

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 320 OF 2015

NAVNATH MOTIRAM SHIRALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Thombre Chandrakant V.
AGP for Respondents: Mr.S.G. Karlekar
Advocate for Respondent No.4 :Mr.M.P. Gude
...

CORAM : R. M. BORDE & P.R. BORA, JJ.
Date: August 19, 2015
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PER COURT :-

1 The petitioner is seeking quashment of the proceedings, initiated under section 88 of the Maharashtra Cooperative Societies Act, 1960.

2 The petitioner contends that, the proceedings are initiated with issuance of order of the District Deputy Registrar dated 28.3.2011, appointing an officer to conduct an enquiry and for prescribing liability of the Directors of the bank. It is the contention of the petitioner that, although an Officer has been appointed in the year 2011, till this date, proceedings under section 88 are not finalized and as such by virtue of proviso to subsection 1 of Section 88, the proceedings shall be deemed to have lapsed.

Sub-section 1 of section 88 reads thus:-

“ 88(1) Where, in the course of or as a result of an audit under section 81 or an inquiry under section 83 or an inspection

under section 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry under section 83 or the person authorised to inspect the books under section 84 or the Liquidator under section 105 or otherwise that any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to [the date of commencement of such audit or date of order for inquiry inspection or] winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may frame charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

(2) The Registrar or the person authorised under sub-section (1) on making any order under this section, may provide therein, for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible. "

3 It is not a matter of dispute that, notice prior to framing of charges has been issued on 10.11.2014 and charge sheet within contemplation of Rule 72(3) is yet to be issued. The period prescribed under the proviso to subsection 1 of section 88 is yet to come to an end. Rule 72 of the Maharashtra Cooperative Societies Rules, contemplating a preliminary enquiry provides that, on receipt of report referred to in section 88 or otherwise, Registrar or any other person authorized by him, may make such further enquiry, as he may deem it necessary regarding extent to which the person who has taken any part in the organization or management of a society or any deceased, past or present officer of the society has misapplied or retained, or become liable or accountable for, any money or property of the society, or has committed misfeasance or breach of trust in relation to the society. Sub-rule 2 contemplates issuance of notice to the person or persons concerned, asking him or them, to show cause in respect of acts of misapplication, retention, misfeasance or breach of trust and the extent of his or their liability, involved therein and calling upon him or them to put in statement in his or their defence, within fifteen days of the date of issue of the notice. A report within contemplation of rule 72 is a result of an audit under section 81 or an enquiry under section 83 or an inspection under section 84 or the winding up of a society.

4 In the instant matter, on receipt of the report prescribed under section 88, the Registrar has conducted a preliminary enquiry and issued a show cause notice within contemplation of sub-rule 2 of rule 72. As has been recorded above, since the proceedings before the Registrar are at the stage of framing of charges, the period prescribed under the proviso to subsection 1 of Section 88 has not come to an end.

5 In view of this, the request made by the petitioner seeking quashment of the proceedings need not be entertained.

6 The Writ petition is devoid of substance and hence stands dismissed.

(P.R. BORA, J)

(R.M.BORDE, J)

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