



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

**Present:**

The Honourable Mr. Justice

George Vadakkal

Friday the 20th day of March 1981/ 29th Phalguna  
1902 O.P.No.3240/78B

**Petitioners:**

1. The North Kerala Private Bankers' Association represented by its President Theothalan Damodaran, Room No. 205, Jawahar Buildings, Robinson Road, Kozhikodu.
2. P. C. Madhavan, Managing Partner, Jayasree Bankers, Nadakavu, Calicut.
3. N. A. Abraham, Nedumparampil Bankers, Pavamani Road, Calicut.
4. The first petitioner is impleaded in a representative capacity representing all the members of the Association as per order dated 12-9-78 on CMP. 13550/78 in OP. 3240/78B

By Advs. M/s. K. Chandrasekharan, P. N. K. Achan & K. Vijayan.

**Respondents:**

1. The Reserve Bank of India represented by its General Manager, New Delhi.
2. The Inspecting Assistant Commissioner, Agricultural Income Tax & Sales Tax, Kozhikode.
3. The Inspecting Assistant Commissioner, Agricultural Income Tax & Sales Tax, Palghat.
4. The Inspecting Assistant Commissioner, Agricultural Income Tax & Sales Tax, Malappuram.
5. The Inspecting Assistant Commissioner, Agricultural Income Tax & Sales Tax, Cannanore.

By Government Pleader.

This Original petition having been finally heard on 20-3-81 the Court on the same day delivered the following:

**JUDGEMENT**

The petitioners impugn Ext. P7 communication issued to them. The first petitioner is the President of the North Kerala Private Bankers Association, a society registered under the Societies Registration Act, 1960. Petitioner Nos. 2 and 3 are individuals, who are engaged in money lending business. It appears that petitioners 2 and 3 applied for renewal of licences issued to them under section 4 of the Kerala Money Lenders Act, 1958. It was with reference to such application submitted by the second petitioner that Ext. P7 communication was issued

by the second respondent. By that communication the second respondent directed the second petitioner, who is doing his money lending business under the trade name "Jayasree Bankers, Nadakavu, Calicut" to delete the word "bankers" from the trade name. This as stated in Ext, P7. is for the reason (as stated therein) that the Government has clarified that it is not in order to permit the private money lenders and such other concerns to use the word 'Bankers' as a part of the name of their firm concerned etc. Since such use is prohibited by Section 7 (2) of the Banking Regulation Act, 1949. The petitioners' complaint is that there is no such prohibition and the direction as aforesaid cannot therefore be sustained.

2. Section 7 (1) and (2) of the Banking Regulation Act, 1949 reads:

"7 (1) No company other than a banking company shall use as part of its name any of the words "bank" "banker" or "banking" and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

(2) No firm individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name any of the words "bank," "banking" or "banking company". Mark, the word "banker" is conspicuously absent in sub-section (2) of section 7 quoted above. It is clear that under the scheme of section 7 of the aforesaid Act, while a non-banking company cannot use the words, 'Bank', 'Banker and 'Banking', firms, individuals and group of individuals are prohibited from carrying on any business with the trade name 'bank', "banking company". Shortly put section 7 (2) of this Act does not prohibit the use of the words "banker" or "bankers" as part of the business name of the concerned firm, individual or group of individuals.

3. Section 4 (3) of the Money Lenders Act, 1958 enumerates the situation in which the Licensing Authority constituted under Kerala Money Lenders Act, 1958 can refuse to grant a licence. It cannot be said that the violation, if any, of the prohibition contained in section 7 is a matter that would enable the said Licensing Authority to refuse to grant a licence. Section 4 (3) of the Money Lenders Act, 1958 reads:

"4 Grant and refusal of licences: (1) (3)The licensing authority may be 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 on two or more occasions; or
- (d) that the application is made within six months of the cancellation of the licence."

The violation of the provisions of Section 7 of the Banking Regulation Act, 1949 would not fall under any of the matters enumerated in Sub Section (3) of Section 4 of the Money Lenders Act, 1958. It may in this connection be noticed that violation of the prohibition contained in Section 7 of the Banking Regulation Act, 1949 would be an offence punishable with fine which may extend to Rs. 2000/- under Section 46 (4) of the Banking Regulation Act, 1949.

4. In view of what is stated above, there is force in the contention advanced on behalf of the petitioners that the second respondent has no jurisdiction to direct deletion of the word "bankers" from the trade name of second respondent or of the any firm, individual or group of individuals doing money lending business or any other business.

5. The only answer stated in the counter affidavit filed by the

second respondent is: 'The words 'Banker and 'Bankers' are similar to the words 'Bank,' 'Banking' and 'Banking Company' and hence the prohibition under section 7 (2) of the Banking Regulation Act, 1949 is equally applicable to the words 'Banker' and 'Bankers'. The answer as aforesaid, to say the least, is silly.

6. The petitioners are entitled to succeed. I, therefore, direct respondent Nos.2 to 5 who are licensing authorities, to dispose of the applications for licence sought for under the provisions of the Kerala Money Lenders Act, 1958 as also applications for renewal of such licences in the light of what is stated herein before and in accordance with provisions of law governing the same without insisting up on deletion of the word 'Banker' or 'Bankers' from the business name so far as firm, individual and group of individuals are concerned.

This original petition is allowed to the above extent. There will be no order as regards costs.

20th march, 1981.

Sd/-

George Vadakkal, Judge.

**Appendix**

Petitioner's Exhibits:

- Ext. P1 dated 27-10-67 Copy of communication.
- Ext. P2 dated 11-11-67 Copy of Reply
- Ext. P3 dated 24-11 -67 Copy of Communication
- Ext. P4 dated 9-12-67 Copy of letter from the petitioner to the 1st respondent. Ext. P5 dated 1-2-77 Copy of communication from the 2nd respondent.
- Ext. P6 dated : Nil Copy of representation from the Association
- Ext. P7 dated 18-8-78 Copy of communication.

(true copy)

Sd/-

Assistant Registrar

Typed by

Compared by

Examiner

**സംഗ്രഹം**

സംഗ്രഹം പണവ്യാപാരികൾക്ക് അവരുടെ വ്യാപാരനാമത്തിൽ ബാങ്കർ/ബാങ്കേഴ്സ് എന്നിങ്ങനെയുള്ള വാക്കുകൾ ഉപയോഗിക്കാവുന്നതാണ്.

എന്നാൽ, ഈ അടുത്ത ഇടയ്ക്ക് ഏതാനും ഐ. എ. സി. മാർ ബാങ്കിംഗ് റഗുലേഷൻ ആക്റ്റിലെ സെക്ഷൻ 7(2) ഉദ്ധരിച്ച്, വ്യാപാരനാമത്തിൽ നിന്നും മേൽ സൂചിപ്പിച്ച പദങ്ങൾ നീക്കം ചെയ്യണമെന്ന് ആവശ്യപ്പെട്ടുകൊണ്ട് നമ്മുടെ ചില അംഗങ്ങൾക്ക് നോട്ടീസ് നൽകിയിരിക്കുന്നു. ഇത് ബഹു. കോടതിവിധിയ്ക്ക് വിരുദ്ധമാണെന്നും അതിനാൽ കോടതി അലക്ഷ്യമാണെന്നും പ്രസ്തുത ഐ. എ. സി. മാർ ഈ ഓഫീസിൽ നിന്നും അറിയിച്ചിട്ടുണ്ട്.