

(1989) 01 KL CK 0079
In the High Court Of Kerala
Case No : O. P. No 7729 of 1987

Quilon Taluk Labour Contract

APPELLANT

Vs

State of Kerala and Others Transporting Co. Op. Society Ltd.

RESPONDENT

Date of Decision : 24-01-1989

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 101, 7(1)(c)

Citation : (1989) 1 KLJ 209

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : N. Haridas and C.M. Suresh Babu, for the Appellant; Vanaja Madhavari, Government Pleader Smt. and M.K. Damodaran, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan,J.

1. Petitioner is a co-operative society having the area of operation over the entire Quilon Taluk except the area covered by Anchalummoodu N.E.S. Block. Fourth respondent is another society of similar character having its area of operation in the area covered by Anchalummoodu N. E. S. Block. The main business of both the societies is to undertake labour contract including construction work within its area of operation. In the year 1980, the State relaxed the rules and permitted 4th respondent society to undertake labour contract even outside the jurisdiction of its area of operation for a period of two years The petitioner society and similar other societies objected to the temporary relaxation given to the 4th respondent. The petitioner society has got financial potentialities and also facilities to undertake major works and it is classified as "A" class society. Fourth respondent is also an "A" class society. When the petitioner came to know that steps are being taken for granting exemption to 4th respondent from its area of operation, the petitioner submitted Ext P1 representation on 28-6-1987. In reply to that Ext.P2 was issued to the petitioner stating that since permission was given to 4th respondent to undertake labour contract in areas falling outside its

area of operation for a period of two years, Ext. P1 cannot be considered. On enquiry the petitioner came to know of Ext P3 order issued by first respondent granting exemption to 4th respondent relaxing its area of operation. The petitioner questions Ext. P3 on the ground that it is one issued without jurisdiction. On behalf of 3rd respondent, the Joint Registrar of Co-operative Societies, Quilon, an Assistant Registrar has sworn to a counter affidavit-From the counter affidavit it is seen that Ext P3 order was issued to enable 4th respondent to effectively under take works for an amount of Rs 20 lakhs for which they are authorised. Fourth respondent" is allowed to undertake works through out the whole of Quilon District for a period of two years The power grant that exemption has been traced to Section 101 of the Kerala Co-operative Societies Act, 1969, hereinafter referred to as "the Act". It is further stated that the quantum of works available in the various departments in Quilon District is far higher to the work undertaking capacity of alt such societies in the District, that the co-operative sector is executing less than 10% of the available public works and that competition between the societies for getting the work is even now an existing practice. In exercise of the powers u/s. 101 of the Act and Rule 181 of the Rules framed thereunder the Government was entitled to pass Ext. P3 order. The exemption was a temporary one taking note of the fact that the available contract works in Anchatummodu N. E. S. Block was insufficient for the proper working of 4th respondent society. It is also stated that Ext. P3 does not involve any permanent change in the area of operation, that it is only a temporary relaxation from the rules so as to enable 4th respondent society to effectively carry on the works up to Rs. 20 lakhs for which they are entitled.

2. Fourth respondent in its turn has filed a separate counter affidavit supporting the order Ext. P3.

3. The petitioner society as also 4th respondent society are "A" Class societies in Quilon District. The area of operation of the petitioner society is the entire Quilon Taluk except the area covered by Anchalummodu N. E. S Block The area covered by Anchalummodu N. E. S. Block is the area of operation of 4th respondent. The objects and activities of these societies are exactly identical. While registering a new society Section 7 (1) (c) of the Act mandates that the area of operation of the proposed society and the area of operation of another society of similar type should not overlap. While effecting registration Rule 4 (ii) of the Rules enjoins the Registrar to examine the application and the bye-laws in order to satisfy that conditions specified in clauses (a) to (e) of Section 7(1) are satisfied. From these provisions it is evident that for a co-operative society to come into existence, it should have its area of operation fixed in such a manner as not to overlap on the area of operation of another society. This provision has been strictly complied with in the case of petitioner society and 4th respondent society. They are having separate and distinct areas of operation.

4. In paragraph-6 of the counter affidavit filed on behalf of 3rd respondent it is admitted that the petitioner society as well as 4th respondent society are exactly

of identical and similar nature. These societies undertake labour contract including construction works. They are "A" class societies entitled to undertake works up to a sum of Rs. 20 lakhs-If their areas of operation overlap it will lead to unhealthy competition between them. Can such a competition be considered as conducive to the success on the co-operative movement? The Kerala Co-operative Societies Act has been enacted, as discernible from its preamble, with a view to providing for the orderly development of the co-operative movement in the State of Kerala. Competition between the co-operative societies of same type, on account of the overlapping of their areas of operation, can by no stretch of imagination be considered as conducive for the orderly development of co-operative movement. It is with this solemn object Section-7 has been enacted It mandates that the area of operation of one society should not overlap on the area of operation of another society. This legislative direction cannot be nullified or defeated by the Government.

5. By Ext. P3 the Government gave sanction to 4th respondent to take up work up to Rs. 20 Lakhs within the Quilon District. The consequence is that 4th respondent society which has its area of operation limited to the area covered by Anchalumoodu N.E S. Block is allowed to have its activities through out the Quilon District. The reason given in the order for extending 4th respondent's area of operation is that its activities are very much limited, are not extending to its entire capacity of Rs 20 lakhs, they are compelled to limit their activities to lesser amounts and consequently they are running at a loss. The so called difficulty that is felt by 4th respondent alone has been mentioned in Ext.P3 as the ground for exempting them from the area of operation fixed in their bye-laws. This order is sought to be supported by relying on Section 101 of the Act. As per that Section the Government are given power inter alia to exempt any society or class of societies from any of the provisions of the Act if they are satisfied that it is necessary so to do in the public interest. It means that for exercising the power u/s. 101 of the Act, the Government must be satisfied that there is necessity to invoke the provisions of that Section in the public interest. Public interest cannot be the interest of a particular society. The fact that a particular society is running at a loss is no ground to invoke the powers u/s. 101 of the Act. Nor can that be treated as a ground for exempting it from the provisions of the Act in public interest. From Ext.P3 no public interest is discernible. Conversely Ext. P3 makes mention of a particular interest of 4th respondent alone. That particular interest can seldom be a ground for granting the exemption. The private interest of a particular society cannot be considered as a public interest. As far as the case on hand is concerned the impugned order has the effect of undermining the orderly development of the co-operative movement. It has resulted in creating unhealthy competition between the petitioner society and 4th respondent society. Section 7 (1) of the Act lays down five conditions to be satisfied for a society to get registration one of the conditions is that the area of operation of the proposed society and the area of operation of another society of similar type should not overlap. This condition is a

condition precedent for a co-operative society to come into existence. A co-operative society which has come into existence after complying with the above conditions cannot be allowed to violate the same. The power of the Government u/s. 101 should not be exercised in such a manner as to nullify the very condition, the compliance of which is mandatory for a society to come into existence. The power of the Government cannot be exercised " to defeat such a salutary condition. The provisions contained in Rule 181 of the Rules on which reliance has been made in the counter affidavit has no application either. In this view of the matter, I hold that the order, Ext.P3, granting exemption to the 4th respondent society from its area of operation fixed under the bye-laws is illegal. The result, therefore is, the Original Petition is allowed and Ext.P3 is quashed.