act, to continue the chitty as if the provisions of the Act relating to the continuance of the chitty had been complied with.

2. It will be noticed that, but for the order, Ext. P. 3, the defendant bank would have had to return to the plaintiff the contributions made by him; and the suit is for the recovery of these contributions totalling Rs. 1,600/- with interest thereon amounting to Rs. 94.66 from 10th December 1960, the date of default. The

defendant bank, is of course, willing to continue the chitty and pay the plaintiff the prize amount due to him on his furnishing security for future subscriptions as required by the variola, but, to this course, the plaintiff is not agreeable. He insists that the chitty has terminated, and, while he would take advantage of the scheme of shouldering the defendant bank with the liability to pay him the contributions made by him, he impugns Ext. P. 3 as ultra vires sub-section (10) of Section 45 of the Banking Companies Act and the sub-section itself as bad for the vice of excessive delegation.

3. It is not necessary to set out at any length the averments in the plaint, written statement and replication, for, before me, the parties have agreed to go to trial on the question of the validity of Ext. P. 3, and of sub-section (10) of Section 45 of the Banking Companies Act under which it was made, although the issue settled by the learned Munsiff cover other controversies as well. These issues are:

1. Whether the suit is not maintainable?
2. Whether there is a demand for the amount claimed in the plaint?
3. Whether the plaintiff offered security for the chitty amount?
4. Whether the chitty collapsed due to the default of the foreman?
5. Whether the alleged moratorium prevented the foreman from conducting or continuing the chitty?
6. Whether the Kottayam Orient Bank Ltd., (Amalgamation with the State Bank of Travancore) (Removal of Difficulties) Order 1961 relied in para 5 of the written statement is void illegal and ultra vires of the powers of the Central Government?
7. Whether the conduct of the chitty is "Banking" within the meaning of the Banking Companies Act?
8. Whether the scheme of amalgamation which authoreises to continue the chitty is void and ultra vires of the provisions of the Banking Companies Act ?
9. Whether the Order of 1961 is outside the scope of Section 45(10) of the Banking Companies Act?
10. Whether the chitty terminated under the provisions of the Chitties Act of 1120 can be revived by this Order of 1961 relied on in para 5 of the written statement?
11. Whether clauses 2 to 4 of the Order of 1961 are in excess of the powers contained in Section 45(10) of the Banking Companies Act?
12. Whether the plaintiff is not entitled to sue for the paid up subscriptions?
13. Whether the plaintiff is not entitled to claim veethapalisa or interest?
14. Reliefs and costs?

Additional Issue 15. Whether the Section 45(10) of the Banking Companies Act is ultra vires for the reasons given in paragraph 8 of the replication filed by the plaintiff?

As I have indicated The parties have gone to trial on issues 6, 9, 10, 11 and 15 and have given up the contentions embodied in the remaining issues.

4. Issues 6 9, 10 and 11 mean much the same thing. The question is whether the impugned order, Ext. P. 3, falls within the scope of sub-section (10) of Section 45 of the Banking Companies Act. On a plain reading of the sub-section I have no doubt that it does.

5. What the impugned order docs has already been staled by me and it is hardly necessary to set out and consider its individual clauses. Now, what sub-section 10 of Section 45 of the Banking Companies Act says L this:

If any difficulty arises in giving effect to the provisions of the scheme, the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

The requirements of the sub-section arc:

- (1) That a difficulty should arise in giving effect to the provisions of the scheme;
- (2) That the order to be made must be such as appears to the Central Government to be necessary or expedient for the purpose of removing the difficulty; and
- (3) That the order must not be inconsistent with any of the provisions of the scheme.

These requirements seem to me amply satisfied in this case. With regard to the first and the second, the impugned order stales that, by reason of the order of moratorium in respect of the Kottayam Orient Bank Ltd., for the period from the 18th December 1960 to the 16th June 1961, that bank was unable to conduct, during that period, the chitties which it was previously conducting as foreman, and that since under the scheme framed, the rights, duties and obligations of the Kottayam Orient Bank Ltd. had been transferred to the defendant bank, difficulty would arise in giving effect to the scheme unless some suitable arrangement was made for the continuance and the conduct of the chitties. It is clear from the language of the sub-section that what has to be done for the purpose of removing any difficulty is what appears to the Central Government to be necessary or expedient for the purpose and it would appear from the decisions in I. T. Commissioner v Ramgopal Mills Ltd., (A. T. R. 1961 S.C. 338) and Mahalakshmi Mills Ltd. v C. L T. Bombay North ((1964) 1 S.C. J. 23), that whether there is any difficulty or not is primarily a matter for the authority concerned (in this case the Central Government) to decide-- its decision, it would seem, is open to challenge only on the ground of mala fides. But, however that

might be, it is obvious that in the present case a difficulty did arise in giving effect to the provision of the scheme in so far as the conduct of the chitties for which the Kottayam Orient Bank Ltd., was acting as foreman was concerned. The object of the scheme was that the defendant bank should take over and conduct the business of the Kottayam Orient Bank Ltd., and, so far as the chitties run by the latter were concerned, the object was that these chitties, should be run to a successful conclusion by the defendant bank. But the scheme lost sight of the fact that the chitties had already terminated under the provisions of sub-section (2) of Section 39 read with sub-section (2) of Section 38 of the Chitties Act by reason of the failure to conduct it at the monthly installments which fell due during the period of the moratorium and that, for continuing the chitty, it would be necessary to suspend it for the period of the moratorium and prolong it by that period which, both under sub-section (1) (iv) of Section 13 of the Chitties Act and clause 29 of the variola, could be done by a special resolution of the subscribers to the chitty. It was therefore necessary to provide for the prolongation of the chitty and for its continuance as if it had not terminated if the object of the scheme were to be fulfilled, and it is precisely to remove the difficulty which stood in the way of the object being fulfilled that the impugned order was made. It is no use saying that the defendant bank could have had no difficulty in accepting that the chitty had terminated and paying off the unprized subscribers. For, that would not be to work the scheme which clearly contemplates that the defendant bank should run the chitties to a successful conclusion. The difficulty that stood in the way of this being done was certainly a difficulty in giving effect to the provisions of the scheme.

6. Turning now to the third requirement, there is nothing in the impugned order which is inconsistent with the provisions of the scheme. On the contrary as we have already seen, the impugned order only furthers the object of the scheme. The scheme provides that the defendant bank shall become the foreman of the chitties conducted by the Kottayam Orient Bank Ltd. and shall continue to exercise all powers and do all such acts and things in respect of the chitties as would have been exercised by the latter bank. It is said that the chitty having terminated, the Kottayam Orient Bank Ltd. would have been obliged, both under the terms of the variola and the provisions of the Chitties Act, to return to the unprized subscribers the contributions made by them and that since the impugned order, of set purpose, does away with this obligation it is necessarily inconsistent with the provisions of the scheme. But this argument forgets that the Kottayam Orient Bank Ltd. could have continued the chitty as if it had not terminated by securing a prolongation of the chitty, either by obtaining the consent of all the subscribers or by the special resolution contemplated by Section 13 of the Chitties Act and clause 29 of the variola. It is this prolongation that the impugned order secures and the object of the scheme being, as I have already said, to continue the chitties, a prolongation of the chitty to achieve that object cannot be regarded as inconsistent with the provisions of the scheme.

7. It is next contended that wide though the language of the sub-section might

be, it should not, in the absence of express provision in that behalf, be read as authorising interference with legal rights much less as authorising interference with the provisions of a statute. Although this might not be a material consideration on this aspect of the case, I might observe at the outset, with reference to this contention, that notwithstanding the non-obstante clauses in the impugned order in respect of the Chitties Act, the order does not really affect that statute although it does alter the contractual rights of the subscribers as embodied in the variola. As clauses (2) and (14) of Section 3 of the Chitties Act indicate, a chitty comprises several similar contracts entered into between the foreman on the one hand and each individual subscriber on the other. It is open to the contracting parties, namely, the foreman and the subscriber, to vary the contract, but, of course, the rights of others who are not parties to the variation, will not be affected there by. And, so long as all the subscribers agree, it is open to the foreman, to suspend or prolong a chitty for a period. There is nothing in the Chitties Act which prevents this, and Section 13 of that Act like, for example, Section 391 of the Companies Act, is only an enabling provision by which a variation of the variola, effected by a resolution passed by the requisite majority of the subscribers, is made binding on all the subscribers, even on those who are not parties to the variation. Therefore, the position is that while the impugned order has made a variation of the variola it has, in truth made no alteration to the statute.

8. If express provision for making a variation of a contract or a statute were necessary, that I think is to be found in sub-section (14) of Section 45 of the Banking Companies Act. That sub-section says:

The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

It is true that this sub-section does not say that an order under sub-section (10) shall have effect notwithstanding anything to the contrary contained in any other law or agreement while it says that of a scheme made under the section, but then it does say that the provisions of the section shall have effect notwithstanding anything to the contrary contained in any other provisions of the Act or in any other law or any agreement. Sub-section (10) of the section is part of the section and if sub-sections (10) and (14) are read together the effect would be as if sub-section (10) had said:

If any difficulty arises in giving effect to the provisions of the scheme, the Central Government may, notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force, by order do anything not inconsistent with such provisions (namely, the provisions of the scheme) which appears to it necessary or expedient for the purpose of removing the difficulty.

Therefore sub-section (10) read with sub-section (14) expressly authorises the Central Government to make an order for removing the difficulty notwithstanding anything contained in any other law or agreement. It necessarily follows that the provisions of the order must prevail over any other law or agreement.

9. I find these issues in favour of the defendant-bank and hold that the impugned order Ext. P. 3, is within the competence of the Central Government under sub-section (10) of Section 45 of the Banking Companies Act. Further, that unless that sub-section is bad, the order is valid and binding on the plaintiff. It will be noticed in this connection that, by reason of sub-section (8) of the section, the constitutionality of which is not challenged, a scheme framed thereunder is binding not merely on the banking companies that are amalgamated but also on all persons, of any description whatsoever, having any right or liability in relation to any of the amalgamated companies.

10. Issue 15. A provision for the removal of difficulties similar to sub-section (10) of Section 45 has become a common feature of legislation and it is not contended that such a provision is in itself bad. What is contended is that if the sub-section read with sub-section (14) is to be so construed as to authorise interference with legal rights or the provisions of other laws, then it must be struck down as a delegation of the essential legislative function which under Article 245 of the Constitution, is entrusted, to Parliament and the State Legislatures in their respective fields.

11. I think that the following extracts from two decisions of the Supreme Court are sufficient to repel this contention:

The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the frame-work of that policy.

So long as a policy is laid down and a standard established by statute, no constitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the legislation is to apply. (Vide *A. L. A. Schechter Poultry Corp. v United States*, 295 U. S. 459)

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The decisions clearly lay down that the legislature cannot part with its essential legislative function which consists in declaring its policy and making it a binding rule of conduct. A surrender of this essential function would amount to abdication of legislative powers in the eye of law. The policy may be particularised in as few or as many words as the legislature thinks proper and it is enough if an intelligent guidance is given to the subordinate authority. The Court can interfere

if no policy is discernible at all or the delegation is of such an indefinite character as to amount to abdication, but as the discretion vests with the legislature, in determining whether there is necessity for delegation or not, the exercise of such discretion is not to be disturbed by the Court except in clear cases of abuse.

Per Mukherjea, J. in *In re Art. 143, Constitution of India, etc.* (A. I. R. 1951, S. C. 332 at p. 400, Paragraphs 243 and 246).

In our opinion, the majority view (in *In re Art. 143, Constitution of India, etc.*, (A.I.R. 1951 S. C. 332) was that an executive authority can be authorised to modify either existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above; it cannot include a change of policy.

Per Bose J. in *Rajnarain Singh v Chairman, P. A. Committee* (A. I. R. 1954 S. C. 569).

12. I have already shown that the impugned order does not in truth modify any of the provisions of the Chitties Act, far less does it effect any change in the policy of that statute. What it does do is to modify the contract between the foreman bank on the one hand and the subscribers on the other; and the question whether if sub-section (10) of Section 45 of the Banking Companies Act were to be so construed as to authorise a modification of any other law, that would amount to excessive delegation, does not really arise. But if it does, I would have little hesitation in holding that the impugned sub-section comes within the bounds of permissible delegation.

13. For the rest, it is sufficient to point out that the essential legislative function of declaring the policy and making it a binding rule of conduct is done by the section itself and is not surrendered under sub-section (10) to the Central Government. It is not as if the Central Government can make any order it pleases under the sub-section and thereby alter contractual or other rights. The policy and the guiding principles are clearly laid down, and only the details are left to the Central Government. The order to be made under the sub-section can only be for the purpose of removing a difficulty that arises in giving effect to the provisions of the scheme and it must be necessary or expedient for that purpose. What the scheme can do is laid down with great particularity in sub-section (5) of the section and among the many things it can do is a reduction or other alteration of the interest and rights of the depositors and other creditors of the banking company concerned. The scheme can thus alter the contract between the banking company and its creditors, and, under sub-section (8), the contract so altered is binding on both parties. It is only a difficulty that arises in the working of the scheme in its many details that the Central Government is empowered to remove and as I have already observed it does not seem to me that there is any abdication of the essential legislative function.

14. I answer this issue in the negative. In the result I dismiss the suit with costs.