

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WP(C).No. 26017 of 2014 (B)

PETITIONER:

THE KARANNUR SERVICE CO-OPERATIVE BANK
LTD NO F 1244, KARANNOOR, KOZHIKODE,
REPRESENTED BY THE SECRETARY.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

1. THE CALICUT CITY SERVICE CO-OPERATIVE BANK
LTD NO 2777, LINK ROAD, P.O.CHALAPURAM,
KOZHIKODE - 673 002 REP. BY ITS SECRETARY.
2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G),
KOZHIKODE, OFFICE OF THE JOINT REGISTRAR OF
CO-OPERATIVE SOCIETIES (G), PUTHIYARA, KOZHIKODE,
PIN - 673 004.
3. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM, PIN - 695 001.
4. THE STATE OF KERALA REP. BY THE SECRETARY TO
GOVERNMENT, CO-OPERATION (C) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

R1 BY ADVS. SRI.B.S.SWATHI KUMAR

SRI.REMYA MURALI

SRI.A.K.RAJESH

SRI.VENKATESH GOPI

R2 TO R4 BY GOVT. PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 26017 of 2014 (B)

PETITIONER'S EXHIBITS:

EXHIBIT P1. TRUE PHOTOCOPY OF THE BYELAW PAGE NOS.1, 2, 8, 21, 22 AND 23 OF THE PETITIONER.

EXHIBIT P2. TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE FIRST RESPONDENT DATED 09.01.2014 TO THE SECOND RESPONDENT.

EXHIBIT P3. TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE MEMBERS OF THE PETITIONER DATED NIL TO THE SECOND RESPONDENT.

EXHIBIT P4. TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY PETITIONER DATED NIL TO THE SECOND RESPONDENT.

EXHIBIT P5. TRUE PHOTOCOPY OF THE ORDER PASSED BY THE SECOND RESPONDENT DATED 19.05.2014.

EXHIBIT P6. TRUE PHOTOCOPY OF THE LETTER FORWARDED BY THE SECOND RESPONDENT DATED 19.05.2014 TO THE THIRD RESPONDENT.

EXHIBIT P7. TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE THIRD RESPONDENT DATED 24.05.2014 TO THE SECOND RESPONDENT.

EXHIBIT P8. TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE SECOND RESPONDENT DATED 22.05.2014 TO A MEMBER OF THE PETITIONER.

EXHIBIT P9. TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE FOURTH RESPONDENT DATED 18.08.2014 TO THE PETITIONER.

EXHIBIT P10. TRUE PHOTOCOPY OF THE ORDER G.O.(RT)NO.523/2014/CO-OP. ISSUED BY THE FOURTH RESPONDENT DATED 24.09.2014.

EXHIBIT P11. TRUE PHOTOCOPY OF THE ORDER VIDE NO.2035/14/II K.DIS. DATED 24.9.2014 ISSUED BY THE SECOND RESPONDENT TO THE FIRST RESPONDENT

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.26017 of 2014 B

Dated this the 18th day of September, 2015

JUDGMENT

In this writ petition, yet again, the issue of a turf war between the co-operative societies operating in the adjacent areas has fallen for consideration. In fact, the core issue to be determined is about the resultant alleged prejudice on account of encroachment by one society into the area of another society.

2. The petitioner is a Co-operative Bank established in 1943, whereas the first respondent was established in 2002. The petitioner Bank has Elathur as one of its areas of operation; the first respondent Bank has as its area of operation the entire territory of Kozhikode Corporation.

3. In the course of time, to be more specific, in 2009, the Government expanded the territorial limits of the Kozhikode Corporation by including four more Grama

Panchayats. Incidentally, Elathur is one of the Grama Panchayats that has been annexed to the Kozhikode Corporation. Taking advantage of the expanded area, the first respondent Bank has amended its bye-laws, including newly-annexed areas as being part of its area of operation. It submitted the bye-laws for approval. The second respondent, in turn, approved it through Exhibit R1(a) proceedings.

4. On the strength of the amended bye-laws; later, the first respondent submitted Exhibit P2 application to the second respondent seeking permission to open a branch in Pooladikunnu, which is within the area of Elathur amsom. Having come to know of Exhibit P2, the members and also the Managing Committee of the petitioner Bank filed Exhibits P3 and P4 petitions before the second respondent. Subsequently, they filed W.P.(C)No.11152/2014 before this Court seeking expeditious consideration of their objections

before the second respondent could decide on Exhibit P2.

5. As can be seen from the record, acting on the judgment rendered by this Court in W.P.(C)No.11152/2014, the second respondent has issued Exhibit P5 proceedings clarifying that Pooladikunnu is situated within the territorial limits of Kozhikode Corporation and that the first respondent establishing any branch in the area will not amount to an encroachment.

6. Further aggrieved, the petitioners in W.P.(C)No. 11152/2014 filed a statutory appeal before the Government, which, in turn, issued Exhibit P10 rejecting those petitioners' objections and thereby confirming Exhibit P5 order. In fact, the appellate Authority has gone one step further and issued a positive direction that the second respondent grant the necessary permission to the first respondent to open a branch in Pooladikunnu. Assailing Exhibit P10, the petitioner Bank has filed the present writ petition.

7. The learned counsel for the petitioner has submitted that Exhibit P5 order of the second respondent and Exhibit P10 order in the appeal by the Government are both unsustainable, especially in the face of Section 7(1)(c) of the Kerala Co-operative Societies Act, 1969 ('the Act' for brevity). He has also submitted that the Appellate Authority ought not to have travelled beyond the scope of the appeal and issued a positive direction in favour of the first: the second respondent should grant it permission to open a branch.

8. According to the learned counsel, in the appeal filed by an aggrieved party, the order could be either affirmation of the order of the primary authority or rejection thereof, but not a positive direction in favour of the respondent, who has, in the first place, never sought any indulgence from the Appellate Authority.

9. The learned counsel has also submitted that, in the light of Section 13A read with Rule 5 of the Kerala Co-operative Societies Rules, 1969, mere registration of the bye-laws is of no consequence. In elaboration, the learned counsel would contend that if the effect of the amended bye-laws is to infract any statutory provision, the very amendment becomes non est notwithstanding its approval by the appropriate authority. In support of his submissions, the learned counsel has placed reliance on **Abdul Gafoor v. Joint Director**¹.

10. The learned counsel has also submitted that given the fact that a Co-operative Bank is autonomous, and the Managing Committee exercises plenary powers, the Registrar ought to be very wary and circumspect in exercising his supervisory powers over the co-operative societies. In support of his submissions, the learned counsel

¹ 1997 (1) KLT 589

has placed reliance on **Aji v. State of Kerala**².

11. As a matter of further development, the learned counsel would further contend that in the light of the positive direction given in Exhibit P10 by the Appellate Authority while the writ petition was pending, the second respondent issued the consequential Exhibit P11 proceedings permitting the petitioner to establish a branch. In fact, the first respondent did establish a branch almost a year ago.

12. The learned counsel for the first respondent Bank, however, is quick to refute the contention of the learned counsel for the petitioner that Exhibit P11 was passed pending the writ petition. According to him, Exhibit P11 was passed on 24.09.2014, whereas the writ petition was filed on 07.10.2014.

13. Be that as it may, the fact remains that Exhibit P11 is consequential, and in fact the first respondent has

² 1995 (1) KLT 363 (FB)

already established a branch in Pooladikunnu. Since initially the licence was for one year, it is to come to an end on 23.09.2015. In that context, the learned counsel for the petitioner contends that unless the issue of area-conflict is resolved, there shall not be any further extension of the licence.

14. The expansion of civic administration of Kozhikode Corporation, contends the learned counsel, does not automatically expand the first respondent's area of operation, which stood crystallized by the date of its incorporation. In support of his submissions, the learned counsel has placed reliance on **Meenakshy v. R.Ananthambal and Others**³.

15. Per contra, the learned counsel for the first respondent has submitted that in the light of the expansion of the area of Kozhikode Corporation, in the first place, there was no need for the first respondent to have its bye-

³ 2015 (1) KHC 27 (FB)

laws amended. According to him, since the bye-laws at the time of the Bank's registration in 2002 explicitly mentioned the area as that of the Kozhikode Corporation, all the future expansions of the Corporation, if any, would inure to the benefit of the first respondent Bank. The first respondent Bank, nevertheless, amended the bye-laws and obtained the necessary approval through Exhibit R1(a) proceedings, contends the learned counsel.

16. The learned counsel has also submitted that neither Exhibit P5 nor Exhibit P10 issued by the second respondent can be objected to on any valid ground. In further elaboration of his submissions, the learned counsel has submitted that the respondent Bank should not be compelled to take recourse to Section 7(1)(c) of the Act, especially given the fact that indisputably the territorial limits of the Corporation are coextensive with those of the respondent Bank. In other words, by operation of law, the

expanded areas of the Corporation are deemed to have been included in the areas of the respondent Bank's operations.

17. Summing up his submissions, the learned counsel has submitted that the first respondent has an exemplary track record and that it has been serving the public interest. Eventually, the learned counsel has also brought to my notice Exhibit P6 proceedings of the second respondent, wherein the second respondent, the Registrar, is said to have recommended to the Government to consider the first respondent's request favourably. According to him, there are clear findings by the second respondent that the area remains unrepresented and that granting permission to the first respondent will be in the public interest.

18. In reply, the learned counsel for the petitioner has submitted that the observations of the authorities contradict the findings in Exhibit P6. In elaboration, the

learned counsel has submitted that though the second respondent in Exhibit P6 has gone on record saying that Pooladikunnu area was not sufficiently represented, in Exhibit P11 the finding is to the effect that already a branch of the petitioner Bank has been functioning in the area.

19. Heard the learned counsel for the petitioner and the learned counsel for the respondent Bank, apart from perusing the record.

20. The bone of contention in the present writ petition is whether the first respondent can take advantage of the territorial expansion of Kozhikode City Corporation. In other words, whether the area of operation allotted to the first respondent Bank is co-extensive with that of the Kozhikode City Corporation, at all times?

21. Indeed, the first respondent Bank got established in 2002, and in its bye-laws the area of its operation was shown as the entire area of the Corporation of Calicut. Now,

the contention of the learned counsel for the respondent Bank is that since the territorial limits of the Corporation was expanded in 2009 with the annexure of four more Grama Panchayats, without the first respondent having done anything further, those areas also are deemed to have been included in its areas of operation. I am afraid, this contention is fallacious.

22. First, the territorial expansion of the Corporation is under a different enactment, and it is a matter of civic administration—the purpose behind it is entirely different. Second, when the first respondent allotted the territorial limits of the Corporation as its areas of operation, the areas beyond the territorial limits of the Corporation had already been assigned to other Banks—a case in point being the petitioner Bank with Elathur amsom as a part of its area of operation.

23. Thus, in my considered view, the area of the said Corporation as was existing at the time of the first respondent's registration stood crystallized; in other words, frozen. Any further expansion needs statutory exemption as has been provided in Section 7(1)(c) of the Act.

24. When the first respondent submitted Exhibit P2 application before the second respondent, the second respondent, in turn, clarified the position—erroneously, though—that in the light of the expanded territorial limits of the City Corporation, it is deemed that the first respondent, in fact, had its area expanded, too. The fact, however, remains that the first respondent has not taken any statutory measures to allot the said new territories of the Corporation to the first respondent Bank.

25. In this regard, it is very pertinent to observe that even by the date of the first respondent's establishment, the areas now included in the territories of the Corporation

stood allotted to some other Banks. Any deemed expansion, without statutory recourse, is certainly impermissible. Incorporation by reference may be a legislative device but not that of administration. The power to exempt a Co-operative Bank from the purview of Section 7(1)(c) of the Act is one thing and its exercise is another. In the present instance, the second respondent has not, in fact, exercised the said power.

26. In Meenakshy (supra) a learned Division Bench of this Court has held as follows:

“6. Once an Act is extended to an area, it operates applying to that geographical limit. The application of the law so extended to a particular geographical limit does not lose its efficacy, co-terminus with any modification of the notification regarding that particular territory under the Panchayats Act, Panchayat Raj Act or any other municipal law which may provide for a delimitation exercise for the purposes of that Act. Therefore, 1965 Rent Act having been applied to Nemara Panchayat, including Nenmara, Ayiloor and Nelliampathy Villages, any further delimitation exercise under the Panchayat laws does not modify the effect of the application of the 1965 Rent Act to that area unless such modification is carried out under the provisions of the 1965 Rent Act as well.”

27. I am in respectful agreement with the ratio laid down by the learned Division Bench of this Court; however, I further hasten to add that once it is to be declared that the first respondent cannot take advantage of the expanded territorial limits of the City Corporation, it does not mean to say that it is remediless to have its area expanded.

28. In tune with its amended bye-laws, as could be seen from Exhibit P5, the first respondent Bank is at liberty to make the necessary application under Section 7(1)(c) of the Act before the Government, which, in turn, after following the due procedure, can pass appropriate orders exercising its powers under Section 101 of the Act. Needless to observe that at the time of the Government's considering the first respondent's application, the affected parties like the petitioner can as well file their objections in that regard.

29. At this juncture, the learned counsel for the first respondent Bank has submitted that the Bank seems to have already submitted an application under Section 7(1)(c) of the Act before the Government. In the alternative, he has also submitted that if it has not so far submitted the application, it will submit an application at the earliest point in time.

30. The learned counsel for the first respondent has further submitted that in the light of the decision being rendered by this Court presently that there is no automatic expansion of the area of operation for the first respondent Bank, its operations in the newly established branch at Pooladikunnu should not be affected before the Government could consider its application.

31. Indeed, I do find substance in the submissions of the learned counsel for the first respondent. Having clarified that the first respondent cannot take advantage of

the expanded territorial limits of City Corporation, this Court further observes that until the Government decides on the application of the first respondent under Section 7(1) (c) of the Act, the respondent Bank may carry on with its banking operations in the branch established in Pooladikunnu.

32. Given the persistent plea on the part of the learned counsel for the petitioner, it is desirable to fix a time frame as regards the exemption sought by the first respondent concerning its areas of operation. Accordingly, this Court further directs that the first respondent Bank shall make an application under Section 7(1)(c) of the Act, if it has not already made, within fifteen days from the date of receipt of a copy of this judgment. Thereafter, the Government, after putting the petitioner Bank on notice, shall decide on the said application as expeditiously as possible, at any rate, within four months.

33. It is, thus, made clear that the continuation of the first respondent's branch in Pooladikunnu shall be subject to the outcome of the decision to be rendered by the Government on the first respondent's application under Section 7(1)(c) of the Act.

With the above observations, the writ petition is disposed of. No order as to costs.

Dama Seshadri Naidu, Judge.

tkv

'C.R.'