(2009) 04 KL CK 0081

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8307 of 2009

Jacob Stephen and Others — APPELLANT

Vs

Kerala State C.A.R.D. Bank Ltd. — RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Citation : (2009) 04 KL CK 0081

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : P. Ravindran and Harikrishnan Ravindran, for the Appellant; C.P. Sudhakara Prasad, General, A.G. Aneetha, Spl. Government Pleader and T.B. Hood, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—The Petitioners were elected as members of the committee of the first Respondent, the Kerala State Co-operative Agricultural and Rural Development Bank Limited, an Apex Co-operative Bank. The polling was held on 28-2-2009 and results were declared. The third Respondent, who is the Chief Executive of the first Respondent, issued a notice dated 5-3-2009 convening the committee on 11-3-2009 in terms of Rule 38(1) of the Kerala State Co-operative Societies Rules, 1969, hereinafter referred to as the "Rules". Thereafter, he cancelled that meeting. That was done in view of Ext. P-8 Government Order, whereby the Government exercised the power under Rule 181 of the Rules and directed that Sub-rule (1) of Rule 38 and Sub-rule (2) of Rule 43 of the Rules shall apply to the first Respondent bank subject to modification that the meeting could be convened within three months, instead of one week. This is under challenge.

2. The Petitioners contend that the impugned Government order is ultra-vires the power of the Government u/s 181 of the Kerala Co-operative Societies Act, 1969, hereinafter referred to as the "Act" and is issued without authority of law. it is contended that neither Section 101 nor Rule 181 enables the Government to

relieve the chief Executive from discharging his statutory obligations under Rule 38(1). It is specifically pointed out that the obligation under Rule 38(1) is not on the bank but on the Chief Executive and therefore, any exemption granted to the bank will not relieve the Chief Executive of the statutory obligations in terms of Rule 38(1), for which purpose he is a statutory functionary, in this context, it is pointed out that the Act and the Rules provide clear distinction between an officer of the society and the society itself and therefore, any power to exempt is only as regards the society and not as regards an officer. It is further pointed out that while the impugned Government Order only enlarges the outer limit of time for convening the meeting, it does not enable the Chief Executive to cancel a meeting already convened.

3. The impugned Ext. P-9 abundantly discloses the context in which it has been issued. The general elections to the Lok sabha, from this State are to be held in April, 2009. The code of Conduct governing Governmental and other functionaries is in force. The Government are entitled to appoint its nominees to be on the committee of the first Respondent, which is an Apex Co-operative Bank, it abstains from making such nomination in view of the application of the Code of conduct. It is in that context that the Government expressed themselves as being satisfied that it is necessary to postpone the process of appointment of nominees of the Government to the committee of the first Respondent for a further period of three months and it was hence that the period for the convening of the meeting of the committee was found necessary to be enlarged. This is the reason for the impugned Ext. P-8 as explicit therefrom.

4. The uncontroverted contention of the state Government in its counter-affidavit through the Under Secretary to Government is that the Government have subscribed 6.91 crores to the share capital and issued guarantee to the tune of Rs. 1,524.71 crores to the first Respondent apex bank and that therefore, the presence of the Government nominees is highly essential for the election of the office-bearers of the bank to protect the interest of the Government. It is, pithily, pointed out that the Government nominees have the right to vote and even to contest in the election of the office-bearers. The Government have also pointed out that the Division Bench, in Sugunan v. State of Kerala 1996 (2) KLT 336, has affirmed the decision in O.P. 5628/1996 [1996 (1) KLT S.N. 36 (case No. 48)] wherein it was found that the proceedings of the Registrar of Co-operative Societies nominating a person as the Government nominee to the committee of a Co-operative Society would fall within the prohibited zone on account of the code of conduct becoming operational. It was in that context that the Government have refrained from making any nomination to the committee.

5. Different provisions relating to meetings of committees and the scope of the power of Government to make exemptions were placed for consideration with reference to the judgment of this Court in Praveenchandran v. State of Kerala 2008 (1) KLT 478, Moideen v. Registrar of Co-op. Societies 2008 (2) KLT 184 and Purushothaman Nair v. State of Kerala 2008 (4) KLT 879. Reference was also

made to the decision of the Division Bench of this Court in Joseph Zacharia and Anr. v. State 1996 (I) KLT 199 laying down that the power of exemption cannot be exercised in a manner depriving the society of any benefit or right under the Act.

6. In distinction to the principles laid down in the precedents aforesaid, the question in hand is only as to whether the Government had acted without authority, illegally or arbitrarily in issuing the impugned order exempting the first Respondent from the purview of Rule 38(1) of the Rules for a period of three months, essentially enabling the convening of the first meeting of its new committee within that period.

7. The exemption that is granted is only from Rule 38(1). Section 101 of the Act does not apply to the case because the exemption that is granted is not from any of the provisions of the Act. If it were an exemption from the provisions of the Act, the question as to whether it is in public interest and whether reasons have been recorded and other attendant questions may arise for decision.

8. Rule 181 of the Rules provides the Government with the power to exempt any society from any of the provisions of the Rules or to direct that such provisions shall apply to a society with such modifications as may be specified in the order of exemption. In contradistinction to Section 101, Rule 181 does not require the exercise of the authority under that rule to be only on grounds of public interest. There is legislative wisdom in it. It may be the requirement of a particular fact situation that a particular society or a class of societies may have to be granted certain exemptions from the Rules for different purposes. Since those purposes may be even those which may not be purely public purposes and such situations cannot be visualized while making the primary legislation or subordinate legislation, the power of exemption is essentially made without any such conditions being imposed. All that may have to be ensured while exercising power under Rule 181 are those noticed in Purushothaman Nair''s case (supra) and Praveenchandran''s case (supra), apart from the other binding precedents. Abuse and colourable exercise of power and any exercise mala fide or that which may be palpably perverse may fall on judicial scrutiny, on ground of arbitrariness.

9. Rule 38(1), though casts a statutory obligation on the Chief Executive to convene the meeting within the period prescribed therein, that is essentially a provision which governs the functioning of the society by the new committee entering into office and performing acts which are required to be done for the purpose of, and in the interest of the society. Therefore, when the power of exemption is exercised by the Government under Rule 181 exempting a particular society or a class of societies, such power can be exercised also in relation to Rule 38(1). Such power is there.

10. The question then, would only be as to whether the decision to grant the exemption was irrational, arbitrary or mala fide. As already noticed, the Government hold enormous financial interest in the first Respondent bank. Public

funds are involved in its activities. The Government are entitled to, statutorily, nominate members. Those members are eligible to vote. They are entitled to contest in the elections from among the committee members. The securing of the public interest involved by protecting the public funds that go into the affairs of the first Respondent is to be ensured. That is a duty of the Government. Therefore, even if the impugned action is assessed from the angle of public interest, there is sufficient such interest that would sustain the impugned action.

11. For the aforesaid reasons, the impugned order is with jurisdiction and is not invalid on any ground.

12. Another incidental question is as to whether a meeting which was convened could have been adjourned or cancelled on the basis of the order of exemption issued after the Chief Executive had issued the notice convening the meeting. The only statutory obligation of the Chief Executive under Rule 38(1) is to convene the meeting within a week. The convening of a meeting does not denude its convener of the authority to adjourn the meeting or even to cancel it, if it becomes necessary. Having convened a meeting within a week of the election of the committee, the convener, that is to say, the Chief Executive, was within authority to adjourn or cancel it. He did so. While he did that, the impugned order of exemption provided that the meeting need be convened only within a period of three months. He is, therefore, duty bound only to convene the meeting within a period of three months. The sustainability of any adjourment or cancellation of the meeting is a matter to be decided on a case to case basis. It is the very same public interest that had advised the Government to issue the impugned order of exemption, that prompted the Chief Executive to cancel the meeting. The Writ Court is not to step in, to say that the Government nominees should be prevented from coming into the committee before the election of the office-bearers, or a new committee should necessarily be convened, to elect its office-bearers, even before the Government have their nominees to the committee of an establishment which deals with public funds in abundance. The challenge on that ground also fails.

In the result, the Writ Petition fails. The same is accordingly dismissed. No costs.

