Reserved on : 11.03.2025
Pronounced on : 17.03.2025

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.6962 OF 2025 (GM – RES)

BETWEEN:

KARNATAKA HIRE PURCHASE ASSOCIATION
A SOCIETY REGISTERED UNDER
THE PROVISIONS OF THE KARNATAKA
SOCIETY REGISTRATION ACT, 1960,
HAVING ITS REGISTERED OFFICE AT:NO.5/1,
SOUTH STREET, YG PALYA, AUSTIN TOWN,
BENGAURU – 560 047.
REPRESENTED BY ITS SECRETARY
VIJAYRAJ CHHAJED.

... PETITIONER

(BY SRI UDAY HOLLA, SR.ADVOCATE FOR
SRI SANJAY H.SETHIYA, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
THROUGH ITS CHIEF SECRETARY,
VIDHANA SOUDHA,
BENGALURU – 560 001.

2 . THE DEPARTMENT OF

PARLIAMENTARY AFFAIRS AND LEGISLATION
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BENGALURU – 560 001
REPRESENTED BY SECRETARY.

3 . THE DEPARTMENT OF FINANCE
GOVERNMENT OF KARNATAKA,
VIDHANA SOUDHA,
BENGALURU – 560 001.
REPRESENTED BY MANAGER.

... RESPONDENTS

(BY SRI K.SHASHIKIRAN SHETTY, AG A/W
SMT.ANISHKA VAISHNAV, ADVOCATE AND
SRI SHAMANTH NAIK, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT DECLARING THE KARNATAKA MICRO LOAN AND SMALL LOAN (PREVENTION OF COERCIVE ACTIONS) ORDINANCE, 2025 AS UNCONSTITUTIONAL, ARBITRARY AND BEYOND THE LEGISLATIVE COMPETENCE OF THE STATE GOVERNMENT PRODUCED AT ANNEXURE – A BEARING NO.DPAL 03 SHASANA 2025, BENGALURU DATED 12.02.2025; DIRECT THE RESPONDENTS TO CLARIFY THAT MOTOR VEHICLE / ASSET FINANCING BUSINESSES ARE OUTSIDE THE PURVIEW OF THE ORDINANCE.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.03.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner, an Association of hire purchasers in the State of Karnataka is before the doors of this Court calling in question constitutional validity of an Ordinance viz., **the Karnataka Micro Loan and Small Loan (Prevention of Coercive Actions) Ordinance, 2025 ('the Ordinance' for short) as being shrouded with ambiguity and steeped in arbitrariness and beyond the legislative competence of the State Government**. As a consequence, thereof, it also seeks a writ in the nature of mandamus to clarify that motor vehicle/Asset Financing businesses are outside the purview of the Ordinance.

2. Facts, in brief, germane are as follows:-

The petitioner claims to be an Association registered under the Karnataka Societies Registration Act, 1960. It is an Association of Motor Vehicle/Asset Financiers who are said to be engaged in the business through hypothecation, hire purchase and leasing models in the State of Karnataka. It is the averment in the petition, that

the petitioner/Association provides financial assistance to individual business under hypothecation, hire purchase or leasing agreements. Several other activities of the Members of the Association are pleaded in the case at hand. The State promulgates the Ordinance to protect economically vulnerable groups from facing coercive means of recovery by microfinance institutions. The constitutional validity of the Ordinance is called in question on the score that it takes away the right of the petitioner under the contract Act and other modes of business that its members are doing and, on that score raised the challenge to the Ordinance terming it to be an incompetent Ordinance.

3. Heard Sri Udaya Holla, leaned senior counsel appearing for the petitioner and Sri K.Shashikiran Shetty, learned Advocate General appearing for the respondents.

4. The learned senior counsel Sri Udaya Holla appearing for the petitioner/Association would vehemently contend that definitions in the Ordinance are so ambiguous that they would take away anybody’s right under different statutes, as all hypothecations

or mortgages are to be released from the date of promulgation of the Ordinance. The learned senior counsel would restrict to place reliance upon a Division Bench judgment of the High Court of Bombay to contend that vulnerable section would be anybody unless appropriately defined. Therefore, even the women group which was a part of the *lis* before the Division Bench in Bombay were held that they would not come within the definition of vulnerable section, as no income criteria was indicated. **The learned senior counsel would submit that the Ordinance by commanding immediate release of security and prohibiting future collaterization imperils the very life blood of their business.** He would seek to place reliance upon plethora of judgments to buttress his submission that, an ordinance which bears no application of mind becomes manifestly arbitrary and, therefore, it is to be struck down.

5. Per contra, the learned Advocate General, Sri K.Shashikiran Shetty, states in defence of the Ordinance and would seek to contend that the petitioner is an Association of members of Hire Purchasers. It cannot claim to be aggrieved by this

Ordinance at all. It does not concern the Association. It has no locus to challenge the Ordinance even. Ordinance is restricted to microfinance rendered to vulnerable groups. The petitioner is doing its business of hypothecation, mortgage and lease. Microfinance is the one which is granted without any security. Therefore, the petitioner cannot project that it is aggrieved and it cannot plead for someone else's grievances. He would, on the Ordinance, also submit that there is nothing arbitrary in the Ordinance nor anything is ambiguous. The Microfinance is defined by the Reserve Bank of India in terms of its circular. It would mean a loan granted to the needy who have their annual income of ₹3 lakhs or less. When the Reserve Bank of India has clear definition, that would always be imported to the Ordinance. He would contend that the Ordinance became imperative, as gross coercive steps were taken against low income group people which has led to several deaths. He would submit that the petition be dismissed with exemplary costs.

6. The learned senior counsel Sri Udaya Holla would join issue in taking this Court to the Ordinance, with particular reference to Section 6, which directs that security obtained from a borrower

before the date of commencement of the Ordinance would forthwith stand released. It is his submission that every borrower is covered under this and it can affect any person. Therefore, the ordinance does not bear application of mind.

7. I have given my anxious consideration to the submissions made by the learned senior counsel and the learned Advocate General and have perused the material on record. In furtherance whereof, the issues that fall for my consideration are:

(i) Whether judicial review of an Ordinance is a permissible exercise?

(ii) Does the impugned Ordinance suffer from arbitrariness/manifest arbitrariness and non-application of mind, for it to be held unconstitutional?

Issue No.1:

(i) Whether judicial review of an Ordinance is a permissible exercise?

8. The issue with regard to judicial review of Ordinance need not detain this Court for long or delve deep into the matter, if a

reference is made to the judgments rendered from time to time. The Apex Court in the case of **A.K. ROY v. UNION OF INDIA**[1] has held as follows:

"…. …. ….

> **26.** We see the force of the contention that the question whether the pre-conditions of the exercise of the power conferred by Article 123 are satisfied cannot be regarded as a purely political question. The doctrine of the political question was evolved in the United States of America on the basis of its Constitution which has adopted the system of a rigid separation of powers, unlike ours. In fact, that is one of the principal reasons why the U.S. Supreme Court had refused to give advisory opinions [See Seervai on Constitutional LAW OF INDIA, Vol. III, foot, notes 64-65. (The CONSTITUTION OF THE UNITED STATES, Congressional Edn., 4th Edn., pp. 649-50] In *Baker* v. *Carr* [7 L Ed 2d, pp. 663, 685-86] Brennan, J. said that the doctrine of political question was "essentially a function of the separation of powers". There is also a sharp difference in the position and powers of the American President on one hand and the President of India on the other. The President of the United States exercises executive power in his own right and is responsible not to the Congress but to the people who elect him. In India, the executive power of the Union is vested in the President of India, but he is obliged to exercise it on the aid and advice of his Council of Ministers. The President's 'satisfaction" is therefore nothing but the satisfaction of his Council of Ministers in whom the real executive power resides. It must also be mentioned that in the United States itself, the doctrine of the political question has come under a cloud and has been the subject-matter of adverse criticism. It is said that all that the doctrine really means is that in the exercise of the power of judicial review, the courts must adopt a "prudential" attitude, which requires that they should be wary of deciding upon the merit of any issue in which claims of principle as to the issue and claims of expediency as to the power and prestige of courts are in sharp conflict. The result, more or less, is that in America

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[1] **(1982) 1 SCC 271**

the phrase "political question" has become "a little more than a play of words".

27. The *Rajasthan case* [*State of Rajasthan* v. *Union of India*, (1977) 3 SCC 592: (1978) 1 SCR 1] is often cited as an authority for the proposition that the courts ought not to enter the "political thicket". It has to be borne in mind that at the time when that case was decided, Article 356 contained clause (5) which was inserted by the 38th Amendment, by which the satisfaction of the President mentioned in clause (1) was made final and conclusive and that satisfaction was not open to be questioned in any court on any ground. Clause (5) has been deleted by the 44th Amendment and, therefore, any observations made in the *Rajasthan case* [*State of Rajasthan* v. *Union of India*, (1977) 3 SCC 592: (1978) 1 SCR 1] on the basis of that clause cannot any longer hold good. It is arguable that the 44th Constitution Amendment Act leaves no doubt that judicial review is not totally excluded in regard to the question relating to the President satisfaction.

28. There are, however, two reasons why we do not propose to discuss at greater length the question as regards the justiciability of the President's satisfaction under Article 123(1) of the Constitution. In the first place, the ordinance has been replaced by an Act. It is true, as contended by Shri Tarkunde, that if the question as regards the justiciability of the President's satisfaction is not to be considered for the reason that the ordinance has become an Act, the occasion will hardly ever arise for considering that question because, by the time the challenge made to an ordinance comes up for consideration before the court, the ordinance almost invariably shall have been replaced by an Act. All the same, the position is firmly established in the field of constitutional adjudication that the court will decide no more than needs to be decided in any particular case. Abstract questions present interesting challenges, but it is for scholars and textbook writers to unravel their mystique. It is not for the courts to decide questions which are but of academic importance.

29. The other reason why we are not inclined to go into the question as regards the justiciability of the President's satisfaction under Article 123(1) is that on the material which is placed before us, it is impossible for

us to arrive at a conclusion one way or the other. We are not sure whether a question like the one before us would be governed by the rule of burden of proof contained in Section 106 of the Evidence Act, though we are prepared to proceed on the basis that the existence of circumstances which led to the passing of the Ordinance is especially within the knowledge of the executive. But before casting the burden on the executive to establish those circumstances, at least a prima facie case must be made out by the challenger to show that there could not have existed any circumstances necessitating the issuance of the Ordinance. Every casual or passing challenge to the existence of circumstances, which rendered it necessary for the President to take immediate action by issuing an ordinance, will not be enough to shift the burden of proof to the executive to establish those circumstances. Since the petitioners have not laid any acceptable foundation for us to hold that no circumstances existed or could have existed which rendered it necessary for the President to take immediate action by promulgating the impugned Ordinance, we are unable to entertain the contention that the Ordinance is unconstitutional for the reason that the pre-conditions to the exercise of the power conferred by Article 123 are not fulfilled. That is why we do not feel called upon to examine the correctness of the submission made by the learned Attorney-General that in the very nature of things, the 'satisfaction" of the President which is the basis on which he promulgates an ordinance is founded upon materials which may not be available to others and which may not be disclosed without detriment to public interest and that, the circumstances justifying the issuance of the ordinance as well as the necessity to issue it lie solely within the President's judgment and are, therefore, not justiciable.

30. The two surviving contentions of Shri Garg that the power to issue an ordinance can operate on a virgin land only and that Articles 14, 19 and 21 will be reduced to a dead letter if the executive is permitted to take away the life or liberty of the people by an ordinance, need not detain us long. The Constitution does not impose by its terms any inhibition on the ordinance-making power that

it shall not be used to deal with a subject-matter which is already covered by a law made by the legislature. There is no justification for imposing any such restriction on the ordinance-making power, especially when an ordinance, like any law made by the legislature, has to comply with the mandate of Article 13(2) of the Constitution. Besides, legislative activity, properly so called, has proliferated so enormously in recent times that it is difficult to discover a virgin land or a fresh field on which the ordinance-making power can operate, as if on a clean slate. Today, there is possibly no subject under the sun which the legislature has not touched.

31. As regards Articles 14, 19 and 21 being reduced to a dead letter, we are unable to appreciate how an ordinance which is subject to the same constraints as a law made by the legislature can, in its practical operation, result in the obliteration of these articles. The answer to this contention is again to be found in the provisions contained in Article 13(2).”

(Emphasis supplied)

A Seven Judge Bench of the Apex Court in the case of **KRISHNA KUMAR SINGH v. STATE OF BIHAR**[2] has held as follows:

“…. …. ….

I. Presidential satisfaction

49. The constitutional power which has been conferred upon the President under Article 123 and upon the Governors under Article 213 to promulgate Ordinances is conditional. Apart from the condition that the power can be exercised only when the legislature is not in session, the power is subject to the satisfaction of the President (under Article 123) or the Governor (under Article 213) “that circumstances exist which render it necessary for him to take immediate action”.

[2] **(2017) 3 SCC 1**

50. In *Rustom Cavasjee Cooper* v. *Union of India* [*Rustom Cavasjee Cooper* v. *Union of India*, (1970) 1 SCC 248] , a Bench of eleven Judges of this Court held that the Presidential power to promulgate an Ordinance is exercisable in extraordinary situations demanding immediate promulgation of law. This Court held that the determination by the President was not declared to be final. Justice J.C. Shah, speaking for the Court, observed thus : (SCC p. 276, para 19)

> "*19*. Power to promulgate such Ordinance as the circumstances appear to the President to require is exercised — (*a*) when both Houses of Parliament are not in session; (*b*) the provision intended to be made is within the competence of Parliament to enact; and (*c*) the President is satisfied that circumstances exist which render it necessary for him to take immediate action. *Exercise of the power is strictly conditioned. The clause relating to the satisfaction is composite : the satisfaction relates to the existence of circumstances, as well as to the necessity to take immediate action on account of those circumstances. Determination by the President of the existence of circumstances and the necessity to take immediate action on which the satisfaction depends, is not declared final*."
>
> (emphasis supplied)

However, the issue had been rendered academic because the Ordinance had been replaced by a legislative enactment. The justiciability of the satisfaction was not conclusively decided.

51. The Constitution (Thirty-eighth Amendment) Act, 1975 was brought into force on 1-8-1975 during the period of the internal emergency. The amendment introduced, among other things, two crucial provisions into Articles 123 and 213 by which the satisfaction of the President or, as the case may be of the Governor, was declared to be final and conclusive and to be immune from being questioned "in any court on any ground". Clause (4) of Article 123 provided as follows : (*A.K. Roy case* [*A.K. Roy* v. *Union of India*, (1982) 1 SCC 271 : 1982 SCC (Cri) 152] , SCC p. 295, para 24)

> "*24*. … '**123.** (**4**) Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground.' "

By a similar amendment, clause (4) was introduced into Article 213. The effect of the amendment was to grant an immunity from the satisfaction of the President or the Governor being subjected to scrutiny by any court. This amendment was expressly deleted by Section 16 of the Forty-fourth Amendment Act.

52. The effect of this deletion [of clause (4)] was urged before a Constitution Bench of this Court in *A.K. Roy* v. *Union of India* [*A.K. Roy* v. *Union of India*, (1982) 1 SCC 271 : 1982 SCC (Cri) 152] , as a positive indicator that the satisfaction of the authority issuing an Ordinance on the existence of circumstances necessitating immediate action was no longer final and conclusive and that it should be open to judicial scrutiny. In support, reliance was placed on the following observations of Shah and Hegde, JJ. in *Madhav Rao Jivaji Rao Scindia* v. *Union of India* [*Madhav Rao Jivaji Rao Scindia* v. *Union of India*, (1971) 1 SCC 85 : (1971) 3 SCR 9] . Shah, J. observed thus : (*A.K. Roy case* [*A.K. Roy* v. *Union of India*, (1982) 1 SCC 271 : 1982 SCC (Cri) 152] , SCC p. 296, para 25)

> "*25*. … '*98*. … Constitutional mechanism in a democratic polity does not contemplate existence of any function which may qua the citizens be designated as political and orders made in exercise whereof are not liable to be tested for their validity before the lawfully constituted courts….' (*Jivaji Rao case* [*Madhav Rao Jivaji Rao Scindia* v. *Union of India*, (1971) 1 SCC 85 : (1971) 3 SCR 9] , SCC p. 147, para 98)"

Justice Hegde observed thus : (*A.K. Roy case* [*A.K. Roy* v. *Union of India*, (1982) 1 SCC 271 : 1982 SCC (Cri) 152] , SCC p. 296, para 25)

> "*25*. … '*178*. … There is nothing like a political power under our Constitution in the matter of relationship between the executive and the citizens.' (*Jivaji Rao case* [*Madhav*

Rao Jivaji Rao Scindia v. *Union of India*, (1971) 1 SCC 85 : (1971) 3 SCR 9] , SCC p. 178, para 178)"

53. In *A.K. Roy* [*A.K. Roy* v. *Union of India*, (1982) 1 SCC 271: 1982 SCC (Cri) 152], Chandrachud, C.J. speaking for the Constitution Bench, held that the issue as to whether the conditions for the exercise of the power under Article 213 had been fulfilled could not be regarded as a political question: (SCC p. 296, para 26)

> "*26*. We see the force of the contention that the question whether the preconditions of the exercise of the power conferred by Article 123 are satisfied cannot be regarded as a purely political question. The doctrine of the political question was evolved in the United States of America on the basis of its Constitution which has adopted the system of a rigid separation of power, unlike ours."

54. The Constitution Bench held that the earlier case, *State of Rajasthan* v. *Union of India* [*State of Rajasthan* v. *Union of India*, (1977) 3 SCC 592 : (1978) 1 SCR 1] was decided at a time when the Presidential satisfaction under clause (1) of Article 123 had been made final by the Thirty-eighth Amendment. This Court held that it is arguable that after the Forty-fourth Amendment, judicial review of the President's satisfaction is not totally excluded. The observations of Chandrachud, C.J., speaking for the Constitution Bench are thus : (*A.K. Roy case* [*A.K. Roy* v. *Union of India*, (1982) 1 SCC 271 : 1982 SCC (Cri) 152] , SCC p. 297, para 27)

> "*27*. The *Rajasthan case* [*State of Rajasthan* v. *Union of India* [*State of Rajasthan* v. *Union of India*, (1977) 3 SCC 592 : (1978) 1 SCR 1]] is often cited as an authority for the proposition that the courts ought not to enter the "political thicket". It has to be borne in mind that at the time when that case was decided, Article 356 contained clause (5) which was inserted by the 38th Amendment, by which the satisfaction of the President mentioned in clause (1) was made final and conclusive and that satisfaction was not open to be questioned in any court on any ground. Clause (5) has been deleted by the 44th Amendment and, therefore, any observations made in *Rajasthan case* [*State of Rajasthan* v. *Union of India* [*State of Rajasthan* v. *Union of India*, (1977) 3 SCC 592 : (1978) 1 SCR 1]] on the basis of that clause cannot any longer hold good. *It is arguable*

> *that the 44th Constitution Amendment Act leaves no doubt that judicial review is not totally excluded in regard to the question relating to the President's satisfaction*."
>
> (emphasis supplied)

However, in the ultimate analysis, the Court declined to go into the question as regards the justiciability of the President's satisfaction under Article 123(1) since, on the material placed before it, it was not possible for the Court to arrive at a conclusion one way or the other.

55. The impact of the Forty-fourth Amendment was noticed by Jeevan Reddy, J. in the nine-Judge Bench decision in *S.R. Bommai* v. *Union of India* [*S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1] : (SCC p. 270, para 379)

> **"*379*. ... We, however, agree that the deletion of this clause is certainly significant in the sense that the express bar created in the way of judicial review has since been removed consciously and deliberately in exercise of the constituent power of Parliament. (See *A.K. Roy* v. *Union of India* [*A.K. Roy* v. *Union of India*, (1982) 1 SCC 271: 1982 SCC (Cri) 152] .) The cloud cast by the clause on the power of judicial review has been lifted."**

As the above extract indicates, the observations in *A.K. Roy* [*A.K. Roy* v. *Union of India*, (1982) 1 SCC 271: 1982 SCC (Cri) 152] found a specific reference, in *Bommai* [*S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1] . The Court while construing the provisions of Article 356 noted that clause (5) which expressly barred the jurisdiction of the courts to examine the validity of a Proclamation had been deleted by the Forty-fourth Amendment to the Constitution. Elucidating the approach of the Court, when a Proclamation under Article 356 is questioned, Jeevan Reddy, J. held that : (*Bommai case* [*S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1] , SCC pp. 266-67, para 373)

> **"*373*. Whenever a Proclamation under Article 356 is questioned, the court will no doubt start with**

> **the presumption that it was validly issued but it will not and it should not hesitate to interfere if the invalidity or unconstitutionality of the Proclamation is clearly made out. Refusal to interfere in such a case would amount to abdication of the duty cast upon the court — Supreme Court and High Courts — by the Constitution."**

56. The standard of judicial review was formulated in the following observations : (*Bommai case* [*S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1] , SCC p. 268, para 374)

> "*374*. … the truth or correctness of the material cannot be questioned by the court nor will it go into the adequacy of the material. It will also not substitute its opinion for that of the President. Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some *relevant* material sustaining the action. The ground of mala fides takes in inter alia situations where the Proclamation is found to be a clear case of abuse of power, or what is sometimes called fraud on power — cases where this power is invoked for achieving oblique ends."
>
> (emphasis in original)

57. Applying the principles which emerge from the judgment of Jeevan Reddy, J. in *Bommai* [*S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1] , there is reason to hold that the satisfaction of the President under Article 123(1) or of the Governor under Article 213(1) is not immune from judicial review. The power of promulgating Ordinances is not an absolute entrustment but conditional upon a satisfaction that circumstances exist rendering it necessary to take immediate action. Undoubtedly, as this Court held in *Indra Sawhney* v. *Union of India* [*Indra Sawhney* v. *Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] the extent and scope of judicial scrutiny depends upon the nature of the subject-matter, the nature of the right affected, the character of the legal and constitutional provisions involved and such factors. Since the duty to arrive at the satisfaction rests in the President and the Governors (though it is exercisable on the aid and advice

of the Council of Ministers), the Court must act with circumspection when the satisfaction under Article 123 or Article 213 is challenged. The Court will not enquire into the adequacy, or sufficiency of the material before the President or the Governor. The Court will not interfere if there is some material which is relevant to his satisfaction. The interference of the Court can arise in a case involving a fraud on power or an abuse of power. This essentially involves a situation where the power has been exercised to secure an oblique purpose. In exercising the power of judicial review, the court must be mindful both of its inherent limitations as well as of the entrustment of the power to the head of the executive who acts on the aid and advice of the Council of Ministers owing collective responsibility to the elected legislature. In other words, it is only where the court finds that the exercise of power is based on extraneous grounds and amounts to no satisfaction at all that the interference of the court may be warranted in a rare case. However, absolute immunity from judicial review cannot be supported as a matter of first principle or on the basis of constitutional history.

... ...

105.13. The satisfaction of the President under Article 123 and of the Governor under Article 213 is not immune from judicial review, particularly after the amendment brought about by the Forty-fourth Amendment to the Constitution by the deletion of clause (4) in both the Articles. The test is whether the satisfaction is based on some relevant material. The court in the exercise of its power of judicial review will not determine the sufficiency or adequacy of the material. The court will scrutinise whether the satisfaction in a particular case constitutes a fraud on power or was actuated by an oblique motive. Judicial review, in other words, would enquire into whether there was no satisfaction at all."

(Emphasis supplied)

Later, the Apex Court in **MADRAS BAR ASSOCIATION v. UNION OF INDIA**[3] has held as follows:

"…. …. ….

II. *India*

(A) *Scope of judicial review*

43. Shifting focus to legislative override in our country, it is necessary to first appreciate the scope of judicial review of Ordinances which is the same as that of a legislative Act. Article 123 of the Constitution empowers the President to promulgate an Ordinance during recess of Parliament, which shall have the same force and effect as an Act of Parliament. The validity of an Ordinance can be challenged on grounds available for judicial review of a legislative Act. An Ordinance passed either under Article 123 or under Article 213 of the Constitution stands on the same footing. When the Constitution says that the Ordinance-making power is legislative power and an Ordinance shall have the same force as an Act, an Ordinance should be clothed with all the attributes of an Act of legislature carrying with it all its incidents, immunities and limitations under the Constitution. It is settled law that judicial review of an Ordinance should be akin to that of legislative action. [*R.K. Garg* v. *Union of India*, (1981) 4 SCC 675 : 1982 SCC (Tax) 30; *T. Venkata Reddy* v. *State of A.P.*, (1985) 3 SCC 198 : 1985 SCC (L&S) 632; *Krishna Kumar Singh* v. *State of Bihar*, (2017) 3 SCC 1]

44. The controversy that arises for the consideration of this Court relates to the legislative response to the judgment of this Court in *MBA (3)* [*Madras Bar Assn.* v. *Union of India*, (2021) 7 SCC 369] . The power to strike down primary legislation enacted by the Union of India or the State Legislatures is on limited grounds. The Courts can strike down legislation either on the basis that it falls foul of federal distribution of powers or that it contravenes fundamental rights

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[3] **(2022) 12 SCC 455**

> or other constitutional rights/provisions of the Constitution of India. [*BinoyViswam* v. *Union of India*, (2017) 7 SCC 59] Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment and a clear transgression of constitutional principles must be shown. In *State of M.P.* v. *Rakesh Kohli* [*State of M.P.* v. *Rakesh Kohli*, (2012) 6 SCC 312 : (2012) 3 SCC (Civ) 481] , this Court held that *sans* flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad and legislative enactment can be struck down only on two grounds:
>
> (*i*) that the appropriate legislature does not have the competence to make the law, and
>
> (*ii*) that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions.
>
> Subsequently, the Court has also recognised "manifest arbitrariness" as a ground under Article 14 on the basis of which a legislative enactment can be judicially reviewed. [*K.S. Puttaswamy (Aadhaar-5 J.)* v. *Union of India*, (2019) 1 SCC 1]"

(Emphasis supplied)

The Apex Court, in the afore-quoted judgments, would clearly hold that constitutional Courts can exercise judicial review of an Ordinance, to scrutinize whether satisfaction of the Governor in promulgating an Ordinance constitutes fraud or it was actuated by any oblique motive. Further, the Apex Court in **MADRAS BAR ASSOCIATION** *supra* holds that *sans* flagrant violation of the constitutional provisions, the laws made by Parliament or the State

Legislature cannot be struck down, if it does not meet the following ingredients:

(i) the appropriate legislature does not have the competence to make the law; and

(ii) that the law takes away or abridges any of the fundamental rights enumerated in Part-III or any other constitutional provisions.

Even, manifest arbitrariness as a ground under Article 14 could be judicially reviewed. Therefore, it is no law that an Ordinance cannot become a subject matter of judicial review. The Apex Court has clearly held the parameters of judicial review of an Ordinance or an Act of Parliament or State Legislature. Therefore, the first issue is answered holding that judicial review of an Ordinance is permissible.

Issue No.2:

(ii) Does the impugned Ordinance suffer from arbitrariness/manifest arbitrariness and non-application of mind, for it to be held unconstitutional?

9. It becomes germane to notice the objects and reasons and certain sections of the Ordinance. They read as follows:

"KARNATAKA ORDINANCE NO. 02 OF 2025

THE KARNATAKA MICRO LOAN AND SMALL LOAN (PREVENTION OF COERCIVE ACTIONS) ORDINANCE, 2025

(Promulgated by the Governor of Karnataka in the seventy sixth year of the Republic of India and first published in the Karnataka Gazette Extra-ordinary on the 12th day of February, 2025)

An Ordinance to protect and relieve the economically vulnerable groups and individuals, especially farmers, women and women's self-help groups from the undue hardship of usurious interest rates and coercive means of recovery by Micro Finance Institutions or Money Lending Agencies or Organizations operating in the state of Karnataka and for matters connected therewith and incidental thereto.

And whereas, the Karnataka Legislative Assembly and Karnataka Legislative Council are not in session, and the Hon'ble Governor of Karnataka is satisfied that the circumstances exist which render it necessary and expedient to exercise powers under Article 213 (1) of the Constitution of India, and promulgate the following Ordinance, namely:-

1. **Short title, commencement and application**.-(1) This Ordinance may be called the Karnataka Micro Loan and Small Loan (Prevention of Coercive Actions) Ordinance, 2025.

(2) It shall come into force at once.

(3) Nothing in this Ordinance shall be applicable to any banking or Non-Banking Finance Company (NBFC) registered with RBI.

(4) The provisions of this Ordinance shall be in continuation of and not in derogation of any existing law for the time being in force.

2. **Definitions**.- (1) In this Ordinance, unless the context otherwise requires,-

(a) "Borrower" means an individual or a Self-Help Group (SHG) or Joint Liability Group (JLG) or group of individuals who avail money in the form of a loan for any purpose from Micro Finance Institutions or Money Lending Agencies or Organizations or Lender under an agreement either orally or in writing with terms and conditions that the money shall be repaid within a certain period of time.

(b) "Coercive Action" means the Coercive Action as explained in section 8.

(c) "Interest" for the purposes of the terms defined under the provisions of this Ordinance means a return on the amount lent by the Micro Finance Institutions or Money Lending Agencies or Organizations or Lender in cash or kind as the case may be, to a Borrower and includes interest charged on daily, weekly, monthly or yearly basis;

(d) "Loan" means an advance or hand loan whether of money or in kind such as seed, fertilizer, etc, given to the borrower at interest explicitly or otherwise.

(e) "Lender" includes Micro Finance Institutions (MFI) or Money Lending Agencies or Organizations and any partnership firm or person or group of persons or digital lending platform whose principal or incidental activity is to lend money or offer financial support of whatsoever nature, in cash or kind to earn profit by charging interest on daily, weekly, monthly or yearly basis.

(f) "Registering Authority" means the Deputy Commissioner of the concerned District:

Provided that, the State Government may by notification appoint such other designated officer as Registering Authority.

(g) "Vulnerable section of the society" means and includes farmers, women, self help group of women, agricultural labours, workmen, footpath

vendors, other vendors who move from one place to other, worker working in milk dairy, construction workers, migrant workers, those group of people who are disadvantaged as compared to others mainly on account of reduced access to their basic services and the underlying determinants of health, housing sanitation etc. and the people who are economically backward, low on livelihood patterns with no regular source of income.

(2) Words used but not defined in this Ordinance, shall have the same meanings respectively assigned to them in the relevant Acts and rules made thereunder.

… … …

6. Micro Finance Institutions or Money Lending Agencies or Organizations or Lender not to seek security.- No Micro Finance Institution (MFI) or Money Lending Agencies or Organizations or Lender shall seek any security from a borrower by way of pawn, pledge or other security for the loan:

Provided that, any such security obtained from a borrower before the date of commencement of this Ordinance shall forthwith stand released in favor of the borrower.

Explanation: For the Purpose of this Ordinance "security" means, any form of collateral.

… … …

8. Penalty for coercive actions against Micro Finance Institutions (MFI).- Micro Finance Institution (MFI) or Money Lending Agencies or Organization or Lender shall not use any coercive action either by itself or by its agents for recovery of money from the borrower and any form of coercive recovery shall be liable for punishment under the provisions of this Ordinance and empower the Registering Authority to suspend or cancel the Registration of such Micro Finance Institution (MFI) or Money Lending Agencies or Organization or Lender as provided under the provisions of this Ordinance.

Explanation: For the purposes of this section, "coercive Action" by a Micro Finance Institution (MFI) or Money Lending

Agencies or Organization or Lender against the borrowers include the following, namely:-

(i) exerting pressure or obstructing or using violence to or insulting or intimidating the borrower or his/her family members, or

(ii) persistently following the borrower, his/her family member from place to place or interfering with any property owned or used by him/her or depriving him/her of, or hindering him/her in the use of any such property, or

(iii) frequenting the house or other place where the borrower resides or works, or carries on business, or happens to be, with an intension of taking coercive action, or

(iv) using the service of private or outsource or external agencies, criminal background to negotiate/urging the borrower to make payment using coercive and undue influence, or

(v) Seeking to take forcibly any document from the borrower which entitles the borrower to a benefit under any Government programme.

… … …

10. **Complaints**.- A complaint can be filed regarding violation of the provision of this Ordinance by a Micro Finance Institution (MFI) or Money Lending Agencies or Organization or Lender before the concerned/ jurisdictional police station and the concerned police officer. No police officer shall refuse to register a case:

Provided that, a Police officer not below the rank of Deputy Superintendent of Police shall be empowered to file a suo-moto case.

11. **Appointment of an Ombudsperson**.- The Government may by notification, appoint an Ombudsperson who can act as mediator between the borrower or lender, for settling the disputes.

12. **Penalty for contravention of section 8 of the Ordinance.**- Any person who contravenes of section 8 of this Ordinance, shall be tried and punishable by the Judicial Magistrate First Class, with imprisonment for a term which may extend to ten years and with fine which may extend to rupees five lakh. The offences under this Ordinance are cognizable and non-bailable.

13. **Every officer to be public servant.**- Every officer of the Government and every person acting under the provisions of this Ordinance shall be deemed to be a public servant within the meaning of sub-section (28) of section 2 of the Bharatiya Nyaya Sanhita, 2023.

14. **Relief to borrower from coercive action by the unlicensed and unregistered Micro finance institutions or Money Lending Agencies or Organizations or Lender**.- Notwithstanding anything in any law for the time being in force or in any contract or instrument having force by virtue of any such law and save as otherwise expressly provided in this Ordinance, with effect from the date of commencement of this section,-

(a) Every loan advanced before the commencement of this section including the amount of interest, if any, payable by the borrower to Micro finance institutions or Money Lending Agencies or Organizations or Lender shall be deemed to be wholly discharged for "Vulnerable section of the society" if the Micro finance institutions or Money Lending Agencies or Organizations or Lender are unregistered and unlicensed.

(b) No Civil Court shall entertain any suit or proceeding against the borrower for the recovery of any amount of such loan including interest, if any:

Provided that, where a suit or proceeding is instituted jointly against the borrower and any other person nothing in this section shall apply to the maintainability of the suit or the proceeding in so far as it relates to such other person.

(c) All suits and proceedings (including appeals, revisions, attachments or execution proceedings) pending on the said date

against any borrower for the recovery of any such loan shall abate."

(Emphasis supplied)

The objects and reasons for promulgation of the Ordinance is to protect the economically vulnerable groups and individuals, especially farmers, women and women's self-help groups from the undue hardship of usurious interest rates and coercive means of recovery by Micro Finance Institutions/Money Lending Agencies/ Organizations operating in the State of Karnataka and for matters incidental thereto. Section 2 deals with definitions. Section 2(a) defines a 'borrower'. A borrower would mean an individual or a self-help group or joint liability group or a group of individuals who avail money in the form of loan for any purpose from Micro Finance Institutions. The Ordinance is issued for the purpose of protection of vulnerable sections of the Society. Who are vulnerable sections is also defined under the Ordinance. Section 2(g) defines vulnerable section to be agricultural labours, formers, workmen, footpath vendors or vendors who move from one place to other and so on and so forth.

10. Lender is also defined. The lender includes Micro Finance Institutions or money lending agencies or organizations of whatever nature who charge interest on daily, weekly, monthly or yearly basis. Interest is also defined to be interest charged by Micro Finance Institutions. Loan is also defined. The loan would mean advance or hand loan whether of money or in kind such as seeds or fertilizers etc. Section 6 deals with Micro Finance Institutions not to seek security. It mandates that no Micro Finance Institution shall seek any security from the borrower by way of pawn, pledge or other security. The proviso indicates that any security obtained from the borrower, as on the date of Ordinance would stand forthwith released in favour of the borrower. Penalty for coercive steps is dealt with under Section 8.

11. The issue is, Ordinance is promulgated for the protection of vulnerable class of the society from the hands of recovery agents. It is in public domain that the need to bring the Ordinance became imperative, as suicides happening everywhere on two counts viz., exorbitant unregulated interest and unethical means of recovery. This affected the vulnerable sections of the society, as

they were borrowers from the Micro Finance lending groups and these finances are available without security if the borrowers' annual income would be less than ₹3/- lakhs. It is only those persons who would become eligible to borrow from a Micro Finance Company. The borrowing happened contrary to the circulars, as in some cases security was taken and when the farmers could not return the loan or pay a particular month's installment, unable to bear the torture of recovery agents, they have committed suicide. All this in public domain. This has driven the Legislature to promulgate the Ordinance. The learned Advocate General submits that the impugned Ordinance has been replaced by a legislative enactment now.

12. Therefore, the Ordinance aims at protecting the borrowers from excessive interest and harsh recovery measures employed by Micro Finance Institutions and organizations. The Ordinance stemmed from suicides attributed to exploitative lending and aggressive loan recovery methods which sparked outrage. Precious lives were lost due to coercive actions and recovery measures. Therefore, there is nothing that can be called manifestly

arbitrary in the promulgation of the Ordinance. The Apex Court defines what is manifest arbitrariness in the case of **NIKESH TARACHAND SHAH v. UNION OF INDIA**[4], as follows:

"…. …. ….

> **23.** Insofar as "manifest arbitrariness" is concerned, it is important to advert to the majority judgment of this Court in *ShayaraBano* v. *Union of India* [*ShayaraBano* v. *Union of India*, (2017) 9 SCC 1: (2017) 4 SCC (Civ) 277]. **The majority, in an exhaustive review of case law under Article 14, which dealt with legislation being struck down on the ground that it is manifestly arbitrary, has observed:** (SCC pp. 91-92 & 99, paras 87 & 101)
>
> > **"*87.* The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three-Judge Bench decision in *McDowell* [*State of A.P.* v. *McDowell & Co.*, (1996) 3 SCC 709] when it is said that a constitutional challenge can succeed on the ground that a law is "disproportionate, excessive or unreasonable", yet such challenge would fail on the very ground of the law being "unreasonable, unnecessary or unwarranted". The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution.**
> >
> > ***
> >
> > *101*. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* [*Indian Express Newspapers*

[4] **(2018) 11 SCC 1**

> *(Bombay) (P) Ltd.* v. *Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."
>
> This view of the law by two learned Judges of this Court was concurred with by Kurian, J. in para 5 of his judgment."

(Emphasis supplied)

A provision would be struck down on the score that it is manifestly arbitrary only if the thread of reasonableness **does not** run through the entire Ordinance or runs counter to the fundamental rights chapter. If the Courts would come to the conclusion that Ordinance is manifestly arbitrary or unreasonable, it would be violative of Article 14 of the Constitution. **Deployment of the concept of manifest arbitrariness should be on sound principles. The test of manifest arbitrariness would be to apply to invalidate the Ordinance only if the legislature capriciously, irrationally**

or without adequate determining principle has promulgated the said Ordinance. None of these traits, as held by the Apex Court, are found in the case at hand, to declare the Ordinance to be suffering from manifest arbitrariness. It is an imaginary plea of the petitioner which does not inspire a semblance of confidence.

13. The only issue projected by the learned senior counsel for the petitioner is that Micro Finance Institution or borrower or lending agency is not defined. Therefore, reliance will have to be placed upon circulars issued by the Reserve Bank of India. The circulars issued by the Reserve Bank of India have been held to have a statutory force in plethora of cases by the Apex Court. A circular issued on 14-03-2022 defines what is **'Microfinance loan'**. It reads as follows:

> "3. **Definition of Microfinance Loan**
>
> **3.1 A microfinance loan is defined as a collateral free loan given to a household having annual household income up to ₹3,00,000/-. For this purpose, the household shall mean an individual family unit, i.e., husband, wife and their unmarried children.**

3.2. All collateral-free loans, irrespective of end use and mode of application/processing/disbursal (either through physical or digital channels), provided to low-income households i.e., households having annual income up to ₹3,00,000/- shall be considered as microfinance loans.

3.3 To ensure collateral-free nature of the microfinance loan, the loan shall not be linked with a lien on the deposit account of the borrower.

3.4 The REs shall have a board-approved policy to provide the flexibility of repayment periodicity on microfinance loans as per borrowers' requirement."

(Emphasis supplied)

A microfinance loan is defined to be a collateral free loan given to a household having annual household income up to ₹3,00,000/- or less. Therefore, the cap is at ₹3,00,000/-. These are microfinance loans without collateral. It further clarifies that to ensure collateral-free nature to the microfinance loan, the loan should not be linked with a lien on the deposit account of the borrower. Therefore, the Reserve Bank of India is clear that microfinance loans should be collateral-free and collateral security should not be created by marking a lien on the deposit account of the borrower. The said definition is to be paraphrased to the so-called ambiguity that the petitioner would project.

14. The petitioner does not come within the ambit of the Ordinance. It is still permitted to run its business in terms of other legislations. There is no impediment, in the subject Ordinance, for the petitioner to make a hue and cry that all securities would stand released in favour of the borrower. The borrower is defined; microfinance is defined and vulnerable sections are defined. Therefore, it is unequivocal that it is applicable only to microfinance lending institutions for protection of borrowers who are from the vulnerable sections of the society, *inter alia*.

15. The Ordinance, conceived in response to the anguished cries of the vulnerable – farmers, women, workers, marginalized groups *inter alia* seeks to rescue them from usurious money lenders and micro finance entities who as public knowledge and legislative record bear testament, have wielded unconscionable recovery methods, often driving the debtors from *buoyancy* of hope, to the abyss of despair and death. The Ordinance does not traverse into the realm of secured transactions undertaken by the regulated entities like the petitioner, on the contrary, it carves out a

protective shield specifically for those trapped in the labyrinth or unsecured micro loans extended without collateral, targeting an annual income of Rs.3 lakhs or less, which is clearly defined by the Reserve Bank of India, as quoted *supra*. **Therefore, the Ordinance has taken birth from the womb of social justice, it nowhere depicts arbitrariness.** The grievance of the petitioner is, on the face of it, imaginary and unacceptable. The issue is thus answered against the petitioner.

16. Therefore, the Ordinance does not suffer from any manifest arbitrariness to declare it to be unconstitutional as is sought by the petitioner. The purport of the Ordinance does not touch upon the business of the petitioner for it to be aggrieved. **In view of the preceding analysis, the unmistakable inference is, that the thread of reasonableness runs through the object of the law. With thus being the case, the Courts must always be *loathe* to strike down a measure of this kind, unless compelled by an egregious violation of constitutional mandates, I find none.**

17. The petition wanting in merit should necessarily meet its dismissal. It accordingly meets. The petition stands ***dismissed.***

Consequently, I.A.No.1 of 2025 also stands disposed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ