

(2013) 11 KAR CK 0345

In the Karnataka High Court

Case No : Writ Petition No's. 46689-692 and 49158-161 of 2013 and 49109 of 2013

N. Begur Primary Agricultural Credit Co-operative Society Ltd., Antharasante Primary Agricultural Credit Co-operative Society Ltd., Madapura Primary Agricultural Credit Co-operative Society Ltd. and Madegowdanahundi Primary Agricultural Credit Co-op. Society Ltd.

APPELLANT

Vs

State of Karnataka and Others
 Hulibele Agricultural Service Co-operative Society Vs State of Karnataka and Others

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) 1 AKR 357 : (2014) 2 KarLJ 361

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Jayakumar S. Patil for Sri Deviprasad Shetty, in W.P. Nos. 46689-692 and 49158-161/2013, Sri Suresh M., in W.P. No. 49109/2013 and Sri M. Krishnappa, in W.P. No. 49257/2013, for the Appellant; A.G. Shivanna, AAG for R1 to R5, Sri R.S. Ravi, for R6 in W.P. Nos. 46689-692 and 49158-161, 49257/2013, Sri A.G. Shivanna, AAG for R1 to 5, Sri Pruthvi Wodeyar, for R6-8 in W.P. No. 49109/2013 and Sri A.G. Shivanna, AAG for R1-6 in W.P. Nos. 49266-49267/2013, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—W.P. No. 46689-692/2013 is filed by four Primary Agricultural Credit Co-operative Societies of Mysore District, challenging the notification dated 27.09.2013 issued by the State Government in exercise of the powers conferred u/s 121 of the Karnataka Co-operative Societies Act, 1959 (for short, "the Act") exempting all the Primary Agricultural Credit Co-operative Societies (for short, "Primary Societies") in Karnataka from the rigor contained u/s 20(2) (b)(iv)(a), 8B(b) of the Act, till 31.12.2013. The case of the petitioners is that this action is contrary to Section 98Y of the Act, apart from being arbitrary and

unreasonable. In the aforesaid writ petition, this Court has passed an order on 10.10.2013 granting interim stay of the impugned notification dated 27.09.2013 making it clear that the interim order will not come in the way of such of the Primary Societies which are otherwise eligible to vote in the election having satisfied the criteria laid down in Section 20 of the Act, after considering the loan waiver scheme by giving credit to the amount of loan waived, although the amount has not been actually and factually reimbursed by the State Government. In the light of this interim order, the authorities have undertaken the exercise of preparation of fresh voters list and have postponed the elections by eight days. This postponement of election is challenged by the very same four Primary Societies by filing another batch of writ petitions in W.P. No. 49158-161/2013.

2. W.P. No. 49109/2013 is filed by Hulibele Agricultural Service Co-operative Society of Bangarpet Taluk in Kolar District, challenging the very Notification dated 27.09.2013 which is impugned in the first writ petition. In this writ petition, three Primary Societies by name Hasandahalli Vyvasaya Seva Sahakara Sangha, Nootway Seva Sahakara Sangha, and Bhairanahalli Sericulturist cum Farmer Service Co-operative Society, have filed impleading application apart from filing application seeking to vacate the interim order granted. By a separate order passed, the impleading application has been allowed.

3. In W.P. No. 49257/2013, Hirikyathanahalli Primary Agricultural Credit Co-operative Society of Hunsur Taluk in Mysore District is challenging the order dated 28.10.2013 postponing the elections on the ground that the voters list has to be re-done in the light of the interim order passed by this Court.

4. W.P. No. 49266-267/2013 is filed by Amblikal Primary Agricultural Credit Co-operative Society and Mallanayakanahalli Primary Agricultural Credit Co-operative Society of Kolar District, challenging the voters list prepared by altering the earlier list in the light of the interim order passed by this Court.

5. In all these writ petitions, common questions of law fall for consideration. Hence, they are heard together and are disposed of by this common order.

6. The notification issued by the Government is assailed on the ground that power u/s 121 of the Act cannot be used to remove the legislative criteria laid down u/s 20(2)(b)(iv)(a) & (b) of the Act to enable the defaulter to participate or cast his/its vote in the election. Learned Senior Counsel Mr. Jayakumar S. Patil appearing for some of the petitioner-Primary Societies in W.P. No. 46689-692/2013 contends that the object behind the provisions contained u/s 20(2)(b)(iv)(a) & (b) of the Act, is to bar a defaulter from voting, therefore, any blanket exemption to allow all the defaulters to vote, would render the very provision nugatory. It is in this background Mr. Patil is critical of the impugned notification characterizing it as arbitrary and unreasonable.

7. Taking me through the impugned notification, particularly the preamble to the notification and the reasons stated in the notification itself for giving exemption,

he points out that the main reason for extending the exemption as spelt out in the notification is the loan waiver scheme that was introduced, because of which certain loans availed by the farmers had been waived, thereby making it impossible for the Societies to recover the same and therefore the failure on the part of the Primary Societies to recover such loan and account for it by remitting the same to the concerned District Central Banks, had persuaded the Government to issue the notification granting exemption to such Societies from the rigor of Section 20(2)(b)(iv)(a) & (b) of the Act. If that is so, Counsel contends, exemption ought to have been extended in favour of such of the Societies which had failed to recover the money from the farmers on account of the loan waiver scheme and to that extent only and there was no justification whatsoever for extending the relaxation to cover other transactions. Therefore, he submits that the impugned notification which extends the exemption in favour of all the Primary Societies, is illegal being arbitrary and unreasonable.

8. It is lastly contended by him that the Primary Societies and District Central Banks fall in the Credit Co-operative Structure as defined in Section 2(b-2) of the Act, and therefore, Chapter XI-A of the Act is applicable to them. As a result, Section 98Y of the Act, which regulates the exemption to be granted by the State Government is applicable. The said provision having not been complied with, in as much as, no prior consultation having been made with the Reserve Bank or the National Bank before extending the exemption u/s 121 of the Act, the entire notification is contrary to the mandatory requirement of Section 98Y of the Act, and is consequently illegal.

9. Learned Additional Advocate General Mr. A.G. Shivanna, contends that in the light of the provisions contained u/s 98B of the Act, excluding the non- obstante clause to Section 20 of the Act, the State Government had all the powers u/s 121 of the Act, to extend the exemption even in respect of Co-operative Societies which fall in the Credit Co-operative Structure. His submission is, if Sections 20, 121, 98B & 98Y of the Act, are harmoniously read together, it will clearly indicate that the State Government has similar powers in respect of all the co-operative credit societies to extend the exemption, whether they are ordinary Co-operative Societies or Cooperative Societies falling under the Credit Co-operative Structure.

10. It is his further submission that on account of the drought situation prevalent in the State, the loan waiver scheme had to be introduced and the Co-operative Societies in the State were indeed directed not to recover the loans by using force or by resorting to coercive steps. In such circumstances, if the State Government has taken note of the fact situation and has extended the exemption to all the Primary Societies in the credit co-operative structure to enable them to participate in the election, the same cannot be regarded as arbitrary or unreasonable. He further points out that the petitioner-Societies are not in any manner affected by the impugned notification as they are found to be eligible. Hence, they have no locus standi to maintain these writ petitions.

11. Learned Senior Counsel Mr. Shivappa appearing for the petitioners in W.P. No.

49266-267/2013 vehemently contends that the fact that overriding effect given to the provisions in Chapter XI-A of the Act have been excluded in so far as the provisions contained u/s 20 of the Act itself discloses that by exercising powers u/s 121 of the Act, the State Government can extend exemption to any of the co-operative societies including the societies under the credit co-operative structure. He also reiterates the other contentions urged by the learned Additional Advocate General. He has further pointed out that if exemption is not extended to all the societies without merely taking note of the loan waiver scheme, then many of the societies will be excluded from participating in the election. He gives the example of Mysore District stating that under the Mysore District Central Bank, totally 236 Primary Societies have been functioning, out of them, only 130 are found eligible. If the exemption is extended to them by taking note of the loan waiver scheme alone, the remaining 106 societies will still be ineligible because they will continue to be defaulters even after credit is given to the loan amount that is required to be waived as per the loan waiver scheme of the Government. He further points out by referring to Section 980 of the Act that only if elections were to be held for a new Board, that is to say the First Board, the provisions of Section 20 are applicable and not in respect of the existing Board.

12. The other learned Counsel who appear for the respective petitioners in their writ petitions have supported the contentions urged by the learned Senior Counsel Mr. Jayakumar S. Patil.

13. Having carefully considered the respective contentions urged, the only point that requires consideration in this case is,

Whether the impugned notification dated 27.09.2013 issued by the State Government granting exemption to the Primary Societies from the rigor of Section 20(2)(b)(iv)(a) & (b) of the Act is legally sustainable?

14. To appreciate the controversy raised, it is necessary to refer to Section 20(2)(b)(iv)(a) & (b) of the Act. Section 20 pertains to votes of members. The relevant provision reads as under:

20. Votes of members.--(1) No member, no representative or no delegate of a society shall have more than one vote in the general meeting or in the election of the members of the board of the co-operative society;

(2) The following shall not have the right to vote at a general meeting or an election of the members of the board of the co-operative society in which they are members, namely.-

(a)

(b) a co-operative society.-

(i)

(ii)

(iii)

(iv) Whose principal object is to advance loans and whose percentage of recovery is less than fifty percent of the total demand for the co-operative year immediately preceding the cooperative year during which the meeting is held and which has failed to pass on to the financing bank or the credit agency, as the case may be, to which it is indebted.-

(a) fifty percent of the demand of the society, if the demand of the society is less than the demand of the financing bank or credit agency, or

(b) the actual demand of the financing bank or credit agency, if the demand of the society is more than the demand of the financing bank or credit agency,

not later than fifteen days of the close of the said co-operative year.

15. The purport and intent of the above clause contained in Section 20(2)(b)(iv) (a) & (b) of the Act is that, if a cooperative society which is engaged in advancing loans has failed to recover atleast 50% of the total demand for the co-operative year immediately preceding the co-operative year during which the meeting is held for election and has failed to pass on to the financing bank (DCC Bank) to which it is indebted the said amount within the prescribed period of 15 days of the close of the said co-operative year, then such society shall not have the right to vote at a general meeting or at an election of the members of the board of the cooperative society in which they are members.

16. Section 121 of the Act, clothes the State Government with the power to extend exemption to certain societies by issuing general or special orders from the operation of any of the provisions of the Act. It reads as under:

121. Power to exempt societies.--The State Government may, by general or special order published in the Official Gazette, exempt any cooperative society or any class of societies from any of the provisions of this Act, or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order.

17. It is thus clear from Section 121 of the Act, that the State Government indeed has the power to exempt any cooperative society or any class of co-operative societies from any of the provisions of the Act or may direct that such provisions shall apply with such modification as it may specify in the order. It is in exercise of this power u/s 121 of the Act that the impugned notification is issued exempting all the co-operative societies from the operation of Section 20(2)(b)(iv)(a) & (b) of the Act.

18. The contention, therefore, urged by the Counsel for the petitioners that Section 121 of the Act cannot be used to remove the legislative criteria laid down in Section 20(2)(b)(iv)(a) & (b) of the Act, is unacceptable. When the language of Section 121 of the Act is very clear and enables the Government to exempt the societies from the operation of any of the provisions of the Act, this Court

cannot restrict its interpretation to hold that the power u/s 121 of the Act cannot be used to remove legislative criteria laid down u/s 20 of the Act. But, this will not answer the grievance made by the writ petitioners in these writ petitions. The important point raised pertains to the effect of Section 98-Y of the Act, which finds a place in Chapter XI-A.

19. Chapter XI-A is incorporated in the Act by way of special provisions made applicable to the societies in credit co-operative structure. This chapter is applicable only to cooperative societies in co-operative credit structure as is evident from Section 98A of the Act. Section 98B of the Act gives overriding effect to the provisions contained in this chapter as against any other provisions of the Act, in so far as they are contrary or inconsistent with the provisions contained in Chapter XI-A, except of course certain provisions specifically mentioned therein, which includes Sections 20 and 29(c) of the Act, as well. Indeed, Section 98-0 of the Act, makes it clear that even for the purpose of electing a new board of a society in co-operative credit structure, the provisions of Sections 20 & 29(c) of the Act, shall be applicable, meaning thereby even for the purpose of electing a new board of a society under the co-operative credit structure, a defaulter who is ineligible to participate in voting will be regarded as such and will be deprived of his right to vote and participate in the election. But, as regards extending exemption to the defaulter societies in the credit structure by resorting to the power conferred u/s 121 of the Act, there is a restriction enacted in Section 98-Y of the Act. Section 98-Y of the Act lays down the following rider. It reads as under:

98-Y. Exemption by the State Government.--No society in the Co-operative Credit Structure shall be exempted u/s 121 of this Act in any manner from the application of the provisions of this chapter without prior consultation with the Reserve Bank or the National Bank.

20. In terms of Section 98-0 of the Act, the provisions of Section 20 of the Act are made applicable for election of new board of a society in co-operative credit structure. Therefore, the provisions of Section 20 of the Act, are to be invoked for elections to be held for Primary Societies or to any other cooperative society under the co-operative credit structure. If the State Government intends to exercise its power u/s 121 of the Act, to extend any exemption to any such co-operative societies falling under the co-operative credit structure, then it has to necessarily follow the mandatory requirement prescribed u/s 98-Y of the Act, by consulting the Reserve Bank of India or the National Bank.

21. In the instant case, the State Government has not undertaken such an exercise of consulting the Reserve Bank or the National Bank before extending the exemption by resorting to its power u/s 121 of the Act. In fact, there is no mention made of any such consultation, in the Government Order nor is it asserted by the State Government that indeed such a consultation had been made. Hence, it has to be held that exercise of power u/s 121 of the Act by the State Government in issuing the impugned notification is contrary to the

provisions contained u/s 98-Y of the Act.

22. The object behind introducing Section 98-Y in Chapter XI-A of the Act as a special provision exclusively made applicable to the co-operative societies under the co-operative credit structure is very clear, in that, in respect of societies falling under co-operative credit structure, the State Government cannot exercise any control or power of extending exemption in an indiscriminate manner, because it will have adverse effect on the fiscal situation if indiscriminate exemptions are granted uninformed by proper considerations. In the long run, it may have adverse effect on the economy and may irreparably affect the societies concerned in their survival and well being also. Therefore, keeping such laudable object in mind, the legislature has made such special provisions in Section 98-Y of the Act. The language used in Section 98-Y of the Act stating that no society in the co-operative credit structure shall be exempted u/s 121 of the Act, in any manner from the application of the provisions of this Chapter without prior consultation of the Reserve Bank, makes the provision mandatory. This provision cannot be interpreted to confer any discretionary power in the State Government to either consult or not to consult the Reserve Bank or the National Bank in the matter of extension of such exemption. Therefore, on this ground alone, the impugned notification deserves to be quashed.

23. In addition to the above, as rightly pointed out by the learned Senior Counsel for the petitioners, there appears to be no nexus between the reasons assigned in the preamble to the notification issued by the Government and the actual order issued directing exemption of all Primary Societies in the State from the rigor of the provisions contained u/s 20(2)(b)(iv)(a) & (b) of the Act. This is so because in the body of the notification including in the preamble, the single most factor that has weighed in the mind of the Government for extending the exemption is the operation of the loan waiver scheme on account of which the societies were debarred from recovering the amount from the farmers. As the loan waived had not been actually reimbursed to the concerned societies or to the financing bank by the State Government they had not satisfied the 50% recovery required to be made. In order to make such societies which had not reached the target of 50% recovery eligible to participate in the election, the Government was persuaded to issue the impugned notification. Having said so in the notification, one would expect the Government to extend the exemption to such of the societies who did not satisfy the criteria of 50% recovery of the amount on account of the loan waiver scheme. Instead, in the notification, exemption is granted to all the Primary Societies who had committed default in recovery and had not reached the minimum prescribed requirement, for whatever reasons. In this background, learned Counsel for the petitioners has rightly contended that the impugned notification is arbitrary and unsustainable.

24. A decision becomes arbitrary, if it is not founded on any reasons which will support the conclusion. If the conclusion reached is de hors the reasons assigned, the conclusion cannot but be characterized as unreasonable or

arbitrary. That is precisely the case in the case of the impugned notification. Hence, on this ground also, the impugned notification is liable to be allowed.

25. As regards the postponement of elections which is done pursuant to the interim order granted by this Court, of which grievance is made in some of the writ petitions, it has to be stated that in the light of the order now passed, the whole process is required to be re-done by following the proper procedure. Therefore, there is no need to pass any separate orders quashing the postponement of the elections. The result of quashing the notification will necessary lead the State Government to re-examine the whole thing.

26. However, it is further made clear that in so far as the societies which have the benefit of the loan waiver scheme and are in a position to show that except for the amount of loan which has been waived by the State Government, the recovery made by them conforms to the requirement mentioned u/s 20(2)(b)(iv) (a) & (b) of the Act, the State Government is right in contending that these societies cannot be termed as defaulters for no fault on their part as it is the Government which delayed the process of reimbursing the loan amount which has been waived and it is because of this reason their recovery was found to be less than 50%. In fact, when these class of societies cannot be strictly termed as defaulters, question of extending any exemption in their favour by exercising power u/s 121 of the Act would not arise. Hence, it is made clear that such of the societies who satisfy that they have recovered the required percentage of demand by including the loan amount waived by the State Government they shall be permitted to go ahead with the process of election and participate in the process by preparing a fresh voters list. If the election process is already re-done following the interim order passed, then it is needles to observe that such process will not get affected by this order. Hence, W.P. No. 46689-692/2013 and W.P. No. 49109/2013 are allowed. The impugned notification dated 27.09.2013 is quashed. It is made clear that the Government is at liberty to re-visit this issue and take appropriate legal action in accordance with law including by way of issuance of any fresh notification. W.P. No. 49158-161/2013, W.P. No. 49257/2013 and W.P. No. 49266-267/2013 are dismissed.