

SUPREME COURT OF INDIA

Soma Suresh Kumar

Vs.

Government of Andhra Pradesh

Writ Petition (Civil) No.614 of 2007

(K.S. Radhakrishnan and A.K. Sikri JJ.)

12.09.2013

JUDGMENT

K.S. RADHAKRISHNAN, J.

1. The petitioners, who were erstwhile Directors of Vasavi Cooperative Urban Bank Limited, have approached this Court seeking a declaration that Sections 3, 5, 8 and 9 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (in short “the Andhra Act”) are unconstitutional and violative of fundamental rights guaranteed to them under Articles 14 and 21 of the Constitution of India and also other consequential reliefs.

2. The petitioners were Directors of the above-mentioned bank during the period from 1996 to 2002. Large number of complaints were received from the depositors stating that the Board of Directors of the bank had swindled away the money of the depositors by creating false documents, amounting to crores of rupees. On receipt of the complaints, enquiry was conducted and, ultimately, Joint Registrar of Cooperative Societies and Chief Executive Officer of the bank registered Crime No.8 of 2003 on the file of the CID, Police Station under Section 120(b), 420, 409, 468, 477(A), Indian Penal Code and under Section 5 of the Andhra Act. Criminal case was later investigated by the Deputy Superintendent of Police, STD-II, CID Hyderabad and charge-sheet was filed against several persons, including the petitioners. The Charge-sheet was registered as C.C. No.4 of 2003 before the Special Court-cum-Metropolitan Sessions Judge, Hyderabad. It is at this juncture,

the petitioners have approached this Court seeking the above-mentioned reliefs and also for a writ of certiorari to quash all proceedings or orders passed by the competent authority and by the Special Court constituted under the Andhra Act. Petitioners have also sought for a writ of mandamus directing the respondents not to arrest the petitioners or to attach their properties for the offences alleged to have been committed by them under Sections 3 and 5 of Andhra Act.

3. The State of Andhra Pradesh filed a detailed counter-affidavit explaining the circumstances under which the petitioners were charge- sheeted. It was stated that, while they were in the Board of Directors of bank, they had entered into a criminal conspiracy with the borrowers of the bank and created fake proprietary concerns, firms/companies and swindled away money of the depositors by accepting defective, fake, forged title deeds and committed default in making payment of dues to the depositors. It was pointed out that the petitioners were rightly charge-sheeted for the various offences under the Indian Penal Code as well as Section 5 of the Andhra Act.

4. Union of India, in its counter affidavit, submitted that the petitioners were rightly charge-sheeted by the State Government and, over and above, the provisions under which they were charge-sheeted, even the provisions of Sections 11 to 11-D of Chapter IV of the Securities and Exchange Board of India Act, 1992 (15 of 1992) would also be applicable as amended by the Amendment Act 2002 (59 of 2002). Further, it was also stated that the Andhra Pradesh Cooperative Societies Act, 1964 did not fall within the meaning of the “banking company” as defined by Section 5(b) of the Banking Regulations Act, 1949. Union of India has taken up that stand by placing reliance on the Judgment of this Court in R.C. Cooper Vs. Union of India (1970) 1 SCC 248, wherein this Court held that all activities falling under Section 5(b) of the Banking Regulations Act, 1949 would fall under Entry 45 of the List I of the Seventh Schedule of the Constitution of India.

5. The Union of India had earlier filed a counter affidavit to the interlocutory application No.2 of 2010, filed to implead the Union of India as a party to Writ Petition (C) No.614 of 2007. In that, it was stated that the provisions of Sections 3, 5, 8 and 9 of the Andhra Act were not opposed to the public policy or unconstitutional or violative of the fundamental rights guaranteed to the petitioners. Further, it is also pointed out that the Banking Regulations Act, enacted

by the Central Government, to regulate the operation of banking companies or organizations, enables the RBI to give licence to banking companies to carry out the functions of the bank. It was pointed out that it covered different areas which are not common to the area covered by the Andhra Act. Further, it was pointed out that both the Acts have applicability to different aspects of refund to the depositors. The Banking Regulations Act, it is pointed out, was enacted to regulate the functioning of the banking companies, including the Vasavi Cooperative Urban Bank Limited and that the petitioners have approached this Court challenging the validity of the Act so as to wriggle out of the clutches of law.

6. Vasavi Cooperative Bank was registered as a cooperative society on 29.05.1982. The bank was issued a licence to carry on the business on June 16, 1982 and was accorded the Scheduled Status in the Banking Regulations Act w.e.f. May 22, 1999. The Bank was placed under the directive of Section 35A of the Banking Regulations Act, 1949 with effect from the close of business on March 7, 2003. Bank is having 17 branches all over the State of Andhra Pradesh.

7. We notice that the State of Andhra Pradesh was contemplating a legislation similar to one enacted in the State of Tamil Nadu, for a long time. On many occasions, the State's attention was drawn, to the large scale diversion of money by many financial institutions in the State, by cheating the depositors of their hard-earned savings, misappropriating the same and then later vanishing from the scene. Several cases were booked against the persons responsible for the same, but the presence of a comprehensive legislation to curb such unfair practice was lacking. This was the reason for the State of Andhra Pradesh to enact the Andhra Act. The Statement of Objects & Reasons of the Act read as under:-

“Instances have come to the notice of the State Government, wherein a number of unscrupulous financial establishments in the State are cheating innocent, gullible depositors by offering very attractive rates of interest, collecting huge deposits and then vanishing suddenly. The depositors are being cheated and are put to grave hardship by losing their hard earned savings. To curb these malpractices, the State Government has decided to bring a law to protect the interests of depositors of the financial establishment in the State and for matters connected therewith or incidental thereto. The above issue was also discussed in a conference of the State Chief Ministers and Finance Ministers presided by the Union Finance

Minister on 14.9.1998 at Vigyan Bhavan, New Delhi. The Union Finance Minister also desired that States should take expeditious steps for enacting legislation on the lines of “Tamil Nadu Protection of Depositors (in Financial Establishments) Act, 1997, “to restore the confidence amongst the innocent depositors and also to serve as a deterrent against malpractices by such establishments during the course of acceptance of public deposits.

To achieve the above object, the Government has decided to make separate law by undertaking legislation.”

8. The above mentioned Act was reserved by the Governor on 13th April, 1999 for consideration and assent of the President and on 23rd June, 1999, the same was granted and the Act was published on 1st July, 1999, in the Andhra Pradesh Gazette for general information.

9. The petitioners have raised an objection that the State Legislature does not have the competence to enact the Andhra Act since the subject “banking” is covered under Entry 45 of List I of Seventh Schedule. Hence, only the Central Government is entitled to enact the law relating to subject “accepting of deposit from the public and repayment of the same on demand”. Referring to the judgment of this Court in R.C. Cooper’s case (supra), it was contended that the scope, ambit and definition of the term “banking” under Entry 45 List I of the Seventh Schedule appended to Article 246 would include all activities falling under Section 5(b) of the Banking Regulation Act, 1949. Consequently, only the Parliament alone has the power to frame the law relating to acceptance of deposits or its return or making the same as an offence. Further, it was pointed out that the powers conferred on State Legislature to legislate “corporate societies” as falling under Entry 32 List II of the Seventh Schedule appended to Article 246 of the Constitution can be confined to incorporation, registration, administration, amalgamation, winding-up of the cooperative societies. Further, it was pointed out that the power under that Entry can be stretched to encompass all the activities of banking under Entry 45 of List I of the Seventh Schedule. It was pointed out that under the guise of legislation with respect to Entry 32 of List I, the State Legislature cannot legislate with respect to the matters falling under Entry 45 of List I of the Seventh Schedule. Consequently, it was submitted that the Andhra Act is constitutionally invalid. Reference was also made to the judgment of this Court in Greater Bombay Cooperative Bank & Ors. Vs. United Yarn Tex (P) Ltd. & Ors., (2007) 7 SCC 236.

10. We notice that the question of law raised in this case had come up for consideration before this Court while challenging the constitutional validity of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (for short “the Tamil Nadu Act”), the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 (for short “the Maharashtra Act”) as well as the Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 (for short “the Pondicherry Act”). This Court in *K. K. Baskaran Vs. State*, represented by its Secretary, Tamil Nadu and Others (2011) 3 SCC 793, while examining the constitutional validity of the Tamil Nadu Act, held that the enactment by the State Legislature is not in pith and substance referable to the legislative heads contained in List I of the Seventh Schedule to the Constitution though there may be some overlapping. The Court held that in pith and substance, the Act comes under the Entries in List II of the Seventh Schedule. In the said judgment, this Court placed specific reference to the Full Bench judgment of the Bombay High Court in *Vijay C. Puljal Vs. State of Maharashtra* (2005) 4 CTC 705. After scanning through the various provisions of the Tamil Nadu Act, this Court held as follows:-

“15. We have carefully perused the judgment of the Full Bench of the Bombay High Court in *Vijay V. Puljal v. State of Maharashtra* (2005) 4 CTC 705 (Bom) and we respectfully disagree with the view taken by the Bombay High Court. It may be noted that though there are some differences between the Tamil Nadu Act and the Maharashtra Act, they are minor differences, and hence the view we are taking herein will also apply in relation to the Maharashtra Act.

16. The Bombay High Court has taken the view that the Maharashtra Act transgressed into the field reserved for Parliament. We do not agree. It is true that Section 58-A of the Companies Act has been upheld by this Court in *Delhi Cloth and General Mills Co. Ltd. v. Union of India* (1983) 4 SCC 166 and the provisions of Chapter III-C of the Reserve Bank of India Act, 1934 were upheld by this Court in *T. Velayudhan Achari v. Union of India* (1993) 2 SCC 582. However, we are not in agreement with the Full Bench decision of the Bombay High Court that the subject-matter covered by the said Act falls squarely within the subject-matter of Sections 58-A and 58-AA of the Companies Act.

17. We are of the opinion that the impugned Tamil Nadu Act enacted by the State Legislature is not in pith and substance referable to the legislative heads contained in List I of the Seventh Schedule to the Constitution though there may be some overlapping. In our opinion, in pith and substance the said Act comes under the entries in List II (the State List) of the Seventh Schedule.”

Further, in para 33 of the judgment, this Court expressed the following view:

“33. The State being the custodian of the welfare of the citizens as *parens patriae* cannot be a silent spectator without finding a solution for this malady. The financial swindlers, who are nothing but cheats and charlatans having no social responsibility, but only a lust for easy money by making false promise of attractive returns for the gullible investors, had to be dealt with strongly. The small amounts collected from a substantial number of individual depositors culminated into huge amounts of money. These collections were diverted in the name of third parties and finally one day the fraudulent financiers closed their financial establishments leaving the innocent depositors in the lurch.”

11. Later, the constitutional validity of the Pondicherry Act came for consideration before this Court in *New Horizon Sugar Mills Ltd. Vs. Government of Pondicherry* (2012) 10 SCC 575, wherein this Court has exhaustively considered the various contentions raised on the constitutional validity of the Pondicherry Act in the light of the judgment in *K.K. Baskaran's case* (*supra*). Contention was raised that the State lacked the legislative competence to enact the Pondicherry Act on the ground that the subject would fall under the Union jurisdiction. This Court, while deciding the constitutional validity of the Pondicherry Act, held as follows:-

“49. The entries relating to the State List referred to above, and in particular Entry 30, appear to be a more appropriate source of legislative authority of the State Assembly for enacting laws in furtherance of such entry. The power to enact the Pondicherry Act, the Tamil Nadu Act and the Maharashtra Act is relatable to Entries 1, 30 and 32 of the State List, which involves the business of unincorporated trading and money lending which falls within the ambit of Entries 1, 30 and 32 of the State List.

50. In addition to the above, it has also to be noticed that the objects for which the Tamil Nadu Act, the Maharashtra Act and the Pondicherry Act were enacted, are identical, namely, to protect the interests of small depositors from fraud perpetrated on unsuspecting investors, who entrusted their life savings to unscrupulous and fraudulent persons and who ultimately betrayed their trust.

53. Even if it is to be accepted that the Pondicherry Act is relatable to List I Entries 43, 44 and 45, it can be equally said that the said enactment is also relatable to List II Entries 1, 30 and 32 thereby leaving the field of legislation open, both to the Central Legislature as well as the State Legislature. In such a situation, unless there is anything repugnant in the State Act in relation to the Central Act, the provisions of the State Act will have primacy in determining the law in the present case. Apart from the above, the provisions of the Pondicherry Act are also saved by virtue of Article 254(2) of the Constitution.”

12. We notice in *New Horizon Sugar Mills Ltd.’s case* (supra), this Court held that the objects of the Tamil Nadu Act, Maharashtra Act and the Pondicherry Act are the same and/or of similar nature. In our view, the object and purpose as well as the provisions of the Andhra Act are *pari materia* with that of Tamil Nadu, Maharashtra and Pondicherry Acts, the constitutional validity of those legislation has already been upheld. We also fully concur with the views expressed by this Court in those Judgments and uphold the constitutional validity of the Andhra Act.

13. Learned counsel for the petitioner raised a further contention that Vasavi Cooperative Bank Ltd. does not come within the definition of “financial establishment” under Section 2(c) of the Andhra Act. We find it difficult to accept that contention. What has been excluded from that definition is a Company registered under the Companies Act or a Corporation or a Cooperative Society owned and controlled by any State Government or the Central Government. The Society in question does not fall in that category. Consequently, the Co-operative Bank in question is also governed by the provisions of the Andhra Act.

14. In the circumstances, we find no merit in these Writ Petitions and the same are accordingly dismissed.