(2010) 10 KL CK 0270

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 24530 of 2009 and W.A. No. 1833 of 2009

Nachimuthu APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Co-operative Societies Act, 1969 — Section 12(5), 60, 7

Citation : (2011) 1 KLJ 784 : (2011) 1 KLT 651

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : George Poonthottam and M. Sasindran, for the Appellant; Ranjith Thampan, A.A.G. C.C. Thomas, M.G. Karthikeyan and Anu Sivaraman, Spl. Government Pleader, for the Respondent

Judgement

A.K. Basheer, J.—These two cases are being disposed of by this common judgment since the issue or question involved in them is one and the same:

2. The question:

Is the general power of the Government to grant exemption u/s 101 of the Coperative Societies Act 1969 circumscribed or restricted by the provisions contained in Sub-clause (c) of Sub-section (1) of Section 7 of the Act?

To put it differently;

Can the Government exempt a new Society from any of the provisions of the Act and allow it to carry on the same or similar activity or business of another existing Society in a particular area, in derogation of the powers of the Registrar u/s 12(5) of the Act ?

The above question has cropped up for consideration in the following scenario.

3. The Appellant, viz., Muthalamada East Ksheera Vyavasaya Co-operative Society Ltd., in Palakkad district is a registered Society engaged in the business

of procurement and sale of milk. It is beyond controversy that the Appellant-Society which was established in the year 1971 has its area of operation in Ward Nos. 2 to 8 and 10 to 14 of Muthalamada Grama Panchayat. Ward No. 9, the only other remaining ward in the above Panchayat, is allotted to Muthalamada (West) Ksheerodpadaka Sahakarana Sangham, another registered Society under the Act which is engaged in the same activity.

4. It appears that some of the residents/inhabitants of Chappakkad area in Ward No. 11 were not entirely happy with the facilities and services made available to them by the Appellant. According to these residents, they were being denied membership to the Appellant-Society. They had a further grievance that they were not being paid adequate price for their milk. The nearest milk collection centre for them was situated 8 kms. away at Chappakkad. They had to carry the milk and supply the same to the collection centre before 4 a.m. every day, which resulted in great inconvenience and hardship to them. Further, they were denied welfare fund facilities available to the dairy farmers. Therefore the residents of Chappakkad wanted to form a new Society in that area. For this purpose they approached Respondent Nos. 1 and 2 and submitted an application. On receipt of the application, the Deputy Director, Dairy Development, Palakkad, Respondent No. 2 herein, issued Ext.P1 communication to the Appellant informing that necessary steps be taken to delink Ward No. 11 from its area of operation, so that a new dairy development Society can be allowed to be established at Chappakkad.

5. In response to the above communication, Appellant informed the Deputy Director that the whole idea was totally ill conceived and unwarranted and the proposal for delinking Ward No. 11 from its area of operation was against the provisions contained in the Act and the Rules. In short, the Appellant raised strong objection to the proposal for establishment of a new dairy development Society within its area of operation.

6. However the Government, after considering the request made by the residents of Chappakkad through Respondent No. 3, who is a resident of that area, found that the request made by them is eminently justified, in the light of the various difficulties highlighted by them and also in public interest. Therefore the Government issued Ext.P3 order invoking its power u/s 101 of the Act.

7. The said order was challenged by the Appellant before the learned single Judge in a Writ Petition filed under Article 226 of the Constitution of India praying, inter alia, that a writ of certiorari be issued to quash the said order. It was further prayed that Ext.P1 order is not in consonance with the requirements of law for the purpose of exercising the power u/s 101 of the Act and that the said order has been issued by misusing and abusing the statutory power vested with the Government.

8. The learned Single Judge held that the contentions raised by the Appellant were wholly misconceived in as much as the establishment of a new society as

ordered in Exts.P1 and P3 will not affect the Appellant society in any manner. While holding so, the learned Judge relied on two decisions of this Court reported in Kunjukunju, President, Alleppey Co-operative Land Mortgage Ltd. v. State of Kerala and Ors. (1971 KLT 350) and in Kasargod Co-operative Land Mortgage Bank v. State of Kerala and Ors. 1976 KLT 437 9. In Kunjukunju (supra) a learned Single Judge of this Court held that no legal right of an existing society can be said to have been affected by the grant of registration to another society to function in a locality which for the time stands included within the area of operation of the objector society.

10. In Kasargod Co-operative Land Mortgage Bank (supra) a Division Bench took the view that even assuming there was overlapping of areas of two societies an Objector- society cannot have any legal grievance against the action of the Registrar if he grants registration to a new society overlooking the interdiction contained in Section 7(1)(c) of the Act.

11. Sri. George Poonthottam, learned Counsel for the Appellant contends that Section 101 of the Act does not give any unbridled power to the Government to grant exemption in a whimsical or fanciful manner. The order of exemption must be supported by cogent reasons and should stand scrutiny under law. If the authority concerned is guided by any extraneous considerations or reasons or if the authority violates the principles of equity and fair play, the order will be vitiated and it will be liable to be set aside by this Court in exercise of its power under Article 226 of the Constitution of India.

12. In response to the above contention, learned Counsel for Respondent No. 3 submits that the primary concern of the Government while exercising power u/s 101 of the Act is only the public interest and nothing else. Learned Counsel while referring to the preamble of the Act submits that the whole idea of the legislation is to provide for the orderly development of the Co-operative Sector in the State by encouraging establishment of co-operative Societies as self governing, democratic institutions, to achieve the objects of equality, social justice and economic development as envisaged in the directive principles of State Policy.

13. Learned Counsel points out that the difficulties faced by the people of Ward No. 11 were kept in view by the Registrar and ultimately by the Government. It was noticed that no milk testing center was available in that area and there was no sufficient infrastructure to collect milk from the people of that locality. He further points out that membership was denied by the Appellant-society to a large number of applicants. Thus the local people had to carry their product to the nearest collecting centre 8 kms away and that too at ungodly hours. Learned Counsel further submits that the Appellant-society had been under cutting the price of milk as well, to the extent of Rs. 2 per litre.

14. Undoubtedly the Government is vested with wide discretionary power in the matter of grant of exemption as is evident from the statutory provision. In The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu

and Others, the Apex Court had occasion to consider the validity of Section 60 of the Madras Co-operative Societies Act (Act 6 of 1932) which is pari materia to Section 101 of the Act. Their Lordships observed that Section 60 "is a near Henry VIII clause. But to give it a name is not to hang it. We must examine the preamble, the scheme and other available material to see if there are discernible guidelines". The court observed that the Co-operative Societies Act being a welfare legislation the thrust should always be to advance the policy and objects of the Act. The Court held thus:

In fact the too rigorous applications of some of the provisions of the Act may itself occasionally result in frustrating the very objects of the Act instead of advancing them. It is to provide for such situations that the Government is vested by Section 60 with a power to relax the occasional rigour of the provisions of the Act and to advance the objects of the Act.

15. Learned Counsel for the Appellant has lastly invited our attention to Section 12 of the Act particularly to Sub-section (5) and (6) thereof. Section 12 deals with amendment of bye-laws of a society. Sub-section (1) postulates that no amendment to the bye-laws of a society shall be valid unless such amendment has been registered under the Act. Sub-section (5) reads thus:

Notwithstanding anything contained in this Act or the rules or bye-laws, if the Registrar is satisfied that for the purpose of altering the area of operation of a registered society or for the purpose of improving the services rendered by it, an amendment of the bye-laws of a society is necessary or desirable, he may, after consulting the financing bank, if any, to which the society is affiliated and the circle co-operative union by order in writing, require the society to make the amendment within such time as may be specified in such order or within such further time as he may grant for the purpose.

16. Registrar may by order in writing require an existing society to make necessary amendment to its bye-laws if he is satisfied for the purpose of altering the area of operation of the said society or for the purpose of improving the services rendered by it. Sub-section (6) of Section 12 empowers the Registrar to register the necessary amendments to the bye-laws as required by him if the society does not comply with the direction issued by him in this regard.

17. It is contended by the learned Counsel for the Appellant that Ext.P1 order issued by the Government is in gross violation of Sub-section (5) of Section 12 of the Act. The contention of the Appellant is that the Registrar had never sought the opinion of the Appellant society as to whether the alteration of its area of operation was contemplated or warranted or at least whether it was feasible or not. The Government was therefore not justified in altering the area of operation of the Appellant society in a whimscial manner and in gross violation of the principles of natural justice.

18. We are afraid, the above contention is wholly misconceived. It has been noticed that Section 12 deals with amendment of bye-laws of a society. Sub-

section (5) of Section 12 deals with contingencies where the Registrar if satisfied, proposes to alter the area of operation of a society for the purpose of improving the services rendered by it. Section 101 operates in a totally different contingency or situation. It deals with power of the Government to grant exemption in public interest.

As has been held by the Apex Court in Kunjambu (supra) the Government is vested with powers "to relax the occasional rigour of the provisions of the Act and to advance its object in public interest".

19. In Ext.P1 communication issued by the Deputy Director, the Appellant was informed that it had been decided to establish a new society in Ward No. 11 which was hitherto within the area of operation of the Appellant society for the following reasons.

i. The collection centre of Ward No. 11 is 8 kms. away from the Head Office at Chappakkad.

ii. Dairy farmers are not able to get the price of their product on the same day of supply. They are also not able to get the result of the quality test on the same day.

iii. Many of the dairy fanners were denied membership despite repeated requests.

20. The Deputy Director had therefore informed the Appellant to take necessary steps to delete ward No. 11 from its area of operation and to report compliance on or before May 30, 2009. Appellant had sent Ext.P2 reply to me above notice on May 25, 2009 taking strong exception to the proposal and contending inter alia that the proposal was totally against the statutory provisions and without any authority of law. However, the Government intervened in the meanwhile and issued Ext.P3 order in exercise of the power vested in it u/s 101 of the Act exempting the proposed new society at Chappakkad from the provisions contained in Clause (c) of Sub-section (1) of Section 7 of the Act in order to avoid overlapping of the areas of operation of the two societies. Section 101 of the Act reads thus:

Section 101. "Power to Exempt Societies: Government may if they are satisfied that it is necessary to do so in public interest, by general or special order for reasons to be recorded, exempt any society or class of society from any of the provisions of this Act or direct that such provisions shall apply to such society or class of societies subject to such modifications as may be specified in the order.

21. Learned Counsel submits that the Appellant had been denied an opportunity of being heard as provided under Sub-section (6) of Section 12 of the Act. It is true that Sub-section (6) empowers the Registrar to register the amendment of bye-law as required by him if the society fails to make the amendment within the time specified under Sub-section (5) of Section 12 of the Act. Sub-section (5) postulates that Registrar shall order such amendment after giving the society an opportunity for making representations in response to the proposal made by the

Registrar. The contention of the Appellant appears to be that though Ext.P2 reply was sent to the Deputy Director in response to Ext.P1 communication sent by him on May 25, 2009, Ext.P3 order was issued by the Government within three weeks there from without giving the Appellant an opportunity to be heard. We have already held that Sub-sections (5) and (6) of Section 12 of the Act operate in totally different fields. Ext.P3 order was issued by the Government in exercise of its power u/s 101 of the Act and also to obviate the legal impediment, if any, that may ensue u/s 7(1)(c) of the Act if a new society is allowed to be established in the area where the Appellant is now operating.

22. For the above reasons we do not find any merit in any of the contentions raised by the Appellant. The Writ Petition and Writ Appeal fail and they are accordingly dismissed.

