

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K. BALAKRISHNAN NAIR

FRIDAY, THE 25TH JUNE 2004 / 4TH ASHADHA 1926

OP.No. 13837 of 2003(V)

PETITIONERS:

1. THE KERALA SMALL FINANCIERS ASSOCIATION, REPRESENTED BY ITS PRESIDENT, C.P.MATHEW KURUPPAM ROAD, TRISSUR.
 2. KERALA PRIVATE BANKER'S ASSOCIATION, REPRESENTED BY ITS PRESIDENT C.J.JOSEPH, BANKER'S BHAVAN, KODIMATHA, ~~KOLLAM~~ DISTRICT. KOTTAYAM
 3. NORTH KERALA PRIVATE BANKER'S ASSOCIATION, REPRESENTED BY ITS PRESIDENT K.P.RADHAKRISHNAN, K.P.KESAVA MENON ROAD, KOZHIKODE.
 4. JOHN THOMAS, PROPRIETOR, KOLLENKERIL FINANCIERS, KOTTAYAM.
 5. P.A.JOSE, MANAGING PARTNER, WELFARE FIRM P.O.KATTOOR, TRISSUR DISTRICT.
- BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.R.RAMDAS

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT, TRIVANDRUM.
2. THE SECRETARY TO GOVT., FINANCE DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM.



3. THE COMMISSIONER OF COMMERCIAL TAXES,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.K.I.ABDUL RASHEED

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON
25/06/2004, ~~ALONG WITH O.P. NO. 1011/2000 AND CORRECTED~~
~~O.P. NO.~~ THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



K. BALAKRISHNAN NAIR, J.

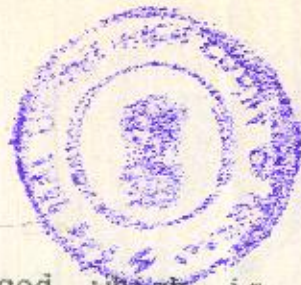
.....
O.P.No. 13837 of 2003 V
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Dated this the 25th day of June, 2004

J U D G M E N T

The petitioners 1 to 3 are associations of money lenders working in various parts of the State. Petitioners 4 and 5 are licenced money lenders. This Writ Petition is filed by them challenging column No. 7 in Form A of the Kerala Money Lenders Rules, which provides for production of solvency certificates for grant of money lender's licence. The said form was introduced as per the newly introduced Rule 22 of the Kerala Money Lenders Rules.

2. The brief facts of the case are the following: Section 3 of the Kerala Money Lenders Act mandates that every money lender shall obtain a licence to run his business. Section 4 of the Act deals with grant and refusal of licences. Sub-section (2A) thereof provides that every licensee shall deposit the amounts shown in the table to that sub-section by way of security in the Government Treasury. Section 11A empowers the licensing authority to demand additional security. The additional security can be in the form of deposit in the Government Treasury, bank guarantee, surety bonds etc. The petitioners have no grievance in remitting the security as provided under Section 4(2A) or the additional security under Section 11A. They were running their businesses after giving the security as provided under Section 4(2A) and the additional Security demanded under Section 11A. While so, a new Rule 22 was introduced and



along with that a new Form A was also introduced which is produced in the Original Petition as Ext.P1. Column 7 of the newly introduced Form A mandates to give details of the solvency certificates produced. Form A is meant for application for grant of money lender's licence. Form AA deals with the application for renewal of the licences. Column 4 of Form AA also prescribes the details of the solvency certificates to be produced. On the strength of that new prescription, the licensing authorities are directing the money lenders to produce solvency certificates, apart from, those necessary under Section 4(2A) and Section 11A. In the above background, the petitioners have moved this Court, challenging the new prescription contained in Form A and Form AA.

3. According to the petitioners, by introducing a new column in a form, additional liability to furnish ~~details~~ of solvency certificates, cannot be fastened on the money lenders. It is a matter concerning legislative policy, which can be done only by the introduction of a substantive provision in the Act. Even assuming, this can be done by an amendment to the Rule, clause 7 in Form A and Clause 4 in Form AA do not prescribe, for which amount the solvency should be given. So, the licensing authorities are demanding simply the production of solvency certificate. The petitioners have produced Ext.P2 along with I.A. No.3115/04. One of the money lenders have been told by the said communication that his application for licence is incomplete

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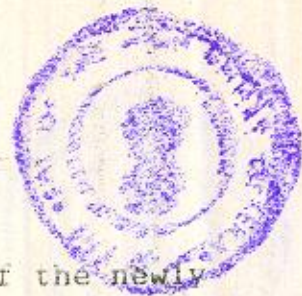


due to several reasons. One of them is "solvency certificate is not filed". The recipient of that notice is unaware as to for what amount he should produce solvency certificate. It is also not clear under which provision of the Act, the said demand is made.

4. I heard the learned Government Pleader for the respondents also. It is submitted by the learned Government Pleader that the licensing authority is competent to demand additional security, either in the form of solvency certificates or otherwise under Section 11A of the Act. In exercise of that power, this communication is issued.

5. I find considerable force in the submission of the petitioners. The liability to pay security or additional security can be imposed only by introducing a substantive provision in the Act and not by amendment of a form. Therefore, the columns 7 and 4 in Form A and Form AA do not create any additional liability. They are only meant to give the details of the solvency certificate which the licensee has already furnished by way of security or additional security. That is the reason why the amount regarding solvency certificate to be produced is not mentioned in those columns. If it was a new liability created, it should be supported by a statutory provision and the amount would have been specified also. Any other interpretation could make the above prescription ~~as~~ ultravires for want of corresponding enabling provision in the parent Act and also for vagueness in as much as there is no prescription of the amount.

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Accordingly, it is declared that by virtue of the newly introduced Form A and Form AA, no additional solvency certificates can be demanded from the money lenders. It is clarified that the licensing authorities are competent to demand security under Section 4(2A) or Section 11A of the Act.

The Original Petition is disposed of as above.

mbu

sd/-
K. BALAKRISHNAN NAIR,
JUDGE



ORDER ON C.M.P.NO.23386/2003 AND I.A.NO.315/2004

IN O.P.NO.13837/2003V

DISMISSED

25-06-2004

SD/-K.BALAKRISHNAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1; COPY OF THE NOTIFICATION S.R.O.403/2002
DT.20-05-2002 ISSUED BY THE GOVERNMENT OF KERALA
DT.20-05-2002.

EXT.P2: COPY OF THE NOTICE NO.A1.3401/2002 DT.5-11-2003
RECEIVED BY ONE OF THE MEMBERS OF ASSOCIATION FROM THE
AUTHORITY DIRECTING TO PRODUCE SOLVENCY CERTIFICATE.

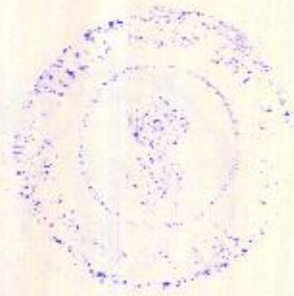
/TRUE COPY/

KSS

PA to judge

True Copy.

Amal
Examiner



10/50

HIGH COURT OF KERALA, ERNAKULAM

- 1. The serial number of suit **OP. 13837/03** or other proceedings
- 2. Name of the suit **M. H. C.**
- 3. The name of applicant **M/s. Wariyar E. Wariyar**
- 4. Number and date of application **20 38921/04, 206/04**
- 5. Date of calling for stamp papers
- 6. Date of production of papers **7/3/04**
- 7. Date of calling additional papers **3/3/04**
- 8. Date of production of additional papers
- 9. Date when copy was ready **8/3/04**
- 10. Date notified for appearance to receive the copy **15/3/04**
- 11. Date when copy was delivered **8/7/04**

Handwritten signature
[Stamp]