

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11931 OF 2015

Satish Pandurang Sale & Ors.	..	Petitioners
VS.		
Authorised Enquiry Officer & Asst. Registrar Co-op. Societies, Sangli Ors.	..	Respondents

Mr. P. D. Pise for Petitioners.
Mr. Umesh Mankapure for Respondent Nos. 1 and 3.
Mr. S. D. Rayrikar – AGP for Respondent Nos. 2 and 4.

CORAM : M. S. SONAK, J.
DATE : 04 FEBRUARY 2016

P.C :

1] Leave to amend by way of challenge to communication dated 8 September 2015 made by the respondent no.1 during the pendency of this petition. Amendment to be carried out forthwith.

2] The challenge in this petition is to the notice dated 19 May 2015 and the communication dated 8 September 2015 made by the respondent no. 1 in connection with enquiry under Section 88 of the Maharashtra Co-operative Societies Act 1960 (said Act) read with Rule 72 of the Maharashtra Co-operative Societies Rules 1961 (said Rules).

3] Mr. Mankapure, the learned counsel for the petitioners has submitted that enquiry in respect of the very same charges commenced against the petitioners way back in the year 2002. Consistent with the provisions contained in Rule 72(3) of the said Rules, then Enquiry Officer also framed charges against the petitioners some time in June of 2008. The petitioners have not only filed their statement of defence but have also adduced their evidence in relation to the charges framed. For reasons, not attributable to the petitioners, the enquiry did not proceed for considerable length of time. However, the enquiry is purported to be re-started by notice dated 19 May 2015. Mr. Mankapure, the learned counsel for the petitioners submitted that in principle, the petitioners have no objection to the recommencement of the enquiry. However, the petitioners have serious objections to the enquiry not proceeding from the stage at which it remained halted. Mr. Mankapure submits that at this stage, the Enquiry Officer ought not to be permitted to restart the enquiry from the beginning i.e. by way of inviting response, framing charges, taking fresh evidence, as this process, will seriously prejudice the petitioners. Mr. Mankapure attempts to draw an analogy of a criminal trial under the provisions of the Criminal Procedure Code, 1973 and submits that the petitioners, having already disclosed their defence, cannot be once again, made to suffer charges and once again defend themselves.

Mr. Mankapure submits that this is an attempt to filling the lacuna in the previous enquiry proceedings, which according to him is clearly impermissible. On all these grounds, Mr. Mankapure submits that the impugned notice dated 15 May 2015 and the communication dated 8 September 2015 is liable to be quashed and set aside.

4] In this case, it is to be noted that the reason for initiating enquiry under Section 88 of the said Act is that, the petitioners were *prima facie*, found to have been responsible for the loss caused to the bank on account of their acts of omission and commission. From the charge sheet dated 5 June 2008 issued against one of the petitioners, it appears that the total loss caused to the bank is in the range of Rs.11.64 Crores.

5] It is true that the enquiry in terms of Section 88 read with Rule 72 of the said Rules did commence earlier and even the charges were framed against the petitioners some time in the year 2008. However, thereafter, for reasons which are not explicable, the enquiry into a matter of this magnitude has not proceeded. Therefore, there cannot be any objection to the recommencement of such enquiry. In fact, it is the duty of the Authorities under the said Act to take such enquiries to their logical conclusion, in the interests of the co-operative movement in the State.

6] The only question is whether the enquiry has to proceed from the stage at which it was virtually abandoned or whether it is permissible for the newly appointed Enquiry Officer i.e. the respondent no. 1 to restart the enquiry from the beginning. In the present case, as noted earlier, the enquiry was virtually abandoned sometime in the year 2008. At that stage, the charges had been framed and perhaps the petitioners had submitted their defence. In fact, if the scheme of Rule 72 is to be perused, then in terms of Rule 72(2), the Enquiry Officer upon completion of further enquiry under sub rule (1), is required to furnish the person or persons concerned with particulars of the 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 from the date of issue of the notice.

7] In the present case, from the submissions made by Mr. Mankapure, it appears that such opportunity was furnished to the petitioners. It is only upon receipt of statement from the petitioners, as referred to in sub rule(2) of Rule 72 that the Enquiry Officer if he is satisfied that there are reasonable grounds for holding the person or persons liable, shall frame charges. This means that it is only after afford of opportunity of filing their statements that charges

came to be framed against the petitioners. This means that even after the petitioners raised their defences, the then appointed Enquiry Officer, specified that there were reasonable grounds for holding the petitioners liable and then went on to frame the charges. If this be the position, it can hardly be said that the petitioners have disclosed their defence after the framing of the charges and therefore will be now prejudiced, in case the enquiry starts from the beginning.

8] Further, it is to be noted that the enquiry in this case, for no explicable reasons was virtually abandoned in the year 2008. In these circumstances, if the Authorities appoint a new Enquiry officer and require him to start the process once again, it cannot be said that any serious prejudice will occasion the petitioners. The prejudice if at all, might be in the context of delay in the continuance of proceedings. For this purpose, necessary directions can always be issued to the Authorities to complete the enquiry within a time bound schedule. The petitioners, by virtue of the recommencement of the enquiry, will have the benefit of once again, putting forth their defence and availing of all the opportunities which the law provides to them in terms of Rule 72 of the said Rules. The petitioners obviously cannot complain about the compliance of principles of natural justice on the part of the Authorities. Such

principles, are in fact to enure for the benefit of the petitioners. In case, the petitioners, are not interested in availing the procedural safeguards, it is open to them to state that they stand by their previous responses or it is open to them to once again file their previous responses. However, there is no question of complaining about the recommencement of the enquiry. In case, no jurisdictional bar to the recommencement of the enquiry has been pointed out. No statutory provision or rule has been pointed out which bars the recommencement of such enquiry.

9] In fact, in the facts and circumstances of the present case, such recommencement is quite consistent with the principles of natural justice and fair play, particularly considering the time gap between the abandonment of the first enquiry and the recommencement of the present enquiry. Recommencement is also necessary to obviate any further challenges on the ground that the person who hears must be the person who decides. This is hardly an occasion to decide whether such principle will apply to enquiries of this nature. However, if, for the purpose of obviating such anticipated challenge, the Authorities at this point of time, decide to recommence with the enquiry, it can hardly be said that such exercise is in excess of jurisdiction or vitiated on account of some presumed prejudice to the petitioners.

10] Accordingly, this petition is liable to be dismissed. However, the respondent no. 1 is directed to dispose of the enquiry as expeditiously as possible and in any case within a period of four months from today. It is made clear that the observations made in this judgment and order are not intended to affect the merits of the petitioners case or their defences. Accordingly, the Enquiry Officer to complete the enquiry in accordance with law and on its own merits. The petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka