IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10615 OF 2015

The Premier Co-operative Bank .. Petitioner
vs.
The Commissioner for Co-operation &
Registrar of Co-operative Societies & Ors. .. Respondents

Mr. S.S. Kulkarni for the Petitioner.
Mrs. V.G. Nimbalkar, A.G.P. for Respondent Nos.1 to 3.
Mr. Kinshuk Kislaya i/b. Udwadia & Co. for Respondent No.4 (R.B.I.).

CORAM : M.S. SONAK, J.
DATE : 21 JANUARY, 2016.

P.C. :

1. By order dated 26.10.2015, this Court had made the following order :-

> *1] "After this matter was heard for some time on behalf of the respondent Nos.1 to 3, it was submitted that the Reserve Bank of India has been added as a necessary party and they were duly served on 23rd March 2015. However, today they are not represented. Having heard the matter for some time the petition can be disposed of at the stage of admission.*
>
> *2] However, since the Respondent No.4 is not present, Mr. Kulkarni is directed to issue fresh notice to the Respondent No.4. Place the matter on 29th October 2015. "*

2. Mr. Kulkarni, learned counsel for the petitioner, submits that service is now completed upon all respondents, necessary affidavit of service has already been filed. Perusal of the record indicates that

pleadings are also completed. Therefore, **Rule**. Rule is made returnable forthwith, in view of the order dated 26.10.2015.

3. The challenge in this Petition is to the orders dated 18.01.2014 and 30.01.2015 made by the Commissioner of Co-operative Society and the Minister (Co-operation), rejecting petitioner's application seeking approval for amendments to its bye-laws. Rejection is on the ground that the petitioner is said to be suffering sustained losses and, therefore, the amendments, by which the petitioner proposes to function as a Co-operative Credit Society, cannot be permitted.

4. Mr. Kulkarni, the learned counsel for the petitioner, has submitted that the petitioner may have suffered losses earlier, however, consequent upon the receipt of substantial amount from the liquidator, the position has undergone changed. This aspect has not been considered while making the impugned order. Even otherwise, Mr. Kulkarni submitted that the alleged circumstance is quite irrelevant, because the proposed amendments were in pursuance of certain directions contained in communication dated 09.10.2013 issued by the Reserve Bank of India (R.B.I.) in the context of the permission applied for by the petitioner for a banking licence or to function as a Co-operative Credit Society. Mr. Kulkarni submitted that this aspect has not been considered by the two

authorities while making the impugned orders.

5. Mrs. Nimbalkar, the learned A.G.P. for respondent Nos.1, 2 and 3 has defended the impugned orders by submitting that the financial health of the petitioner has consistently been in the red. She submitted that in fact the R.B.I. had directed the respondents to take appropriate action against the petitioner and in pursuance thereof, liquidator came to be appointed for the management of the petitioner society. Such appointment may have been stayed by this Court, but the order has not been set aside. She pointed out that the proposals for amendment were forwarded by the petitioner at the stage when such liquidator had been appointed. She submitted that the two authorities have taken into consideration relevant circumstances and, therefore, there is no reason to interfere with the impugned orders.

6. Rival contention now fall for determination.

7. The amendments proposed by the petitioner society to its bye-laws are basically to the following effect :-

a) to prohibit acceptance of deposit from non members,

b) to refund the deposits belonging to non members,

c) to declare itself as a non-banking financial institution,

d) to make consequential amendments, inter-alia by deleting reference to certain expressions like bank, banker or banking.

8. There is some substance in the contention of Mrs. Nimbalkar that the financial position of the petitioner Society was indeed in the red. It is also true that the R.B.I. had directed the respondent Nos.1, 2 and 3 to take appropriate action against the petitioner society. However, it is equally true that the petitioner vide representation dated 26.07.2013 had requested the R.B.I. for grant of banking licence or atleast grant of permission to function as Co-operative Credit Society. By communication dated 09.10.2013, the R.B.I. turned down the petitioner's representation and denied the petitioner any banking licence or permission to function as Co-operative Credit Society by setting up various reasons. In the context of permission for operation as Co-operative Credit Society, the R.B.I. pointed out that there were certain compliances necessary, before such request could be considered. The R.B.I. however, stated that in case the request for grant of permission to function as Co-operative Credit Society is made, complying with certain specified requirements, then the same will be considered on merit. In this regard, reference is necessary to paragraphs 3, 4 and 4(A) of the communication dated 09.10.2013 passed by the R.B.I., which reads thus :-

> *3. As regards your request for grant of permission to function as a co-operative credit society, we advise that the request was carefully examined by RBI as per the provisions of section 36A of the Banking Regulation Act, 1949(AACS) and the circulars issued by RBI from time to time, setting out the procedure to be followed by a salary earner's/ employees' co-operative credit society, which satisfies the definition of a primary co-operative bank for being notified as a non-banking institution under section 36A(2) Banking Regulation Act, 1949 (AACS). However, we regret our inability to accede to your request as you are presently not complying with the requirements as mentioned in the circulars.*
>
> *4. <u>If the request for grant of permission to function as co-operative credit society is made, complying with the following requirements, the same will be considered on merit.</u>*
>
> *(A) For salary earners'/employees' co-operative credit societies*
>
> *The request of any salary earners'/employees' co-operative credit society whose membership is confined to persons who are/were employed in one establishment or who are/were under a common employer to go out of the purview of the BR Act, 1949 (AACS) could be considered provided :*
>
> *(i) <u>It amends its by-laws suitably so as to prohibit acceptance for deposits from non-members and</u>*
>
> *<u>(ii) It refunds all the deposits belonging to non-members.</u>*
>
> *(emphasis supplied).*

9. From the aforesaid, it is clear that the R.B.I. had itself informed the petitioner that the petitioner's application for permission to function as Co-operative Credit Society could be considered on merits, provided, the petitioner complies with certain requirements as specified. One of the requirement was that the petitioner amends its bye-laws suitably so as to

prohibit acceptance for deposits from its non-members, and refunds all the deposits belonging to non members.

10. If the application made by the Petitioner seeking approval for the amendments, as well as, the proposed amendments are perused, it does appear that such amendments were applied for in order to ensure compliances, so that the petitioner's application for permission to function as Co-operative Credit Society is considered by the R.B.I. on merits. It is pertinent to note that at the stage when the R.B.I. addressed communication dated 09.10.2013, even the R.B.I. was aware of the financial position of the petitioner society. However, the R.B.I. did not deem it appropriate to outright reject the petitioner's application for permission to function as Co-operative Credit Society, relying solely on the said ground. Instead, the R.B.I., as is evident from the tenor and contents of the communication dated 09.10.2013 informed the petitioner society that the application for petitioner society for permission to function as Co-operative Credit Society can be considered, provided, certain requirements, including *inter-alia* suitable amendments to the bye-laws are effected. In these circumstances, it is necessary for the authorities to have atleast taken into consideration the communication dated 09.10.2013 made by the R.B.I., before making the impugned orders. The contents of the said communication constituted relevant and valid material, to which, the

authorities were duty bound to apply their mind. Circumstance with regard to loss made, in a given case, be one of the parameters. However, it cannot be the sole parameter. Authorities, whilst considering whether approval should be granted for amendment to the bye-laws of the society, are required to apply their mind to various relevant parameters and at the same time, shun irrelevancies.

11. If the impugned orders are perused, it will be noticed that the order dated 18.01.2014 was made without any afford of opportunity of hearing to the petitioner. Besides, the said order merely states that there is no compliance with circular dated 03.12.1966 issued by the R.B.I. and the circumstance that the petitioner society has sustained losses. The order dated 30.01.2015 made by the Minister (Co-operation) is substantially elaborate. However, even the same, proceeds on the basis that the petitioner, having sustained losses, cannot be permitted to operate as a Co-operative Credit Society. It must be noted that before the petitioner society functions as Co-operative Credit Society, permission from the R.B.I. is a must. Therefore, the R.B.I. will obviously take into consideration all relevant parameters as to whether or not the petitioner society deserves such permission. However, as noted earlier, the R.B.I. by its communication dated 09.10.2013 has stated that the application of the petitioner society can be considered on its merits provided, the petitioner society complies

with certain requirements. One of the requirement is the amendment to its bye-laws. Therefore, the contents of the communication dated 09.10.2013 are relevant and were required to be considered. The non-consideration thereof, vitiates the impugned orders.

12. Mrs. Nimbalkar, the learned A.G.P. submitted that considering the facts and circumstances of the present case, including the circumstance that Respondent Nos.1, 2 and 3 have taken action against the petitioner society on the basis of advice of R.B.I. itself, it would be appropriate if the petitioner had impleaded the R.B.I. as a party in the Appeal before the Minister (Co-operation). Considering that the petitioner society was challenging the order made by the Commissioner ordinarily, there is no scope for impleadment of the R.B.I. However, now that the impugned orders are being set aside and the matter is being remanded to the Registrar/Commissioner for fresh consideration, the Registrar/ Commissioner is directed to issue notice to the R.B.I., so that the views of the R.B.I. are also heard, before, the petitioners proposal seeking approval for the amendments is considered and the decision thereof taken. The Registrar/Commissioner is directed to dispose of the petitioner's application seeking approval to the amendments in accordance with law and on its own merits, as expeditiously as possible, within three months from today.

13. Accordingly, the impugned orders dated 18.01.2014 and 30.01.2015 are set aside. The Registrar/Commissioner is directed to hear the petitioner and the R.B.I. and to dispose of the petitioner's application dated 12.12.2013 seeking approval for amendment to the bye-laws in accordance with law and on its own merits, as expeditiously as possible and in any case within three months from today. All contentions are kept open.

14. During the pendency of the proceedings before the Registrar/ Commissioner, the interim order granted by this Court on 18.12.2013 shall operate. The interim order is continued subject to the condition that the petitioner society neither takes any policy decision nor any decisions involving major finance or the money of the society.

15. Rule is made absolute to the aforesaid terms. There is no order as to costs.

16. All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)