

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(C).No. 15917 of 2015 (L)

PETITIONER:

ADHITHA VARMA RAJA T.K., MEMBER NO.26429,
IRINJALAKUDA CO-OPERATIVE AGRICULTURAL & RURAL
DEVELOPMENT BANK LTD. NO.R 312, THRISSUR.

BY ADVS.SRI.P.RAVINDRAN (SR.)
SRI.SREEDHAR RAVINDRAN

RESPONDENTS:

1. IRINJALAKUDA CO-OP AGRICULTURAL & RURAL
DEVELOPMENT BANK LTD NO. R 312, THRISSUR - 680 121
REPRESENTED BY ITS MANAGING COMMITTEE.
2. THE SPECIAL OFFICER, PROPOSED CHALAKKUDY CO-OPERATIVE
AGRICULTURAL & RURAL DEVELOPMENT BANK ,
IRINJALAKUDA CO-OPERATIVE AGRICULTURAL & RURAL
DEVELOPMENT BANK LTD. NO.R.312, THRISSUR - 680 121.
3. THE JOINT REGISTRAR OF CO-OPERATION SOCIETIES
(GENERAL), THRISSUR, PIN - 680 002.

R1 BY ADVS. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
R3 BY SPL.GOV'T. PLEADER SRI.D.SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 15917 of 2015 (L)

PETITIONER'S EXHIBITS:

EXHIBIT-P1: TRUE COPY OF THE SCHEME PLACE IN THE GENERAL BODY (ALONG WITH TRANSLATION).

EXHIBIT-P2: TRUE COPY OF THE NOTICE ISSUED IN VEEKHANAM DAILY DATED 23.04.2015 (ALONG WITH TRANSLATION).

EXHIBIT-P3: TRUE COPY OF THE DRAFT SCHEME ISSUED BY THE REGISTRAR.

EXHIBIT-P4: TRUE COPY OF THE MODEL OF THE DECISION OF THE SPECIAL GENERAL BODY MEETING APPENDED ALONG WITH EXT.P3 (ALONG WITH TRANSLATION).

EXHIBIT-P5: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER UNDER RULE 176 OF THE CO-OPERATIVE SOCIETIES RULES DATED 12.5.15.

EXHIBIT-P6: TRUE COPY OF THE NOTICE ISSUED IN MATHRUBHOOMI MALAYALAM DAILY DATED 21.5.2015 (ALONG WITH TRANSLATION).

RESPONDENT'S EXHIBITS:

EXT.R 1(a) A TRUE COPY OF THE LETTER NO.CLT(3)52616/2014 DATED 27.04.2015 OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES

EXT. R1(a)(i) COPY OF THE ENGLISH TRANSLATION OF EXT. R1(a)

EXT. R1(b) A TRUE COPY OF THE MINUTES OF THE GENERAL BODY MEETING HELD ON 06.06.2015

EXT. R1(b)(i) COPY OF THE ENGLISH TRANSLATION OF EXT. R1(b)

EXT. R2(a) TRUE COPY OF THE LETTER DATED 23.4.2015

EXT. R2(b) TRUE COPY OF THE MINUTES OF THE GENERAL BODY MEETING HELD ON 6.6.2015

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.15917 of 2015 L

Dated this the 25th day of November, 2015

JUDGMENT

The petitioner, who is the member of the first respondent Bank, apart from being its erstwhile President, has questioned the manner and method of bifurcation the first respondent Bank has been subjected to.

2. Briefly stated, a Primary Co-operative Agricultural and Rural Development Bank, as has been defined under Section 2(oc) of the Kerala Co-operative Societies Act, 1969 ('the Act' for brevity), has to confine its area of operation to a particular Taluk. In this instance, the first respondent Bank is situated in Mukundapuram Taluk. Initially in 2008, when the said Taluk was divided and a new Taluk, Kodungallur, was created, the Bank was bifurcated. Once again in 2013, Mukundapuram Taluk was bifurcated; it resulted in the creation of Chalakudy Taluk. It has thus

necessitated the division of the first respondent Bank, again.

3. As a consequence to the bifurcation of the respondent Bank, the Managing Committee prepared Exhibit P1 Draft Scheme for apportioning the assets and liabilities of the Bank. Later, it placed the Scheme before the General Body, which is said to have approved it despite the objection of the petitioner, a participant. Eventually, the Draft Scheme thus approved by the General Body was placed before the Joint Registrar, who is said to have given his imprimatur to the Scheme. As a matter of further development, the Scheme was approved and placed before the General Body of the newly created Taluk, i.e., Chalakudy Taluk. At that juncture, the petitioner has approached this Court.

4. Sri.P.Ravindran, the learned Senior Counsel for the petitioner, has strenuously contended that Section 14 of

the Act mandates the procedure concerning the bifurcation of an existing Primary Co-operative Agricultural and Rural Development Bank, especially an Assisted Society, which the respondent Bank is. He has contended that the procedural nitty gitty concerning the bifurcation is provided under Rule 13 of the Kerala Co-operative Societies Rules, 1969 ('the Rules' for brevity).

5. The singular grievance of the petitioner is that before placing the Draft Scheme, as had been prepared by the Managing Committee, before the General Body, it ought to have been placed before the Joint Registrar, after whose consideration alone it should have been placed before the General Body. In this regard, the learned Senior Counsel has taken me through the statutory provisions such as Section 14 of the Act, as well as Rule 13 of the Rules.

6. The learned Senior Counsel has further drawn my attention to Exhibit R1(a) Draft Scheme and also Exhibits

P3 and P4 Model Draft Scheme and Model Decision of the General Body respectively to hammer home his point that all these documents invariably establish that the proper procedure to be adopted is as has been mandated under Section 14 of the Act and Rule 13 of the Rules.

7. The learned Senior Counsel has also submitted that gross injustice has been done to the Society being formed in the division of assets and liabilities. In elaboration of his submissions, he has submitted that majority members come from the area that is now under the new Taluk. Ipso facto, major portion of the assets ought to have been allotted to the new Society. On the converse, most of the assets and liabilities, contends the learned Senior counsel, have not been divided; nor have they been specified. According to him, the ratio of 62:38 is only with regard to the loans outstanding and that is based on the pattern of the membership in the two Taluks.

8. The learned Senior Counsel has drawn my attention to Clause 18 of Exhibit P1 to contend that the assets and liabilities which have not been expressly mentioned in the Scheme should be divided between the existing Society and the new Society in the ratio of 60:40. The said ratio, according to the learned Senior Counsel, is quite iniquitous.

9. Further, referring to the reply affidavit filed by the petitioner, the learned Senior Counsel has submitted that many assets have been deliberately omitted from Exhibit P1 Draft Scheme, and in one fell swoop through Clause 18 of Exhibit P1, it was ordered that all those assets should be divided in the ratio of 60:40. The learned Senior Counsel has further contended that in the General Body meeting held to approve Exhibit P1 Draft Scheme, no proper communication was sent to all the members, and as a result many members failed to attend.

10. In sum and substance, the learned Senior Counsel would contend that the approval, if any, by the General Body, apart from being illegal, was not duly representative of the majority opinion, for many people had been unaware of the proceedings of bifurcation.

11. Per contra, the learned Special Government Pleader has, with equal vehemence, opposed the petitioner's claims and contentions. To begin with, he has submitted that though Section 14 of the Act read with Rule 13 of the Rules provides the necessary guidelines, the Statute has never mandated that those provisions alone govern the process of bifurcation. In elaboration, the learned Special Government Pleader has drawn my attention to Section 28(1D) as well as Section 2(qc) of the Act to contend that for the purpose of bifurcation of the Society and division of the assets and liabilities, a Special Officer has been appointed. The said officer has, in fact,

taken charge.

12. The learned Special Government Pleader has also submitted that the Special Officer in furtherance of the Draft Scheme prepared by the Managing Committee did convene the General Body and had the Draft Scheme approved. Thereafter, the said official placed the matter before the Joint Registrar, who also approved it, as a matter of subsequent development.

13. The learned Special Government Pleader further brings to my notice that the Scheme thus approved by the Joint Registrar has also been placed before the General Body of the proposed Society. According to him, the new General Body has also taken a decision, which could not be further implemented by the Joint Registrar only in view of the pending judicial proceedings: the interim order passed in this writ petition.

14. In support of his submission that Section 28(1D) especially applies to the bifurcation of the Society in the face of the creation of a new Taluk, the learned Special Government Pleader has placed reliance on **Padmanabhan v. State Co-operative Election Commission**¹ and **Irinjalakuda Co-operative Agricultural and Rural Development Bank Ltd.No.R312 v. Kerala State Co-operative Agricultural and Rural Development Bank Ltd.No.4017 & Others**².

15. The learned counsel for the first respondent, on his part, has contended that the Scheme of bifurcation of the Society and also the division of assets and liabilities have many inbuilt checks and balances to ensure that neither of the entities, i.e. the existing Society or the new Society, is put to any prejudice.

¹ 2014 (1) KLT 911

² 2009 (1) KLJ 729

16. In elaboration, the learned counsel has submitted that contrary to the petitioner's contention that division was iniquitous, most of the assets have gone to the new Society, the ratio being 62:38. He has further submitted that Clause 18 of Exhibit P1 is only a residuary provision concerning the assets which have not been enumerated in Exhibit P1 Draft Scheme. The learned counsel has also submitted that given the fact that the Joint Registrar has already approved the Draft Scheme, it is an empty formality to insist that the Scheme should have been placed before the Joint Registrar before the General Body had approved it. According to him, the petitioner has not been put to any prejudice.

17. In further elaboration of his submissions, the learned counsel has, first, submitted that whatever be the procedure to be applied—be it one prescribed under Section 28(1D) or the one prescribed under Section 14 of the Act—the petitioner in effect has not been put to any prejudice.

Second, at this juncture, trying to turn the clock back by insisting on having the imprimatur of the Joint Registrar as a pre-condition before the General Body could consider the issue is impermissible; rather, it is an exercise in futility.

18. In sum and substance, the learned counsel has submitted that the petitioner had ample opportunity to voice his grievance before the General Body, and in fact the petitioner's lone objection had already been put to vote. Eventually, summing up his submissions, the learned counsel has urged this Court to dismiss the writ petition. The learned counsel has drawn my attention to Clause 7 of Exhibit R2(a) to contend that the procedure is to the effect that the Scheme prepared by the Managing Committee shall be first placed before the General Body and later before the Joint Registrar.

19. In reply, the learned Senior Counsel has submitted that the proceedings of the respondent

authorities have been eloquent to the effect that the procedure required to be followed is the one prescribed under Section 14 of the Act and Rule 13 of the Rules. Laying specific emphasis on Exhibits P3 and P4, the learned Senior Counsel has further contended that it admits of no ambiguity that the sequence of events to be followed in the case of division of assets and liabilities is to have the Draft Scheme first placed before the Joint Registrar and thereafter before the General Body.

20. Given the fact that the Joint Registrar, if not at the earlier stage, later approved the scheme, this Court queired the learned Senior Counsel whether it causes any prejudice if the order has not been strictly followed. He, in reply, would contend that when the statue is clear and mandates a particular procedure, it cannot be deviated from for whatever reasons. Thus, the learned Senior Counsel has urged this Court to allow the writ petition with a direction

to the respondent Bank to place the Draft Scheme initially before the Joint Registrar. According to him, he should consider it after affording an opportunity to the persons interested and later place it before the General Body, because whatever had been considered by the General Body in procedural violation could not be recognised.

Issue:

As regards the bifurcation of the existing Society and the division of its assets and liabilities, which procedure is to be followed: whether the one prescribed under Section 14 of the Act read with Rule 13 of the Rules or the one prescribed under Sections 28(1D) and 28(1E) of the Act?

21. To my mind, as it appears to be a pure question of law, I may make an effort to answer the issue with specific reference to the statutory provisions in this regard. Section 2(oc) defines 'Primary Co-operative Agricultural and Rural Development Bank'. The proviso added to the said

provision makes it clear that creation of a primary society could be only by way of bifurcation of an existing Society. It is further evident that the Society's territory is specific, i.e., each Society should operate within a specific Taluk. If there is to be any division of Taluk, the Society gets automatically bifurcated by compulsion of law.

22. In the present instance, it is the case of creation of a Taluk by dividing an existing Taluk. It necessitated the division of the first respondent Bank as well. Section 14 to the extent relevant reads as follows:

“14. Amalgamation, transfer of assets and liabilities and division of society:- (1) A society may, by a resolution passed by a two third majority of the members present and voting at a general body meeting of the society;

(a) transfer its assets and liabilities in whole or in part to any other society;

(b) divide itself into two or more societies.

(2) Any two or more societies may, by a resolution passed by a two-third majority of the members present and voting at a general body meeting of such society, amalgamate themselves and form a new society.”

23. Further, Rule 13 of the Rules, which provides the procedural parameters as have been indicated in Section 14, reads as follows:

“13. Amalgamation, transfer of assets and liabilities or division of societies.-

(1) Every co-operative society desiring to effect amalgamation, transfer of assets and liabilities or division shall convene a meeting of a special general body, called for the purpose, giving fifteen clear days notice and pass resolution, for amalgamation, transfer of assets and liabilities or division as the case may be, by a two third majority of the members present and voting at that meeting.

Provided that in the case of an insured co-operative bank, no resolution shall be passed without the prior approval in writing of the Reserve Bank of India and in the case of an assisted society, no resolution shall be passed without the prior approval of the Registrar. In the case of amalgamation or division, the resolution shall include the scheme and the draft bye-laws proposed for adoption, consequent on the approval of the proposals. The draft bye-laws shall include provisions of appointment of the first committee by nomination.

(2) Where the resolution so passed is deemed to have been taken effect under sub-section (6) of Section 14, the society concerned shall report the fact to the Registrar.

(3) On receipt of the report from the society under sub-rule (2) the Registrar shall, after satisfying himself that the procedure has been properly followed, declare that the

resolution has taken effect and register the amalgamated or divided societies.”

24. On the other hand, the Act also contemplates appointment of Special Officer, who is defined under Section 2(qc). It reads as follows:

“Special Officer” means an officer not below the rank of an Assistant Registrar, appointed by the Registrar, to take into custody the assets and liabilities of the society which secured registration, without bifurcating the area of operation of an existing society and to register new societies and to constitute Committees as provided in Section 28 of the Act.”

25. Under Section 28(1D), an eventuality has been contemplated; its happening entails the appointment of a Special Officer. It is profitable to examine Section 28(1D), which reads as follows:

“Notwithstanding anything contained in this Act, or in any Judgement, decree or order of any Court the registration of any Primary Co-operative Agricultural and Rural Development Bank without the bifurcation of area, assets and liabilities of the society and the constitution of the Committee pursuant to any such a registration without such bifurcation shall be void and the Registrar shall appoint Special Officer for each of such societies which were registered without bifurcation of area[,] assets and liabilities.”

26. From Section 2(qc), it is clear, to me, that an officer not below the rank of an Assistant Registrar can be appointed by the Registrar to take into custody the assets and liabilities of the Society which secured registration without bifurcation of the area of operation of an existing Society and also to register new societies and to constitute committees as provided under Section 28 of the Act.

27. Upon careful examination of the said provision, I am compelled to conclude that the society to be taken control of is the Society that has come into existence subsequently. In fact, the expression 'which secured registration without bifurcation of area[,] assets and liabilities' has been employed in contradistinction to the expression 'erstwhile society'. For the possessive pronoun 'its' is conspicuous by its absence. In other words, had the reference been to the parent society (if the said expression can be employed), the provision could have read 'without

bifurcation of its area, assets and liabilities'.

28. Viewed from another perspective, we may appreciate that if the properties have not been divided, the registration shall be void. Let us assume, a society may have been in existence for many decades. It was subjected to bifurcation; a new society has come into being. But, it was without the division of area (?), assets and liabilities, too. Usually, the division is based on a supervening event of the division of a Taluk, over which the society has no control—that is why the question mark after the 'area' above. Then, what remains is the division of assets and liabilities. The existence of a society registered decades ago becoming null and void for want of division of assets and liabilities in favour of a new society is sheer incongruity.

29. Further Section 28(1D) also specifies that 'the constitution of the Committee pursuant to any such registration without such bifurcation' shall be void. Once

such an eventuality arises and the Society thus registered without division is treated to have been void, the Registrar shall appoint a Special Officer for the Society which has been registered without the bifurcation of the area and division of the assets and liabilities. The statute is eloquently silent as regards the registration of which society the rule of voidness applies. But all pointers are towards the registration of the new society.

30. On the practical front, too, declaring the existing society void on the premise that its registration was without demarcation of the area or the division of properties raises two difficulties in its wake: (1) Usually compliance with the pre-condition is mandatory for the validity of an action subsequent. In this case, the registration of the existing society could have been decades ago. The division of properties which is only subsequent could not invalidate the registration which, in fact, was a prior event. (2) A society

spread across the whole Taluk having branches all over if were to have its registration annulled, all the banking transactions or the affairs of the society, as the case may be, would come to a standstill. In other words, they would be robbed of their sanctity and legality. Thus, the consequences are unforeseen and immitigable.

31. Further, in Section 28(1E), the expression as regards the parent society is 'erstwhile society'. Thus, it is all the more essential to hold that the default clause is concerning the new society that has come into existence on bifurcation of the 'erstwhile society'.

32. I admit, with humility, that there exists a precedent in Padmanabhan (supra) rendered by a learned Single Judge of this Court taking a different view. One mitigating factor, however, is that his Lordship in paragraph 7 of the judgment has observed that the finding therein is with special reference to the facts of the case. Be

that as it may, judicial propriety behoves me to fall in line for the principle of standi decisis is too well established, as far as it applies, to be trifled with. Nevertheless, since the adjudication of the present case does not turn up on the finding as regards the nullity of registration of either of the societies, I have not persuaded myself to fall in line. I have, under these circumstances, spelt out what could have been a different, or at least an alternative, view on the question, thereby leaving it open to be resolved in future.

33. In terms of Section 28(1E), the Special Officer so appointed shall take steps as may be necessary and expedient to prevent loss or deterioration or damage to such society. He shall also take such steps for bifurcation of the area, the assets and liabilities, etc.

34. On the other hand, Section 14, in a comprehensive manner, deals with amalgamation and transfer of assets and liabilities and division of the societies.

As has been extracted above, the provision is to the effect that if there is to be any division of the society, the General Body of the society may pass a resolution by a two-third majority of the members present and voting at a general body meeting of the society, transfer its assets and liabilities in whole or in part to any other society or divide it into two or more societies. When the society has passed any such resolution, it shall give notice in writing to all its members and creditors. Within a period of two months from the date of service of notice upon a member, he may have the option of withdrawing the shares, etc.

35. The resolution thus passed by the society shall not take effect until either (a) the assent of all the members or creditors has been given or deemed to have been given, or (b) all claims of the members and creditors who exercise the option referred to in sub-section (4) within the period specified therein have been met in full. In terms of sub-

section (7), the resolution involving transfer of assets and liabilities shall be treated as conveyance to vest the assets and liabilities in the transferee without further assurance.

36. Rule 13 of the Rules provides the procedural parameters concerning, among other things, the division of the society. Once the society is an assisted society, no resolution shall be passed without the prior approval of the Registrar. And, indisputably, in terms of Section 2(aa), the first respondent is an assisted society.

37. The fulcrum of the submissions made by the learned Senior Counsel for the petitioner is that since the respondent Society is an assisted society, the question of the General Body passing any resolution without the prior approval of the Registrar does not arise.

38. Trying to refute the contentions of the petitioner, the learned Special Government Pleader and also the learned counsel for the first respondent Bank have

submitted in unison that in terms of the non obstante clause appended to Section 28(1D), neither Section 14 nor Rule 13 has any overriding effect. In the alternative, they have submitted that if not prior to the approval of the General Body, the very Joint Registrar, later, has considered the issue and accorded his imprimatur. The petitioner's insistence on prior reference to the Registrar is an empty formality, they contend.

39. In Irinjalakuda Co-operative Agricultural and Rural Development Bank Ltd. (supra), this Court has held that despite registration of a Co-operative Society as a Primary Co-operative Agricultural and Rural Development Bank, the provisions of the Kerala Co-operative Societies Act alone apply but not the Kerala State (Agricultural and Rural Development Banks) Act [KSARDB Act]. For KSARDB Act has no provisions exclusively dealing with the registration of the society and other related aspects.

Indeed, there is no quarrel concerning the said proposition, nor is it the petitioner's case that the Kerala Co-operative Societies Act has no application.

40. Indeed, there is, I must confess, certain amount of ambiguity in the provisions: Section 28 seems to come into operation only when a newly formed society, as a result of the bifurcation of the existing society, gets registered without the division of assets and liabilities. And only in such an eventuality the Special Officer may have a role to play. On the other hand, Section 14 prescribes a voluntary method of division of a society. And it requires a resolution of two-third majority of the members of the Society present and voting.

41. Nevertheless, in the present instance, it is an adventitious, forced division, i.e. a division by compulsion of law. Accordingly, in my considered view, it cannot be said that Section 14 has any overwhelming or overriding

application to the exclusion of every other provision. The fact, however, remains that the draft proposal, the guidelines, etc., all through have unambiguously established that the procedure prescribed under Section 14 of the Act read with Rule 13 of the Rules is required to be followed.

42. Be that as it may, much water has flowed in the interim. Now turning the clock entirely back is iniquitous and also impracticable. At the same time, we cannot ignore the statutory mandate and also the bye-laws.

43. Taking into account the totality of the circumstances, as a measure of equitable adjudication, I am of the opinion that Exhibit P1 draft scheme should be placed before the Joint Registrar, who in turn, after hearing all the parties concerned, shall pass appropriate orders. If the order to be passed is in tune with the decision taken earlier by the General Body, the respondent Society shall proceed further from where it had left prior to filing of this writ petition.

44. If, for whatever reason, the Joint Registrar takes a different view on Exhibit P1 draft scheme, from that stage onwards the procedure contemplated under Section 14 of the Act read with Rule 13 of the Rules shall be followed.

45. Given the apprehension expressed by the learned counsel for the respondent Bank that unless the bifurcation takes place expeditiously, the Bank is not in a position to carry on its operations, it needs no special emphasis that the Joint Registrar may take every step to dispose of the issue as expeditiously as possible, at any rate, within three weeks from the date of receipt of a copy of this judgment. Being conscious of the fact that the time limit fixed is short, this Court further observes that for any unavoidable reasons the Joint Registrar could not dispose of the issue within the time stipulated, he may as well seek extension of time from the Court.

With the above observation, the writ petition stands disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

tkv

'C.R.'