

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2366 OF 2015
WITH
CIVIL APPLICATION NO. 614 OF 2015
IN
WRIT PETITION NO. 2366 OF 2015

Rajgurunagar Sahakari Bank
Ltd. & Ors. .. Petitioners
vs.
The Commissioner & Registrar,
Co-operation, Co-op. Societies,
Maharashtra State, Pune & Ors. .. Respondents

WITH
WRIT PETITION NO. 8385 OF 2014
WITH
CIVIL APPLICATION NO. 610 OF 2015
IN
WRIT PETITION NO. 8385 OF 2014

Mahesh Sahakari Bank Ltd. Pune
& Ors. .. Petitioners
vs.
The Commissioner & Registrar,
Co-operation, Co-op. Societies,
Maharashtra State, Pune & Ors. .. Respondents

WITH
WRIT PETITION NO. 2367 OF 2015
WITH
CIVIL APPLICATION NO. 613 OF 2015
IN
WRIT PETITION NO. 2367 OF 2015

Karad Urban Co-operative Bank Ltd.
& Ors. .. Petitioners
vs.
The Commissioner & Registrar,
Co-operation, Co-op. Societies,
Maharashtra State, Pune & Ors. .. Respondents

WITH
WRIT PETITION NO. 1883 OF 2015
WITH
CIVIL APPLICATION NO. 1700 OF 2015
IN
WRIT PETITION NO. 1883 OF 2015

Mahendra Gokuldas Doshi & Anr.	..	Petitioners
VS.		
The Commissioner & Registrar, Co-operation, Co-op. Societies, Maharashtra State, Pune & Ors.	..	Respondents

Mr. Amit Borkar for Petitioners in all Writ Petitions.
Ms Vaishali Nimbalkar – AGP and Ms Neha Bhide – 'B' Panel
Counsel for Respondents in all Writ Petitions.
Mr. Niranjana Mogre and Mr. Ravi Shinde for Applicants in Civil
Applications.

CORAM : M. S. SONAK, J.
DATE: 27 JANUARY 2016

P.C :

1] The challenge in each of these petitions is to the order made by the Registrar of Co-operative Societies granting permission to launch prosecution against the petitioners for offences under Sections 406, 409 and 420 of the Indian Penal Code, 1860 (IPC).

2] Mr. Borkar, the learned counsel for the petitioners has submitted that the petitioners are not involved in the commission of any acts which would be construed as offences under the provisions of the IPC. That apart, he submits that the acts on basis of which

such offences are alleged are said to have taken place in the year 2008. The permission for prosecution has been granted in the purported exercise of powers under Section 81(5B) of the Maharashtra Co-operative Societies Act, 1960 (said Act), which is a provision, which came on the statute book in the year 2013. In these circumstances, Mr. Borkar contends that the very grant of permission to launch prosecution is hit by the principle that there can be no *ex post facto* application of criminal laws, which is a principle duly enshrined in Article 20 (1) of the Constitution of India.

3] Mr. Borkar further submitted that if the audit report in terms of Section 81 (5B) is perused, then the auditors have virtually exonerated the petitioners who were the managing committee members during the relevant period. The auditor's report contains no recommendations for prosecution against the petitioners. The audit report suggests that it is the borrowers who have cheated bank and there was no involvement of the managing committee members in the transaction, which is now alleged to be cause for the offences.

4] Finally, Mr. Borkar submitted that even if the entire audit report is perused or taken into consideration, the ingredients of any offences under Sections 406, 409 and 420 cannot be said to have

been made out against the petitioners. Besides, the petitioners were not offered any opportunity of hearing before such sanction was granted and that this constitutes breach of principles of natural justice and fair play.

5] Ms Nimbalkar, the learned AGP has contended that in fact the exercise of power relates to Section 81 (3)(b) of the said Act.

6] Having considered the contentions raised by the learned counsel for the parties and perused the record, in my judgment, there is no case made out to entertain the present petitions. The impugned order in these cases, merely authorized the launching of prosecution against the petitioners for offences under Sections 406, 409 and 420 of the IPC. This is in the context of transactions where loans of lakhs of rupees were advanced for purchase of vehicles on the basis of one and same set of documents. The modus operandi adopted was that one set of vehicle documents were produced and utilised for obtaining loans from several banks. The borrowers, have ultimately fled without repayment of an amounts to the banks, as a result of which, the banks have sustained losses to the tune of lakhs of rupees. This includes the banks of which, the petitioners were in management and control at the relevant time. The material on record was sufficient to enable the authorities to exercise powers

under Section 81 of the said Act and to authorise the launch of prosecution against the petitioners. The impugned order, in the facts and circumstances of the present cases, does not suffer from any jurisdictional error.

7] There is no merit in the contention of Mr. Borkar based upon the provisions contained in Article 20(1) of the Constitution of India. Article 20(1) provides that no person shall be convicted of any offence except for violation of a law in force at the time of commission of the act charged as an offence, nor be subjected to penalty greater than that which might have been inflicted under the law in force at the time of commission of offence. This means that there cannot be *ex post facto* application of criminal laws, i.e., making an act a crime for the first time and then making that law retrospective. Nothing of this nature is even remotely being attempted in the present case. The impugned order has merely authorised the launch of prosecution against the petitioners for offences under Section 407, 409 and 420 of IPC. On the date when the petitioners are alleged to have been involved in the commission of these offences, these offences were already on the statute book. Therefore, there is no question of any retrospective application of criminal laws involved. The submission is quite misconceived.

8] Section 81(5B) of the said Act merely relates to procedures for audit and powers of auditor in the matters of examination and audit of the accounts of the society. The circumstance that this provision came in the statute book in the year 2013, does not mean and imply that the auditor can examine or audit the accounts only for the year 2013 and thereafter. There is absolutely no retrospectivity involved and in any case, there is no question of bar of Article 20(1) of the Constitution of India, even remotely being attracted.

9] Even in absence of provisions like Section 81(5B) of the said Act, the acts, if, the acts of omission and commission, in which, the petitioners are alleged to be involved were to be established, the petitioners would have been liable for prosecution under Sections 406 and 420 of IPC. The circumstance that the provisions like Section 81 (5B) came to be introduced with a view to streamline procedures of examination of accounts and audits in the cooperative sector, does not mean and imply that such auditors examine and audit only the accounts or affairs based upon 2013. There is accordingly, no merit in Mr. Borkar's first contention based upon Article 20(1) of the Constitution of India.

10] If the audit report is perused, it does not indicate that the petitioners have been exonerated as suggested by Mr. Borkar. It may be true that there are no specific recommendations in the matter of prosecution of the petitioners. However, the recommendations in the audit report, are not binding upon the Registrar. In this case, after the audit report was received, the Registrar, apart from independent application of mind, had also sought for legal advise in the matter. Based upon independent application of mind as also the legal advise, the impugned order has been made. At this stage, there was no question of afford any further opportunity of hearing to the petitioners. The decision in case of ***Dilip Bhagwantrao Ingole & Ors. vs. Commissioner of Co-operation & Registrar of Co-operative Societies Maharashtra State, Pune & Ors.***¹, is in applicable to the facts and circumstances of the present cases. The Court was concerned with specific provisions contained in Section 75 of the said Act which had provided that before any order is made, the Registrar shall give, or cause to be given a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken in regard to him. No provision of similar nature was pointed out in support of the contention that opportunity of hearing is necessary even before approval is granted to launch prosecution.

1 2009 (2) Mh.L.J. 471

Further, the record reveals that sufficient opportunity was afforded to the petitioners, at the stage of preparation of audit report, which is, one of the materials taken into consideration by the Registrar before making impugned order.

11] The contention that the material on record does not disclose any complicity whatsoever on the part of the petitioners, cannot be accepted at this stage. However, rather than making any observation in this regard, it will suffice to clarify that the petitioners will have every sufficient opportunity to raise whatever defences that are legally permissible to them, in the course of proceedings. However, this is not a case where it can be said that the impugned order has been made in excess of jurisdiction or on the basis of any non application of mind by the Registrar.

12] The observations in this order are only *prima facie* and not intended to prejudice the defence of the petitioners in the course of the criminal proceedings. The observations are only in the context of examining whether the impugned order authorising launching of prosecution is in excess of jurisdiction or constitutes abuse of the process of the Court, as urged by the petitioners.

13] For all the aforesaid reasons, these petitions are dismissed. Interim orders, if any, to stand vacated. There shall be no order as to costs.

14] All concerned to act on basis of authenticated copy of this order.

15] At this stage, Mr. Borkar requests that the ad interim orders granted earlier be continued for a period of six more weeks. The request is reasonable and therefore the ad interim orders are continued for a period of six weeks from today.

16] As these petitions are disposed of, there is no necessity to make any separate orders on the civil applications, by which certain persons who are seeking intervention in these petitions, in order to oppose grant of any reliefs in the petitions. The said civil applications also are hereby disposed of.

(M. S. SONAK, J.)