IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

Writ Petition No. 7105 of 2007

District : Latur

Latur District Central Co-operative
Bank Limited, Main Road,
Latur, District : Latur,
Through its Managing Director,
Shivaji Thakaram Wagh,
Age : 47 years,
Occupation : Service,
R/o. Latur, District : Latur. .. Petitioner.

versus

1. The Union of India,
   Ministry of Finance,
   New Delhi.

2. The Attorney General of India,
   New Delhi. .. Respondent no.2 deleted.

3. The Secretary,
   Department of Finance,
   Government of India,
   New Delhi. .. Respondents.

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Mr. V.D. Hon, Senior Advocate, for the petitioner.

Mr. S.B. Deshpande, Asst. Solicitor General of India, for respondent nos.1 and 3.

Respondent no.2 deleted as per Court's order dated 13-12-2007.

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CORAM : S.V. GANGAPURWALA &
A.M. BADAR, JJ.

DATE : 11TH FEBRUARY 2016

ORAL JUDGMENT *(Per S.V. Gangapurwala, J.)* **:**

1. The petitioner is a Cooperative Society registered under the provisions of the Maharashtra Cooperative Societies Act 1960. It is a District Central Cooperative Bank. Its members are other Cooperative Societies in Latur District and some are also Agricultural Credit Societies.

2. Mr. Hon, the learned Senior Counsel for the petitioner, submits that till the accounting year 2005-06, income from the Bank activities of all Cooperative Societies was totally exempted under the provisions of Section 80P of the Income Tax Act 1961. However, Finance Act 2006 has withdrawn the said exemption available to the Cooperative Banking Societies from the accounting year 2006-07. The learned Senior Counsel submits that on one hand, the Banks like the petitioner are being excluded from the benefit of Section 80P of the Income Tax Act and on the other hand, some of the Banks are given benefit of Section 80P of the Income Tax Act, such as, Primary Agricultural Credit Society and Primary Cooperative Agricultural and Rural Development Bank. According to the learned Senior Counsel, the same amounts to discrimination. The same is arbitrary and does not stand to any reason.

3. The learned Senior Counsel further submits that some of the aims and objects of the petitioner - Bank are also concerned with the agriculturists. The petitioner - Bank also caters to the agriculturists. The

bye-laws of the petitioner - Bank makes said aspect explicitly clear. The learned Senior Counsel further submits that the primary function of the Cooperative Banks like the petitioner is to mainly cater to the needs of rural areas and small borrowers and is concerned mostly with financing the agriculturists. The petitioner - Bank cannot be put on par with the commercial Banks as making profit is not the object of the petitioner - Bank. Equating the petitioner - Bank with the Commercial Bank is unreasonably arbitrary. In fact, the petitioner - Bank is similarly placed as the Primary Agricultural Credit Societies. The distinguishing features of Commercial Bank and Cooperative Bank have not been considered while incorporating Sub-Section 4 to Section 80P of the Income Tax Act. The Commercial Banks operate through their network of Branches in urban and semi-urban areas. However, Cooperative Banks are distinct entities. The Commercial Banks are required to maintain minimum ratios between their balances with the Reserve Bank, other cash and investments in securities and demand time deposits whereas Cooperative Banks maintain cash reserves and liquid assets in relation to deposits only. Deposits of Commercial Banks can be collected in one area and lent in other areas and they can be shifted from one centre to another while deposits raised by Central Cooperative Banks can be used for financing agricultural activities only. In Cooperative Banks borrowers, being members, have some say in the use of the funds whereas in commercial banks, borrowers have no voice in the management and policies of the Banks.

4. Mr. Deshpande, the learned Asst. Solicitor General for respondent nos.1 and 3, submits that the Cooperative Bank like the petitioner cannot be equated with the Primary Agricultural Credit Society

or a Primary Cooperative Agricultural and Rural Development Bank. If the bye-laws of the petitioner - Society are perused, it is clear that even they cater to the class of businessmen. The bye-laws also state that the area of operation would be even for non-agricultural purposes and even loan can be granted to Companies, Partnership Firms, Corporations, etc. One of the objects of the petitioner - Bank is also to give loan to institutions other than Cooperative Societies so also to give loans for machineries to other institutions. The learned Asst. Solicitor General submits that there is no discrimination for introduction of Sub-Section 4 to Section 80P of the Income Tax Act.

5. We have considered the rival submissions. The petitioner is entitled to assail provision of a statute as ultra vires only if the said provision does not have a rational nexus with the object in view or the same is arbitrary, discriminatory and unreasonable. The discrimination has to be between persons of the same class. The petitioner will have to show that it belongs to the same class as that of Primary Agricultural Credit Society or Primary Agricultural and Rural Development Bank. The said Agricultural Credit Societies would constitute a class in themselves as they basically cater to the agriculturists and in rural areas only. If the bye-laws of the petitioner - Bank are perused, it is clear that they also advance the commercial loans to the industries for the purchase of machineries, etc. Discrimination cannot be alleged if the class to whom some benefit is given forms different class.

6. The memorandum of explanations during budget 2006 amending Section 80P while introducing Sub-Section 4 is placed on record

wherein it is stated that the Cooperative Banks are functioning at par with other Commercial Banks, which do not enjoy any tax benefit and therefore it was proposed to amend Section 80P by inserting Sub-Section 4. We do not find the said statement to be incorrect looking to the bye-laws of the petitioner - Society. Though Agricultural Credit Societies are also members of the petitioner - Bank, that itself would not be sufficient to treat it on par with Primary Agricultural Credit Societies. Primary Agricultural Credit Societies have to exclusively cater to the agriculturists.

7. There is nothing placed on record to show that it is a case of discrimination and that the Cooperative Banks can be said to be at par with Primary Agricultural Credit Society and Primary Cooperative Agricultural and Rural Development Bank.

8. In the light of the above, the challenge fails. The Writ Petition is dismissed. Rule is discharged. No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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