

**High Court Dismisses Writ By Kerala Private Bankers' Assn Against RBI's Insistence Requiring Small Financiers To Not Describe Themselves As 'Bank'**

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**V.G. ARUN; J.**

**WP(C) NO. 16356 OF 2022; 14 November 2022**

**ALL KERALA PRIVATE BANKER'S ASSOCIATION versus COMMISSIONER OF STATE TAX**

*Petitioners by Adv K.P. Sreekumar*

*Respondents by Adv Advocate General Office Kerala, GP Rashmita Ramachandran*

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

The petitioner is an Association of small financiers and unincorporated bodies registered under the Kerala Money Lenders Act ('the Act' for short). The members of the petitioner are issued with licence under the Act which is to be renewed from time to time. Although renewal applications were submitted by many of the members, the authorities refused to renew their license in view of Ext.P1 communication of the Additional Commissioner, State Goods and Services, Tax Department. Ext.P1 refers to the Reserve Bank of India's intimation that it had noticed that some entities registered under the Kerala Money Lenders Act are using the words 'bankers' as part of their name and are engaging in acceptance of public deposits, which is a prohibited activity insofar as money lenders registered under the Act are concerned. Further, the use of the words 'bank, banker, 'banking' and 'banking company' and is prohibited by Section 7 of the Banking Regulation Act, 1949. Based on the RBI instruction, the authorities under the Money Lenders Act are directed that not grant fresh registration or renew existing registration without the applicants dropping the word 'banker/s' from the name. Ext.P1 also requires the authorities to report about the prevailing practice, if any, of using the words 'bank', 'banker', 'banking' and 'banking company' by any company/firm/individual/group of individuals, other than the entities falling under the definition of 'banking company' under the Banking Regulation Act, 1949. The petitioner has taken up the issue with the first respondent as per Ext.P2 representation. As the representation did not yield the decided result, this writ petition is filed seeking the following reliefs;

*"a) Declare that the members of the petitioner's Association are entitled for renewal of their existing licenses without complying the requirements pointed out in Ext.P1 and without insisting on the deletion of the word 'bank' or 'bankers' from the business name so far as the firm, individual and group of individuals are concerned;*

*b) issue such further writs, orders or directions which this Hon'ble Court may deem it fit to grant in view of the facts and circumstances of the above case."*

2. Adv. K.P.Sreekumar, learned Counsel appearing for the petitioner submitted that the refusal to renew the licence of members of the petitioner's association is *ex facie* illegal. It is contended that, Section 4(3) of the Act, which enumerates the reasons for refusing grant/renewal of registration, does not mention any of the reasons stated in Ext.P1. It is pointed out that the issue is covered by Ext.P3 judgment. Therein, a similar challenge raised by the North-Kerala Private Bankers' Association and two of its members was upheld and the licencing authority directed to dispose of the applications for licence/renewal in accordance with the provisions of law governing the same, without insisting upon deletion of the word 'banker or bankers' from the business name. It is contended that in the light of the declaration of law in Ext.P3 judgment, the first respondent

cannot require the members of the Association to carry out the deletion mentioned in Ext.P1 as a condition for renewal of licence.

3. Adv.Resmitha R.Chandran, learned Government Pleader raised preliminary objection as to maintainability of the writ petition on two grounds;

(i) The writ petition filed by an Association espousing the individual grievance of its members cannot be entertained and even if entertained, the same can only be on the petitioner remitting court fee for each individual member. In elaboration of this objection, it is submitted that Rule 147A of the High Court Rules read along with Schedule II Article 11 (1)(iii) of the Kerala Court Fees and Suit Valuation Act, 1959, require court fee to be paid Rs.100 for each individual member. It is also mandatory for the petitioner Association to produce the list of members and the authorisation given by the members for filing the writ petition. In support of this contention, reliance is placed on the Single Bench decisions in **Mathew v. Edathua Panchayat [1988 (2) KLT 329]**, **Kerala Electric Trades Association, Kochi and others v. State of Kerala and another [2010 (1) KHC 248]** and the Division Bench decision in **Maradu Market Traders' Association v. State of Kerala and others [2018 (3) KHC 530 (DB)]**.

(ii) The writ petition is not maintainable in view of the efficacious alternative remedy of appeal available under Section 60B of the Act. To buttress this contention, reliance is placed on **Titaghur Paper Mills Co.Ltd and another v. State of Orissa and others [(1983) 2 SCC 433]** and **Commissioner of Income Tax and others v. Chhabil Dass Agarwal [(2014) 1 SCC 603]**.

4. In answer to the objection that the writ petition at the instance of an Association is not maintainable, learned Counsel for the petitioner argued that the Association being a legal entity apart from its members, it can maintain a writ petition on its own. In support of this contention, reliance is placed on the decisions in **Parayakattu Nalukulangara Devaswom v. Padmanabhan Harshas and others [1983 KHC 178]** and **Prem Kumar v. Sree Narayanan Bhaktha Paripalana Yogam [2018 (1) KLT 944]**. It is pointed out that the dictum laid down in **Marakkar v. Government of Kerala [1998(2) KLT 920]** and **Maradu Market Traders' Association v. State of Kerala and others [2018 (3) KHC 530 (DB)]** have been distinguished by a learned Single Judge in unnumbered writ petition (f) number 9037453/2021. The Registry had refused to number the writ petition on the premise that the petitioner Association therein, a society like the writ petitioner registered under the Travancore Cochin Literary Scientific and Charitable Society Registration Act, 1955, should produce a list of its members and remit court fee for all the members treating the writ petition as one instituted by the members jointly. While overruling Registry's objection, the learned Single Judge held as under;

*“10. It is seen that though the petitioner in Kerala Electric Trades Association was also a society registered under the Act, a contrary view is expressed without taking note of the said fact and the provisions of the Act. In so far as the question whether court fee is liable to be levied in a will petition instituted by a society registered under the Act for the benefit of its members has not been considered in Kerala Electric Trades Association, the order passed in the said case, according to me, cannot be an impediment in taking the view expressed in this order. Coming to the order in Maradu Market Traders' Association, the said case being one instituted by an unregistered association, this court was certainly justified in directing the petitioner to pay court fee for all its members placing reliance on Rule 147A of the Rules of the High Court of Kerala and therefore, the said order also cannot be an impediment in taking the view aforesaid. Identical is the view taken by this court in an unnumbered writ petition corresponding to File No.6191 of 2019 dated 6th February 2019, in terms of which this court overruled the identical objection taken by the registry relying on the order in Maradu Market Traders' Association. The writ petition involved in*

*the said case was of course not a society registered under the Act, but a registered trade union, a legal entity apart from its members.”*

It is contended that in the light of the above order, the challenge against maintainability for the reason of non-payment of court fees for each member, cannot be countenanced.

5. No doubt, in **Parayakattu Nalukulangara Devaswom** and **Prem Kumar**, it has been held that a registered society enjoys the status of a legal entity and is capable of suing and being sued in its own name. Pertinently, those judgments were rendered when the societies had resorted to the private law remedy. Here, the petitioner is resorting to the public law remedy and therefore the question is whether the petitioner is entitled to maintain the writ petition highlighting the grievance of its members. There cannot be any doubt that the petitioner Association is not an aggrieved person, since the Association on its own is not conducting money lending business and is not affected by the restriction imposed through Ext.P1. It may be that the members of the Association are aggrieved by the insistence on removing the words 'bank, 'banker', 'banking' and 'banking company' from their business names and in that sense, the Association might be interested in doing all that is necessary for getting reliefs for its members. But, that does not amount to legal grievance as far as the petitioner Association is concerned. Going by the relief sought, it is evident that the declaration asked for, if granted, will entitle the individual members to get their licence renewed without complying the requirements pointed out in Ext.P1. Being so, it is for the individual members to challenge the objectionable condition or rejection of application for renewal, as the case may be. As evident from Ext.P4 interim order, some of the aggrieved persons have approached this Court individually. Having held so, I am not venturing to decide the question whether the petitioner Association is bound to remit court fees for each individual member.

6. The second objection as to maintainability on the ground of availability of efficacious remedy under the Act is also liable to be upheld. In this context, it may be profitable to refer to the relevant provisions of the Act extracted hereunder;

**“Section 4. Grant and refusal of licenses.—** (1) *Every application for a money-lender’s licence shall be in writing and shall be made to the licensing authority and in the manner prescribed under this Act: Xxxxxxxxxxxxxxxxxx*

(3) *The licensing authority may by order in writing refuse to grant a licence if such authority is satisfied—*

(a) *that the applicant has not complied with the provisions of this Act or the rules made thereunder in respect of an application for the grant of a licence; or*

(b) *that the applicant has made willful*

*default in complying with or knowingly acted in contravention of any requirement of this Act; or*

(c) *that the applicant has—*

(i) *knowingly participated in or connived at any fraud or dishonesty in the conduct of or in connection with the business of money-lending; or*

(ii) *been found guilty of an offence under Chapter XVII or Chapter XVIII of the Indian Penal Code (Central Act XLV of 1860); or*

(iii) *been found guilty of an offence under section 11 or section 13 .*

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*(d) that the application is made within six months of the cancellation of the licence [“(4) Every order of the licensing authority under sub-section (3) shall be communicated to the applicant in such manner as may be prescribed”.]*

*[“16B. Appeals.— . [“(1) Any person aggrieved by an order of the Licensing Authority under sub-section (3) of section 4 or sub-section (1) of section 14 or subsection (1) of section 16A or by an order of the Inspector or the Licensing Authority under section 11A of section 18C or section 18D may, within thirty days from the date of communication of such order, appeal in such manner as may be prescribed, to the*

*Appellate Authority having jurisdiction over the area.”.*

*[“(1A) Every appeal under sub-section (1) shall be accompanied by a fee of [three hundred rupees.”;]*

*(2) The appellate authority may admit an appeal preferred after the period of thirty days aforesaid if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.*

*(3) The appellate authority may, after giving the appellant an opportunity of being heard, pass such orders on the appeal as it may deem fit.*

*(4) Every order passed by the appellate authority shall be communicated to the appellant and to the licensing authority in such manner as may be prescribed”.*

Reading of the above provisions leaves no room for doubt that an order refusing to renew licence is appealable under Section 16B. It is settled law that the High Courts must not interfere, if an adequate efficacious alternative remedy is available to the petitioner and the writ petition is filed without availing such remedy unless an exceptional case warranting interference is made out or there exists sufficient grounds to invoke the extraordinary jurisdiction under Article 226. In my considered opinion, the petitioner has not been able to point out any exceptional circumstance warranting interference under Article 226, except that in Ext.P3 judgment in the issue was considered and decided earlier. Needless to say that, Ext.P3 judgment having attained finality, the respondents are bound by the declaration/direction therein. Being so, no separate writ petition need be filed for that purpose.

For the aforementioned reasons, the writ petition is dismissed.

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