

State of Kerala and others

Vs

Monarch Investments and others

Civil Appeal No. 3293 of 1990 with (Civil) Appeals Nos. 2486-95 A to J of 1991 and 2496-2505 and 2506-25 of 1991

(K. Jagannatha Shetty, V. Ramaswami, Yogeshwar Dayal JJ)

16.07.1991

JUDGEMENT

K. JAGANNATHA SHETTY, J.:-

1. The common question raised in these appeals relates to the validity of S.16A of the Kerala Money-Lenders Act, 1958. The High Court by the judgment and appeal has struck down the section as ultra vires and unconstitutional, violating Arts. 14 and 19(1)(g) of the Constitution.

2. Section 16A refers to the deposit made under S. 4(2A) and both the sections are extracted hereunder.

Section 4(2A) provides :

"4(2A) Every licensee specified in Column (1) of the Table below shall, within such time and in such manner as may be prescribed, deposit in the Government Treasury in respect of each licence held by him, the amount specified in the corresponding entry in Column (2) of the said Table, by way of security for the due observance of the conditions of the licence."

Section 16A reads :

"16A. Forfeiture of security -

(1) The licensing authority may, at any time, by order in writing, forfeit to the Government

the whole or any portion of the security furnished under sub-section (2A) of S.4.

(a) If the licensee carries on the business of money-lending in contravention of any of the

provisions of this Act or the Rules made thereunder or the conditions of the licence;
or

(b) If the licensee is convicted of an offence under S.9 or S.11 or S. 13; or

(c) If the licensee maintains false accounts.

3. Section 4(2A) imposes obligation on the money-lender to deposit amount by way of security as specified in the section. The security is intended for the due observance of the conditions of the licence. This security is liable to be forfeited on any of the grounds set out under S.16A. The grounds are: (i) if the licensee carries on the business of moneylending in contravention of any of the provisions of this Act or the rules made thereunder or the conditions of the licence; (ii) if the licensee is convicted of an offence under S.9 or S.11 or S.13; (iii) if the licensee maintains false accounts.

4. In this context reference may be made to S.11 A. S.11 A authorises Licensing Authority to determine from the money-lender additional security at any time if in the opinion of such authority there is excess of liabilities over the assets of the money-lender at that time. While determining the excess of liabilities over the assets the security furnished by the money-lender under S.4(2A) shall be treated as assets of the money-lender. This additional security is not liable to be forfeited to the Government. It shall be utilised for the payment of liabilities of the money-lender in connection with his business as money-lender at the time of winding up of the business or cancellation of the licence, as the case may be [Section 11 A (5)1.]

5. The question is whether the power to forfeit the security under S.16A is reasonable and whether it is necessary to ensure due observance of the conditions of the licence. The Act provides several measures for compliance with the conditions of the licence. The money-lender is liable to prosecution for contravention of the conditions of the licence (Ss. 9, 11 and 13). If the money-lender is convicted of an offence, the Court convicting him may cancel his licence [Section 11(2)1. Independently of the conviction, the authority may cancel the licence for contravention of the condition of the licence (Section 14). If the money-lender has failed to keep true and complete accounts of the business, or has acted in contravention of any of the provisions of the Act or the Rules etc., then the Inspector or the Licensing Authority may levy penalty of an amount up to Rs. 5000 / (Section 18C). The penalty so levied could be recovered as arrears of land revenue [S. 18F(2)1. The Act also confers power to levy penalty on the money-lender if he has received interest in excess of the rate of interest prescribed under the Act (Section 18D).

6. For the purpose of regulation of the money-lending business, and to ensure compliance with the conditions of the licence, the licence fee is collected; the penalty is imposed, the prosecution is ordered and the licence is cancelled etc. Even security is demanded and additional security is called for. All these measures seem to be regulatory in nature. The demand of security and additional security may also be justified in the social interest and. to ensure financial stability of the moneylender who is accountable to the public in money-lending transactions. But there seems to be little legitimacy of the power conferred by S.16A to forfeit the security deposit made under S. 4(2A). It has no relation with the need for protection of the public interest or for effectuating the objects sought to be achieved by the Act. Nor it is necessary for the due observance of the conditions of the licence. There are adequate provisions in the Act to ensure compliance with the conditions of the licence. The grounds for forfeiting the security deposit are not different from the grounds available for cancellation of the licence. S.16A, in our opinion, is wholly unreasonable and arbitrary.

7. We agree with the view expressed by the High Court and dismiss these appeals. But in the circumstances of the case, we make no order as to costs.

Appeals dismissed

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