

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13749 OF 2018

Sandip Subhas Bhavar ... Petitioner
Vs.
The Nashik Merchant Co-operative Bank Limited
through its Manager and others ... Respondents

Mr. Pravartak Pathak for Petitioner.
Mr. A.R. Gole i/b. Mr. Puneet Gogad for Respondent No.1.
Mr. P. N. Joshi i/b. Mr. Ajinkya J. for Respondents No.3 to 15.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 4, 2018

P.C. :

Not on Board. At the request of Mr. Pathak, taken up for admission.

2. Heard Mr. Pathak, learned Counsel for the petitioner, Mr. Gole, learned Counsel for the respondent No.1 and Mr. Joshi, learned Counsel for respondents No.3 to 15 at length.

3. Mr. Pathak seeks leave to delete respondents No.3, 8, 10, 11, 13 and 15 on the ground that during the tenure of 1996-2000 they were not directors of respondent No.1 Bank. Leave to delete as prayed for is granted. Amendment shall be carried out forthwith.

4. This Petition takes exception to the order dated 29.11.2018 passed by the respondent No.2-The Election Officer of the Nashik Merchant Co-operative Bank Limited (Multi-State Scheduled Bank) cum Divisional Sub-Registrar, Co-operative Societies, Nashik Division, Nashik. By that order, respondent No.2 accepted the nominations of respondents No.3 to 15.

5. In support of this Petition, Mr. Pathak strenuously contended that respondent No.2 committed serious error in accepting the nominations of respondents No.3 to 15. He invited my attention to the order dated 30.11.2007 passed by the Joint Secretary to the Government of India and Central Registrar, Co-operative Societies (for short 'Central Registrar') and in particular paragraphs 10, 13(ii) and (iii) as also the order dated 10.07.2008 passed by the Additional Secretary to the Government of India & Appellate Authority (for short 'Appellate Authority'). In paragraph 10 of order dated 30.11.2007, Central Registrar expressed his views that “blaming only an individual or two for the irregularity in question would be grossly unfair and against the principles of natural justice. The entire Board of Directors along with CEO during whose tenure such irregularities were perpetuated should be held collectively responsible in principle.”

6. In paragraph 13(ii) and (iii), the Central Registrar held thus,
“(ii) As regards recovering the money from M/s. Thakkar and Sons, Shri H. C. Bagmar and Shri A. K. Kukade will effect the said recoveries with the assistance of bank, the other members of the present Board of Directors and also the members of the Board of Directors officiating at the time the irregularity was committed. Shri Bagmar and Shri Kukade will furnish quarterly progress reports to this authority and Reserve Bank of India in respect of the recoveries made. The maximum time for recovering the entire amount and the interest thereof will be one year from the date of issue of this order.

(iii) The matter primarily pertains to banking operations. Therefore, in the event of Shri Bagmar and Shri Kukade along with other members of the Board of Directors of the bank

failing to effect full recoveries from M/s. Thakkar & Sons, further action for compensating the losses caused to the bank on this account will be taken in consultation with the Reserve Bank of India under the provisions of Multi-State Co-operative Societies Act, 2002 and Banking Regulation Act, 1949 (AACCS).”

7. In paragraph 13 of the order dated 10.07.2008 of the Appellate Authority, it was observed thus,

“13. Keeping in view the fact that the limited issue before this authority is whether all the facts and claims were taken into consideration by the Central Registrar before passing the orders, this authority, after having gone through the orders of Central Registrar dated 30.11.2007 and records, has observed that all relevant material on record was taken into consideration by the Central Registrar before passing the order. Hence, this authority sees no reason to interfere with the orders of Central Registrar dated 30.11.2007. Since the sole aim of the CRCS and this authority has been to recover the money that the Bank has lost in the course of the irregularity, this authority directs that matter may be reviewed quarterly by the Central Registrar of Co-operative Societies and once the entire amount of the bank including interest has been recovered and loss of bank has been compensated, he may exonerate / absolve all or any of the Directors of the NAMCO Bank including S/Shri H. C. Bagmar and Vallabh Kalantri and Shri A. V. Kukade, ex-CEO of the bank.”

8. Mr. Pathak submitted that basically, petitioner relying upon Section 43(1)(h) of the Multi-State Co-operative Societies Act, 2002 (for short 'Act') contended that the Central Registrar and the Appellate

Authority collectively held respondents No.4 to 7, 9, 12 and 14 responsible for not recovering the amount due and payable by M/s. Thakkar & Sons. In particular, he highlighted following portion of Section 43(1)(h):

“If such member is a person against whom any amount due under a decree, decision or order is pending recovery under the Act.”

9. As respondents No.4 to 7, 9, 12 and 14 have not recovered the amount from M/s. Thakkar & Sons, they are clearly covered by Section 43(1)(h) of the Act. Respondent No.2 was, therefore, not justified in accepting their nominations.

10. On the other hand, Mr. Joshi raised preliminary objection about maintainability of the Petition. He submitted that Section 84(2)(c) deals with reference of disputes arising in connection with the election of officer of Multi-State Co-operative Society to arbitration. As the petitioner has an equally efficacious alternate statutory remedy, this Court will decline to exercise its extra-ordinary jurisdiction under Article 227 of the Constitution of India. On merits, he submitted that respondent No.2 rightly overruled the objections raised by the petitioner. He invited my attention to the findings recorded by the second respondent while overruling the objections raised by the petitioners. He submitted that the Bank did not issue any certificate against these respondents to the effect that they are defaulters. He further submitted that no demand was raised and no notice calling upon the respondents No.4 to 7, 9, 12 and 14 to pay the arrears was ever issued.

11. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on

record. Section 43(1)(h) reads thus,

“43. Disqualifications for being a member of board

(1) No member of any multi-State co-operative society or nominee of a member, society or a national co-operative society shall be eligible for being chosen as, or for being, a member of the board of such multi-State co-operative society or a national co-operative society, or of any other co-operative society to which the multi-State co-operative society is affiliated, if such member-

(h) **is a person against whom any amount due under a decree, decision or order is pending recovery under this Act.**

(emphasis supplied)”

12. A perusal of the above extracted provision prima facie shows that **a person, against whom any amount due under a decree, decision or order is pending recovery under the Act, will incur disqualification for being a member of board.** In the present case, a perusal of the order dated 30.11.2007 of the Central Registrar and order dated 10.07.2008 of the Appellate Authority prima facie, does not indicate that any decision is passed against respondents No.4 to 7, 9, 12 and 14 quantifying amount due and payable by them. In view thereof, prima facie, I find that Section 43(1)(h) of the Act is not attracted.

13. In the light of the aforesaid discussion, I do not find that the second respondent committed any error in rejecting the objections raised by the petitioner. It is also brought to my notice that the last date for withdrawal of the nominations was 04.12.2018 till 3.00 p.m. In view thereof as also having regard to the fact that in case respondents No.4 to 7, 9, 12 and 14 are declared elected, petitioner has remedy of filing

dispute under Section 84(2)(c) of the Act, no case for invocation of powers under Article 227 of the Constitution of India is made out. In case petitioner institutes dispute under Section 84 of the Act, all contentions of the petitioner raised in the present Petition are expressly kept open. The Arbitral Tribunal will decide the dispute uninfluenced by the observations made in the impugned order and in this order. Subject to this, Petition fails and the same is dismissed. All parties to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

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