



2023:KER:18935

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 17<sup>TH</sup> DAY OF MARCH 2023 / 26TH PHALGUNA, 1944

WA NO. 419 OF 2023

AGAINST THE JUDGMENT DATED 09.12.2022 IN WP(C)NO.24257/2022

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APPELLANTS/RESPONDENTS 1 TO 3 IN THE WP(C):

- 1 THE RESERVE BANK OF INDIA,  
1ST FLOOR, CENTRAL OFFICE BUILDING,  
SHAHID BHAGAT SINGH ROAD, TOWN HALL P.O.,  
MUMBAI - 400 001. REPRESENTED BY ITS PRINCIPAL  
CHIEF GENERAL MANAGER.
- 2 GENERAL MANAGER, RESERVE BANK OF INDIA,  
DEPARTMENT OF SUPERVISION, BAKERY JUNCTION,  
VIKAS BHAVAN. P.O., THIRUVANANTHAPURAM - 695 033.
- 3 ASSISTANT MANAGER, RESERVE BANK OF INDIA,  
DEPARTMENT OF SUPERVISION, BAKERY JUNCTION,  
VIKAS BHAVAN P.O., THIRUVANANTHAPURAM - 695 033.

BY ADVS.

SRI.M.GOPIKRISHNAN NAMBIAR

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN

SRI.KURYAN THOMAS

SRI.PAULOSE C. ABRAHAM

SRI.RAJA KANNAN

RESPONDENTS/PETITIONER & RESPONDENTS 4 TO 7 IN THE WP(C):

- 1 THE THIRUVALLA EAST CO-OPERATIVE BANK LTD  
NO.3260,  
HEAD OFFICE, ERAVIPEROOR.P.O., THIRUVALLA,  
PATHANAMTHITTA, REPRESENTED BY ITS CHAIRMAN,  
PIN - 689512.



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- 2 UNION OF INDIA, REPRESENTED BY THE JOINT SECRETARY, DEPARTMENT OF FINANCIAL SERVICES, MINISTRY OF FINANCE, (ECONOMIC AFFAIRS), 3RD FLOOR, JEEVAN DEEP BUILDING, PARLIAMENT STREET, SANSAD MARG. P.O., NEW DELHI, PIN - 110001.
- 3 STATE OF KERALA, REPRESENTED BY ITS SECRETARY, CO-OPERATIVE BANK LTD., GOVERNMENT SECRETARIAT G.P.O., THIRUVANANTHAPURAM, PIN - 695014.
- 4 REGISTRAR OF CO-OPERATIVE SOCIETIES, JAWAHAR SAHAKARANA BHAVAN, DPI JUNCTION, THAICAUD P.O., THIRUVANANTHAPURAM - 695 014.
- 5 JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, CIVIL STATION, 4TH FLOOR PATHANAMTHITTA.P.O., PATHANAMTHITTA - 689645.

BY ADVS.

SRI.K.I.MAYANKUTTY MATHER

SRI.MANU S. DSG OF INDIA

SMT.T.K.SREEKALA (K/000246/1987)

SRI.VINEETH KOMALACHANDRAN (K/1521/2002)

SMT.KALLIYANI KRISHNA B. (K/000466/2019)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 14/3/2023,  
THE COURT ON 17.03.2023 DELIVERED THE FOLLOWING:



**A.MUHAMED MUSTAQUE & SHOBA ANNAMMA EAPEN, JJ.**

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**Writ Appeal No.419 of 2023**  
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**Dated this the 17<sup>th</sup> day of March, 2023**

**J U D G M E N T**

**A. Muhamed Mustaque, J**

The power of Reserve Bank of India (RBI) to stop further sanction/disbursal of loans and advances without giving an opportunity of hearing to the banking company is a question to be decided in this appeal.

2. The Thiruvalla East Co-operative Bank Ltd., an Urban Co-operative Bank having more than 18 branches in Pathanamthitta District, came before this Court with the Writ Petition challenging the decision of RBI dated 22.7.2022 stopping disbursal of fresh loans and advances till further orders issued by RBI. The learned Single Judge who heard



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the matter set aside the decision of RBI prohibiting sanctioning of fresh loans and advances. Aggrieved by that direction, RBI has come up in this appeal.

3. Heard the learned Senior Counsel, Shri E.K. Nandakumar appearing for RBI and Adv. Mayankutty Mather for the Thiruvalla East Co-operative Bank.

4. As seen from the impugned decision in the proceedings before RBI, the Bank officials conducted inspection before issuing the prohibitory order. The inspection report was also served along with the prohibitory order. It is stated in the decision that the operational restriction will continue till a review of the same is carried out by RBI.

5. There is no dispute to the fact that Thiruvalla East Co-operative Bank is amenable to the supervisory and regulatory control of RBI in



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the light of Section 56 of the Banking Regulation Act, 1949.

6. Two questions arise in this matter for consideration. The first, in regard to the power of RBI to issue prohibitory order without any show cause notice. The second question arises if the first question is answered in favour of RBI, in relation to proportionality or reasonableness of the action in light of the power conferred on RBI based on the facts of the case.

7. Section 35 of the Banking Regulation Act states that inspection may be made by the officers of RBI as directed by the Central Government or on its own. Section 35(4) generally refers to an action, based on the inspection report. The power is given to the Central Government after giving an opportunity to the banking company to make representations to act on such report as seen from Section 35(4). The power given to the Central Government is only to prohibit the banking company



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from receiving fresh deposits or to direct RBI to apply for winding up of the banking company.

8. Section 35A gives power to RBI, to give directions to the banking company to prevent the affairs of the banking company from being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company based on public interest or interest of banking policy. Section 35A confers general power to streamline banking business when it is found that bank has acted against public interest or banking policy. Section 35A postulates a notice to the bank to act in a particular manner as directed by RBI. It may be possible for RBI to give such directions based on any inspection conducted as referable under Section 35 of the Banking Regulation Act to the banking company. It is to be noted that the power given to RBI under Section 35A is more in the nature of regulation to secure the larger



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interests of the bank through such measures or directives as directed by RBI. Nowhere in Section 35A, RBI has been empowered to completely prohibit banking activities by a banking company.

9. Section 36 empowers RBI to prohibit banking companies generally or particularly from entering into any particular transaction or class of transactions and give advice to banking companies. This power referred under Section 36 allows RBI to prohibit the banking companies from entering into particular transactions. It is not seen anywhere in Section 36 that RBI is allowed to place a complete embargo on receiving deposits or disbursing fresh loans of all types. The combined reading of Section 35, 35A and 36 gives an idea of the power of RBI to control a banking company when lapses are detected. The following are the powers:

- i. Conduct inspection based on the direction of the Central Government or on its own.



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ii. Power to issue directions to regulate the affairs of the banking company based on public interest and also based on the interest of banking policy. This power is to secure proper management of the banking company.

iii. The power to prohibit banking companies generally or any banking company in particular against entering into a particular transaction or a class of transaction.

10. The reading of the powers as above, clearly indicates that RBI, by invoking Section 35 to 36 cannot completely prohibit the transactions of the bank. The power conferred on RBI in 35 to 36 is only in circumstances referable under Section 35 and 35A. That means, based on inspection report, or based on public interest, or in the interest of banking policy. If RBI wants to prohibit a particular transaction of a banking company, it must have foundational facts to initiate action. The inspection report would





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reveal that certain loan advance schemes are susceptible to foul play and certain deficiency. It reveals the deficiencies in banking practice. To exercise the power referred under Section 36(1), to prohibit banking transaction, there must be a clear finding based on the acceptance of the inspection report or based on factors referred under Section 35A relatable to public interest and banking policy. The factual appreciation is required before passing orders of prohibition. That means, an opportunity should be given to the banking company to contradict or object to the factual aspects referred against them.

11. We cannot overlook that in extreme circumstances, RBI may have to act in public interest or based on inspection report to prohibit a banking company from entering into a particular transaction without notice to the banking company. That would arise when RBI is satisfied with prima facie urgency to prohibit banking transaction. We



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are of the firm view that in normal circumstances, RBI cannot pass a prohibitory order under Section 36(1) without giving banking company an opportunity of being heard. The deviation is exceptional and that too, to protect public interest. If RBI intends to pass such an order, it must demonstrate with reasons in the order itself how the larger public interest would adversely be affected if prohibition order is not imposed.

12. Coming back to the facts of the case, no demonstrable reasons are assigned by RBI before resorting to complete prohibition of disbursal of fresh loans and advances. If the particular loan scheme is against banking policies, RBI could have ordered the bank to stop advancing loan under that scheme till deficiencies are cured. We already noted that no reasons are assigned in the impugned decision except the appending inspection report. In such circumstances, we are of the view that the impugned decision prohibiting disbursal of fresh



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loans and advances was without application of mind. The learned Single Judge was right in setting aside the impugned part of the decision. We make it clear that nothing prevents RBI from proceeding against the bank based on inspection report after affording an opportunity of hearing, in accordance with law. The appeal stands dismissed as above. No costs.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE**

Sd/-

**SHOBA ANNAMMA EAPEN, JUDGE**

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