(2019) 02 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No. 14149 Of 2013

South Canara District APPELLANT

Vs

State Of Karnataka RESPONDENT

Date of Decision : 07-02-2019

Acts Referred:

Citation : (2019) 02 KAR CK 0038

Hon'ble Judges : S.N.Satyanarayana, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, Abhinay P. Patil, Vaheeda, Dayanand S Patil

Final Decision : Allowed

Judgement

1. Petitioner herein is impugning the orders of respondents 1 and 2, namely the Secretary, Department of Cooperative Societies, State of Karnataka and Registrar of Cooperative Societies, Bengaluru, which are at Annexures - B, D and F.

2. Brief facts leading to this writ petition are as under: The petitioner herein is a District Cooperative Bank of South Canara. It is a Central Bank for the District of South Canara which has the responsibility of distributing agricultural credit funds received from NABARD by the Apex Bank, which in turn will distribute to Cooperative Societies and Banks through the petitioner and similarly placed Banks. It is stated by the petitioner that in terms of the conditions which would govern the distribution of loan, the petitioner - Bank had distributed loans to various Primary Cooperative Societies and Banks, which primarily serve the agriculturists in the District of South Canara and would recover the loan from them with minimum rate of interest, which is fixed by the Apex Bank for each year.

3. According to the petitioner, for the financial year 2009-2010 the rate of interest that was fixed for recovery of loan amount was 1% and in terms of the order of sanction of short term credit limit to financial banks, the petitioner - Bank was required to deposit the interest received thereon with NABARD on or

before 31st March of each financial year or at the earliest as and when the entire loan is repaid with interest. Accordingly, it is stated that as on 31.3.2010 the petitioner - Bank has credited a sum of Rs.12,29,70,774/- to NABARD account, which in turn will be reimbursed to it by the Apex Bank.

4. In the instant case, it is stated that subsequent to petitioner - Bank depositing the amount to NABARD account, the Government has issued GO dated 16.3.2011 vide No.CO 219 CLS 2010 (B-1), Bengaluru, wherein it was ordered that all the District Banks which collected interest from the Primary Cooperative Societies shall refund the same to respective Societies. It is stated by the petitioner that even before it could receive communication of aforesaid GO, it had already deposited the aforesaid amount with NABARD from out of the interest collected by it from the Primary Cooperative Societies within the District of South Canara. Further, from out of the amount that was collected, it had also distributed dividend to its members, paid income- tax to the Income Tax Department even before the end of the year 2010 and thereafter, the present G.O was received by them.

5. Therefore, in the fact situation, it is stated that the petitioner - Bank requested the Government that in view of the amount already being deposited with NABARD, they are not in a position to refund the interest collected from the Primary Cooperative Societies to said Societies. Therefore, from out of the funds that would be released in its favour by the Government, the Government could directly pay the amount to the respective Primary Cooperative Societies on the basis of the accounts that would be furnished by the petitioner - Bank or otherwise, could remit the amount to the account of the petitioner - Bank to reimburse the same to the concerned Primary Cooperative Societies. It is stated that the said request of the petitioner - Bank is not responded to by the State. However, contrary to the request made by the petitioner -Bank the respondent - State is said to have taken coercive steps in not releasing the funds for subsequent years and in further directing the petitioner - Bank to comply with the GO dated 16.3.2011 failing which the funds which are required to be released in its favour for the subsequent years will be kept in Fixed Deposit till such time the petitioner - Bank comply with the G.O. When this matter was at a Catch 22 situation, where the petitioner - Bank claiming that they do not have funds to repay to the Societies and the Government not agreeing to release the money unless the amount is released in favour of the respective Primary Cooperative Societies, the matter has reached this Court.

6. Heard the learned Senior Counsel Sri.Jayakumar S.Patil appearing for the learned counsel on record for the petitioner and learned HCGP Smt.Vaheeda for respondent - State. After giving careful consideration to the arguments addressed by the learned counsel appearing for both the parties, it is clearly seen that the stand that is taken by the respondent - State appears to be unreasonable. Admittedly, the amount which is required to be collected and forwarded by the petitioner - Bank to NABARD has fallen due on 31.3.2010 for

the financial year 2009-2010, which is not in dispute. It is also not in dispute that one of the conditions which is laid down by the NABARD for sanction of loan to these banks is that interest amount should be paid on or before 31st March of each financial year. It is pursuant to aforesaid condition imposed by NABARD, the petitioner - Bank has complied with the same by repaying the amount from out of the interest collected by it and thereafter, it has also paid income tax and other statutory amounts due.

7. When matter stood thus, by the present GO the Government cannot compel the petitioner - Bank to comply with the said order which is passed belatedly. Therefore, in the facts and circumstances, the GO issued on 16.3.2011 bearing No.CO 219 CLS 2010 (B-1) does not stand to reason so far as it pertains to condition No.10 is concerned. Further it is held that the GO bearing No.CRD/04/KRF/2008-2009 dated nil/11.2012 as well as order No.CRO4 KR 2008-09 dated 12.3.2013 so far as it pertains to withholding the interest subsidy for the years 2009-2010 and 2010-2011 are unreasonable and accordingly, those two orders are hereby quashed. Consequently, writ petition is allowed.

