

Bishop of Kottayam and ors. Vs. Union of India (Uoi) and ors.

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Court : Kerala

Decided On : Jul-16-1985

Reported in : AIR1986Ker126; [1989]65CompCas48(Ker)

Judge : K. Bhaskaran, C.J. and; V. Bhaskaran Nambiar, J.

Acts : [Banking Regulation Act, 1949](#) - Sections 45(1), 45(3), 5 and 69; [Foreign Exchange Regulation Act, 1973](#) - Sections 6; [Constitution of India](#) - Article 26 and 26(3)

Appeal No. : O.P. Nos. 4123, 4217, 4395 and 4457 of 1985

Appellant : Bishop of Kottayam and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : V.O. John,; C.K.S. Panicker and K. Karthikeya Paniker, Advs.

Advocate for Pet/Ap. : M.I. Joseph and; Abdul Samad, Advs.

Disposition : Petitions dismissed

Judgement :

Bhaskaran Nambiar, J.

1. In exercise of the powers conferred under Section 45(1) of the [Banking Regulation Act, 1949](#) (Act 10 of 1949), the Government of India claimed

moratorium on the Bank of Cochin from the close of business on the 27th of April, 1985 till 28th August, 1985.

2. The petitioners receive foreign contribution through some of the branches of the Bank of Cochin and have registered themselves under Section 6 of the Foreign Contribution (Regulation) Act, 1976. They thus maintain accounts in some specified branches of the Bank. The petitioners are, however, prevented from operating these accounts and withdrawing any amounts while the moratorium is in force. They have therefore filed these writ petitions for appropriate reliefs.

3. The learned counsel appearing for the petitioners in all these cases, Shri M. I. Joseph, raised only two contentions: --

(1) The moratorium ordered under Section 45(1) of the Banking Regulation Act cannot affect the authorisation granted to the Bank under the [Foreign Exchange Regulation Act, 1973](#) to deal in foreign exchange.

(2) Assuming the power under the Banking Regulation Act extends to transactions and activities carried on by the authorised dealers of foreign exchange, the fundamental right guaranteed under Art, 26(d) of the Constitution is violated.

4. We shall consider these points with reference to the relevant statutory provisions.

5. Section 45(1), (2) and (3) of the Banking Regulation Act read thus : --

'45. Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution or amalgamation.-- (1) Notwithstanding anything contained in the foregoing provisions of this part or in any other law or any agreement or other instrument for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of a banking company

(2) The Central Government, after considering the application made by the Reserve Bank under Sub-section (1) may make an order of moratorium staying

the commencement or continuance of all actions and conditions as it thinks fit and proper and may from time to time extend the period, so however that the total period of moratorium shall not exceed six months.

(3) Except as otherwise provided by any directions given by the Central Government in the order made by it under Sub-section (2) or at any time thereafter, the banking company shall not during the period of moratorium make any payment to any depositors or discharge any liabilities or obligations to any other creditors.

xxxxx'.

6. The notification ordering moratorium, in so far as it is relevant, for our purpose, is extracted below : --

'GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF ECONOMIC AFFAIRS (BANKING DIVISION).....New Delhi, the 27th April, 1985. Vaisakha 7, 1907 (Saka) NOTIFICATION In exercise of the powers conferred by Sub-section (2) of Section 45 of the [Banking Regulation Act, 1949](#), (10 of 1949), the Central Government, after considering an application made by the Reserve Bank of India under Sub-section (1) of that section, hereby makes an order of moratorium in respect of the Bank of Cochin Ltd., Cochin for the period from the close of business on the 27th April, 1985 up to and inclusive of the 28th August, 1985 and hereby stays the commencement or continuance of all actions and proceedings against that banking company during the period of moratorium, subject to the condition that such stay shall not in any manner prejudice the exercise by the Central Government of its powers under Clause (b) of Sub-section (4) of Section 35 of the said Act or the exercise by the Reserve Bank of India of its powers under Section 38 of the said Act.

2. The Central Government hereby also directs that during the period of moratorium granted to the Bank of Cochin Ltd., Cochin, that Bank shall not, without the permission in writing of the Reserve Bank of India, --

(a) grant any loan or advance, incur any liability, make any investment or agree to make, or disburse, any payment whether in discharge of its liabilities and obligations or otherwise, or enter into any compromise or arrangement, except to the extent and in the manner provided thereunder: --

(i) a sum not exceeding 25% of the total balance in every savings bank or current account or in any other deposit by whatever name called, provided that the sum total of the amounts paid in respect of the accounts standing in the name of any one person (and not jointly with that of any other person) does not exceed Rs. 2500/- and provided further that no amount shall be paid to any depositor who is indebted to the bank in any way:

xxxxx'.

7. The moratorium itself is not under challenge. In fact, the petitioners support the moratorium as statutory protection for the depositors.

8. The [Foreign Exchange Regulation Act, 1973](#) defines 'foreign exchange' in Section 2(h) thus : --

'foreign exchange' means foreign currency and includes--

(i) all deposits, credits and balances, payable in any foreign currency, and any drafts, traveller's cheques, letters of credit and bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency:

(ii) any instrument payable, at the option of the drawee or holder thereof or any other party thereto, either in Indian currency or in foreign currency or partly in one and partly in the other;'

9. Section 6 of the Foreign Exchange Regulation Act enables the Reserve Bank of India to authorise any person to deal in foreign exchange. The counsel contends therefore that the dealing in foreign exchange by the authorised dealer, the Bank of Cochin, cannot be affected by a moratorium issued under another Act, the Banking Regulation Act. The right to revoke the authorised dealership should be found in the Foreign Exchange Regulation Act. Moreover, so submits counsel,

when the Bank was functioning as an authorised dealer it was not transacting any banking business. Banking company is defined in Section 5(c) of the Banking Regulation Act thus :--

'banking company' means any company which transacts the business of banking in India;'

and therefore Section 45(1) of this Act can operate only to the Banking company so defined.

10. We have no hesitation in rejecting this contention.

11. A Banking company transacts business of banking under the Banking Regulation Act. Banking is also defined in Section 5(b) of this Act thus : --

'Banking' means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise'.

12. Under Section 6 of the Act a banking company may engage in any other business, specified therein in addition to the business of banking. Thus the Bank can buy and sell foreign exchange including foreign bank notes, collect and deal in bills of exchange, receive valuables on deposit or for safe custody and transact several forms of business. The moratorium contemplated under Section 45(1) of the Act is 'in respect of a banking company" and not confined to banking business only. Moratorium, as the word signifies is a suspension of activity, a temporary ban on the performance of legal obligations. Section 45(3) of the Banking Regulation Act therefore enjoins that the Banking company shall not during the period of moratorium make any payment to any depositor or discharge any liabilities or obligations to any creditor, except as otherwise directed by the Central Government. The activity of the banking company is thus suspended and the Bank cannot transact any banking business or engage in other forms of business. The fact that for certain types of business, a further authorisation or permission is insisted under the Foreign does not affect the content of the power of moratorium sanctioned under Section 45 of the Banking Regulation Act and does not authorise

any business, banking or otherwise, during the operation of the moratorium. The Bank is in status quo during this period. Thus when the moratorium on the Bank is in force, the Bank cannot transact business as an authorised dealer in foreign exchange under the Foreign Exchange Regulation Act also. This activity also stands suspended.

13. When the Bank acts as an authorised dealer in foreign exchange and a person can receive foreign contributions only through any one of the branches of a bank, specified in the application for registration, it is a transaction of banking business. 'Banking' as per the definition in the Banking Regulation Act means the acceptance of deposits of money from the public repayable on demand or otherwise. The contention therefore that the Bank of Cochin was not transacting banking business when it was functioning as an authorised dealer cannot also be accepted.

14. Thus during the operation of the moratorium ordered by the Central Government in respect of the Bank of Cochin, the petitioners are not entitled to withdraw any amount from their accounts in any branch of this Bank except to the extent allowed by the Government itself even when the amounts in deposit are foreign contributions and the provisions of the Foreign Exchange Regulation are also attracted. The first point urged has thus no substance.

15. The second point is equally without merit.

16. We are not considering whether the petitioners are religious denominations entitled to the protection under Article 26(d) of the Constitution. Even assuming that they belong to a religious denomination, there is no infraction of the guarantee under this Article. Under Article 26(d), every religious denomination or any section thereof shall have the right to administer its properties according to law. This provision, relating to the secular activities of a religious denomination regarding administration of its properties makes it clear that the administration can only be in accordance with law. The law may be amenable to challenge under other provisions of the Constitution, but as long as there is no such challenge, there can be no infraction of this guarantee. In the present case, the petitioners do not challenge the validity of the Banking Regulation Act.

17. However, the counsel raises an ingenious argument that the law referred to in Article 26(d) can be challenged only on the ground that it offends public order, morality and health. The counsel derives inspiration for this submission from the opening words of the Article. The Constitution, in Article 26, guarantees to every religious denomination or any section thereof certain rights relating to matters of religion and those affecting properties and their administration. These rights are, however, subject to public order, morality and health. These rights cannot therefore be asserted or recognised when they are plainly opposed to public order, morality and health. It is this restricted right that is guaranteed. Article 26(d) regulates that right in accordance with law. That law naturally may cover wider fields and cannot be limited to the three specified subjects, public order, morality and health. Similarly, while this law may be challenged as beyond the legislative competence of the State or as offending Articles 14 and 19 of the Constitution, it cannot be contended that the challenge should also be restricted to these grounds based on public order, morality and health. A legislation beyond the legislative competence cannot derive support under this Article on the ground that it is a legislation relating to public order, morality and health and affecting the right to administer properties of a religious institution. This point is absolutely baseless and has to be rejected.

In the result, these Original Petitions fail and they are dismissed with costs of respondents 1 and 2 -- one set each.

Immediately after the judgment as pronounced, the counsel for the petitioners made an oral request for leave to appeal to the Supreme Court. We do not find any substantial question of law of general importance which requires to be decided by the Supreme Court involved in these O. Ps. Hence leave declined.

Issue carbon copy of this judgment to the counsel for the petitioners and the counsel for the respondents, on usual terms if applied for in that behalf.