

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10102 OF 2014

Prathamik Shikshak Sahakari
Bank Ltd and Anr.

Petitioners

Vs

Vikaram Mukund Dongre

.. Respondent

Mr.Kiran Bapat a/w Mr T.R.Yadav i/b M/s Desai & Desai &
Associates, Advocates for the Petitioners.

Mr. Mandar Limaye, Advocate for Respondent no.23.

CORAM : R.G.KETKAR,J.
DATE : 02/03/2015/

PC:

1. Heard Mr. Kiran Bapat, learned counsel for the petitioners and Mr.Mandar Limaye, learned counsel for respondent no.23 at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 26.9.2014 passed by the learned in-charge Member, Industrial Court, Satara (for short, "Tribunal") below Exhibit-C-22 and C-20 in Complaints (ULP) No.40 to 61 of 2013. By that order, the Tribunal allowed the applications made by respondent no.23, herein, and directed his impleadment in the complaints.

3. In support of this Petition, Mr. Bapat submitted that respondent no.23 instituted Dispute in Co-operative Court, Satara

in or about January, 2013, under section 91 of the Maharashtra Co-operative Societies Act, 1960, challenging Resolutions no.29 and 30 passed by Board of Directors on 28.10.2012 as also for perpetual injunction restraining the petitioner no.1-Bank from recruiting employees in pursuance thereof. During pendency of that dispute, respondent no.23 took out application for interim relief. By Judgment and order dated 31. 5.2013, the learned Judge, Co-operative Court, Satara rejected the application.

4. He submitted that respondents 1 to 22 instituted Complaints (ULP) No.40 to 61 of 2013 in or about December, 2013. During pendency of the complaints, they took out application Exhibit U-2 and prayed for injunction restraining the petitioner no.1-Bank from terminating their services and changing their service conditions. By order dated 10.12.2013 the Tribunal restrained the Bank from terminating the services of any of the complainants without following due process of law and fixed the matter for filing say to Exhibit U-2 and for filing Written Statement to the main complaints. Mr. Bapat submitted that it is thereafter one of the share-holders filed application in or about January 2014 for impleading him as a third party respondent. Another application was filed on or about 5.7.2014 by one Vilas B. Salunkhe working as Peon for his impleadment. By the Judgment and order dated 5.8.2014, the Tribunal rejected the applications. It is only thereafter respondent no.23 filed

application on 19.8.2014 for his impleadment. He submitted that since respondent no.23 did not get any interim relief in the Co-operative Court he had set up one shareholder and one peon for impleadment. The Tribunal rejected those applications. Since respondent no.23 did not succeed in getting any interim relief in the dispute filed by him, as and by way of forum shopping he has filed the present application on 19.8.2014 for impleadment. Mr. Bapat further submitted that the Cooperative Court, while rejecting the application filed by respondent no.23, prima facie, observed that the recruitment is undertaken by the petitioners after following due process of law. He further submitted that the petitioners have filed Written Statement opposing the complaint and reply to the applications for interim relief. Thus, there is no collusion between the petitioners and respondents no.1 to 22. He, therefore, submitted that the impugned order deserves to be quashed and set aside.

5. On the other hand, Mr. Limaye supported the impugned order. He submitted that the Tribunal recorded that respondent no.23 is a sitting Director of the Bank. He also considered the decision of this Court in the case of Mahesh Rangrao Dhere Dhere Vs Kolhapur Sheti Utpanna Bazaar Samiti, Writ Petition (ST) No.4439 of 2013 decided on 12.2.2013 and held that respondent no.23, being a Director, cannot be said to be a total stranger to the affairs of the Bank. He further submitted that respondents 1

to 22 being the complainants, are dominus litis. They have, however, not challenged the order of impleadment. The petitioners cannot make any grievance as regards impleadment of respondent no.23 in the complaints. He, therefore, submitted that no case is made out for invocation of powers under Articles 226 and 227 of the Constitution of India.

6. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, respondent no.23 has challenged Resolutions no.29 and 30 passed by the Board of Directors on 28.10.2012 as also has sought permanent injunction restraining the petitioner no.1-Bank from proceeding with the recruitment of employees. During pendency of the dispute he took out application for interim relief. By order dated 31.5.2013 that application was rejected. Perusal of that order and in particular paragraph 6 thereof, prima facie shows that the learned Judge of the Cooperative Court observed that the major part of recruitment till the examination was completed. If the procedure of recruitment is stayed then it will cause loss to the candidates who had appeared for the examination. It was further prima facie observed that opponents therein have followed due procedure for recruitment. It is undoubtedly true that one of the share holders filed application for impleadment sometime in January 2014 and another application by Mr V. B. Salunkhe on or

about 5.7.2014 for impleadment and those applications were rejected by the Tribunal on 5.8.2014. While rejecting the applications, the Tribunal observed that a share holder or Ex-Director and other employees working as a peon have no locus standi to join in the proceedings.

7. As far as respondent no.23 is concerned, as noted earlier, he has already approached the Co-operative Court. Even if the interim relief prayed for by him is rejected by the Cooperative Court, that does not mean that the main dispute filed by him is decided against him. The dispute is very much pending and lis between the parties is alive. The Tribunal while allowing the application observed in paragraph 4 that respondent no.23 is a sitting Director of the Bank. It also considered the decision of this Court in the case of Mahesh Rangrao Dhere (supra).

8. It is also relevant to note that when the respondents no.1 to 22 instituted complaint on 10.12.2013, the Tribunal issued injunction restraining the petitioner- Bank from terminating their services. Paragraphs 3 and 4 of that order read as under:

“3. If the prayer which is made in Ex.U-2 is considered then as per prayer clause (b) a relief was sought not to terminate the services of the complainants and not to change the service conditions. As time is sought to file written statement by the respondents and as apprehension has been shown by the complainants regarding termination of their services so, a balance is to be strike out between the interest of parties as the employment of the complainants with the respondent-Bank as on the date of filing of the complaints is undisputed as submitted at Bar.

4. So, in order to have some protection in respect of apprehension to the complainants the respondents are restrained from terminating the service of any of the complainant in complaint (ULP) No.40 to 61/2013 without adopting due process of law. The matters shall be fixed for filing say by the respondents to Ex.U-2 and for filing written statement to main complaints on 10.1.2014. “

The petitioners have not challenged this order. Mr Limaye expressed his apprehension that the petitioners will not effectively oppose the complaint instituted by respondents no.1 to 22 and respondent no.23 wants to ensure that appointments are not made contrary to the provisions of law. In the case of Mahesh Dhere, this Court considered assertions made by respondent no.3 therein. In paragraph 11, respondent no.3 had made complaint to the State Government as also Deputy District Registrar, Kolhapur. On the basis of the complaint made by him on 20.11.2012 to the District Registrar, enquiry was being conducted. In the present case, respondent no. 23 has already approached the Cooperative Court and the dispute is pending. Respondent no.23, being one of the Directors of petitioner no.1 Bank, it cannot be said that he is total stranger to the affairs of the petitioner no.1-Bank, that includes appointment of employees which is to be made in accordance with law. I, therefore, find merit in the submission of Mr. Limaye that the Bank has to make appointments strictly in accordance with law.

9. It is also material to note that respondents no.1 to 22 being

the complainants are the dominus litis. However, they did not prefer to challenge the impugned order. It is only the Bank and its Chief Executive Officer have challenged the order whereby respondent no.23 is impleaded. In my opinion, the petitioners have hardly any say in the matter of impleadment as they are not dominus litis and it is only the complainants who are dominus litis. For all these reasons, I do not find that the Tribunal committed any error in passing the impugned order. The Petition fails and the same is dismissed.

(R.G.KETKAR, J.)