
(2003) 04 KL CK 0043
In the High Court Of Kerala
Case No : O.P. No. 28893 of 2002

Trissur District Co-operative Bank

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-04-2003

Acts Referred:

Citation : (2003) 2 KLT 606

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : P.V. Surendranath and P.P. Sudheer, for the Appellant; C.K. Radhakrishnan and George Jacob (Jose), for the Respondent

Final Decision : Allowed

Judgement

R. Rajendra Babu, J.—The petitioner, the Trissur District Co-operative Bank Employees Union represented by its Secretary, filed this O.P. for directing the 2nd respondent, the Registrar of Cooperative Societies, to consider Ext.P9 representation and to cancel Exts.P7 and P8 resolutions taken by the 4th respondent, the Administrator, Trissur District Cooperative Bank, and also for directing respondents 1to 6 not to grant and disburse the loan amount sanctioned as per Exts.P7, P8 and P11to the 7th respondent, Priyadarshini Co-operative Hospital Ltd. No. R 756.

2. The allegations in the petition briefly are as follows: The 5th respondent, the Trissur District Co-operative Bank was under the administration of the Administrator with effect from 4.5.2002. The 7th respondent Priyadarshini Co-operative Hospital Ltd. No.R756 was a co-operative society registered as a Hospital Society in 1986. The objectives of the above society could not be achieved even after 16 years and the above society is in loss of about Rs. 2 crores. The 7th respondent availed a bridge loan of Rs. 25 lakhs from the Keecheri Branch of the Trissur District Co-operative Bank on 9.4.1994. They did not repay the amount. Accordingly the 7th respondent filed ARC 45/98 before the Joint Registrar of Co-operative Societies and a decree was passed for a sum

of Rs. 33,44,334/- and interest at 19% p.a. for the decree amount. Later the District Co-operative Bank filed E.P. 209/99 for a total amount of Rs. 49,68,502/-. The properties of the 7th respondent were attached. Even then no amount was paid. The Trichur District Co-operative Bank is now undergoing the worst crisis and the bank is in loss as the NABARD found that the loan granted to the Trichur Paddy Processing and Marketing Co-operative Society as lost asset and Trichur Co-operative Spinning Mill shall be classified as Class III and 30% reserves shall be maintained with respect to the above loan. Accordingly Rs. 14.5 crores has to be maintained as reserves for the abovesaid loan. In spite of the above circumstances the 4th respondent, the Administrator, had sanctioned aloan of Rs. 1crore to the 7th respondent society against the interest of the Co-operative Bank and the same was illegal and against the guidelines issued by the State Co-operative Bank, NABARD and the Reserve Bank of India. The Administrator had sanctioned aloan of Rs. 1crore to the 7th respondent based on a total unviable and unreasonable project for a hospital with 52 beds. The Co-operative Bank made a study of the project and reported that the project was not viable and that the 7th respondent Society had an outstanding liability of nearly Rs. 170 lakhs and the above society was not having sufficient assets too. But ignoring all the above, the 4th respondent had taken Exts.P7 and P8 resolutions on 19.9.02 sanctioning a loan of Rs. 1crore to the 7th respondent. The petitioner filed Ext.P9 representation before the Registrar of Co-operative Societies, the 2nd respondent, for quashing the above resolutions, but no action was taken. A similar petition was sent to the NABARD also, but the General Manager passed Ext.PI 1order directing the issue of sanction order incorporating certain conditions in accordance with the decision of the Administrator. Aggrieved by the above orders, the Employees' Union represented by the Secretary filed this petition for quashing Exts.P7 and P8 resolutions and Ext.P11order and also for directing the 2nd respondent to consider Ext.P9 representation and to pass orders.

3. Heard the learned counsel appearing for the petitioner and the respondents.

4. The 7th respondent Priyadarshini Co-operative Hospital Ltd. No.R 756, Eranelloor, was registered as a society in 1986 under the Co-operative Societies Act and commenced functioning in April 1986. It purchased 295.5 cents of land in R.S. 156/7 of Eranelloor Village by spending Rs. 5.25 lakhs as evident from the counter filed by the 7th respondent. The area was low lying and an amount of Rs. 3.88 lakhs was expended for land development. In 1994 they started the construction of a building utilising the balance amount available by the society from the paid up capital. Meanwhile, a bridge loan for Rs. 25 lakhs was sanctioned and disbursed by the 5th respondent bank. Till the end of 1997 the construction progressed. Thereafter the society was not having money to proceed with the construction. Meanwhile the 5th respondent filed arbitration case and obtained a decree. Thereafter a revival scheme regarding the construction of the building was considered. A meeting was convened by the Hon"ble Minister for Co-operation wherein the officials of the 5th respondent

bank and others participated. They have decided for sanctioning the loan of Rs. 1crore. On the basis of the above decision the Administrator of the 5th respondent bank took Exts.P7 and P8 resolutions for sanctioning Rs. 1crore to the 7th respondent society ignoring Exts.P5 and P6 reports prepared by the officials of the 5th respondent bank.

5. The learned counsel appearing for the petitioner submitted that the decision of the Administrator to grant loan of Rs. 1crore to the 7th respondent was illegal and against the interests of the society. Reliance was placed on Exts.P5 and P6 reports prepared by the officials of the bank. When the 7th respondent made an application for sanction of the loan of Rs. 1crore, the bank authorised its officers to examine the matter and to file a report. Accordingly they examined the entire matter and filed Ext.P5 report. It would be desirable to consider some of the important observations made in the report. The 7th respondent society had a paid up capital of Rs.21,52,850/-. The society was collecting deposits also. The interest payable on the deposits was Rs.60,61,058/- whereas the interest payable to the loan advanced by the District Cooperative Bank was Rs. 39,94,3267/-. Altogether as on 31.3.02 the total amount payable by the 7th respondent towards interest was Rs. 1,00,65,384/-. Further, it would reveal that the 7th respondent spent Rs. 1,34,97,282/towards construction of the building and for meeting such expenditure, they have not obtained the permission of the Joint Registrar. It would further reveal that the loss sustained by the 7th respondent society in 1997-98 was Rs. 17,28,220.73 whereas the total loss was Rs. 76,35,220/-. As per the statement filed by the 7th respondent, the total loss as on 31.3.02 was Rs.1,64,45,261/-. It would further reveal that the loss as on 31.3.02 was 763.88% considering the paid up capital and was 258.28% in respect of the working capital. The report would further reveal that the project report was unrealistic and if the entire liability has to be wiped off, the hospital will have to be run with a profit of Rs. 33 lakhs per year. The report would further reveal that considering the number of other hospitals like Private Hospitals, District Hospital, Medical College Hospital etc., it was impossible to make such income from a hospital with 50 beds and their whole project was only imaginary and unrealistic. The report would specifically mention that the grant of loan would never be to the best interest of the society and as such they refused to recommend the grant of the loan. Again the matter was examined and Ext.P6 report was filed. Though the 7th respondent was directed to produce certain records, they did not produce the same, but with the available records it was further reported that the project report filed before the 5th respondent society was unrealistic and imaginary. Further, the proposal to write off Rs. 40 lakhs due to the 5th respondent bank and to grant a further loan of Rs. 1crore was improper and was against the interests of the society. In fact the decision for granting the loan was taken by the Administrator ignoring the above reports prepared on analysing all the aspects of the case.

6. The main contention put forward by the respondents was that the petitioner was incompetent to file the O.P. and an O.P. under Article 226 of the Constitution

will not lie against the society. It was further contended that the Co-operative Society is not amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India. Reliance was placed on the decision of a Full Bench of this Court in *P. Bhaskaran and Ors. v. Addl Secretary and Ors.* (1987 (2) KLT 903). The Full Bench held:

"The Co-operative Societies are not created by the Co-operative Societies Act and they are not statutory bodies. They are only functioning in accordance with the provisions of the Act. These institutions would have legal existence even if the Co-operative Societies Act was not in force. Moreover, the Government have no shares in the Co-operative Societies. There is no deep and pervasive State control. The management of the Societies does not vest in the Government or in the representatives of the Government. The management is under the effective control of a committee elected by the members of the societies. The statutory regulation or restriction in the functioning of the societies is not "an imprint of State under Article 12". Therefore no writ will lie against a Co-operative Society governed by the Kerala Co-operative Societies Act"

The learned counsel for the petitioner placed reliance on the decision of the Supreme Court in *U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others*, to substantiate his argument that the Cooperative Societies are also amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India. There the Supreme Court held:

"In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution."

It was further held:

"Under Clause (1) of Article 367 unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" u/s 2(42) of the General Clauses Act shall include any company, or association of body of individuals, whether incorporated or not. Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him."

In view of the above decision of the Apex Court, the argument advanced by the learned counsel for the respondents that the Co-operative Societies are not amenable to the writ jurisdiction of the High Court under Article 226 cannot be accepted and the Co-operative Societies are amenable to the writ jurisdiction of the High Court under Article 226. The Supreme Court in *K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another*, held that when an element of public interest is created, a writ under Article 226 would lie.

7. The learned counsel for the petitioner submitted that as the Co-operative Banks are dealing with public money, they have a duty to safeguard the interests of the public. While granting loans, the bank has to see whether the loanee have the ability to repay the amount. It was further submitted that the 7th respondent society is in irredeemable debts and by no means they can repay the amount and to revive the society as per the project report furnished by them. The project report is in respect of a hospital with 50 beds. Ext.P5 report would reveal that they can run the hospital in a viable manner by discharging the entire debt within a period of five years only if their annual income would come up to Rs. 33 lakhs. In addition to the same they will have to meet the running expenditure for paying the doctors, staff, electricity bills, water charges etc. By no stretch of imagination can one visualise a hospital with 50 beds earning so much income in a year. The project report in fact was a castle on air without any sense of reality, and an amount of Rs. 1crore was decided to be advanced to the 7th respondent on the basis of such a project. The learned counsel for the petitioner submitted that the amount will have to be written off in future and the above hospital cannot repay any portion of that amount. The learned counsel for the petitioner placed reliance on the decision of a learned Single Judge of this Court in *Sabu Kurian v. Meenachil East Urban Cooperative Bank Ltd.* (1999 (2) KLT 180). There it was held:

"Banks which deal with public money have to act in public interest, since they discharge a public duty. If there is any erosion or dissenting by those who control the activities, all expectation and hopes of the people will be destroyed. Every action of a co-operative bank dealing with public money is having insignia element of public interest. Consequently their actions must be guided by reasonableness, fairness and justness."

The institutions which are involved in banking business like Co-operative Banks dealing with public money have got a public duty to perform. When huge amount is advanced towards loan, it has to secure repayment of the amount. The assets of the loanee and the capability to repay are matters which the bank has to consider before advancing the loan. The grant of a loan to the tune of Rs. 1crore to an indebted society should be only when there is a viable revival scheme with a realistic project report. It would be relevant to note that hospitals are coming up everywhere just like mushrooms and many of the hospitals have become only commercial institutions rather than institutions affording relief to the sick or

suffering from ailments. The main moto of many of the institutions had become extraction of money from the patients who happened to reach the hospital. Even if such an approach is made in the hospital envisaged as per the project report, I do not think that the entire debts can be wiped off by making repayments. In the above circumstances the grant of loan of Rs. 1crore to the 7th respondent is shocking and it cannot be said that the Administrator has taken a decision after considering the interests of the 5th respondent bank. The decision taken by the Administrator appears to be on extraneous considerations without considering the interests of the society. It is settled law that major policy decisions cannot be taken by an Administrator and such decisions are to be left to be decided by the appropriate managing committee elected in accordance with law. In that respect also the decision of the Administrator requires reconsideration.

8. The business which a bank attracts depends upon the confidence which the depositors repose in the management and its employees. The regulations and restrictions imposed by the Reserve Bank over the banks may to a certain extent reduce the chance of the resources of the bank being misused and the business of the bank largely depend upon the reputation of its management, officers and employees. The Supreme Court in LIC of India and Another Vs. Consumer Education and Research center and Others, held as follows:

"If it is shown that the exercise of power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or persons whose acts have a insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens simplicitor do in the field of private law. Its actions must be based on some rational and relevant principles."

The decision taken by the Administrator to advance a further loan of Rs. 1crore when the bank found that the loanee was not capable of repaying the earlier loan and after writing off a substantial portion of the earlier loan appears to be a misuse of the resources of the bank. In such circumstances the decision taken by the Administrator requires a proper reconsideration considering the public interest involved in the matter.

9. Exts.P7, P8 and P11prima facie appear to be against the interests of the 5th respondent bank and also public interest and hence the 2nd respondent has to be directed to consider Ext.P9 and to pass necessary orders safeguarding the interests of the bank.

In the result this O.P. is allowed. The 2nd respondent is directed to consider Ext.P9 and to dispose of the same in accordance with law in the light of the discussions made in this judgment. Till Ext.P9 is disposed of, the disbursement of the amount in pursuance to Exts.P7, P8 and P11shall be kept in abeyance.