IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY,THE 19TH DAY OF AUGUST 2015/28TH SRAVANA,1937

WP(C).No. 20622 of 2015 (C)

PETITIONER : -

THE KURUMATHUR SERVICE CO-OPERATIVE BANK LTD. NO.C.362,
CHORUKKALA, P.O.KURUMATHUR, KARIMBAM (VIA),
KANNUR DISTRICT,
REPRESENTED BY ITS SECRETARY.

BY ADVS.SRI.P.NARAYANAN
SRI.NICHOLAS JOSEPH

RESPONDENTS :-

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1. THE KANNUR DISTRTICT CO-OPERATIVE BANK,
   KANNUR - 670 001,
   REPRESENTED BY ITS GENERAL MANAGER.

2. ADDITIONAL REGISTRAR OF CO-OPERATIVE SOCIETIES (CREDIT),
   THIRUVANANTHAPURAM - 695 001.

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

R1 BY ADV. SMT.MEENA JOHN, SC, KANNUR DIST. CO.OP.BANK
BY Sr. GOVERNMENT PLEADER SRI. K.C. VINCENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 20622 of 2015 (C)

APPENDIX

PETITIONER'S EXHIBITS : -

EXT.P1 : COPY OF THE RELEVANT PORTION OF THE BYE- LAW OF THE PETITIONER SOCIETY AND ITS ENGLISH TRANSLATION.

EXT.P2 : COPY FO THE PROFIT AND LOSS ACCOUNT OF THE PETITIONER FOR THE YEAR ENDED 31/3/15.

EXT.P3 : COPY OF THE ORDER NO. 1219/01/C.R.P/KDIS DATED 15/3/01 ISSUED BY THE SECOND RESPONDENT SANCTIONING THE BRANCH AT POKKUNDU AND ITS ENGLISH TRANSLATION.

EXT.P4 : COPY OF THE ORDER NO. C.B(4)1970/15 DATED 1/7/15 ISSUED BY THE 2ND RESPONDENT AND ITS ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS : -

EXHIBIT R1(a) : TRUE COPY OF THE ADVERTISEMENT DATED 8.7.2015 IN 'MATHRUBHUMI DAILY' AND ITS ENGLISH TRANSLATION.

EXHIBIT R1(b) : COPY OF THE PROCEEDINGS No. HR/TP/2/2015-2016 DATED 7.7.2015.

EXHIBIT R1(c) : A LIST OF 27 PERSONS WHO HAVE OPENED SAVINGS BANK ACCOUNT IN KURUMATHUR BRANCH.

EXHIBIT R1(d) : A LIST OF 3 PERSONS WHO HAVE OPENED FIXED DEPOSIT ACCOUNT IN KURUMATHUR BRANCH.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

CR

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 20622 of 2015

Dated this the 19th day of August, 2015

JUDGMENT

The petitioner, the Service Co-operative Bank, has laid challenge against Exhibit P4 order of the second respondent permitting the first respondent to open a branch in the area of the petitioner.

2. The singular grievance of the petitioner Bank is that Exhibit P4 is in violation of Section 74B of the Kerala Co-operative Societies Act, 1969, and also the judicial dictum of this Court in *Perumatty Service Co-operative Bank Ltd v. Registrar of Co-operative Societies*[1] .

3. The learned counsel for the petitioner has submitted that Section 74B clearly mandates that another bank can have its operations in the area earmarked for a particular bank only if such member credit society is weak and not functioning properly to provide service to the members or the public. According to him, Exhibit P4 does not contain

1[2014 (3) KLT 483]

even a remote reference to the statutory mandate, much less to the judicial dictum, and a finding regarding the inadequacy of the services provided by the petitioner bank.

4. The learned Government Pleader has made valiant efforts to justify Exhibit P4. According to him, Exhibit P4 order does contain reasons. In elaboration, the learned Government Pleader has submitted that the second respondent has ensured that the opening of the branch by the first respondent shall be without causing obstruction to the functioning of other primary Co-operative Societies or Banks.

5. The learned Standing Counsel for the first respondent Bank, in tune with the averments made in the counter affidavit, has made elaborate submissions essentially echoing the submissions made by the learned Government Pleader. She has further submitted that the services being provided by the first respondent Bank are not provided by the petitioner Bank, and as such it is only for the benefit of the public, the second respondent has permitted the first respondent to open its branch in the area earmarked for the petitioner. According to her, what is

essential is the public utility rather than the comfort of one particular Bank.

6. Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondent, as well as the learned Government Pleader, apart from perusing the record.

7. Indeed, Section 74B is very categoric to the effect that the State Co-operative Bank, the State Co-operative Agricultural and Rural Development Bank or the District Co-operative Bank may open branches in the area of operation of the member credit society if such member credit society is weak and not functioning enough to provide service to the members or to the public. There is no invariable statutory mandate that no other bank should functioning in the area alloted to some other Bank; nevertheless the authority granting the permission shall take into account the statutory mandate and render a clear finding that the member credit society, which is operating in the area, is weak and not functioning up to the level so as to provide good services to the members or the public. In the present instance, Exhibit P4 solely lacks any finding to the

said effect.

8. A perusal of the judgment of the learned Division Bench in *Perumatty Service Co-operative Bank Ltd (supra)* makes it clear that the issue fell for consideration in the said judgment is identical to the one that has been raised in the present writ petition. In my considered opinion, the ratio laid therein squarely applies to the facts of the present case as well.

9. In the facts and circumstances, essentially keeping in view the statutory mandate in Section 74B of the Act and also the judicial dictum in *Perumatty Service Co-operative Bank Ltd (supra),* this Court does not have any other option than setting aside Exhibit P4, and it has accordingly set it aside.

10. It is further directed that the second respondent shall reconsider the application of the first respondent keeping in view the statutory mandate of Section 74B of the Act and pass fresh orders, after affording an opportunity of hearing to the first respondent as well as the petitioner.

It is made clear that since the branch of the first respondent has already been functioning, it is not in the interest of public to close its operations. In the alternative, it is further directed that the second respondent shall consider the first respondent's application as expeditiously as possible, at any rate, within a period of six weeks from the date of receipt of a copy of this judgment. The continued banking operations of the first respondent shall be subject to the result of the orders to be passed by the second respondent.

DAMA SESHADRI NAIDU
JUDGE

DMR/-