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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5683 OF 2012

Dhanashri Mahila Sahakari Bank Ltd. … Petitioner

Vs.

Union of India and Ors. … Respondents

Mr. S.S. Patwardhan a/w R.P. Pawar, for the Petitioner.
Mrs. Neeta Masurkar, for the Respondent No.1.
Mr. Shenoy Prasad a/w Kinshuk Kislaya i/by M/s. Udwadia Udeshi & Argus Partners, for the Respondent No.2.
Mrs. M.P. Thakur, AGP, for the Respondent No.3.

CORAM : A.S. OKA &
A.K. MENON, JJ.

DATE : 14th JANUARY, 2015

P.C.

. Heard the learned counsel appearing for the Petitioner. The Petitioner is a Co-operative Bank. On 15th October, 2009, a show cause notice was issued by the second Respondent-Reserve Bank of India under Sub-Section (4) of Section 22 of the Banking Regulation Act, 1949 (for short "the said Act") to the Petitioner. The show cause notice was based on the Petitioner Bank's financial position as of 31st March, 2009. The allegation is that there is a violation of Sub-Section (1) of Section 11, Section 18 and Clause (b) of Sub-Section (3) of Section 22 of the said Act. The Petitioner Bank replied on 29th October, 2009. An order was made by the second Respondent Reserve Bank of India on 19th March, 2010 by which the second Respondent cancelled the licence granted to the Petitioner for the conduct of the banking business.

2. An Appeal was preferred by the Petitioner against the said order under Sub-Section (5) of Section 22 of the said act. By order dated 9th March, 2012, the Appellate Authority (Joint Secretary of the Ministry of Finance of the Government of India) dismissed the Appeal. In this Petition under Article 226 of the Constitution of India, both the orders have been impugned.

3. The first submission of the learned counsel appearing for the Petitioner is that there was a violation of Sub-Section (1) of Section 35 of the said Act as a copy of the scrutiny report was not provided to the Petitioner. He invited our attention to the paragraph 6 of the order passed by the second Respondent. He pointed out that there is a report submitted after scrutiny of the books of accounts of the Petitioner Bank with reference to its financial position as of December 31, 2009. He submitted that a copy of the report is not made available to the Petitioner. He urged that no opportunity was granted to the Petitioner to improve its functioning. He invited our attention to an application made on behalf of the Petitioner on 4th November, 2011 before the

Appellate Authority with a prayer to allow filing of a rejoinder to the reply filed by the second Respondent to the Appeal preferred by the Petitioner. He submitted that an opportunity to file a rejoinder was denied to the Petitioner. He, therefore, submitted that illegality has been committed both by the second Respondent as well as the Appellate Authority. He urged that in any event, an opportunity deserves to be granted to the Petitioner to improve its functioning.

4. We have given careful consideration to the submissions. It will be necessary to make a reference to the order dated 19th March, 2010 passed by the second Respondent. In the statutory inspection of the Petitioner's financial position as of 31st March, 2009, various deficiencies and irregularities were noted. The said deficiencies noted by the second Respondent are as under :-

> "The real and exchangeable value of paid up capital and reserves being negative at (-) Rs.72.31 lakh, the bank is not having adequate assets to meet its liabilities as required under section 22(3) (a) of B.R. Act 1949(AACS). The bank, also, does not comply with the requirement of minimum share capital prescribed in terms of the provisions of section 11(1) of the Act.
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> (II) CRAR of the bank was assessed negative at (-) 49.7%. The bank was not having minimum regulatory required CRAR of 9%.
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> (III) The erosion in the value of assets has not only wiped out

the entire owned funds but the deposits have also been eroded to the extent of 25.2% of the total deposits.

(IV) The Gross NPAs of the bank were assessed at Rs.91.60 lakh, which formed 50.2% of the gross loans and advances as on March 31, 2009. The Net NPAs were assessed at Rs.66.43 lakh forming 42.2% of the net loans and advances as on that date.

(V) The bank had defaulted in the maintenance of CRR and SLR thereby violating the provisions of Section 18 & 24 of the Act."

5. What is noted is that the real and exchangeable value of the paid-up capital and reserves of the Petitioner was (-) Rs.72.31 lakhs and, therefore, the Petitioner Bank was not in a position to meet its liabilities under Clause (a) of Sub-Section (3) of Section 22 of the said Act. Apart from failure to comply with the requirement of minimum share capital, it was observed that CRAR of the Bank was also assessed (-)49.7%. The minimum regulatory required CRAR was of 9%. Even the gross NPA as on 31st March, 2009 was more than 50% of the gross loans and advances. The findings recorded in the said order after consideration of the reply to the show cause notice read thus :-

"(i) The bank does not comply with the provisions of sections 11(1), 18, 22(3) (a) & (b) and 24 of the Act.

(ii) The bank is not in a position to pay its present and future depositors.

(iii) The affairs of the bank are being conducted in a manner detrimental to the interests of the depositors.

(iv) The financial position of the bank leaves little scope for its revival.

(v) In all likelihood public interest will be adversely affected if the bank is allowed to carry on its business any further."

6. In view of the said findings, satisfaction was recorded by the second Respondent that allowing the Petitioner to carry on the banking business any further would be detrimental to the interests of the present and future depositors. Being aggrieved by the said order of 19th March, 2010, an Appeal was preferred by the Petitioner. Reply was filed to the said Appeal by the second Respondent on 14th July, 2010. We must note here that Exhibit 'H' to the Petition shows that after hearing the Ex-Chairman of the Petitioner on behalf of the Petitioner, the Appeal was closed for final orders on 4th October, 2011. One month thereafter, on 4th November, 2011, by making an application, a prayer was made for permitting the Petitioner to file a rejoinder. As noted earlier, a reply was filed on 14th July, 2010 by the Reserve Bank of India and hearing was concluded on 4th October, 2011. The prayer for filing a rejoinder was made one month after the Appeal was closed for orders. Therefore, we find no error in the order by which the prayer was turned down by the Appellate Authority.

7. As far as non-compliance with Sub-Section (1) of Section 35 of the said Act is concerned, the requirement of Sub-Section (1) is that the Reserve Bank of India shall cause an inspection to be made by one or more of its officers of any banking company and its books of accounts; and the Reserve Bank shall supply to the banking company a copy of the report on such inspection. In the order passed by the Appellate Authority, it is stated that the show cause notice was based on the findings of the inspection in terms of Sub-Section (1) of Section 35 in three reference years i.e. 2006-07, 2007-08 and 2008-09. It is recorded that the inspection reports of the said three years were furnished to the Petitioner on 15th October, 2007, 14th October, 2008 and 5th June, 2009 respectively with advice to submit compliance reports. It is observed that the compliance report submitted by the Bank was not satisfactory.

8. It will be necessary to make a reference to the show cause notice dated 15th October, 2009. The show cause notice is specifically based on the financial position of the Petitioner Bank as obtained on 31st March, 2009. We have perused the reply dated 29th October, 2009 to the show cause notice. In the reply, the figures quoted in the show cause notice were not disputed. However, it was contended that as of 15th October, 2009, CRAR stands at (-)34.82% when the minimum regulatory requirement is of 9%. It is stated that erosion of value of

deposits assessed 25.2% was brought down marginally to 19.04% on 19th March, 2009. It also records that gross NPA of the Petitioner which was assessed at 50.2% was marginally brought down to 42.46%.

9. It is in this context that the observations in paragraph 6 of the impugned order dated 19th March, 2010 have been made. In paragraph 6, the second Respondent has dealt with the said contentions in the reply dated 29th October, 2009 recording the marginal improvement of the financial condition of the Bank. Only while dealing with the said contention that a reference has been made to the scrutiny of the books of accounts of the Bank reflecting the position as of December 31, 2009.

10. In fact, what was required to be considered at the time of hearing of the show cause notice was the Bank's financial position on 31st March, 2009. However, considering the claim made by the Petitioner of marginal improvement, the second Respondent has verified the said claim as of 31st December, 2009 and has recorded that the improvement was marginal having no impact on the financial position of the Bank. Therefore, the submission that a copy of scrutiny report showing the position as on 31st December, 2009 was not supplied has no merit. It is pertinent to note that in the reply to the show cause notice,

the precarious financial position of the Bank set out in the show cause notice as of 31st March, 2009 has not been disputed and the only claim is of marginal improvement made subsequently. The Appellate Authority has precisely noted that only in the light of contention raised in the reply to the show cause notice that the scrutiny was made of the books of accounts of the Petitioner Bank to ascertain whether there was merit in the said contention of marginal improvement.

11. The second Respondent – Reserve Bank of India has all the expertise in the field of banking. On the basis of the Bank's financial position as obtaining on 31st March, 2009 and after considering the claim of marginal improvement, a finding of fact has been recorded by the second Respondent that the affairs of the Bank are being conducted in a manner detrimental to the interests of the depositors. It was held that the Bank is not in a position to pay its present depositors. The order of the second Respondent records that a realistic action plan to turn around its financial position is also not submitted by the Bank and, therefore, a conclusion was recorded that public interests will be adversely affected if the Bank is allowed to carry on its business any further. As set out earlier, the figures set out in the show cause notice were not disputed in the reply. What was claimed was only the marginal improvement. Thus, there is no reason to interfere with the findings

recorded by the expert body like the second Respondent – Reserve Bank of India. Based on the consideration of the record, even the Appellate Authority has recorded that the Petitioner Bank was not complying with the statutory requirements of Sub-Section (1) of Section 11, Section 18, clauses (a) and (b) of Sub-Section (3) of Section 22 and Section 24 of the said Act. In the circumstances, there is no reason to interfere with the impugned orders in a Writ Petition under Article 226 of the Constitution of India. The Petition is accordingly rejected.

(A.K. MENON, J) **(A.S.OKA, J)**