
(2009) 02 KL CK 0042

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26399 of 2006 (P)

Irinjalakuda Co-operative Agricultural and Rural development
Bank Ltd.

APPELLANT

Vs

Kerala State Co-operative Agricultural and Rural Development
Bank Ltd. and Others

RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 101, 12, 12(5), 2, 2(OC)

Citation : (2009) 1 KLJ 729

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P. Ravindran, for the Appellant; George Poonthottam, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Irinjalakuda Co-operative Agricultural and Rural Development Bank Ltd No. R312 registered under the provisions of the Kerala Co-operative Societies Act, 1969, hereinafter referred to as the "KCS Act", has filed this writ petition through its President and Secretary. Its area of operation in terms of approved bye-laws is Mukundapuram and Kodunglloor Taluks in Thrissur District. It operates through its branches at Irinjalakuda, Kodungalloor, Chalakudy, Kodakara and Mala.

2. The first respondent is the Kerala State Co-operative Agricultural and Rural Development Bank Limited (KSCARD BANK, for short), which is so christened by the operation of Section 2(a) of the Kerala State Co-operative (Agricultural and Rural Development Banks) Act, 1984, hereinafter referred to as the "CARD Act".

3. Primary banks which are registered under the KCS Act as Primary Co-operative Agricultural and Rural Development Bank Limited and admitted as members of the first respondent, including those falling under the inclusive provision of Section 2(h) of the CARD Act, are primary banks as defined in that provision for the purpose of that Act.

4. In 1997, the Government of Kerala decided to provide for the creation of a primary Co-operative Agricultural and Rural Development Bank, hereinafter, "PACARD Bank", for each Taluk. That decision was challenged before this Court on the ground that it would result in adverse consequences to the existing Agricultural and Rural Development Banks which provide soft loans to the agricultural sector covering more than one Taluk and would result in compulsory depletion of the area of operation of the existing banks thereby curtailing their membership and activity. This Court heard a bunch of matters in relation to that and issued judgment in WP(C). 10603/2000 and connected matters directing that the Government has to take a decision de novo before the commencement of the activities of any PCARDBS by arriving at a policy decision in the matter.

5. When Ext. P1 was issued by the first respondent KSCARD Bank, the petitioner filed WP (C). 11072/2004. That matter and WP(C). 15705/2004 were decided as per Ext. P2 judgment. This Court, taking into consideration the counter affidavit on behalf of the respondents therein that it is left to the discretion of the societies to constitute separate societies or affiliate with existing banks, held that the decision contained in Ext. P1 has no legal stand. What was produced before this Court by the Government in Ext. P 2 case was a Government decision dated 21-11-2003 which is Ext. P3 herein. Ext. P2 judgment was issued preserving the right of the petitioner to challenge the said decision.

6. This writ petition is filed seeking to set aside the impugned Ext. P3 decision dated 21-11-2003. Also under challenge is a consequential decision (Ext. P4), by which an administrator has been appointed for the fifth respondent Kondungallor Taluk primary Co-operative Agricultural Bank Limited.

7. As per the impugned Ext. P3, which is the essential bone of contentions between the parties, the Government had earmarked six PCARD Banks to be permitted to function. It appears that after Ext. P2 judgment was rendered, the Government obtained the views of the Registrar of Co-operative societies and consequently, out of the 17 PCARD Banks which were registered following GO(P). 112/97/Co-operation dated 3-9-1997, it was decided that six such banks, including the fifth respondent, could continue their activity while the other 11 have to be wound up. The challenge to this action is on the ground that Ext. P3 does not disclose any reason whatsoever for the decision contained therein and that there is no rhyme or reason relatable to any material on record to sustain the decision contained in Ext.P3, conferring the benefit the six banks mentioned therein. It is also the case of the petitioner that the decision contained in Ext.P3 is contrary to the views of the Registrar of Co-operative Societies to the effect that all the 17 PCARD Banks have to be wound up.

8. After institution of this writ petition, the petitioner applied for, and leave was granted, to amend the writ petition to challenge the validity of the proviso to Section 2(OC) of the KCS Act 1/2000. It is pointed out by the learned senior counsel appearing for the petitioner at final hearing that the challenge is only to the extent of facilitating that provision to be read down, if necessary, so that the

statutory provision could continue to sustain if it is not treated as mandatory.

9. The counter affidavit of the fourth respondent State Government, is to the effect that following the aforesaid amendment, the Registrar of Co-operative Societies issued directions to amend the, bye-laws restricting the area of operation and the Government were directed by this Court to examine the issue arising for decision in the context of various writ petitions. It is contended that the Government, after examination of the issue, found that all the newly registered 17 PCARD Banks are not able to function as viable societies as per the norms and it was accordingly that the impugned order was issued to wind up those societies except six, which were treated as viable, with the aim to give more importance to the agricultural sector.

10. In addition to the aforesaid stand, the learned Advocated General also argued, as a pure proposition of law, that if the amendment to Section 2(OC) of the KCS Act as per Act 1/2000 is not to be held as unconstitutional, the natural flow of the consequence would be that the writ petitioner was statutorily obliged to function in terms of the proviso to Section 2(OC) by restricting its area of operation to the Taluk where the headquarters of the petitioner society is situated and that, this had to be done within a period of six months from 1-1-2000, the date of coming into force of the Amendment Act 1/2000. Accordingly, it is argued that the writ petitioner would not have any right to insist on the statutory authorities or the Government to grant approval to any bye-law provision by which its area of operation could exist beyond the Taluk where its headquarters is situated. It is thus pointed out that hence, the petitioner has no right to challenge any decision of the Government granting registration to the fifth respondent to operate in the Taluks beyond that in which the headquarters of the petitioner is situated.

11. The learned Advocate General further attempted to point out that the impugned order is essentially one which would stand as an order of exemption on terms of Section 101 of the KCS Act and therefore, it would be only a case of exemption being granted to the fifth respondent to have its registration Continued with an area of operation, spread to the Taluks over which the petitioner cannot claim any area of operation, having regard to the operation of Section 2(OC). It is pointed out that in such event, the impugned order would be only one granting exemption to the fifth respondent from the operation of the proviso to Section 2(OC) thereby permitting it to have its area of operation, including also in Taluks other than the Taluk in which its headquarters is situated. Still further, it is pointed out that since such order of exemption would not entitle the fifth respondent to operate within the taluk where the headquarters of the petitioner society is situated, the petitioner cannot make out any grievance on the face of the proviso to Section 2(oc) of the KCS Act.

12. The registration of a Co-operative society, even as a Primary Co-operative Agricultural and Rural Development Bank, could be had only under the KCS Act and not under the CARD Act since the latter does not deal with the subject of

registration but, as rightly pointed out on behalf of the petitioner, the said statute governs the financial relationship between the KSCARD Bank and PCARD Banks, and also provides machinery for recovery etc. The legislative competence to categorize co-operative societies registered or deemed to be registered under the KCS Act into different categories is beyond dispute. Even by primary legislation, different types of Co-operative Societies are defined. This includes Primary Co-operative Agricultural and Rural Development Bank which is defined in Clause (OC) of Section 2 of the KCS Act. It provides that a PCARD Bank means a society having its area of operation confined to a Taluk and the principal object of which, is to provide for long term credit for agricultural and rural development activities. By making such a definition, the legislative intent is explicitly expressed, in as much as, the purpose is to provide for the identification of a class of societies which would provide for long term credit for agricultural and rural development activities, but would confine its area of operation to a taluk. This is one of the intelligible differentia by which it stands out qua those Primary Agricultural Credit Societies which fall within the definition of "Primary Co-operative Agricultural and Rural Development Bank" as it now stands in Section 2 (OC), the natural outcome of that provision is that any PCARD Bank can operate and have its area of operation only within a taluk. If Sub-section 5 of Section 12 of the KCS Act, is immediately adverted to, it can be seen that the Registrar can proceed to compulsorily alter the area of operation. If a society does not continue its area of operation to a taluk, it cannot be called a PCARD Bank, going by Section 2 (OC). Therefore, it would not have any right to be a member in the KSCARD Bank since the definition of that bank as contained in Section 2(ra) of the KCS Act enjoins that the KSCARD Bank means an apex society having only PCARD Banks as its members. The words "primary Cooperative Agricultural and Rural Development Banks" in the definition clause of "State Cooperative Agricultural and Rural Development Bank" in Section 2(ra), have to be understood to mean those Primary Co-operative Agricultural and Rural Development Banks, as defined in Section 2(oc). Therefore, if an existing PCARD Bank does not trim itself down to fall within the definition of a "PCARD Bank" as per Section 2(oc), it necessarily would not have the entitlement to participate as a member of the KSCARD Bank. However, the Legislature, in their wisdom, thought it fit to grant a period of "six months" time for the existing PCARD Banks to trim themselves down by restricting the area of operation to the Taluk where the headquarters of such society is situated. This is, in effect, the only purpose of the proviso occurring after Section 2(oc). Therefore, Section 2(oc), even without the proviso, would be constitutionally valid and the petitioner would not be entitled to operate beyond one taluk. If it does, it will be in violation of its status as a PCARD Bank and would be detrimental to its interests of being eligible to be a member of the KSCARD Bank. So much so, the petitioner has no legal right to insist that it can continue its area of operation beyond one Taluk. The proviso is only a practical regulation of choosing the taluk which a particular PCARD bank can have as its area of operation, the statutory choice being that Taluk in which the headquarters of that particular PCARD bank is situated. Having made the

statutory choice, the PCARD bank gets six months" time from 1-1-2000 to confine its activities to the Taluk that could be its area of operation. This is all that is the flow of Section 2(oc) read with the proviso thereto.

13. Having thus noticed that the petitioner will have no legal right to have any Taluk other than the Taluk wherein its headquarters is situated as its area of operation, there is no continued legal right to challenge the existence of the fifth respondent except to the extent of contending, if at all, that it should not be permitted to encroach into the area of operation of the petitioner in terms of the proviso to Section 2(oc). In that view of the matter, the area of operation of the fifth respondent would be a matter of concern of the petitioner, in law, only if it encroaches or overlaps the area of operation that the petitioner could have in terms of Section 2(oc) of the KCS Act. There is no such plea and hence, the petitioner's challenge to the continued activities of the fifth respondent fails.

14. In the absence of any right of the petitioner being infringed by the continued existence of the fifth respondent, it is not necessary for this Court to further go into the question as to whether the fifth respondent could be permitted to exercise its area of operation to any other Taluk. Therefore, it is really not necessary to go into the question whether the impugned order works as an exemption order in terms of Section 101 of the KCS Act. Even if it were, that would be an exception to the fifth respondent from the operation of the provisions contained in Section 2(oc) and the proviso thereby permitting it to continue its activities in more than one Taluk. Even then, there would be no legal right in the petitioner to challenge grant of exemption because, that decision of the Government does not, in any manner, impair the statutory right of the petitioner in terms of what is contained in Section 2(oc), namely, that its area of operation shall be the Taluk where its headquarters is situated.

15. In the aforesaid backdrop, it is unnecessary to dwell into the question as to whether the impugned order, through a policy decision, is totally bereft of any reason. This is because the petitioner has already been found to be disentitled to challenge that decision. I may, however, note that the recommendation of the Registrar, as seen from the files, is that all the 17 PCARD Banks have to go. But the Government, however, decided to permit six of them to function. But, this is of no consequence, having regard to the conclusions already arrived at.

For the foregoing reasons, the writ petition fails. The same is dismissed.