

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT : VADODARA
SPECIAL CIVIL APPLICATION No. 1173 of 2004
Vadodara Urban Co-operative Banks Federation
Versus
State of Gujarat

Coram : Hon'ble Mr. Justice K.M. Mehta
Date of Order: 31/03/2004

Oral Order

Notice returnable on 12th April 2004.
Status-quo as of today.
(K.M. Mehta, J.)

Synopsis:

The present petition is moved by Vadodara Urban Co-operative Banks Federation having Office at Sahkar Bhavan, Bhaukale's Lane, Raopura, Vadodara – 390 001 wherein they have challenged the amendment in the Gujarat Co-operative Societies Act by insertion of section 115-G in the new chapter XB.

Section 115-G is as below:

"115-G, Urban Bank Credit Equalization Fund.- (1) There shall be established by the Gujarat State Co-operative Bank Limited (hereinafter in this section referred to as "the State Co-operative Bank") a fund called "Urban Bank Credit Equalization Fund" consisting of payments made into it under sub-section (2).

(2) After providing for the reserve fund as provided in Section 67, for the dividend as provided in section 68, for the educational fund as provided in Section 69 and for contribution for the public purpose as provided in Section 70, the bank shall each year set-aside a sum of fifteen per cent. Of its profits and pay the same to the State Co-operative Bank for the purpose of crediting it into the Urban Bank Credit Equalization Fund.

(3) The Urban Bank Credit Equalization Fund shall be maintained and utilized by the state Co-operative Bank in such manner as may be prescribed."

Main arguments of the Petitioner:

1) Section 115-G has put an unwanted burden on the efficiently managed Urban Co-operative Banks, which are already required to make contributions to the reserve fund under section 67, restriction on distribution of dividend under section 68, contribution to the educational fund under section 69 and also contribution for the public purpose as provided in section 70 of the Act.

2) The inability of the mismanaged Urban Co-operative Banks to maintain the cash reserve ratio as per RBI norms cannot be and should not be made good by making it compulsory on the efficiently managed Urban Co-operative Banks to contribute to the fund created under sub-section (1) of section 115-G.

3) The efficiently managed Banks ought not to be robbed of the fruits of their efficient management by compulsory contribution to Urban Bank Credit Equalization Fund. The failure to maintain CRR/SLR by UCBs does not take place overnight. The proper monitoring by the Co-operative Department, and internal as well as the statutory auditors of the Books of Accounts of the Urban Co-operative Banks and the proper scrutiny of security documents and taking timely actions for recovery from defaulting debtors/borrowers can prevent liquidity crisis of maintaining CRR/SLR and subsequent failures and/or mismanagement of UCBs.

4) It does not aim at preventing mismanagement of the funds of Urban Co-operative Banks on account of reckless lending against worthless securities which result in non-performing assets or bad debts. This is a shield to the mismanaged UCBs instead of tightening control over them.

5) Even for getting the fund as provided in section 115-G, it will have to make an application to the State Co-operative Bank for a loan and will not be able to draw from the said Fund to which it has made payments from time to time, as of right. Thus, the creditor will have to apply for a loan and

become a debtor for taking loan from the Fund built up from the contributions made by it from time to time. This measure is a tax in disguise and also expropriates property of the petitioner's member Banks in the form of compulsory contributions towards the Fund and is therefore ultra vires Articles 14, 19(1) (g), 265 and 300A of the Constitution of India.

- 6) Draft Rules are also Arbitrary and without the authority of law.
- 7) UCBs are governed by Banking Regulation Act as applicable to Urban Co-operative Banks.
- 8) RBI gives direction from time to time regarding maintenance of CRR and SLR.
- 9) Section 115-G has no nexus with the objects sought to be achieved.
- 10) Impugned section 115-G deprives the members of the Co-operative Banks who are citizens and nationals of India by unreasonably and unjustifiably depriving them of their property by making compulsory payment to the Fund.
- 11) The objects sought to be achieved by insertion of section 115-G can be achieved by obtaining exemption under section 24-A of the Banking Regulation Act from RBI for such duration as has been necessary.
