
(2008) 04 KL CK 0043

In the High Court Of Kerala

Case No : Writ Petition (C) No. 37452 of 2007 and Connected Cases

Philip, K.J.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2008) 04 KL CK 0043

Hon'ble Judges : P.N. Ravindran, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : George Poonthottam and B.S. Swathi Kumar, for the Appellant; K.K. Ravindranath, Spl. Govt. Pleader and Liaison Officer, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—In all these cases, the constitutional validity of Ordinance No. 62/2007, promulgated by the Governor of Kerala, is mainly challenged by the Petitioners. Therefore, they are heard and disposed of by this common judgment.

W.P.(C) No. 37452/2007

2. This writ petition is treated as the main case for the purpose of referring to the exhibits.

3. The brief facts of the case are the following: The writ Petitioner is the President of the Kottayam District Co-operative Bank Ltd., which is a Central Society as defined u/s 2(d) of the Kerala Co-operative Societies Act (hereinafter referred as the "KCS Act"). The District Co-operative Banks, including the Petitioner's Bank are hereinafter mentioned for convenience as DCB. The Petitioner is the delegate of Valavoor Service Co-operative Bank Ltd., to the general body of the DCB. The election to the Managing Committee of the DCB was held about five years back and the present Committee assumed office on 4-5-2003. The members of the Board of Directors of the DCB were elected for a

period of five years. While so, the Registrar of Co-operative Societies by Ext. P-1 proceedings dated 13-12-2007, appointed the Joint Registrar of Co-operative Societies (General), Kottayam as the Part-time Administrator of the DCB, u/s 33(1) of the KCS Act. The said order was passed based on the finding that in view of Ordinance No. 62/2007, some of the members of the Board of Directors ceased to be its members and the remaining members cannot constitute the quorum for the Board. The Ordinance relied on by the Registrar in Ext. P-1 is Ext. P-2 dated 11-12-2007. According to the Petitioner, the provisions of Ext. P-2 amendment are ultra vires and unconstitutional and therefore, unenforceable. As a result of the Ordinance, majority of the members of the DCB other than Primary Agricultural Credit Societies and Urban Co-operative Banks became nominal or associate members of the DCB, having no right to vote or participate in the administration of the Bank. The exclusion of societies belonging to categories other than the two categories mentioned above, is arbitrary and discriminatory. So, the Ordinance is hit by the violation of Article 14 of the Constitution of India. The Petitioner also relied on the decision of this Court in Alapuzha Dt. Co-op. Bank Ltd. v. State of Kerala 2003 (1) KLT 297 in support of his submissions. As per the said decision, the provisions similar to those contained in Ext. P-2 Ordinance in an earlier amending Act were held to be arbitrary and unconstitutional. Therefore, the Petitioner prays for declaring that Ext. P-2 is unconstitutional and also for quashing Ext. P-1.

4. The Respondents 1 and 2 have filed a counter-affidavit, supporting the impugned legislation. According to them, the DCB is mainly engaged in banking business. The Primary Agricultural Credit Societies and Urban Co-operative Banks, which are also mainly engaged in agricultural credit and banking business should, alone, be permitted to have a say in the management of the DCB. A DCB should be a central society for the co-operative societies, mainly engaged in agricultural credit and banking business. Other categories of societies have their own respective apex bodies. The Milk Societies have Regional Milk Producers Union as their central society as also Milma as the apex society at the State level. For Consumer Co-operative Societies, there is a central society called District Wholesale Consumer Store and the apex body is Consumerfed. There are other apex societies like Housing Federation, Serifed, Matsyafed, etc. The Government appointed a Committee called E.V. Kumaran Committee, which, after making extensive studies, recommended that the DCB should be the central society for Primary Agricultural Credit Societies and Urban Co-operative Banks. In other categories of central and apex societies, the societies belonging to different categories are not admitted as members. Only in the case of DCB, societies belonging to different categories are admitted as members and they are practically controlling the Bank, The membership of other societies drown the membership of Primary Agricultural Credit Societies and Urban Co-operative Banks. So, the legislature in its wisdom decided to amend the law, providing that the DCB shall be the central society for Primary Agricultural Credit Societies and Urban Co-operative Banks functioning in a district. It is a valid. legislative

exercise. In view of the amended provisions, the present Committee can no longer continue to function validly and therefore, the Administrator was appointed as per Ext. P-1, it is submitted.

5. The Petitioner has filed a reply affidavit, dealing with the averments in the counter-affidavit. It is reiterated that the discrimination shown to societies other than Primary Agricultural Credit Societies and Urban Co-operative Banks, is arbitrary and discriminatory. All the members of the DCB should have a say in its management. Various subsidies and subsidised loan facilities are routed through the DCB. So, all types of societies should have a say in the management of the DCB also. The present Ordinance Ext. P-2 runs counter to the democratic principles, underlying the organization and functioning of co-operative societies. So, the Petitioner prays for allowing the writ petition, disregarding the contentions in the counter-affidavit.

6. Heard the learned Counsel on both sides. Sri George Poorithottam, learned Counsel for the writ Petitioner and Sri B.S. Swathikumar, learned Counsel appearing for the Petitioners in some of the connected writ petitions led the arguments on behalf of the writ Petitioners. They reiterated the contention of hostile discrimination meted out to various other types of co-operative societies other than Primary Agricultural Credit Societies and Urban Co-operative Banks and prayed for striking down the Ordinance. Sri K.K. Ravindranath, learned Senior Government Pleader supported the Ordinance, relying on the contentions raised in the counter-affidavit filed on behalf of Respondents 1 and 2.

7. The Petitioner mainly attacked the amendment to the definition of District Co-operative Bank in Section 2(ia) in Ext. P-2 and also the newly introduced second proviso to Section 18 of the KCS Act.

8. The salient features of the amendments introduced to the KCS Act by Ext. P-2 are the following: Section 2(ia) of the KCS Act defines District Co-operative Bank. Before the amendment, the definition of District Co-operative Bank was as follows:

(ia) "District Co-operative Bank" means a Central Society the principal object of which is to raise funds to be lent to its members, with jurisdiction over one revenue district and having as its members any type of primary societies and Federal and Central Societies having headquarters in such district.

Now, after the amendment of the Act by Ext. P-2 Ordinance, the definition of District Co-operative Bank reads as follows:

(ia) "District Co-operative Bank" means a Central Society having jurisdiction over one revenue district and having as its members Primary Agricultural Credit Societies and Urban Co-operative Banks and the principal object of which is to raise funds to be lent to its members, including nominal or associate members.

In Section 2, a new Clause (od) defining Primary Co-operative Society has been added. The said clause reads as follows:

(od) Primary Co-operative Society" means a society having jurisdiction over a revenue district as a whole or over any specified area within such revenue district and having individual or individuals and other Co-operative Societies as its members.

Another Clause (ta) defining Urban Co-operative Bank was also introduced, which reads as follows:

(ta) "Urban Co-operative Bank" means a society registered under this Act having its area of operation in the Urban areas and which undertakes banking business with the licence obtained from Reserve Bank of India.

Under Sub-section (1) of Section 18, before the existing proviso, two new provisos were added, which read as follows:

Provided that a District Co-operative Bank may admit any Co-operative Society registered under the provisions of this Act, other than Primary Agricultural Credit Societies and Urban Co-operative Banks functioning within its area of operation as nominal or associate member;

Provided further that the members of a District Co-operative Bank other than Primary Agricultural Credit Societies and Urban Co-operative Banks as on the date of commencement of the Kerala Co-operative Societies (Amendment) Ordinance 2007 shall become nominal or associated members of such District Co-operative Banks at such commencement.

The effect of the above amendments is that only Primary Agricultural Credit Societies and Urban Co-operative Banks are eligible to be the members of the DCB. Other societies, which are members on the date of issuance of the Ordinance will become nominal or associate members. The Petitioner condemns the above amendments as arbitrary, discriminatory and undemocratic. Earlier, by Act 15/1997, provisions similar to those contained in Ext. P-2 were introduced in the Act. They were removed from the KCS Act by Act 3/2002. When the validity of Act 3/2002 was challenged before this Court, this Court upheld it. But, while giving the reasons for the said decision, this Court in *Alapuzha Dt. Co-op. Bank Ltd. v. State of Kerala* 2003 (1) KLT 297, condemned the provisions of Act 15/1997 as undemocratic and hailed the introduction of Act 3/2002, repealing Act 15/1997. The Petitioners mainly rely on the observations of the learned Judge in that decision to attack Ext. P-2. The learned Counsel took us through paragraphs 4 to 10 and 17 of the said decision. Special reference was made to paragraphs 9, 10 and 17. Relevant portions of them are quoted below for convenient reference:

9. Petitioners contend that classification is mandatory and absence of classification would render the purpose of the KCS Act otiose. There is also a contention that unequals are treated equally. It has to be seen that there is no case for anybody that a classification based on the nature of activity is impermissible. But, what is to be considered is whether such a classification

based on the nature of the activity has any nexus to the object sought to be achieved. As already noted above, in the concept of District Co-operative Bank as the financing bank in the district, functioning as the central society under the Act and in the scheme of the functioning of the primary societies depending on the District Co-operative Bank, it cannot be said that non-credit and non-banking primary societies have to be treated as a separate class and treated differently, without permitting them to have full participation in the affairs of the central society. In such circumstances, classification for the purpose of keeping the non-credit and non-banking primary societies away from the main stream and attributing a different status of membership without participatory opportunities is impermissible. It is significant to note that both under the Amendment Act of 1997 and the impugned Act of 2002, District Co-operative Bank is defined as a Central Society with jurisdiction over one revenue district. A Central Society shall not treat its members differently since all the members in that society are other societies with similar privileges and obligations in relation to the Central Society. It will not also be out of context to note that the funds of the District Co-operative Banks take in not only the funds of primary agricultural credit societies and urban banks, but also other non-credit societies and individuals.

10. Co-operative societies are set up on democratic principles. A true and meaningful participation in the affairs of the society by the members is the basis of such a principle. In the counter-affidavit filed by the State, a comparative chart is given indicating the impact of the Amendment Act of 1997, which is extracted below:

* * * * * A perusal of the above chart would show the glaring imbalance, rather the hostile discrimination meted out to the bulk of the members in each central society. Not only that, such a classification does not achieve the purpose of the Act-the orderly development of the primary co-operative societies-in the instant case in each district, but the same results in hostile discrimination to the majority of the primary societies. The facts and figures indicate that vast majority of primary societies in each district are non-credit societies who have their financial relationship with the District Co-operative Bank and who have share capital investment in the District Co-operative Bank. By the 1997 amendment, the non-credit and non-banking primary societies were treated as nominal members and as a consequence of which they were denied their dividend for their share capital contribution. They were denied opportunity for effective and meaningful participation. Negation of such democratic rights infracts rights under Article 14 of the Constitution of India. The Amendment Act of 2002 is intended to remedy the situation and pursuant to the amendment, all primary cooperative societies and federal and central societies having head quarters in a district are roped in the definition of District Co-operative Bank. By virtue of their powers under item 32 in List II of the Seventh Schedule of the Constitution of India, the State is well within its powers to provide for such a legislation.

* * * * * 17... By the impugned Amendment Act 3 of 2002, the concept of active member has been taken away and now subject to the restrictions u/s 20, every member of a society has one vote. Right to vote is an essential concomitant of membership. The basic idea behind any co-operative movement being active co-operation among the members for their Welfare and the welfare of the public, unless there is effective participation of the members, it cannot be said that there is a co-operative movement. It may not be altogether out of context to observe being a matter of common knowledge that in many co-operative societies, it is not the movement of the co-operators that is taking place now. It is sheer political movement now and the noble ideals of democracy and co-operation are only rarely reflected. Therefore, it is ideal that the participation in co-operative movement is limited to those who are actually interested in the movement. But the question is how to ensure such participation. The concept of active membership as introduced by Act 1 of 2000 lacks luster. As the explanation indicates, the legislature apparently intended to affect only the election general body meeting. But that was not the effect of amendment. It does not go with the scheme of the Act in the matter of rights and duties of members. For example, once a member is branded as non-active member for having not attended the general body meeting for five years preceding the date of the resolution of the committee before the conduct of election, he cannot, thereafter, participate in any general body meeting. Section 20 deals with all general body meetings and not limited to elected general body alone. The second limb of the explanation was also very vague as to what is the nature of involvement in a non-credit society. Therefore, though it is highly desirable to limit the scope of the co-operative movement among those who are actually interested in the movement, the amendment introduced as per Act 1 of 2000 was not capable of combating the situation and the amendment does not go with the scheme of the Act regarding membership. Hence the impugned amendment on active membership cannot also be said to be in any way unreasonable or ultra vires the Act.

Based on the above observations contained in the above quoted portion of the judgment, the learned Counsel for the Petitioner prayed for striking down the Ordinance. The learned Counsel also referred to the relevant provisions in the Banking Regulation Act, in support of his submissions. On the other hand, the learned Senior Government Pleader submitted that the above decision, to the extent it concerns the Amendment Act 15 of 1997, is obiter dicta and is rendered per incuriam. He relied on the decision of this Court in Secretary, Cannanore District Muslim Educational Association v. State of Kerala I.L.R 2008 Ker. 319 and also the decisions of the Apex Court in (2002) 10 SCC 226 and Krishnan Kakkanth Vs. Government of Kerala and others, , in support of his submissions.

9. Though several contentions were taken, the learned Counsel for the Petitioner fairly submitted that while considering the constitutional validity of a legislation, the only point to be considered is whether the provisions of the legislation violate any of the constitutional provisions. If the legislation does not infringe or impinge

upon any of the constitutional limitations, the Courts have no power to invalidate the same. Normally, the legislature should be conceded the freedom to decide, what should be the law on a subject, which it is authorised to legislate under List II of the Seventh Schedule of the Constitution of India, provided the provisions of the legislation do not violate any of the constitutional limitations like those contained in Part III. Both sides conceded that the only point that arises for decision concerning the validity of Ext. P-2 Ordinance, is whether it is unconstitutional for being violative of Article 14 of the Constitution of India.

10. It is well-settled position in law that our Constitution permits classification. In this case, the main complaint of the writ Petitioner, though not so stated, is, essentially, that the classification suffers from the vice of under-inclusiveness. Among similarly placed Societies, Primary Agricultural Credit Societies and Urban Co-operative Banks were chosen to be the members of the DCB. Several societies similarly placed were excluded. Therefore, the classification is vitiated, it is submitted. Regarding the vice of under-inclusiveness in classification, Mathew, J. in *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, held as follows:

The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify... A reasonable classification is one which includes all who are similarly situated and none who are not. The question is what does the phrase "similarly situated" mean? The answer to the question is that we must look beyond the classification to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good.

A classification is under-inclusive when all who are included in the class are tainted with the mischief but there are Ors. also tainted whom the classification does not include. In other words, a classification is bad as under-inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on Ors. who are similarly situated. A classification is over-inclusive when it includes not only those who are similarly situated with respect to the purpose but Ors. who are not so situated as well.

How the reasonableness of a classification can be ascertained has been dealt with by the Apex Court in *Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others*, . The relevant portion reads as follows:

This doctrine recognises that the Legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated.

But the question is: what does this ambiguous and crucial phrase "similarly situated" mean? Where are we to look for the test of similarity of situation which

determines the reasonableness of a classification? The inescapable answer is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law.

The Constitution Bench of the Hon^{ble} Supreme Court in *R.K. Garg and Others Vs. Union of India (UOI) and Others*, summarised the law relating to classification under Article 14 of the Constitution of India, in the following manner:

6. That takes us to the principal question arising in the writ petitions namely, whether the provisions of the Act are violative of Article 14 of the Constitution. The true scope and ambit of Article 14 has been the subject-matter of discussion in numerous decisions of this Court and the propositions applicable to cases arising under that Article have been repeated so many times during the last thirty years that they now sound platitudinous. The latest and most complete exposition of the propositions relating to the applicability of Article 14 as emerging from "the avalanche of cases which have flooded this Court" since the commencement of the Constitution is to be found in the judgment of one of us (Chandrachud, J., as he then was) in *In Re: The Special Courts Bill, 1978*, . It not only contains a lucid statement of the propositions arising under Article 14, but being a decision given by a Bench of seven Judges of this Court, it is binding upon us. That decision sets out several propositions delineating the true scope and ambit of Article 14 but not all of them are relevant for our purpose and hence we shall refer only to those which have a direct bearing on the issue before us. They clearly recognise that classification can be made for the purpose of legislation but lay down that:

1. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in Ors. who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from Ors. and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

2. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above-mentioned.

It is clear that Article 14 does not forbid reasonable classification of persons,

objects and transactions by the legislature for the purpose of attaining specific ends. What is necessary in order to pass the test of permissible classification under Article 14 is that the classification must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. The question to which we must therefore address ourselves is whether the classification made by the Act in the present case satisfies the aforesaid test or it is arbitrary and irrational and hence violative of the equal protection clause in Article 14.

11. In the light of the above principles, we have to examine whether the classification under Ext. P-2 is hit by Article 14 of the Constitution of India. An apex society is a society, having the whole of the State as its area of operation and its members shall be only other co-operative societies with similar objects. The said definition is contained in Section 2(a) of the KCS Act. For example, the apex society of a Housing Society is the Housing Federation. In the Housing Federation, only Housing Societies will be admitted as members. Section 2(d) defines Central Society as a Co-operative Society having jurisdiction over one or more revenue districts but not the whole of the State as its area of operation. Its members will be only other societies. Section 2(ib) defines Federal Co-operative Society as a society having more than one district as its area of operation and having individuals and other co-operative societies as its members. Section 2(1) defines financing bank as a co-operative society having as its members only other co-operative societies and the main object of which is to raise money and lend the same to its members. Section 2(1) defines member as a person admitted to the membership of a society after its registration and includes a nominal or associate member. Section 2(m) defines nominal or associate member as a member who possesses only such privileges and rights of a member who is subject only to such liabilities of a member as may be specified in the bye-laws. A Primary Agricultural Credit Society is defined in Section 2(oa) as a Service Co-operative Society, a Service Co-operative Bank, a Farmers Service Co-operative Bank and a Rural Bank, the principal object of which is to undertake agricultural credit activities and its area of operation confined to a Village, Panchayat or a Municipality. A Primary Credit Society is defined u/s 2(ob) as a society other than an apex or central society which has as its principal object the raising of funds to lend to its members. Section 2(rb) defines State Co-operative Bank as an apex society having only District Co-operative Banks as its members. The definitions of District Co-operative Bank prior to and after the amendment have already been noticed in the earlier part of this judgment.

12. Rule 15 of the Kerala Co-operative Societies Rules classifies the societies into Credit Societies, Marketing Societies, Consumer Societies, Farming Societies, Producers Societies, Hospital Societies, SC/ST Societies, Educational Co-operative Societies, Labour Contract Societies, Vanitha Co-operative Societies and Miscellaneous Societies. Going by the classification, State Co-operative Bank is an apex society and District Co-operative Banks are central societies.

Primary Agricultural Credit Societies and other societies with the principal object of raising funds and lending the same to its members, are the primary societies. A glance at Rule 15 would show the various apex, central and primary societies for various categories of Co-operative Societies. In the case on hand, Ext. P-2 Ordinance provides that only Primary Agricultural Credit Societies and Urban Co-operative Banks can be the members of the DCB. Other societies which are now the members of the DCB will be treated as nominal or associate members. Section 18 of the KCS Act permits admission of nominal or associate members. Sub-section (2) of Section 18 says that a nominal or associate member shall not be entitled to any share in any form, whatsoever, in the assets or profits of the society or to be elected to the committee of a society. So, as a result of the Ordinance, the member societies of the DCB other than Primary Agricultural Credit Societies and Urban Co-operative Banks, will not have any right to be elected to the Managing Committee. They will have only such rights as are provided in the bye-laws of the Bank.

13. The point to be decided is whether the legislative action to segregate the members of the DCB into two groups will stand the test of Article 14. According to the Petitioner, all the co-operative societies belong to a homogeneous class. Their further classification based on the nature of their business is unjustified. There is no intelligible differentia between the two groups of societies and the said classification has got no rational nexus with the object sought to be achieved by the KCS Act, which is orderly development of the co-operative movement, as evident from the preamble of the Act.

14. The Respondents, on the other hand, would submit that the Primary Agricultural Credit Societies and Urban Co-operative Banks form a separate group. They are engaged in agricultural credit activities and banking respectively. They raise funds for the above activities. There are other societies, which work in specified and restricted fields. For example, milk societies are meant only for milk producers. Housing societies are meant only for those who intend to purchase a house or land for constructing a house. Similar is the case of Serifed, Matsyafed etc. There is a clear distinction between the societies engaged in agricultural credit and banking and other societies engaged in various other activities. There is a clear intelligible differentia between them. The Respondents also submit that it is not proper to give membership to all sorts of societies in the DCB other than the above said societies engaged in raising funds for agricultural credit and banking. The new provisions help the orderly development of the co-operative movement. Thus, the said classification has got a rational nexus with the object sought to be achieved, it is submitted.

15. We think that the wisdom of the legislature should prevail. Its representatives are the best judges of what is good for the people. If the legislature thinks that a particular type of societies alone should be admitted as members of the DCB, it has to be recognised as the law of the land. If the legislature thinks that some other type of societies should also be admitted to

the membership of the DCB, it has also to be recognised as the law of the land. This Court cannot sit in appeal over the wisdom of the legislature. Here, though what is impugned is only an Ordinance, the above principles will squarely apply. In this context, we think, it is quite apposite to quote a few authorities on this aspect.

16. The Apex Court in *R.K. Garg and Others Vs. Union of India (UOI) and Others*, held as follows:

7... the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud* 354 U.S. 457 where Frankfurter, J. said in his inimitable style:

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events—self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is

essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The Courts cannot, as pointed out by the United States Supreme Court in *Secretary of Agriculture v. Central Reig Refining Co.* 338 US 604 (1950) be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

* * * * * 19... The Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in *Munn v. Illinois* 94 US 13, namely, "that Courts do not substitute their social and economic beliefs for the judgment of the legislative bodies". The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary. The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theater Co. v. City of Chicago* 228 US 61 (1912):

The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review.

(Emphasis supplied)

17. The opinion of Mr. Justice Frankfurter in *West Virginia State Board of Education v. Barnette* 319 U.S. 624 (1943) with great clarity and felicity, explained the cause of judicial restraint and the need for deference to the views of the legislature. The relevant portion of the said opinion reads as follows:

As a member of this Court, I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard. The duty of a Judge who must decide

which of two claims before the Court shall prevail, that of a State to enact and enforce laws within its general competence or that of an individual to refuse obedience because of the demands of his conscience, is not that of the ordinary person.

It can never be emphasized too much that one's own opinion about the wisdom or evil of a law should be excluded altogether when one is doing one's duty on the bench. The only opinion of our own even looking in that direction that is material is our opinion whether legislators could, in reason, have enacted such a law. In the light of all the circumstances, including the history of this question in this Court, it would require more daring than I possess to deny that reasonable legislators could have taken the action which is before us for review....

For the removal of unwise laws from the statute books, appeal lies not to the Courts, but to the ballot and to the processes of democratic Government....

The Constitution does not give us greater veto power when dealing with one phase of "liberty" than with Anr. , or when dealing with grade school regulations than with college regulations that offend conscience. In neither situation is our function comparable to that of a legislature, or are we free to act as though we were a super- legislature....

The reason why, from the beginning, even the narrow judicial authority to nullify legislation has been viewed with a jealous eye is that it serves to prevent the full play of the democratic process. The fact that it may be an undemocratic aspect of our scheme of Government does not call for its rejection or its disuse. But it is the best of reasons, as this Court has frequently recognized, for the greatest caution in its use....

Tact, respect, and generosity toward variant views will always commend themselves to those charged with the duties of legislation so as to achieve a maximum of good will and to require a minimum of unwilling submission to a general law. But the real question is, who is to make such accommodations, the Courts or the legislature?....

A Court can only strike down. It can only say "This or that law is void". It cannot modify or qualify, it cannot make exceptions to a general requirement....

If the function of this Court is to be essentially no different from that of a legislature, if the considerations governing constitutional construction are to be substantially those that underlie legislation, then indeed judges should not have life tenure, and they should be made directly responsible to the electorate. There have been many, but unsuccessful, proposals in the last 60 years to amend the Constitution to that end....

I think I appreciate fully the objections to the law before us. But to deny that it presents a question, upon which men might reasonably differ, appears to me to be intolerance. And since men may so reasonably differ, I deem it beyond my constitutional power to assert my view of the wisdom of this law against the view

of the State of West Virginia....

The attitude of judicial humility which these considerations enjoin is not an abdication of the judicial function. It is a due observance of its limits... Courts, as has often been said, are not to think of the legislators, but of the legislature-the great, continuous body itself, abstracted from all the transitory individuals who may happen to hold its power. It is this majestic representative of the people whose action is in question, a co-ordinate department of the Government, charged with the greatest functions, and invested, in contemplation of law, with whatsoever wisdom, virtue, and knowledge the exercise of such functions requires.

To set aside the acts of such a body, representing in its own field, which is the very highest of all, the ultimate sovereign, should be a solemn, unusual, and painful act. Something is wrong when it can ever be other than that. And if it be true that the holders of legislative power are careless or evil, yet the constitutional duty of the Court remains untouched; it cannot rightly attempt to protect the people by undertaking, a function not its own. On the other hand, by adhering rigidly to its own duty, the Court will help, as nothing else can, to fix the spot where responsibility lies, and to bring down on that precise locality the thunderbolt of popular condemnation.

(Emphasis supplied)

18. The above decisions in felicitous words highlight the principle that the Courts should be slow to interfere or tinker with legislative wisdom. The people of our State should be conceded the freedom to decide what law should govern them. Their representatives in the Legislative Assembly can pass any law, subject, of course, to the constitutional limitations. The Government having majority in the Legislative Assembly, should also be conceded the same degree of freedom to legislate by issuing an Ordinance. Here also, the power has to be exercised, subject to the constitutional limitations. The Courts should respect the judgment and wisdom of the legislature on social and economic issues, reflecting the will of, we the people". The Judges, however learned or erudite they may be, may not substitute their judgment for that of the legislature.

19. Going by the above principles, we feel that the provisions of Ext. P-2 Ordinance do not trespass into any prohibited terrain, making them invalid. The classification of member societies of the DCB attempted under Ext. P-2 Ordinance is not hit by Article 14. The contentions to the contrary are untenable. There is a clear intelligible differentia between the societies retained as members of the DCB and those excluded. The view that the said classification has rational nexus with the orderly development of co-operative movement, which is the object of the KCS Act, cannot be said to be irrational. The observations of the learned Judge in *Alapuzha Dt Co-op. Bank Ltd. v. State of Kerala* 2003 (1) KLT 297 concerning the validity of Act 15 of 1997 do not lay down the correct legal position. In the result, we uphold the impugned provisions of the said Ordinance.

Since the said Ordinance is valid, the challenge against Ext. P-1 also fails. Accordingly, the Writ Petition is dismissed.

W.P. (C) Nos. 37728, 37806, 38292 and 38293/2007 and 1449, 1459, 1484, 2307, 2308, 2584 and 2733/2008.

20. In view of the dismissal of W.P.(C) No. 37452/2007, these writ petitions are also dismissed.