

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

WP(C).No. 33043 of 2011 (E)

PETITIONERS:

1. V.J.JOSE, S/O.JOHN VARGHESE, FLAT NO.B-2,
PALACKALODIL BUILDINGS, ERAVIPEROOR
(MANAGER (RETD), THIRUVALLA EAST
CO-OPERATIVE BANK LTD NO.3260, HEAD OFFICE).
2. V.K.SREEDHARAN PILLAI, S/O.KRISHNA PILLAI,
MAREKKATTU THEVALLIL HOUSE, EAST OTHARA P.O,
THIRUVALLA (GENERAL MANAGER IN CHARGE(RETD),
THIRUVALLA EAST CO-OPERATIVE BANK LTD NO.3260).
3. P.S.SIVANDAN CHETTIYAR, S/O.CHELLAPPA CHETTIYAR,
PAINKAVIL, KOTTANADU P.O., THIRUVALLA (MANAGER
(RETD), THIRUVALLA EAST CO-OPERATIVE BANK LTD.
NO.3260, PERUMPETTY BRANCH).
4. GEEETHABAI D, W/O.V.G. NAIR, VAMADEVA SADANAM,
KEEZHVAIPUR P.O, MALLAPPALLY (MANAGER (RETD),
THIRUVALLA EAST CO-OPERATIVE BANK LTD 3260,
EZHUMATTOOR BRANCH).
5. SUSAMMA MATHEW, W/O.M.BABY MATHEW, KALCHIRA
MELEKUTTU HOUSE, MALLAPPALLY WEST, THIRUVALLA
(ACCOUNTANT (RETD), THIRUVALLA EAST CO-OPERATIVE
BANK LTD. NO.3260, EZHUMATTOOR BRANCH).
6. SREEDEVI.P, W/O.SASIDHARAN NAIR, VETTIKAVUNKAL
HOUSE, KARUKACHAL P.O, KOTTAYAM (MANAGER, T
HIRUVALLA EAST CO-OPERATIVE BANK LTD. NO.3260,
KEEZHVAIPUR BRANCH).
7. HEMALATHADEVI K.G, W/O.K.S.HARIDAS, DEVI KRIPA,
NEDUMKUNNAM P.O., KOTTAYAM (MANAGER (RETD),
THIRUVALLA EAST CO-OPERATIVE BANK LTD. NO.3260,
PUNNAVELI BRANCH).
8. LISSY ABRAHAM, W/O.VARKEY GEORGE, CHIRAMUKHATH
HOUSE, NELLIMALA P.O., ERAVIPEROOR, (MANAGER(RETD),
THIRUVALLA EAST CO-OPERATIVE BANK, LTD. NO.3260,
HEAD OFFICE).

BY ADVS.SRI.S.SUBHASH CHAND
SMT.V.AJITHA

RESPONDENTS:

1. STATE OF KERALA REP. BY SECRETARY TO GOVERNMENT, CO-OPERATION DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM 695 001.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES, OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES, THIRUVANANTHAPURAM 695 001.
3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, PATHANAMTHITTA 689 001.
4. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES, RANNI.
5. THE THIRUVALLA EAST CO-OPERATIVE BANK LTD NO.3260, H.O.ERAVIPEROOR 689 542 REP. BY ITS GENERAL MANAGER.
6. THE BOARD OF DIRECTORS, THE THIRUVALLA EAST CO-OPERATIVE BANK LTD. NO.3260, H.O ERAVIPEROOR 689 542 REP. BY ITS PRESIDENT.

ADDL. R7 IMPEADED

THE ALL KERALA CO-OPERATIVE URBAN BANK EMPLOYEES ASSOCIATION NO.86/71, THE THIRUVALLA EAST CO-OPERATIVE BANK LTD., ERAVIPEROOR UNIT, THIRUVALLA REP. BY ITS UNIT SECRETARY, K.R.MOHANAN, S/O M.R.RAMACHANDRAN, NOW RESIDING AT KULAMAN POIKAYIL, ERAVIPEROOR, PURAMATTOM P.O., THIRUVALLA.

Impleaded as per order dated 19.09.2012 in IA 12577/2012

R5 & R6 BY ADV. SRI.GEORGE POONTHOTTAM
R1-R4 BY SPL.GOV'T. PLEADER SRI.D.SOMASUNDARAM
ADDL.R7 BY ADV. SRI.SHINDO VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-11-2015 ALONG WITH WPC. 21370/2012 AND 10238/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 33043/2011

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE GOVERNMENT ORDER BY WHICH 2003 PAY REVISION WAS INTRODUCED BY RESPONDENT NO.1 DATED 22/8/2005 AND ITS TRANSLATION

EXT.P2 TRUE COPY OF THE 54TH ANNUAL REPORT AND ACCOUNTS OF RESPONDENT NO.5 BANK AND ITS TRANSLATION

EXT.P3 TRUE COPY OF THE GOVERNMENT ORDER BEARING GO (P) NO. 149/10/CO-OP DATED 18/8/2010

EXT.P4 TRUE COPY OF THE CIRCULAR DATED 24/5/2011 ISSUED BY THE CHIEF GENERAL MANAGER, RESERVE BANK OF INDIA

EXT.P5 TRUE COPY OF THE PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31/3/2011 PREPARED BY THE AUDITORS

EXT.P6 TRUE COPY OF THE REPORT DATED 4/10/2011 SUBMITTED BY RESPONDENT NO.4 BEFORE RESPONDENT NO.3 ALONG WITH TRANSLATION

EXT.P7 TRUE COPY OF THE ORDER DATED 11/11/2011 ISSUED BY RESPONDENT NO.3 AND ITS TRANSLATION

EXT.P8 TRUE COPY OF THE JUDGMENT DATED 22/11/2013 PASSED BY THIS HON'BLE COURT IN WPC 21774/2013

EXT.P9 TRUE COPY OF THE RELEVANT PAGE OF THE 58TH ANNUAL REPORT AND ACCOUNTS OF RESPONDENT NO.4 BANK FOR THE YEAR 2013-14 AND ITS TRANSLATION

EXT.P9(a) TRUE COPY OF THE RELEVANT PAGE OF THE 58TH ANNUAL REPORT AND ACCOUNTS OF RESPONDENT NO.4 BANK FOR THE YEAR 2013-14 AND TRANSLATION

EXT.P9(b) TRUE COPY OF THE RELEVANT PAGE OF THE 58TH ANNUAL REPORT AND ACCOUNTS OF RESPONDENT NO.4 BANK FOR THE YEAR 2013-14 AND ITS TRANSLATION

EXT.P9(c) TRUE COPY OF THE RELEVANT PAGE OF THE 58TH ANNUAL REPORT AND ACCOUNTS OF RESPONDENT NO.4 BANK FOR THE YEAR 2013-14 AND ITS TRANSLATION

EXT.P9(d) TRUE COPY OF THE RELEVANT PAGE OF THE 58TH ANNUAL REPORT AND ACCOUNTS OF RESPONDENT NO.4 BANK FOR THE YEAR 2013-14 AND ITS TRANSLATION

EXT.P10 TRUE COPY OF THE COMMUNICATION DATED 7/10/2014 THUS ISSUED BY THE DEPUTY COMMISSIONER OF INCOME TAX CIRCLE I, THIRUVALLA AND ITS TRANSLATION

EXT.P11 TRUE COPY OF ORDER NO.EM(4)43377/2012.L.Dis. DATED 9/7/2013 AND ITS TRANSLATION

EXT.P12 TRUE COPY OF THE ORDER DATED 1/10/2014 PASSED BY RESPONDENT NO.1 AND ITS TRANSLATION

EXT.P12(a) TRUE COPY OF THE REQUEST DATED 29/7/2013 SUBMITTED BY THE PRESIDENT OF RESPONDENT NO.5 BANK BEFORE THE ADDITIONAL SECRETARY TO GOVERNMENT SEEKING EXEMPTION FROM PAYMENT OF SALARY AND ARREARS

EXT.P13 TRUE COPY OF LETTER DATED 5/12/2014 ISSUED BY THE FIRST RESPONDENT UNDER RIGHT TO INFORMATION ACT ALONG WITH ITS ENCLOSURES

EXT.P14 TRUE COPY OF THE RELEVANT PAGES OF THE DIAMOND JUBILEE SOVENIR 2014-15 PUBLISHED BY THE FIFTH RESPONDENT

EXT.P15 TRUE COPY OF PAGE NOS.98 AND 99 OF THE GUIDELINES ISSUED BY THE RESERVE BANK OF INDIA

EXT.P16 TRUE COPY OF THE RELEVANT PAGES OF THE 59TH ANNUAL REPORT AND ACCOUNTS FOR THE YEAR 2014-2015/BUDGET FOR THE YEAR 2016-2017 PUBLISHED BY THE THIRUVALLA EAST CO-OPERATIVE BANK LTD. NO.3260

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)Nos.33043 of 2011,
21370 of 2012 & 10238 of 2015

Dated this the 13th day of November, 2015

JUDGMENT

W.P.(C)No.33043/2011 is filed by eight petitioners, all of whom have retired from the service of the fifth respondent Bank on different dates beginning from 2008 till 2010. Their singular grievance is that Exhibit P3 pay revision with effect from 01.04.2008 has not been implemented, and the arrears have not been paid to them.

2. In W.P.(C)No.21370/2012, another batch of eight retired employees has come before this Court with a similar grievance. In so far as W.P.(C)No.10238/2015 is concerned, the first petitioner is the Employees' Union, which in fact represents the interest of all the present employees. The second petitioner is one of the employees who is also a constituent of the first petitioner. They too, like the

petitioners in the other two writ petitions, have got a similar grievance. In fact, they have laid challenge against Exhibit P12 order (as shown in W.P.(C)No.33043/2011) issued by the Government purportedly exercising its powers under Section 101 of the Kerala Co-operative Societies Act ('the Act' for brevity) deferring the implementation of Exhibit P3 pay revision until 31.01.2013.

3. Since all the petitioners are similarly situated and have a common grievance against the same set of respondents, this Court has proposed to dispose of the writ petitions through a common judgment. For the sake of narrative convenience, the facts as pleaded and the exhibits as filed in W.P.(C)No.33043/2011 are taken as the bases.

4. As has been stated at the outset, the facts are not in dispute and in fact they fall in a narrow compass. Viewed comprehensively, the cause is the implementation of Exhibit P3 pay revision; the hurdle is Exhibit P12 order of the Government. As a result, the issue to be determined is

whether the Government is justified in exercising its power under Section 101 of the Act to interdict the benefits flowing from or defer the implementation of Exhibit P3 pay revision.

5. Mr.Subhash Chand, the learned counsel for the petitioners in W.P.(C)No.33043/2011, has submitted that Exhibit P3 pay revision was issued on 18.08.2010 to be applied retrospectively with effect from 01.04.2008 for five years, i.e. till 31.03.2013. According to him, the Government issued Exhibit P3 by exercising its powers under Section 80 of the Act, especially sub-section (6) thereof.

6. Drawing my attention to Exhibit P2 annual report, the learned counsel would contend that the general body had earmarked Rupees thirty lakh for the implementation of the pay revision. He has also laid emphasis on Exhibit P4 communication from the Reserve Bank of India stipulating that the Co-operative Banks cannot defer the payment of benefits due to the employees.

7. Referring to Exhibits P5 to P7 statements of profit and loss account ('P&L A/c' for brevity) of the fifth respondent Bank, the learned counsel has contended that the respondent Bank has been earning profits at least beginning from 2009-2010 and that it has set apart certain amounts to meet its statutory obligation of implementing the pay revision. As such, the respondent Bank without further delay ought to have implemented Exhibit P3 pay revision, contends the learned counsel.

8. According to the learned counsel, having tarried on the issue for about five years, the respondent Bank, in August 2013—much belatedly, i.e., beyond five years—approached initially the Registrar seeking exemption from implementing Exhibit P3 pay revision. Later, when the said authority through Exhibit P11 declined to interfere, the President of the Bank submitted a representation on 20.08.2013 to the Government and invited Exhibit P12 order, which is impugned in the writ petition.

9. One of the principal contentions on the part of the learned counsel for the petitioners is that though the beneficiaries under Exhibit P3 are identifiable, the Government after five years chose to entertain the respondent Bank's request. And more particularly, the Government deferred the implementation of Exhibit P3 based on the resolution of only the Board Directors, rather than that of the General Body—without notice to the affected persons, too.

10. In furtherance of his submissions, the learned counsel would contend that the respondent Bank had preferred to pay exorbitant amounts towards income tax rather than pay its employees the revised pay, which is mandatory, apart from being a statutory obligation. The learned counsel has also contended that once the Government has taken into account all relevant factors and issued Exhibit P3 pay revision, it is estopped from interdicting its own orders by exercising its powers under

Section 101 of the Act.

11. On the issue of the Bank's performance, the learned counsel has laid emphasis on the fact that based on its performance, RBI permitted it to open three more branches. Further, merely on the premise that the Bank might sustain losses if the pay revision was implemented, the Government exempted the Bank from implementing the pay revision. According to the learned counsel, it is impermissible.

12. To hammer home his point that the Government ought not to have exercised its power under Section 101 of the Act, the learned counsel has placed reliance on **Kolam Taluk LC&T Co-operative Society v. State of Kerala**.¹ He has further submitted that if at all the Bank has to sustain a loss, it only results in the re-classification of the Bank's status; the deprivation of pay-revision benefits to the employees is no answer to ward off the anticipated losses.

¹ 1989 (1) KLT 350

13. In W.P.(C)No.10238/2015, Mr.Ranjith Thampan, the learned Senior Counsel for the petitioners, apart from reiterating the submissions advanced by the learned counsel for the petitioners in W.P.(C)No.33043/2011, has strenuously contended that Section 80(6) of the Act suffered an amendment in 2013, providing certain leverage to both the Government and the employer Bank to have certain discretion concerning the pay revision or its implementation. On the converse, according to the learned Senior Counsel, the unamended Section 80 (6) does not give any scope for discretion for either the Government or the employer in implementing the pay revision. It is mandatory for the employer to implement the Government directive, for the Government exercises its powers under Section 80 of the Act essentially after taking into account all factors that go into pay revision.

14. In elaboration of his submissions, the learned Senior Counsel has submitted that the Government passed

a uniform Exhibit P3 pay revision order involving all Urban Banks, whereas only the fifth respondent Bank has chosen not to implement it. In the words of the learned Senior Counsel, it grossly offends the principle of equality under Article 14 of the Constitution. Differently put, the action of the respondent Bank smacks of arbitrariness and illegality.

15. The learned Senior Counsel has also made elaborate submissions on the issue that, beginning from 2010, the Bank has been financially very comfortable and in every P&L A/c it has made sufficient provision intending to implement Exhibit P3 pay revision. In that context, the learned Senior Counsel has submitted that the Government ought not to have interfered with the implementation of Exhibit P3 with its belated exercise of the power under Section 101 of the Act—even if available.

16. In the alternative, the learned Senior Counsel has contended that the Government has no occasion to exercise its powers under Section 101 of the Act. In

elaboration, he has submitted that the amendment to subsection (6) of Section 80 is only prospective in nature. It is the specific contention of the learned Senior Counsel that Exhibit P12 suffers from the vice of non-application of mind on the Government's part. According to him, the order also suffers from the vice of violating the principles of natural justice and denying the employees' legitimate expectations.

17. Mr.Monaye, the learned counsel for the petitioners in W.P.(C)No.21370/2012, has submitted that time and again the Reserve Bank of India has issued guidelines mandating that the respondent Bank shall not withhold any benefits due to the employees, especially the pay benefits. According to him, Exhibit P3 was issued by the Government after a lot of deliberation involving all stakeholders. He has further contended that though the period of pay revision came to an end on 31.03.2013, the respondent Bank submitted its representation to the Government on 20.08.2013, i.e. beyond five years. By then, the writ

petitions filed by the aggrieved employees had been pending before this Court. In sum and substance, the learned counsel has contended that Exhibit P12 order cannot be sustained and that Exhibit P3 pay revision ought to be implemented.

18. Per contra, Mr.P.Ravindran, the learned Senior Counsel appearing for the respondent Bank in W.P.(C)No. 10238/2015, has submitted that the petitioners have not established any valid grounds seeking the indulgence of this Court, especially for a judicial review of the Government order. In elaboration, he would contend that the order impugned did not suffer from any legal limitations such as arbitrariness, non-application of mind, or lack of power on the Government's part.

19. The learned Senior Counsel has taken me through the statements of profit and loss account of the respondent Bank to contend that indisputably the Bank did not earn any profits and, in fact, suffered losses till 2010.

According to him, even thereafter it had minimum profits. Had there been any implementation of Exhibit P3 pay revision, the Bank would have plunged into deep debts or losses, which eventuality is not in the interest of the organisation.

20. With a specific reference to Section 56 of the Act, the learned Senior Counsel would contend that the Section prescribes the manner in which the net profits have to be disbursed. According to him, the Government has got every power to defer the implementation of the pay revision.

21. Concerning the impact of the amendment to subsection (6) of Section 80, the learned Senior Counsel contends that the proviso, added in 2013, is only clarificatory in nature. According to him, the Government has the plenary power to fix the revised pay and also mandate when it has to be implemented. In other words, it is permissible to defer the implementation of pay revision, and such exercise of power on the Government's part is

unexceptionable.

22. The learned Senior Counsel has also submitted that the Registrar, in the first instance, never rejected the respondent Bank's claim to have Exhibit P3 deferred. The said authority has only made it clear that he is not the competent authority, but the Government is. He has also contended that when the Government, acting on the representation of the respondent Bank, sought remarks from the Registrar, he in fact responded positively: He recommended that the implementation of the pay revision should be deferred to safeguard the respondent Bank from the financial hardship.

23. According to the learned Senior Counsel, the petitioners cannot make a heavy weather of the fact that five years had elapsed before the Government could take a decision to defer the pay revision. The Statute, for that matter, does not prescribe a period for pay revision, contends the learned Senior Counsel. It is only the policy of

the Government subject to various constraints. Ipso facto, it lies within the powers of the Government, avers the learned Senior Counsel, either to exempt any entity from the burden of pay revision or to defer the very implementation.

24. The learned Senior Counsel has drawn my attention to Clause 20 of Exhibit P3 to contend that implementation of pay revision shall be subject to the managing committee's acceptance. According to him, since the managing committee of the Bank has not accepted the pay revision, the question of its implementation does not arise. In elaboration, he has submitted that the respondent Bank has approached the Government and invited Exhibit P12 order only as a matter of abundant caution.

25. Mr. George Poonthottam, the learned counsel for the respondent Bank in W.P.(C)Nos.33043/2011 and 21370/2012, supplementing the submissions of the learned Senior Counsel for the respondent Bank in W.P.(C)No. 10238/2015, has submitted that the Bank has 53997

members on its rolls. It is obligatory for the Government as well as the management of the Bank to take care of the members' interest as well, apart from that of the employees.

26. While making a representation to the Government and inviting Exhibit P12 order, according to the learned counsel, the managing committee has taken into account all the factors, especially the welfare and financial wellbeing of the Bank in the eventuality of its implementing Exhibit P3 pay revision. The learned counsel has also contended that the Bank, having essentially come into existence to serve a social purpose, cannot be obsessed with the enhancement of its employees' pay as its primary concern. The Bank has to, after all, take various steps to ensure its financial health and also the welfare of the members, asserts the learned counsel.

27. In elaboration of his submissions, the learned counsel has specifically contended that this Court does not in the present instance exercise any appellate power to

examine Exhibit P12 on merits. He contends that the Government, in the first place, has got the necessary competence to pass Exhibit P12 order; second, it has taken into account all the aspects and passed a reasoned order, which need not be interfered with, especially while this Court exercises its power of judicial review—a power that can be exercised only on well-established, limited grounds. In sum and substance, the learned counsel specifically contends that Exhibit P12 is neither illegal nor irrational, much less arbitrary.

28. In reply, the learned Senior Counsel for the petitioners in W.P.(C)No.10238/2015 has strenuously contended that as regards the implementation of Exhibit P3, the unamended Section 80(6) alone applies. According to him, the Bank maintained sufficient funds to implement the pay revision as is evident from the P&L A/cs beginning from 2010 till 2013. It has, however, strangely chosen to pay a huge amount towards income tax instead of implementing

Exhibit P3 pay revision. The learned Senior Counsel contends thus especially drawing my attention to Exhibit P9 P&L A/c for the year 2013-2014 in W.P.(C)No. 10238/2015.

29. In further elaboration, the learned Senior Counsel, by referring to Exhibit P9, would contend that the Bank set apart Rupees 2.30 crores for paying the arrears of pay revision both to the present employees and the retired employees. In that context, he has submitted that this Court issued an interim direction on 30.03.2015 restraining the respondent Bank from withdrawing or disbursing the said amount until further orders.

30. The learned Senior Counsel has also contended that under Section 101 of the Act, the Government can exempt any society from the provisions of the Act, prospectively. It cannot, however, be invoked, according to the learned Senior Counsel, to interdict any order that has already been passed under a specific provision of the Act.

31. Mr.Subhash Chand, the learned counsel for the petitioners in W.P.(C)No.33043/2011, has submitted that payment of salary is an essential element of the administration of any organisation. According to him, it is preposterous to contend that salary could be paid only when a particular employer is earning profits. Having extracted work, contends the learned counsel, the respondent Bank cannot deny its statutory obligation to pay salary, especially given the inflationary trends.

Issues:

- I.** Whether the Government has the power under Section 101 of the Act to interdict or nullify its orders issued under Section 80 of the Act?
- II.** Whether sub-section (6) of Section, which was incorporated with effect from 14.02.2013, is clarificatory in nature so as to hold that it takes effect retrospectively?
- III.** Whether Clause 20 of Exhibit P3 pay revision mandates that implementation shall be subject to the concurrence of the Managing Committee of the Society?

IV. Whether earning profits or the threat of incurring losses is a factor under the extant statutory scheme to be considered for the implementation of the pay revision?

Issue Nos.I & II:

32. Since the interplay between Section 101 and Section 80 of the Act forms the fulcrum of the submissions made by the learned counsel on either side, it is essential for us to examine the said provisions. Section 101, reputed to be a quasi-Henry VIII clause, confers sweeping powers on the Government, albeit, in public interest: it is to exempt any society or class of societies from any of the provisions of the Act or direct that such provision shall be applied to such society or class of societies subject to such modification as may be specified.

33. The pre-requisite for the Government to exercise the power under Section 101 of the Act is that it is necessary in the public interest. Section 80, on the other hand, is a provision that deals with the classification of the

societies. The classification in its fold also takes the aspects such as fixation of pay as well. In fact, sub-section (6) of Section 80 prescribes the manner of fixing the pay and allowances.

34. Pertinently, sub-section (6) of Section 80 suffered an amendment by way of 'substitution' prior to 14.02.2013. To begin with, the unamended provision stood as follows:

“Government shall have power to fix the pay, allowances and other benefits of employees of co-operative societies provided that the Government may direct the Registrar to fix the pay and allowances of employees of Co-operative Societies, who pay and allowances are not fixed by the Government as per this sub-section.”

35. On 14.02.2013, through Act 8 of 2013 sub-section (6) came to be substituted with the following:

“Government shall have power to fix or alter the maximum and minimum limit of establishment of Co-operative Societies including the pay and allowances and other benefits of employees of Co-operative Societies.

Provided that societies run on net loss can give pay and allowances to its employees below the minimum limit fixed by the Government.”

36. It is evident from the unamended provision of sub-section (6) of Section 80 that the Government had the power to fix the pay, the allowances and other benefits of the employees of Co-operative Societies. In the alternative, the Government could as well direct the Registrar to fix the pay and allowances of the employees of Co-operative Societies if the Government does not undertake the task. Conspicuously, the leverage to fix or alter the maximum and minimum limits of pay and allowances was not available to the Government prior to the amendment, i.e., before 14.02.2013.

37. The learned counsel for the petitioners in all the writ petitions have contended that the amended sub-section (6) has no application to the facts of the case. In the alternative, they have also submitted that it is at best prospective in its application. On the converse, the learned counsel appearing for the respondent Bank have contended that the amended sub-section (6) is clarificatory in nature

and as such it is deemed to have been effected retrospectively.

38. Without much cavil, I may observe that the parameters of an amendment which is clarificatory in nature are well established. The very amending act is to provide the background and the necessary explanation as regards what vagueness or misconception or even misinterpretation the amendment seeks to remedy and in what manner it remedies the same. It pays, in this context, to refer to the learned author G.P. Singh, who in his treatise *Principles of Statutory Interpretation*² has opined thus:

“[A]n explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language ‘shall be deemed always to have meant’ is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the

² Pp.560-61, 12th Ed.

principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law.”

(emphasis supplied)

39. In the present instance, regrettably, I do not see anything similar to being explanatory or clarificatory in the amended sub-section (6) of Section 80 of the Act. Nor can I persuade myself to hold that the unamended provision suffered from any ambiguity. In my considered view, sub-section (6) is an amendment by way of a substitution, and it shall take effect from the date of its incorporation, i.e. 14.02.2013.

40. In sum and substance, in so far as Exhibit P3 pay revision is concerned, it is the unamended sub-section (6) of Section 80 that applied. In that context, the proviso appended to the amended sub-section (6) that the societies running on net loss can give pay and allowed to its employees below the minimum limit fixed by the Government, without cavil, does not apply to the facts of the

present case.

41. The learned counsel for the petitioners have urged that once the Government has passed any order under Section 80, including that benefiting the employees, it cannot turn back and interdict its own orders by exercising the power under Section 101 of the Act. I do find sufficient strength in the submissions made by the learned counsel for the petitioners. The more drastic the power to be exercised, the more cautious one is required to be in its exercise. Such omnipotent provisions as Section 101 of the Act are required to be read restrictively so that they would not inflict more harm than is necessary to achieve its objective: the amorphous public interest.

42. In the present instance, as is evident, Section 101 empowers the Government, in the public interest, to exempt any society or any class of societies from the provisions of the Act. It can also direct that such provision shall apply to such society or class of societies with

modifications as may be specified in the order.

43. Having already held that the unamended subsection (6) of the Section of the Act alone applies to Exhibit P3 pay revision, I am of the opinion that the Government, if at all, intended to exempt, for the reasons to be recorded, the respondent Bank from the obligation of pay revision, it could have very well done so before it had issued Exhibit P3. In other words, it could have issued Exhibit P3 making it explicit that it would not apply to the respondent Bank.

44. On the converse, once an order has been issued by the Government exercising its powers under any provision of the Act, the future exercise of its power under Section 101 to nullify the result of its own effort is inequitable and illegal, too. Put differently, the Government, at best, can prospectively exempt any society from the application of any of the provisions of the Act, but not from the consequences of a decision taken by invoking any of the provisions. Having already exercised its power under

Section 80, the Government has, in a sense, become *functus officio*, so to say.

45. The eventuality of rendering oneself *functus officio* applies not to the tribunals—judicial and quasi-judicial—alone. It equally applies in the administrative realm as well. Indeed, Black’s Law Dictionary,³ a seminal semantic source, defines the expression *functus officio* as follows:

“*Functus officio*: [Latin "having performed his or her office"] (19c) (Of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished. The term is sometimes abbreviated to *functus* <the court was *functus*>.”

46. Thus, under the totality of circumstances, I do not hesitate to hold that the Government ought not to have invoked Section 101 of the Act. Its invocation of the said provision, therefore, is required to be and accordingly interdicted; consequently, Exhibit P12 is set aside.

³ 9th Ed. (2011)

Issue No.III:

47. Indeed, Clause 20 of Exhibit P3 is to the effect that the re-fixation of the pay based on the revised scale of pay will be done with the concurrence of the Executive Committee/Board of Directors of the Urban Co-operative Banks. It further mandates that the pay so revised will be audited and certified by the concurrent auditors of the Bank.

48. Specific assertion of the learned counsel for the respondent Bank is that though the Government had issued Exhibit P3 pay revision, there was no occasion for its implementation because the Board of Directors of the respondent Bank did not concur with Exhibit P3. Appealing as the submission may be, I am afraid it fails to pass the judicial muster. The implementation of Exhibit P3 does not require, in my view, any concurrence of the Board of Directors of any Co-operative Bank.

49. On the other hand, once the Government orders the pay revision by exercising its powers under Section 80, the arithmetical nitty gritty of fixing the pay of the Bank employees based on its staff pattern, ranking, service, etc., needs to be taken care of. Simply stated, the Government cannot fix the revised pay across the board involving all the banks. In that context, the Government leaves the final pay fixation of the individual employees of the Bank to its management.

50. The last limb of Clause 20 of Exhibit P3 puts the issue in perspective: The pay so revised will be audited and certified by the concurrent auditors of the Bank. In other words, based on the pay revision each bank is required to fix the pay of its employees. To ensure that the said fixation is not arbitrary or discriminatory, the certification by the auditors has been contemplated.

51. Thus, in sum and substance, what is sought to be concurred with by the Board of Directors is not the very pay

revision but the reckoning or re-fixation of the pay with reference to each class of employees of the Bank.

52. Any other interpretation of Clause 20 of Exhibit P3, in my view, amounts to conferring a veto power on the Board of Directors over the statutory power of the Government. It is impermissible. I am, therefore, not inclined to uphold the contention of the respondent Bank that for the implementation of Exhibit P3 concurrence of the Board of Directors is a pre-condition.

Issue No.IV:

53. Extensive arguments have been advanced on either side concerning the economic status of the bank, the periodic provisions made in the Bank's P&L A/c, and also the resolution passed by the General Bodies for the implementation of Exhibit P3.

54. The learned counsel for the petitioners have contended that either the pre-requisite of a Co-operative Bank making profits or the eventuality of its sustaining

losses shall not be a reckoning factor in implementing the pay revision. Such a contention, according to them, is preposterous.

55. Indeed, unamended Section 80(6) has not given any leverage to either the Government or the Society concerned as regards the fixation of pay or its revision. All that the proviso prospectively adds by way of an amendment is that notwithstanding the pay that has been fixed by the Government, the Managing Committee, given the financial status of the Society, can as well vary the pay disregarding the minimum or maximum fixed by the Government.

56. The learned counsel for the respondent Bank have also submitted that Exhibit P12 was issued in the public interest. According to them, the respondent Bank has to take care of the interest of its numerous members, apart from ensuring the payment of salary to its employees. In other words, they have contended that so long as the

employees have been paid the salaries, mere denial of enhancement does not amount to any deprivation requiring judicial intervention.

57. In the first place, I am constrained to observe that the pay revision does not amount to any enhancement of pay, much less a bounty conferred on the employees. The periodic pay revision—usually once in five years—is undertaken by the Government or the employer concerned, only with a view to offsetting the inflationary impact. In other words, if no pay revision is effected, at least within reasonable periods, what eventually the employee receives is reduced pay without any deduction in actual terms, though.

58. Thus, if Exhibit P3 has to be deferred indefinitely, as is the case in the present instance, it amounts to, in my view, depriving the salary to the employees rather than denying any enhanced benefit. Given the nature of Exhibit P12 order, it is evident that the Government has exempted

the respondent Bank from implementing Exhibit P3 for five years, i.e. till the subsequent pay revision is due. Thus, practically Exhibit P3 pay revision stands abrogated.

59. Under these circumstances, I am constrained to hold that the issue of the respondent Bank earning the profits or facing threat of sustaining loss is not germane. As has been rightly contended by the learned counsel for the petitioners, if the Bank has to be affected adversely in its P&L status, it may at best attract Section 80 of the Act read with Rule 182 of the Rules entailing the Society to be re-classified. Even in such an eventuality, it is impermissible for the Society to deprive its employees the legitimate benefits.

60. Viewed remedially, if at all the Bank has to suffer financial loss, it has to raise its performance, for which I believe the Management has many administrative measures at its disposal. If it feels that the employees are lax or not up to their mark, the Management can as well take

necessary disciplinary steps. Depriving the employees of the Bank the benefit of the pay revision showing a projected loss as a scarecrow is not the answer. Under those circumstances, the issue is held against the respondent Bank.

In the totality of circumstances, this Court allows the writ petitions declaring Exhibit P12 to be illegal and arbitrary; it consequently directs the respondent Bank to implement Exhibit P3 forthwith as regards its present employees as well as the retired employees—retroactively. No order as to costs.

Dama Seshadri Naidu, Judge

tkv

'C.R.'