**(2003) 06 MAD CK 0051**

**In the Madras High Court**

**Case No :** Writ Petition No''s. 6964, 7081, 7182, 7345, 7562, 7924 to 7926, 7774, 7944, 8537, 8777, 8818, 8900, 8931, 9360, 9566, 9695 to 9701, 9728 to 9738, 9761 to 9765, 11468, 13137, 19796, 19810, 19892, 20959, 21933 and 21947 of 2000 and 164, 989, 1655, 2057, 23

P. Baluchamy APPELLANT

Vs

The State and Others RESPONDENT

**Date of Decision :** 23-06-2003

**Acts Referred:**

Constitution of India, 1950 — Article 19, 19(1), 19(6), 226
Industrial Disputes Act, 1947 — Section 2, 9A

**Citation :** (2003) 3 CTC 65 : (2003) 3 LLJ 815 : (2003) 3 MLJ 54

**Hon'ble Judges :** B. Subhashan Reddy, C.J;K. Govindarajan, J

**Bench :** Division Bench

**Advocate :** G. Rajagopalan for C. Prakasam, S.M. Subramanian, G. Ravishankar, P.H. Manoj Pandian, V. Bhiman and S. Jayachandran, K. Chandru for P. Chandrasekaran, P. Sureshbabu, S.A. Balasubramanian, S. Ayyathurai, T.S. Rajamohan, S. Kamadevan, S. Ponnarasi, S. Aparna and K. Annandan, for the Appellant; N.R. Chandran, General Assisted by V. Raghupathi, Government Pleader, M.S. Palaniswamy, Special Government Pleader, M. Devaraj, M.R. Raghavan, K. Vasu Venkat, S. Silambanan, G. Sankaran, P.S. Jayakumar, P. Chandrasekaran and A.S. Thambuswamy, for the Respondent

**Final Decision :** Dismissed

## Judgement

K. Govindarajan, J.—The Government, on the basis of the recommendations of the Registrar of Co-operative Societies, decided to

constitute the Tamil Nadu Primary Agricultural Co-operative Banks'' common cadre of service in respect of the post of Secretary in Primary

Agricultural Co-operative Banks. To implement the said decision, exercising powers conferred u/s 75 of the Tamil Nadu Co-operative Societies

Act 1983 (hereinafter called ''the Act''), the Government passed order in

 

G.O.Ms.No.55, Co-operation, Food and Consumer Protection

Department, dated 24.3.2000 constituting common cadre of service in respect of the post of Secretary in Primary Agricultural Co-operative

Banks in the State. They have also formed the Tamil Nadu Agricultural Co-operative Banks common Cadre Service Regulations.

2. Challenging the said Government Order, most of the petitioners have filed the writ petitions. Some of them have challenged the validity of

Section 75 of the Act.

3. Mr. Chandru, learned Senior Counsel appearing for some of the petitioners submitted that if common cadre is created, it will be a financial

burden to the Society and the Secretaries employed were not given opportunity before the Government Order was passed. He further submitted

that the reason for changing the system by creating common cadre is not adequate which clearly shows that the Government passed the impugned

Order without applying their mind. According to the learned Senior Counsel, if the existing Secretaries are not given option to come within the

common cadre, they have to go out, which amounts to termination of service. So, the impugned Government Order cannot be sustained. As

contemplated u/s 39 of the Act, Societies are corporate bodies with perpetual succession and common system and so, they are entitled to employ

their own employees. Even the power given under Rule 147 of the Rules to the Board of Directors cannot be taken away. When the Registrar is

having every power to control the Secretary of the Society, bringing the said post under common cadre may not be necessary. If the Secretary

comes from outside the Society in view of the common cadre system, he may not have special training with respect to the Society in question to

discharge his function effectively.

4. Mr. Ayyadurai, learned counsel appearing for some of the petitioners submitted that the Secretary cannot be construed as an employee of the

Government and so, the common cadre cannot be created. If any proceedings u/s 75 of the Act are upheld, they will create problem in the

Society. Unless the Board of Directors are having a Secretary for their confidence, the Society cannot run effectively and the Board of Directors

lose their power to appoint their own Secretary of their choice.

5. Mr. G.Rajagopal, learned Senior counsel has submitted that Section 75 of the

 

Act has to be struck down as it is ultra vires of Articles 19(1)(c)

and 19(1)(g) of the Constitution of India. Referring to the Preamble to the Tamil Nadu Co-operatives Societies Act, he submitted that any

interference with the right of Board of Directors in appointing Secretaries amounts to taking away the right of management. He has also submitted

that Article 19(1)(c) guarantees freedom to form association to all the citizens which right includes right to manage the said association or the

society. So, thrusting upon the society to have a Secretary as suggested u/s 75 of the Act is violative of Article 19(1)(c) of the Constitution.

Leaned counsel has also putforth his argument that the said provision has to be struck down as violative of Article 19(1)(g) of the Constitution of

India. This submission made on the basis that compelling the Society to have a Secretary as provided u/s 75 of the Act is nothing but unreasonable

restriction.

6. Learned Advocate General submitted that the State Government is given power to create common cadre u/s 75 of the Act. The Government

have decided to create common cadre of service as a matter of policy and so, most of the petitioners, as the existing Secretaries, cannot challenge

the impugned Government Order. He also pointed out that the salary including allowances of the Secretaries shall not be valued to their

disadvantage. This submission of the learned Advocate General is based on proviso to Sub-section 2 to Section 75 of the Act. He also relied on

Rule 152 of the Tamil Nadu Co-operative Societies Rules, 1988 to sustain the power of the Government to issue the impugned Government

Order. Referring to paragraph 7 of the counter affidavit, learned Advocate General further submitted that sufficient reason is available to pass the

impugned Government Order. The Society itself is created by a statute and it is controlled by statute and so, it cannot have any objection to the

statutory interference by creating common cadre of service with respect to the post of Secretary.

7. From the above, it is clear that some of the petitioners have challenged the validity of Section 75 of the Act and most of the petitioners have

challenged the validity of the impugned Government Order dated 24.3.2000. Pursuant to the said provision of Section 75 of the Act, the said

Government Order was passed constituting a common cadre of service with reference to the Secretaries of Primary Agricultural Co-operative

Banks.

8. The Tamil Nadu Co-operative Societies Act, 1983 (Act 30/1983) was enacted repealing Tamil Nadu Co-operative Act, 1961 (Act 53/1961)

and the Tamil Nadu Co-operative Land Development Act, 1934 (Act 10/1934), as in the Co-operative Movement there had been vast progress

which necessitated the State Legislature, to bring in a comprehensive legislation to achieve the objects of the Co-operative Movement. The Act

was brought into force with effect from 13.4.1988. The Rules were also framed which are called as the Tamil Nadu Co-operative Societies Rules

which came into force with effect from 13.4.1988. The preamble of the Act says that the Act is passed to provide for an orderly development of

the cooperative movement in accordance with co-operative principles such as open membership, democratic management, limited interest on

capital, distribution of surplus based on patronage, provision for co-operative education and co-operation among co-operatives for the formation

of thrift, self help and mutual aid among persons with common socio-economic needs so as to bring about the improvement in agriculture and

industry, better methods of production, better business and better living.

9. From the provisions of Section 4 of the Act it is clear that a society which has its object the promotion of economic interests or general welfare

of its members in accordance with co-operative principles or a society established with object of facilitating the operations of such a society may

be registered under the Act. So the registration of the society is not compulsory, but voluntary. The salient features of various provisions of the Act

coupled with the object of the enactment, make it quite clear that a society which is registered under the Act is in accordance with the provisions of

the Act. The Act, however, does not prohibit formation of a society for carrying on the activities which may be carried on by a society registered

under the Act.. Moreover, the reasons for getting society registered under the Act are obvious. The registration of a society carries with it several

privileges and benefits not only under the Act, but also under various enactments and also various schemes of the Government which are available

exclusively to societies registered under the Act, a society registered under the Act gets a status of body corporate u/s 39 of the Act. From the provisions of the Act and policy of the State Government various concessions and priorities are given to the societies registered under the Act, So

the registration can be had only on the basis that the society is willing to abide by the Bye-laws as may be approved by the Registrar under the Act

as well as the provisions of the Act and the Rules framed thereunder.

10. Section 2(19) of the Act deals with ""Officer"", which includes Secretary, Assistant Secretary, etc. Section 73 of the Act gives power to the

registered Society to appoint such paid officers and servants as are necessary for the efficient performance of its functions. But, such appointment

should be subject to the provisions of Sections 74, 75, 76 and 77 of the Act. So, the Secretaries can be appointed by a Society subject to

Sections 74 to 77 of the Act. Section 74 of the Act gives power to the Government to constitute Recruitment Bureaus at the State and District

levels for the recruitment of such categories of paid officers and servants. However, the said provision will not apply to the posts in respect of

which common cadre of service has been constituted u/s 75 of the Act. Section 75 of the Act gives power to the Government to constitute, from

time to time, one or more common cadre of service with respect to the posts mentioned therein and with respect to the Societies specifically

mentioned in the said provision and correspondingly, the Rules were framed. Under Rule 152 of the Tamil Nadu Co-operative Societies Rules,

1988, every employee deemed under Sub-section (3) of Section 75 to have been absorbed in the common cadre of service shall, within a period

of thirty days from the date of constitution of such common cadre of service, intimate his option for not becoming a member of such common cadre

of service. Rule 152(3) creates an obligation on the Society to contribute the amount towards salary and other allowances in respect of an

employee who is in the common cadre of service.

11. Till the impugned Government order is passed the Secretary of a society was appointed by the respective Board of Directors/Special officers.

Such Secretary could not be transferred to some other society. Now exercising the powers'' u/s 75 of the Act, the Government, under the

impugned notification in G.O.Ms.No.55, Co-Operation, Food and Consumer Protection Department dated 24.3.2000, constituted a common

cadre of service in respect of the posts of Secretaries of the Primary Agricultural

 

Co-operative Banks in the State. There are 4,589 Primary

Agricultural Co-operative Banks functioning in the State. Since the Government undertakes the responsibility of ensuring flow of credit to the

Primary Agricultural Co-operative Banks, every year, the Government decided to introduce a common cadre of service for Secretaries of these

banks for better management as they are the key persons in processing and disbursing the loan applications of the farmers and handling the

deposits of the individuals.

12. The main attack on validity of Section 75 of the Act and Rule 152 of the Rules is on the ground that it violates Articles 19(1)(c) and 19(1)(g)

of the Constitution of India. Though the right to form an association is a fundamental right of a citizen, there cannot be any such right available in

forming a Co-operative society. As such, the Co-operative Society can be formed only as contemplated under the statute and so it is a right given

under the statute. When such a Society is a creature of statute and it is controlled by the statute, the petitioners cannot claim any fundamental right

under Article 19(1)(c) of the Constitution of India. The right to manage the society by the Board by making appointments is conferred by the

statute, and so such right is subject to the conditions as laid down by the statute. The said rights are not common law rights. Therefore they can be

enforced only in accordance with and subject to the conditions laid down therein by the statute concerned. The fundamental right guaranteed under

Article 19(1)(c) can be enjoyed by all and everybody. But the same has no reference to the right conferred or created by a particular statute.

Board of Director is itself a creation of statute and so they are imposed with restrictions contemplated under various provision of the Act including

Section 75 of the Act. The very philosophy and concept of the co-operative movement is impregnated with the public interest and so giving power

to the Government to form a common cadre can only be to secure the proper management of the societies. So, such a provision cannot be

construed as unreasonable or adverse to the interests of the society and it can be justified under Article 19(4), as it imposes reasonable restriction

in the interest of the society.

13. The restriction whether contained in the bye-laws or the rules or the provisions of the Act comes into operation by reason if the registration of

 

the society under the Act which is the result of a purely voluntary act of its members and as such, the petitioners cannot make complaint of any

infringement of Article 19(1)(g) of the Constitution merely because the Government was given power to constitute common cadre as the members

on their own volition submitted to the restrictions. The said provision in any manner infringe upon the right of the members to form and manage the

association guaranteed under Article 19(1)(c) of the Constitution. The said provision does not take away the rights of the members to continue the

association with its composition as voluntarily agreed upon by them. So the said provision can be construed as it is for regulating the affairs of the

society without encroaching upon the right to continue the association with its composition agreed upon by them.

14. The Apex Court, in Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, while dealing with a similar issue, held as follows:

That case has no application whatever to the situation before us. It was a case where an unregistered society was by statute covered into a

registered society which bore no resemblance whatever to the original society. New members could be admitted in large numbers so as to reduce

the original members to an insignificant minority. The composition of the society itself was transformed by the Act and the voluntary nature of the

association of the members who formed the original society was totally destroyed. The Act was, therefore, struck-down by the Court as

contravening the fundamental right guaranteed by Article 19(1)(f). In the cases before us we are concerned with cooperative societies which from

the inception are governed by statute. They are created by statute, they are controlled by statute and so there can be no objection to statutory

interference with their composition on the ground of contravention of the individual right of freedom of association ...

15. Even the Full Bench of Karnataka High Court in H. Puttappa v. State AIR 1978 Kar. 148, while dealing with the claim under Article 19(1) of

the Constitution of India, held as follows:

The provisions in the Act govern the duties and privileges, rights and liabilities, property and funds, the audit inspection and surcharge, the

dissolution and amalgamation of co-operative societies and its members. The Act thus regulates the economic interests of the members and controls the trading activities of the societies in the interest of the public or in the interest of the advancement of the cooperative movement. The

process of amalgamation and division or reorganisation of co-operative societies relates only to structural alternations in the Corporate bodies and

cannot be construed as a restriction on the right guaranteed to the citizens by Article 19(1)(c).

It was further observed:

It is now a settled principle that the freedom to form an association guaranteed to the citizens by Article 19(1)(c) does not include the freedom to

achieve any objects of the association. The amalgamation, compulsive or consensual, pertains to the rights of the latter category

16. The Full Bench of the Andhra Pradesh High Court, in Kaamareddy Suryanarayana and Another Vs. The District Co-operative Officer-cum-

Election Officer, The West Godavari Co-operative Sugars Ltd. and Others, has held that the right to form a Co-operative Society under the Co-

operative Societies Act is not a fundamental right and that it is only a right given under the Act subject to its provisions and the Rules framed

thereunder.

17. Even with respect to the attack on the basis of Article 19(1)(g) of the Constitution of India, the petitioners cannot sustain their case. The power

given to the Government to form a common cadre of service u/s 75 of the Act has to be construed as a reasonable restriction in the interest of

general public within the meaning of Clause (6) of Article 19.

18. A Division Bench of Andhra Pradesh High Court, in the judgment in M. Ranga Reddy Vs. State of Andhra Pradesh and Another, while

dealing with the issue with respect to the amalgamation of the Societies exercising power under the Andhra Pradesh Co-operative Societies Act,

held as follows:

20. From the above decisions, the principle that emerges is that while the right to form an association or a Union is a fundamental right of a citizen,

there is no fundamental right to form a Co-operative Society under the Co-operative Societies Act. The formation of a Cooperative Society, its

management conduct of its affairs, and its winding up etc. are all matters governed by the relevant statute. If persons want to form a Co-operative

Society, they have to do it only in accordance with the provisions of the relevant statute. Such statute can provide for classification of societies, the

conditions which they must observe in the conduct of their affairs, the control and supervision subject to which they should operate, the manner in

which their committees should be elected, and so on and so forth. Such a statute can always provide for amalgamation, merger, liquidation and

reorganisation of societies. It would not be reasonable to deny to the Legislature the right to bring about structural changes, or, to effect structural

reorganisation of societies in the interest of the Co-operative Society themselves, their members and the co-operative movements as a whole. It

cannot be argued that once a co-operative society is registered, its existence can never be put an end to in any circumstances. Indeed, the Act

recognizes several modes of putting an end to the existence of a co-operative society, viz, by amalgamation, by merger, by division, and by

liquidation. The abolition of a particular category of societies is also one of the modes, now provided by the Amendment Act. It is not as if the

abolition of the Agricultural Development Banks is being done without a purpose, or arbitrarily. It is being done to introduce the ''single window

system'' which is recommended and cleared by the Central Government. The idea is that hereafter all credit to the agriculturists should flow from

one society, and not from two sets of societies. It cannot be said that this object is either unreasonable or adverse to the interest of the societies, or

their members, or the co-operative movement as a whole. The principle of Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, has

no application herein, inasmuch as that was a case where a society incorporated under the Societies Registration Act was sought to be converned

into a statutory body and in that process its membership and all allied matters were sought to be changed to, the prejudice of the existing members.

That is not the case here. As a measure of reorganising the credit societies one class of societies (i.e. Agricultural Development Banks) is being

abolished, and their work is being allotted to the other (existing) category of societies. It is also provided that if the members of the abolished

societies want to become members of the concerned Primary Agricultural Co-operative Societies, they shall be admitted as such. As stated above,

since the registration of a co-operative society, or the right to become a member of a co-operative society is not a right within the meaning of

 

Article 19(1)(c) of the Constitution, the taking away of such right cannot also be treated as infringement of the said right. It is, therefore, not

possible to agree with the counsel for the petitioners that Section 11 of the Amendment Act is void for the reason that it violates Article 19(1)(c).

27. Now coming to the attack based upon Article 19(1)(g) we do not think it appropriate to go into the said question in these two writ petitions.

No Agricultural Development Bank as such has come forward, nor any members of such abolished Banks have come forward complaining that

their properties and other assets are being transferred to Co-operative Central Banks without reference to them and without making any provisions

for sharing the surplus by their erstwhile members. Such a general question cannot be gone into in these writ petitions which are filed by the

Association of Primary Agricultural Co-operative Societies and also a few of their members"".

19. When the Karnataka Government constituted a ''Common Cadre Authority'' for recruitment, training and disciplinary control of all the

employees of ARD Banks (CCA) for the State, the same was challenged before the High Court. The Division Bench, in Primary Co-operative

Land Development Bank Ltd. v. State of Karnataka, 1987 LAB I.C. 1226, on the following reasons, rejected the challenge of the petitioners

through Section 128-A based on Article 19(1)(c)(f) and (g) of the Constitution of India :

46. Section 128-A, the creation of CCA thereunder or the powers exercised by that authority in conformity with the common regulations made

thereunder do not in any way affect or contravene the rights of the petitioners, if any to practise their profession, trade or business, if any

guaranteed to them under Article 19(1)(g) of the Constitution. So also the right of the petitioners to continue to serve in one or the other bank is

not interfered with by Section 128-A or the Regulations made thereunder. On the other hand the creation of the CCA with uniform scales of pay,

conditions of service as are extended to Government servants of the State had really advanced the prospects of employees of the Banks. The

CCA with the Registrar as the Chairman and other representatives, is undoubtedly a better and superior organisation to regulate recruitments,

conditions of service and the disciplinary control of all the employees who are all similarly placed to serve the objectives of the banks that are also common.

47. A transfer is only an incident of service and is not even a condition of service. If the provisions empowering the creation of CCA is valid, then it

necessarily follows that authority which becomes the appointing authority in the place of original appointing authority of the banks must have power

to transfer its employees from one bank to another bank. We cannot on any principle hold that the same contravenes Article 19(1)(g) of the

Constitution.

48. Section 128-A empowering the creation of CCA and the CCA are in the interests of the great majority of employees who were clamouring for

the creation of such an authority. At the highest the restriction if any, placed by Section 128-A is a reasonable restriction saved by Clause (6) of

Article 19 of the Constitution.

20. From the above, it is clear that the challenge of Section 75 based on Article 19(1)(c) and (g) of the Constitution of India is devoid of merits

and so, it has to be rejected.

21. With respect to the challenge of the Government Order passed in G.O.Ms.No.55, Co-operation Food and Consumer Protection Department

dated 24.3.2000, it also cannot be sustained as it does not have any merit. The main attack on the said Government Order is that if the common

cadre system is followed, the Board of Directors cannot have their own officers and there will be a financial burden on the Society. It is also stated

that the Board of Directors cannot have an effective control over the Secretaries. It is the further case that there is no valid and sufficient reason for

introducing the common cadre system and that such a system is not necessary when the Registrars are having effective control over such officers

even if they are not working properly.

22. Such an argument was rejected by the learned Judge in Coimbatore District Central Co-operative Bank Employees'' Association v. The

Government of Tamil Nadu and others, 1999 WLR 789 while the validity of the order in G.O.Ms.No.130 dated 8.5.1997 came up for

consideration under which a common cadre in respect of posts of General Manager and Assistant General Manager was created. In the said

judgment, the learned Judge upheld the Government Order, holding that the salary of an employee has been protected u/s 75(2) of the Act and that the transfer of employees is an incident of service. Such a conclusion was arrived at on the basis of the judgment of Apex Court in Virendra

Pal Singh and Others Vs. District Assistant Registrar, Cooperative Societies, Etah and Another, . The principles laid down in the above decisions

apply to the present case as the issues raised in the writ petitions are similar to the issues raised in the above cases.

23. Most of the writ petitions are filed by the Secretaries challenging the Government order which establishes that the Societies are not having any

grievance in creating the common cadre association. When the employees'' service conditions are not affected by creating the common cadre

system, they cannot sustain the writ petitions challenging the Government order. Under the proviso to Sub-section (2) of Section 75, it is

specifically stated that the salary including allowances of any of the employee shall not be varied to his disadvantage. In view of the said provision

and also in view of the fact that any transfer is an incident of service as held by the Apex Court, the employees cannot sustain the writ petitions

challenging the Government order. More over, the Government has come forward with reasons in their counter for creating such a common cadre.

So, the action of the Government cannot be construed as arbitrary and unreasonable one. Merely because the higher authorities are having power

to supervise and to take action against the Secretaries, it cannot be said that there is no necessity for creating a common cadre of establishment

when the Government, for the reasons mentioned in the counter, as a policy, has created such a cadre.

24. Certain difficulties were expressed with respect to the posting of Officers on the basis of the status of the Primary Agricultural Co-operative

Bank. Even if such a difficulty arises in enforcing the Government order, it could be solved in future on the basis of the practical difficulty. On that

basis, the impugned order need not be set aside. The Societies have been categorised into three with reference to its working capital. The

Secretaries will be posted taking into consideration the said classification and also the salary of the Secretaries.

25. Though Mr. Chandru, learned Senior Counsel appearing for some of the petitioners submitted that the Government should have consulted the

Secretaries before passing the impugned order, such a submission cannot be accepted as there is no alteration in the remuneration and conditions of service. The question of giving such opportunity to the employees does not arise.

26. Even Mr. Ayyadurai, learned counsel appearing for the petitioner, relying on Section 9(A) of the Industrial Disputes Act, submitted that notice

should have been issued to the Secretaries under the said provision. The said provision has no application to the Secretaries as there is no

alteration in the service conditions and they are not workmen.

27. In view of the above,

(1) Section 75 of the Tamil Nadu Co-operative Societies Act and Rule 152 of the Rules are not violative of Articles 19(1)(c) and 19(1)(g) of the

Constitution of India and so, they are valid in law.

(2) The impugned Government order in G.O.Ms.No.55, Co-operation, Food and Consumer Protection Department dated 24.3.2000 also is valid

and sustainable.

28. Hence, the writ petitions are liable to be dismissed and accordingly, they are dismissed. No costs. Consequently, connected W.P.M.Ps and

W.V.M.P are also dismissed.

 