IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WP(C).No. 4949 of 2015 (P)

PETITIONERS:

1. PERUMANNA SERVICE CO-OPERATIVE BANK
   LTD.NO.D-1955 REP. BY SECRETARY IN CHARGE,
   P.O.PERUMMANNA, KOZHIKODE.

2. OLAVANNA SERVICE CO-OPERATIVE BANK
   LTD.NO.2963 REP. BY SECRETARY IN CHARGE,
   P.O.OLAVANNA, KOZHIKODE.

3. THE NANMINDA CO-OPERATIVE RURAL BANK
   LTD.NO.F-1238 REP. BY SECRETARY,
   NANMINDA P.O., KOZHIKODE.

4. MANNUR SERVICE CO-OPERATIVE RURAL BANK
   LTD.NO.F-1621 REP. BY SECRETARY, MANNUR,
   KOZHIKODE.

5. KURUVATTOOR SERVICE CO-OPERATIVE BANK
   LTD.NO.D-1973 REP. BY SECRETARY, P.O.KURUVATTOOR,
   KOZHIKODE.

BY ADVS.SRI.O.D.SIVADAS
SRI.P.N.MOHANAN

RESPONDENTS:

1. STATE OF KERALA REP. BY SECRETARY,
   CO-OPERATIVE DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. KARASSERY SERVICE CO-OPERATIVE BANK REP. BY
   SECRETARY, KARASSERY P.O., KOZHIKODE-673 602.

3. REGISTRAR OF CO-OPERATIVE SOCIETIES,
   THIRUVANANTHAPURAM-695 001.

4. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G),
   KOZHIKODE-673 001.

ADDL. RESPONDENTS 5 TO 7 IMPLEADED

5. THE MANAGING COMMITTEE OF THE KARASSERY
   SERVICE CO-OPERATIVE BANK LTD. NO.D 2628,
   KARASSERY, KOZHIKODE REP. BY ITS PRESIDENT.

Impleaded as per order dated 12.10.2015 on IA 3146/2015

6. THE NAGARAM CO-OPERATIVE MILK SUPPLY SOCIETY LTD. NO.D-3(D), NAGARAM, TALI, KOZHIKODE REP. BY ITS SECRETARY.

7. SANTHOSH KUMAR.P.P., S/O BALAKRISHNAN, RESIDING AT MUNDERI HOUSE, 25/162, KUTTIYILTHAZHAM, POKKUNNU POST, KOZHIKODE - 673 007.

Impleaded as per order dated 13.10.2015 in IA 7609/2015.

R2 BY ADVS. SRI.DEVAN RAMACHANDRAN
SRI.K.M.ANEESH
SRI.K.SANTHOSH KUMAR (KALIYANAM)
SRI.ADARSH KUMAR
SRI.BIJU VARGHESE ABRAHAM
SRI.AJITH KRISHNAN
R1, R3 & R4 BY SPL.GOVT. PLEADER SRI.D.SOMASUNDARAM
ADDL.R5 BY ADV. SRI.P.P.JACOB
ADDL.R6 & R7 BY ADVS. SRI.MURALI PURUSHOTHAMAN
SRI.DEEPU LAL MOHAN
SMT.S.LEENA
SRI.K.S.PRENJITH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-10-2015 ALONG WITH WPC. 5147/2015,AND CON. CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 4949 of 2015 (P)

PETITIONER'S EXHIBITS:

EXT P1 : A TRUE COPY OF THE DETAILS OF THE MEMBERS OF THE SECOND RESPONDENT BANK.

EXT P2 : A TRUE COPY OF THE ORDER SRO NO.27/2013 DATED 16-01-2013.

EXT P3 : A TRUE COPY OF THE LIST OF VILLAGES OF THE KOZHIKODE TALUK.

EXT P4 : A LIST PUBLISHED BY THE REGISTRAR WITH DETAILS OF THE SOCIETIES OF THE KOZHIKODE TALUK.

EXT P5 : A TRUE COPY OF THE COMMUNICATION DATED 16-05-2013 WITH TRANSLATION.

EXT P6 : A TRUE COPY OF THE ORDER DATED 06-12-2013 OF THE GOVERNMENT WITH TRANSLATION.

EXT P7 : A TRUE COPY OF THE JUDGMENT DATED 14-08-2014 IN WPC.NO.6330/2014.

EXT P8 : A TRUE COPY OF THE ORDER DATED 16-01-2015 OF THE GOVERNMENT WITH TRANSLATION.

EXT P9 : A TRUE COPY OF THE ORDER OF CLASSIFICATION DATED 05.10.2013 OF THE SECOND RESPONDENT WITH TRANSLATION.

EXT P10 : A TRUE COPY OF THE JUDGMENT REPORTED IN 2015(1)KLT 438.

EXT.P11 : A TRUE COPY FO THE ORDER OF THE GOVERNMENT PUBLISHED IN KERALA GAZETTE DATED 03-02-2015

RESPONDENT'S EXHIBITS:

EXT. R2(a) TRUE COPY OF THE ORDER NO.G.O.(P)NO.18/2015/CO-OP. DATED 02/02/2015

EXT. R2(b) TRUE COPY OF THE RELEVANT PORTION OF THE BYE-LAWS OF THIS (2nd) RESPONDENT

EXT. R2(c) TRUE COPY OF THE RESOLUTION NO.11 PASSED BY THE GENERAL BODY OF THIS (2nd) RESPONDENT DATED 29/03/2012

EXT. R2(d) TRUE COPY OF THE REPRESENTATION PREFERRED BY THIS (2nd) RESPONDENT BEFORE THE GOVERNMENT

EXT. R2(e) TRUE COPY OF THE JUDGMENT IN WPC 17686/2012 DATED 07/08/2012

EXT. R2(f) TRUE COPY OF THE ORDER NO.G.O.(P)09/2013/CO-OP. DATED 16/01/2013

EXT. R2(g) TRUE COPY OF THE JUDGMENT IN WPC 3379/2013 DATED 05/02/2013

EXT. R2(h) TRUE COPY OF THE ORDER ISSUED BY THE JOINT REGISTRAR DATED 27/03/2013

EXT. R2(i) TRUE COPY OF THE JUDGMENT IN WPC 4510/2013 DATED 11/03/2013

EXT. R2(j) TRUE COPY OF THE JUDGMENT IN WPC 10666/2013 DATED 19/08/2013

EXT. R2(k) TRUE COPY OF THE JUDGMENT IN WPC 11900/2013 DATED 04/07/2013

EXT. R2(l) TRUE COPY OF THE HEARING NOTICE DATED 04/01/2014

EXT. R2(m) TRUE COPY OF THE ORDER NO.CP(1) 9050/12 ISSUED BY THE REGISTRAR OF CO-OPERATIVE SOCIETIES DATED 16/05/2013

EXT. R2(n) TRUE COPY OF THE ORDER NO.GO(Rt)784/2013/CO-OP. DATED 06/12/2013

EXT. R2(o) TRUE COPY OF THE COMMON JUDGMENT IN WPC 6330/2014 AND WPC 2406/2014 DATED 14.08.2014

EXT. R2(p) TRUE COPY OF THE ORDER GO(P)NO.133/2014/CO-OP. DATED 04/11/2014

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)Nos.4949, 5147, 5148, 5219, 5825,
6417, 26035, 26176 and 26925 of 2015

Dated this the 13th day of October, 2015

COMMON JUDGMENT

Introduction:

In this batch of writ petitions what falls for consideration is the scope and extent of Section 101 of the Kerala Co-operative Societies Act, 1969 ('the Act' for brevity). In other words, in terms of Section 101 of the Act, whether the Government as a delegate can have unbridled powers to exempt any society from the operation of the provisions of the Act, especially with specific reference to Section 7(1)(c) of the Act?

2. In all the writ petitions the petitioners, different Co-operative Banks, have a common grievance against the same set of respondents. This Court, therefore, proposes to dispose of all the writ petitions through a common

judgment. For the purpose of convenience and ease of reference, the facts pleaded and parties arrayed in W.P.(C) No.4949/2015 are taken as the basis.

Facts in Brief:

3. The facts in brief are that all the writ petitions have been filed by the Primary Agricultural Credit Co-operative Banks functioning in Kozhikode District. They ventilate their grievance that Karassery Service Co-operative Bank, the second respondent in W.P.(C)No. 4949/2015, has been given a blanket permission to extend its area of operation across the length and breadth of Kozhikode Taluk; it was, thus, exempted from the mischief of Section 7(1)(c) of the Act. In other words, the exemption granted in favour of the second respondent Bank is to the prejudice of the petitioner Banks.

4. The second respondent Bank, registered on 22.09.1994, initially, had its its area of operation confined to Karassery Panchayat of Kozhikode Taluk with only 537

members. On the other hand, the petitioner Banks, five in number, having been established many decades ago, have thousands of members in their ranks, with different and distinct areas of operations.

5. The singular grievance of the petitioner Banks is that the second respondent Bank could obtain Exhibit P8 exemption, ostensibly under Section 101 of the Act, clearly in violation of Section 2(oaa) of the Act, thereby extending its areas of operations across Kozhikode Taluk. If Exhibit P8 order of exemption is allowed to operate, it will sound a death knell to more than twenty-seven Co-operative Banks, including the petitioners, in the face of unhealthy competition. The very existence of the other Co-operative Banks is in peril.

6. Thus, assailing the exemption granted by the Government in favour of the second respondent Bank, the petitioners have filed the present writ petition. Similarly, many other Co-operative Banks of the area have filed the

rest of writ petitions ventilating the same grievance.

Summary of Submissions:

Petitioners':

7. Sri.P.N.Mohanan, the learned counsel for the petitioners, has begun his submissions laying emphasis on the fact that the second respondent Bank was established only in 1994 with minimal membership of 537; rest of the members are D class members without any voting right, but with a facility of borrowing from the second respondent Bank. According to him, the second respondent Bank initially managed to obtain permission to have two collection centres at Ramanattukara and Thamarassery Panchayats—beyond its area of operaton—though Rule 178A of the Kerala Co-operative Societies Rules, 1969 ('the Rules' for brevity). He contends that the said provision exclusively deals with opening of the branches but not collection centres, which are available only for the Milk Co-operative Societies. The exemption granted by the

Government, contends the learned counsel, is for the individual benefit of the second respondent Bank, but not that of the public at large.

8. Statistically submitting, the learned counsel has set out the details of the Co-operative Banks in the Taluk. According to him, there are countless number of Co-operative Banks and Societies of all hues in the Taluk, and they have been jostling for space. Under these circumstances, the impugned order in favour of the second respondent Bank, claims the learned counsel, is to the prejudice of all these Banks and Societies.

9. Drawing my attention to Section 7(1)(c) of the Act, the learned counsel would contend that, as there are 46 Primary Credit Co-operative Banks, the area of operation of each Bank shall not overlap or come into conflict with that of any other Bank. According to him, in terms of Section 2 (oaa) of the Act, the Primary Agricultural Credit Co-operative Bank shall confine its operations only to a Village

but not beyond.

10. The learned counsel has submitted that when the second respondent Bank initially wanted to expand its area of operation in the entire Kozhikode Taluk, despite the recommendation by the Registrar in Exhibit P5, the Government, through Exhibit P6 order dated 06.12.2013, rejected the respondent's claim. Exhibit P6, according to the learned counsel, has not been challenged by the second respondent Bank. On the contrary, certain Milk Societies and individuals residing outside the area of operation of the second respondent Bank filed W.P.(C)No.6330/2014 before this Court, which disposed it of through Exhibit P7 judgment dated 14.08.2014.

11. Taking shelter under Exhibit P7 judgment, which only directed the authorities to re-consider the matter, the first respondent, points out the learned counsel, issued Exhibit P8 order dated 16.01.2015 exempting the second respondent Bank from the purview of Section 7(1)(c) of the

Act. In fact, the Government before passing Exhibit P8 order heard another Co-operative Bank, namely Calicut City Service Co-operative Bank and prevented the second respondent Bank from having its operations in the area of the said City Service Co-operative Bank alone.

12. It is the specific contention of the learned counsel that under Section 101, exercising the delegated powers, the Government cannot pass orders in violation of Section 2(oaa) read with Section 7(1)(c) of the Act. The impact of Exhibit P8 order of exemption, according to the learned counsel, is to change the character of the second respondent Bank as Urban/Agricultural Rural Bank with the consequential change of classification. It is also the grievance of the petitioners that the Government had not heard most of them before its passing Exhibit P8 order.

13. When Exhibit P8 is examined, it is evident that all the objections contained in Exhibit P6 order of initial rejection, contends the learned counsel, have been

conveniently bye-passed in the present impugned order. In other words, by issuing Exhibit P8 the Government contradicted itself. It is also one of the contentions of the petitioners that the second respondent Bank with 537 members is functioning as a family trust rather than a Co-operative Bank meant for the benefit of the common people of the area. According to the learned counsel, exemption under Section 101 of the Act from the purview of Section 7 (1)(c) could be provided only to Co-operative Milk Societies. Despite the tall claims of the second respondent Bank, it is still a Class-I Bank, whereas the petitioner Banks have already been assigned the Class Special Grade or Super Grade, asserts the learned counsel.

14. Drawing my attention to the statutory scheme, the learned counsel would contend, the power under Section 101 should be exercised with circumspection. In support of his submissions, the learned counsel for the petitioners has placed reliance on **Kalladikode Service**

Co-operative Bank Ltd. v. State of Kerala[1]. Summing up his submissions, he has contended that the very functioning of the second respondent and its present expansion under the cover of Exhibits P8 and P11 strike at the root of the co-operative spirit. Disregard for the objections of the petitioner Banks as well as the other Banks of the area having membership basis running into thousands, according to the learned counsel, is in clear negation of Article 43B of the Constitution which was inserted through 97th Constitutional Amendment for securing voluntary formation and autonomous functioning of the democratically controlled co-operative sector.

15. The learned counsel for the petitioners has placed reliance on the following decisions: **The Registrar of Co-operative Societies and another v. K.Kunjabmu and others**[2], **Benny Peruvanthanam v. Kerala State Co-operative Consumer's Federation Ltd.**[3], **Antony**

1 2015 (1) KLT 438
2 AIR 1980 SC 350
3 2013 (4) KLT 987

Pattukulangara v. E.N.Appukuttan Nair and Others[4], **Consumer Action Group and another v. State of Tamil Nadu and others**[5], **Quilon Taluk L.C. & T. Co-op. Society v. State of Kerala**[6], **Nachimuthu v. State of Kerala**[7], **Rajnarain Singh v. Chairman, Patna Administration Committee, Patna and another**[8] and an unreported judgment dated 04.02.2015 in W.P.(C) No.14721/2014. Accordingly, the learned counsel has urged this Court to interdict Exhibits P8 and P11.

16. In W.P.(C)No.5825/2015, Sri.T.A.Shaji, the learned Senior Counsel for the petitioners, in addition to the contentions raised by the learned counsel for the petitioners in W.P.(C)No.4949/2015, has further submitted that a benefit extended to one Bank shall not be to the prejudice or detrimental to another Bank. Referring to the Preamble of the Act, he would contend that now the existence of 27

4 2012 (3) KHC 726
5 AIR 2000 SC 3060
6 1989 (1) KLT 350
7 2011 (1) KLT 651
8 AIR 1954 SC 569

other Banks has been threatened since Exhibit P8 order is fraught with serious consequences. According to him, it paves the way for unhealthy competition and unethical banking practice in the area.

17. The learned Senior Counsel has elaborated on different classes of membership and what is said to be the ploy adopted by the second respondent Bank in having the minimum membership base but with extended D Class membership to ensure that though loans are obtained by many people, the benefits are enjoyed only by a few members. According to him, it is against the spirit of the co-operative movement. The learned Senior Counsel has also submitted that whatever justification the Government has in Exhibit P6 against the second respondent Bank having its collection centres established in other areas also applies in full vigour against the second respondent's opening its branches in terms of Exhibit P8 order.

18. The learned counsel for the petitioners in all other writ petitions have adopted the submissions of the learned counsel for the petitioners in W.P.(C)No.4949/2015. Though they also referred to certain additional issues, I prefer to refer to them at appropriate places during the discussion.

Second Respondent's:

19. Per contra, Sri.Devan Ramachandran, the learned counsel for the second respondent, has submitted that the petitioners in none of the writ petitions have any redressable grievance; they are just alarmist in their approach. According to him, despite the sanction granted to the Calicut City Co-operative Bank, which was registered in 2002, to operate in the areas of several Service Co-operative Banks, their growth in the last twelve years has been exponential.

20. The learned counsel has also contended that the Government on more than one occasion has invoked Section

101 of the Act to grant exemption to the second respondent Bank. The present exemption, according to him, is only in continuation of the earlier exemptions. In the face of Exhibit R2(m) letter of the Registrar and Exhibit R2(o) judgment of this Court, the petitioners, contends the learned counsel, are precluded from challenging the consequential Exhibits P8 and P11 orders of the Government.

21. The learned counsel for the second respondent has placed a heavy reliance on Exhibit R2(f), the order allowing the second respondent to open two sub-centres in Kozhikode Taluk and Exhibit R2(p) order allowing it to purchase land in Kottooly Village in Kozhikode Taluk. It is also the contention of the learned counsel that the Government has taken into account the fact that the second respondent Bank has, apart from its commercial considerations, adopted altruistic and philanthropic attitude in its banking operations, especially, to serve the interests of the impoverished and marginalised sections of the

society.

22. Summing up his submissions, the learned counsel for the second respondent has submitted that the Government has essentially considered the public interest rather than the interest of the second respondent in granting to it exemption from Section 7(1)(c) of the Act. In essence, the learned counsel would contend that the power of the Government is plenary; unless it is exercised mala fide or for an extraneous purpose, its exercsie cannot be interdicted.

Respondents 1, 3 and 4:

23. The learned Government Pleader has substantially adopted the submissions of the learned counsel for the second respondent.

Issue:

i. Whether the second respondent Bank can be allowed to have its branches beyond its area of operation in violation of Section 7(1)(c) of the Act? Or

Expressed differently, whether the Government is justified in exercising its powers under Section 101 of the Act to exempt the second respondent Bank from the mischief of Section 7(1)(c) of the Act, to the prejudice of the petitioners?

Discussion:

24. As the issue has a chequered history, before referring to the rival submissions, it is appropriate to refer to the administrative, quasi-judicial and judicial proceedings that have taken place so far. Though the petitioners in all the writ petitions have questioned the same set of orders, the exhibits referring to them differ. So as to avoid confusion, I refer, as far as possible, to the exhibits in the counter affidavit filed by the second respondent in W.P.(C) No.4949/2015, since it seems to have been adopted in all other writ petitions as well.

25. Initially, on 29.03.2012 the general body of the second respondent resolved though Exhibit R2(c) proceedings to request the Government to extend the

second respondent's area of operation to the Kozhikode Taluk, in its entirety, with a view to serving a large number of its class D members and loanees. The second respondent Bank through Exhibit R2(d) has also requested the Government to exercise its powers under Section 101 of the Act to exempt it from the purview of Section 7(1)(c) of the Act.

26. In the course of time, questioning what is said to be the Government's inaction, certain beneficiaries of the second respondent Bank filed W.P(C)No.17686/2012. Through Exhibit R2(e) judgment, this Court directed the Government to consider the second respondent Bank's Exhibits R2(c) and R2(d) and pass appropriate orders.

27. In compliance with Exhibit R2(e) judgment, the Government issued Exhibit R2(f) order exempting the second respondent Bank from the provisions of Section 7(1)(c) of the Act only to enable it to open Sub-Centres, one each at two other Panchayaths. Aggrieved, Ramanattukara

Service Co-operative Bank Ltd. challenged Exhibit R2(f) order in W.P.(C)No.3379/2013. Through Exhibit R2(g) judgment, this Court directed the Joint Registrar, Calicut, to consider the representation of the Ramanattukara Service Co-operative Bank. The Joint Registrar, in turn, issued Exhibit R2(h) order rejecting the representation of the Ramanattukara Service Co-operative Bank.

28. In the meanwhile, certain persons claiming to be the beneficiaries and members of the second respondent Bank filed W.P.(C)No.4510/2013 before this Court questioning Exhibit R2(f) order to the extent that the Government declined to extend the operations of the second respondent Bank to the entire Kozhikode Taluk. This Court, through Exhibit R2(i) judgment disposed of the writ petition granting liberty to the second respondent Bank to approach the Government with a fresh resolution. The Government, too, was directed to consider in accordance with law such resolution as is to be submitted by the respondent Bank.

29. On an another front, the Calicut City Service Co-operative Bank filed W.P.(C)No.10666/2013 alleging, among other things, that the second respondent Bank was attempting to open new sub-centres or branches in its area of operations. Through Exhibit R2(j) judgment, this Court restrained the second respondent Bank from opening any sub-centre or branch other than those that have been permitted by the Government under Section 7(1)(c) of the Act. This Court has also further observed that the Government is at liberty to consider and issue orders on the new resolution of the respondent Bank for extending its operations to the entire Kozhikode Taluk area.

30. Again, Ramanattukara Service Co-operative Bank Ltd., making similar allegations filed W.P(C)No. 11900/2013, inviting Exhibit R2(k) judgment. This Court, in fact, made it clear that the sub-centres of the respondent Bank shall only be used as collection centres but not as full-fledged branches.

31. The Secretary to Government, Co-operative Department, essentially going by the direction of this Court in Exhibit R2(k) judgment, is said to have held a hearing on 18.10.2013. Keeping aside the controversy whether all the other affected Co-operative Societies had the opportunity to be present at the hearing, we may move further. Based on the hearing held by the Secretary to Government, he submitted Exhibit R2(l) hearing note to the Government, with a positive recommendation.

32. Further, through Exhibit R2(m), the Registrar of Co-operative Societies is also said to have recommended for exemption to be given to the respondent Bank from the restrictions of Section 7(1)(c) of the Act. But, through Exhibit R2(n), the Government rejected the request of the respondent Bank to extend its area of operations. It has, however, granted liberty to the respondent Bank to apply for conversion of its sub-centres at Thamarassery and Ramanattukara into full branches.

33. Complaining that Exhibit R2(n) order was at variance with the recommendations in Exhibits R2(l) and R2 (m), certain beneficiary societies and members of the respondent Bank filed W.P.(C)No.6330/2014. On the other hand, Ramanattukara Service Co-operative Bank Ltd., also challenged the same order by filing W.P (C) No.2406/2014. It finds fault with the direction of the Government in the order giving liberty to the respondent Bank to convert its sub-centres as full branches.

34. Eventually, this Court through Exhibit R2(o) common judgment quashed Exhibit R2(n) order on the premise that it was not in consonance with the recommendations in Exhibit R2(1) hearing note. The Court further directed the Government to consider the matter after taking specific note of the recommendation of the Registrar of Co-operative Societies as contained in Exhibit R2(m).

35. On parallel lines, the second respondent Bank resolved to approach the Government for permission to purchase a piece of land at Kottoly Village as part of what is said to be diversification and expansion of its business activities. Through Exhibit R2(p), the Government exempted the second respondent Bank from the provisions of Section 7(1)(c) of the Act so as to enable it to buy some land outside its area of operation.

Statutory Scheme:

36. If we examine the statutory scheme, Section 2 (oaa) defines a Primary Agricultural Credit Society ('PACS') to mean 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 having its area of operation confined to a Village Panchayat or a Municipality. The second proviso is to the effect that if the principal object of a Society is not fulfilled, it loses all the characteristics of a

PACS, except as regards the staff strength. Indeed, even the petitioners contend that the second respondent has already lost its characteristic as a PACS.

37. While registering a society, the Registrar shall ensure, inter alia, in terms of Section 7(1)(c) of the Act, that the area of operation of the proposed society does not overlap the area of operation of another similar society. Without much cavil, it can be said that Section 101 confers plenary powers on the Government to exempt any society from any of the provisions of the Act. The sole criterion for this purpose is 'public interest'. It is profitable to extract Section 101 of the Act, which reads as follows:

> "**101. Power to exempt societies**.- The Government may, if they are satisfied that it is necessary so to do in the public interest, by general or special order for reasons to be recorded, exempt any society or any class of societies from any of the provisions of this Act or direct that such provisions shall apply to such society or class of societies subject to such modifications as may be specified in the order."

38. In the present instance, initially the Government exempted the second respondent through Exhibit R2(f) from

the rigour of Section 7(1)(c) of the Act: to open sub-centres, one each at Thamarassery and Ramanattukara. The objection of Ramanattukara Service Co-operative Bank, in that regard, was rejected by the Joint Registrar, as is evident from Exhibit R2(h).

39. The sanction of sub-centres has not satisfied, at least, some of the beneficiaries and members of the second respondent; they filed W.P.(C)No.4510/2013 before this Court, which directed the Government to consider the second respondent's request, if submitted again, in accordance with law. Indeed, as far as the sub-centres are concerned, this Court, on more than one occasion, directed that they should function only as collection centres.

40. In terms of the judicial directives issued earlier by this Court, the second respondent passed a fresh resolution and presented it before the Government seeking exemption from the area of restriction, so that it can operate across the Kozhikode Taluk. A hearing in that

regard is said to have taken place on 18.10.2013. The fact, nevertheless, remains that despite the recommendation of the Registrar of Co-operative Societies through Exhibit R2(m), the Government through Exhibit R2(n) rejected the second respondent's request, save the concession it has given to the second respondent to apply for having its two sub-centres converted into full branches.

41. This Court, later, rendered Exhibit R2(o) common judgment in two writ petitions filed by the beneficiaries of the second respondent and Ramanattukara Service Co-operative Bank respectively. The direction to the Government, this time, is to consider the matter afresh. In the meanwhile, the second respondent desired to buy a piece of land outside the area of its operation with a view to, ostensibly, establishing its branch as part of its expansion. The Government through Exhibit R2(p) once again exempted the second respondent from Section 7(1)(c) of the Act to enable it to purchase the land.

The Previous Exemptions: Whether a Bar?

42. At this juncture, it is pertinent to address the contention of the learned counsel for the second respondent regarding the previous exemptions. Indisputably, earlier on two occasions the Government exempted the second respondent from the purview of Section 7(1)(c) of the Act: to open sub-centres and to buy land, both outside its area of operation. I am afraid, it may not be any hindrance to the petitioners to challenge Exhibits P8 and P11. The scope and ambit of the earlier exemptions is entirely different. And it is restricted in its scope, too.

The Precedential Parameters:

43. Before proceeding further, it is essential to examine the relevance of the precedents cited at the Bar by the learned counsel on either side.

(a) <u>The automatic change of a Society's Classification</u>:

44. In Antony Pattukulangara (supra), a society was registered as a Primary Agricultural Credit Society. In the

course of time, its operations have spread and its funds base, too, has diversified beyond agricultural credit activities. In that context, the question is whether a co-operative society stands reclassified by operation of law once the society's activities change their character.

45. The learned Division Bench has observed that from the operations of the society, as evident from the above figures, nobody can dispute that the society can by no stretch of imagination be treated as a Primary Agricultural Credit Society. On the other hand, it squarely answers the description of the "Primary Credit Society" as defined under Section 2(ob) of the Act, the principal objective of such society being raising funds to be lent to its members. Thus, the conclusion is that the Bank in question has ceased to be a Primary Agricultural Credit Society by operation of the second proviso to Section 2(oa), whether or not there is compliance with the statutory provisions and Rules by the Registrar in declassifying the Society.

(b) The Validity of Section 101 of the Act & the Power of the Government:

46. In K.Kunjabmu (supra), Section 60 of the Madras Co-operative Societies Act, analogous to Section 101 of the Kerala Co-operative Societies Act, has fallen for consideration. It was attacked as void on the ground of excessive delegation. The Apex Court has held that the power given to the Government is to be exercised to advance the policy and objects of the Act, and that Section 60 is not void on the ground of excessive delegation of legislative power. Their Lordships have further observed that the provision is a near Henry VIII clause. But to give it a name is not to hang it.

47. In Rajnarain Singh (supra), a Constitution Bench of the Apex Court has examined the constitutional contours of the delegated power under the provisions of the Orissa Municipalities Act. Their Lordships have held that an executive authority can be authorised to modify either the

existing or future laws but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms. Acknowledging some divergence of view about what exactly is the essential feature, the Constitution Bench has further observed that it cannot, clearly, include a change of policy.

48. In Consumer Action Group (supra), the challenge is against the constitutional validity of Section 113 of the Tamil Nadu Town and Country Planning Act, 1971, under which the Town Planning Authority can exempt certain areas from the purview of the town planning norms with a view to achieving faster development of new rural or urban areas. In other words, the power of exemption has given rise to illegal structures.

49. In the above context, a Three-Judge Bench of the Hon'ble Supreme Court has observed that whenever any statute confers any power on any statutory authority, it has to be exercised reasonably within the sphere of policy of the

statute; exercise of power must stand the test of judicial scrutiny. According to the Apex Court, when wide power is given to any statutory authority, including the delegate, then it is obligatory on the part of the authority to record its reason while passing the order—even if Section is silent about recording of the reason, it is obligatory on the Government to record the reasons while passing the orders. Thus, the Court declared that exercising the power of a statutory authority without following the aforesaid principles is illegal and arbitrary.

50. In Nachimuthu (supra), a learned Division Bench of this Court has examined Sections 12 and 101 of the Act, both dealing with the aspect of exemption, and observed that Section 101 and sub-sections (5) and (6) of Section 12 operate in totally different fields and situations. According to their Lordships, the Government is vested with wide discretionary power in granting exemption to the societies from any of the provisions of the Act.

(c) Private Interest v. Public Interests:

51. In Quilon Taluk L.C. & T. Co-op. Society (supra), the fact of the matter is that exemption under Section 101 was granted to a nearby society extending its area of operation on the ground that it is running at a loss. The question that fell for consideration before a learned Single Judge was whether the interest of a particular society could be treated as public interest.

52. It is held that the private interest of a particular society cannot be considered as public interest. The Court took note of the fact that one of the five conditions under Section 7(1) of the Act is that the area of operation of another society of similar type should not overlap. It eventually observed that power of the Government under Section 101 should not be exercised in such a manner as to nullify the very condition, the compliance of which is mandatory for the society to come into existence. The power of the Government cannot be exercised to defeat such

salutary condition.

53. In the present instance, the Government has never had in the range of its considerations bailing out the second respondent Bank from any difficulty. On the contrary, it wants to ensure quality banking services spread across a larger arena.

(d) Exemption under Section 101 of the Act cannot be retrospective:

54. In Benny Peruvanthanam (supra), a learned Single Judge of this Court has held that Section 101 of the Act does not grant power to the executive Government to bring in retrospective exemption.

(e) No Need for Prior Notice:

55. In **Joint Registrar of Co-operative Societies, Madras and others v. P.S. Rajagopal Naidu, Govindarajulu**[9], Section 72 of the Madras Co-operative Societies Act, which empowers the Registrar to supersede a

9 AIR 1979 SC 992

managing committee fell for consideration. The issue is whether a prior notice to the very committee is mandatory. In that context, the Hon'ble Supreme Court has observed that the object of supersession apparently is to appoint a Special Officer or an Administrative Committee to set the working of the Society right.

56. It is not difficult to envisage a situation where mal-administration by a committee has so adversely affected the functioning of the society that it is essential in the interests of the society itself to give control of its affairs temporarily to a neutral authority. At any rate, if operation of Section 72 in certain circumstances is likely to operate harshly so far as certain members of the committee are concerned, it is not possible to read into it other provisions of the Act which are not incorporated in the section expressly or by necessary implication.

57. However, the record in the present instance reveals that most of the petitioners had been heard before

the Government issued Exhibit P8 order of exemption.

(f) Public Interest:

58. In M/s.Jalyan Udyog (supra), Section 25 of the Customs Act, 1962, which clothed the Central Government with the power of exemption of customs duty on any import has fallen for consideration. The Hon'ble Supreme Court has held that the power of exemption is variously described as conditional legislation and also as a species of delegated legislation. According to their Lordships, whether it is one or the other, it is a power given to the Government to be exercised in public interest. Reading any limitation into this power is not warranted. If the public interest demands that exemption should be absolute, the Government can do so.

59. In **Joint Registrar and another v. M.R.Cheriyan and others**[10], a learned Division Bench of this Court has considered extending the term of an Arbitrator under Section 28(1A) of the Act by the Government taking

10 1994 (1) KLJ 603

recourse to Section 101. The learned Division Bench has held that once modification of any provision is within the statutory confines and does not affect the policy of the Act, it cannot be interfered with.

60. In **Feroke Service Co-op. Bank Ltd. v. State of Kerala**[11], another learned Division Bench of this Court has held that power of the Government under Section 101 to exempt any society from any of the provisions of the Act is not any way limited or curtailed by Section 7(1)(c) of the Act.

(g) Locus of the Rival Banks to Question the Exemption – No Vested Right:

61. In **Kunniyode Ksheera Vyavasaya Sahakarana Sangham Ltd. v. State of Kerala**, an unreported judgment, a learned Single Judge of this Court has taken note of what is said to be the peculiar characteristic of a Milk Society while granting exemption under Section 101 of

11 1995 (2) KLT 404

the Act. Quoting with approval **Kunju Kunju, President, Allepey Co-operative Land Mortgage Bank Ltd. v. State of Kerala and Others**[12], his Lordship has observed that there is no necessity to put a society on notice while granting exemption to another society from the provisions of the Act.

62. In Kunju Kunju (supra), this Court squarely addressed the issue of prior notice in the event of a society is being granted exemption from the purview of Section 7 of the Act by invoking Section 101 of the Act.

A learned Single of this Court has observed thus:

> "3. [I]t may be that at the time when the petitioner society was registered it had framed its bye-laws by including the Taluk of Shertallai also within the area of its operation since at that time there was no similar society functioning in Shertallai. Neither by reason of the inclusion of any particular locality as part of the area of operation of a society in the relevant clause in its bye-laws nor on account of the approval of such bye-law by the competent authority under the Act can it be said that a vested right of monopolistic banking activity has accrued to a parti-cular society, so as to preclude the Registrar or the State Government from subsequently granting registration to another society to operate in any part of the said area. In

12 1971 KLT 350

> my view, no legal right of the society can be said to have been affected by the grant of registration to another society to function in a locality which for the time being stands included within the area of operation of the former society."

63. While arriving at the above conclusion, his Lordship has also placed reliance on the judgment of a learned Division Bench of Andhra Pradesh High Court in **The Vizianagaram Co-operative Land Mortgage Bank Ltd. v. The Bheeminipatnam Co-operative Land Mortgage Bank Ltd.**[13], and **The Nagar Rice and Flour Mills v. F. Teekappa Gowda and Bros**[14] of the Hon'ble Supreme Court.

64. In **Kasaragod Co-operative Land Mortgage Bank v. State of Kerala & Others**[15], a learned Division Bench of this Court has held as follows:

> "Assuming that there is overlapping of areas of the two societies and that the Registrar granted registration overlooking the requirement in Section 7(1)(c) of the Act, it appears that a society like the petitioner cannot have any legal grievance against the action which can be redressed under Article 226."

13 (1968) 1 An. WR: 52
14 AIR 1970 (1) SCWR 627
15 1976 KLT 437

65. Regarding the decision of a learned Single Judge in Kunju Kunju (supra), their Lordships have further held that no exception can be taken to the principle of the decision in Kunju Kunju's case. According to them, the said decision could be upheld in the light of the subsequent judgment of the Hon'ble Supreme Court in **J.M.Desai v. Roshan Kumar**[16].

(h) Judicial Interference:

66. In **Secretary, BPL & PSP Union Workers Union v. Groups of Companies**[17], a learned Division Bench of this Court has held that under Article 226 of the Constitution the Court has no appellate power over the decision of the statutory authorities. The same proposition of law has been approved in P.S.Rajagopal Naidu, Govindarajulu (supra).

The Justification of the Government's Decision:

Public Interest: The Performance of the Bank:

16 AIR 1976 SC 578
17 2010 (2) KLT SN 14 (C.No.17)

67. In Exhibit P8 order of the Government, it has taken into account the performance of the second respondent Bank and also the public interest it has been serving with its what is said to be stellar performance. Adverting to those observations in Exhibit P8, the learned Counsel for the second respondent, without much contradiction, has further elaborated on the issue. He has submitted that the Bank has taken special care of the student community, apart from extending interest-free loans to the farmers, including vegetable growers. The Bank, in the interest of the farmers, is said to have made an arrangement with Dr.M.S.Swaminathan Foundation to train the farmers. It is said to be the only Bank to receive assistance from NABARD, thereby giving easy financial assistance and loans to 4416 families under the Joint Liability Group Scheme. Its services include loans at a very low interest rate of 4%; interest-free loans to women; loans to extremely poor persons for constructing dwelling houses;

ambulance and other services, including dialysis facility for the indigent patients as part of its palliative care; and benefits in the nature of old-age pension, to name a few, according to the learned counsel.

68. The second respondent is said to be the first Bank to obtain an ISO Certification. It has long back been fully computerised extending the state-of-the-art banking facilities to its customers, including ATM facility, being the first in the Co-operative sector. The second respondent further boasts of offering pension of ₹ 1000/- per month to all its class-A members who have completed 60 years of age. It is said to have hardly any defaults, with a working capital and deposits over ₹ 350 crores, capable of being utilized for the benefit of a larger population.

The Decision Making – Application of Mind:

69. A perusal of Exhibit P8 reveals that the Government has applied its mind, took note of all the contingencies, and eventually decided to exercise its powers

under Section 101 of the Act. Nobody can deny that the second respondent Bank has a stellar performance to boast of, and the Government's decision to extend its operations is only in the public interest.

70. Public interest, like public policy, may be conceptually an unruly horse. But on empirical principles, it is not unbridled; it is amenable to judicial review, the parameters of which are well-settled. Public interest frees the policy making from parochial constraints. And in that process, the Government has to be given sufficient play at the joints, so to say. Needless to observe, any decision of the Government in public interest, unless it is demonstrably perverse, deserves sufficient judicial deference not to be stifled merely on the premise that an alternative—and, even, an opposite—view is possible.

71. In the facts and circumstances, given the definitive judicial pronouncements in **Kunniyode Ksheera Vyavasaya Sahakarana Sangham Ltd., Kunju Kunju,**

and Kasaragod Co-operative Land Mortgage Bank, (supra)**,** I have failed to persuade myself to hold that there is any illegality in Exhibit P8 order or the consequential Exhibit P11 proceedings issued by the Government invoking its powers under Section 101 of the Act. I, therefore, hold that Exhibits P8 and P11 do not warrant any judicial interference, more particularly, under Article 226 of the Constitution of India.

As a result, the above writ petitions are dismissed. No order as to costs.

Dama Seshadri Naidu, Judge

tkv

'C.R.'