IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2821 OF 2018

Bhagwan Vidya Prasarak Mandal, Beed,
Through its Secretary,
Anilkumar S/o Bhanudas Sanap ..PETITIONER

VERSUS

The State of Maharashtra and Ors. ..RESPONDENTS

WITH
WRIT PETITION NO.5574 OF 2018

Bhagwan Vidya Prasarak Mandal, Beed,
Through its President,
Narayan S/o Shrimantrao Munde ..PETITIONER

VERSUS

The State of Maharashtra and Ors. ..RESPONDENTS

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Mr. S. S. Thombre, Advocates for the Petitioners.
Mr. P. S. Patil, A.G.P. for Respondent Nos.1 to 4.
Mr. N. P. Bangar, Advocate for Respondent Nos.5 and 6.

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CORAM : S. V. GANGAPURWALA &
A. M. DHAVALE, JJ.

Closed for Orders on : 14.02.2019.

Order Pronounced on : 01.03.2019.

<u>**FINAL ORDER**</u> **(Per S. V. Gangapurwala, J.) :-**

1. The petitioner is borrower of respondent no.5-Bank. The petitioner had obtained loan from the respondent by filing different loan applications for three different schools. The certificate under Section 101 of the Maharashtra

Co-operative Societies Act is also issued in favour of respondents.

2. Mr. Thombare, learned counsel for the petitioner submits that about 130 teaching and non-teaching staff are working with the three schools of the petitioner. About Rs.57,00,000/- loan was obtained from the respondent. The school buildings are constructed from the loan. The petitioner till date has repaid an amount of Rs.2,19,00,000/-. The petitioner has not misused any amount. The respondents have obtained five recovery certificates under Section 101 for the five accounts. The petitioner had challenged the recovery certificates issued in favour of respondents by filing writ petitions and the same are pending.

3. The learned counsel submits that respondents issued notice on 11.10.2017 to the petitioner contending that an amount of Rs.1,52,00,000/- was sanctioned in between the years 1997-2004 and as per the recovery certificate as on 10.10.2017 an amount of Rs.5,84,30,967/- was due towards the petitioner. The petitioner filed application with respondents stating that only amount of Rs.57,00,000/- was taken as a loan up to 2004, so also repayments are made. The learned counsel submits that the State Government floated one time settlement policy. The said policy is still in force. The petitioner's case is covered

as per the Government Policy dated 15.11.2017 for seeking benefit of one time settlement. The petitioner filed an application on 23.02.2018 and prayed to consider the petitioner's case as per the said policy. The respondent no.5-Bank opted for the one time settlement scheme by passing a Resolution on 28.11.2017 and the same is also informed to respondent nos.4 by respondent no.5 under letter dated 04.12.2017. The respondent no.6 had sealed five rooms of the petitioner's Bhagwan High School without giving him notice. The respondent no.4 after hearing respondent nos.5 and 6 observed that the act of respondent in not extending the benefit of one time settlement to the petitioner is not correct and directed respondent no.6 to consider the petitioner's application. The petitioner is not a willful defaulter. After the order was passed by respondent no.4, the petitioner filed an application on 01.03.2018 stating that in spite of order passed by respondent no.4, respondent no.5 is not extending the benefit of OTS Scheme to the petitioner. The respondent no.2 also directed respondent no.5 to take action as per the policy dated 15.11.2017 with immediate effect. However, the respondent no.5-Bank is not complying with the orders of the authorities. The petitioner has deposited an amount as directed by this Court from time to time. Even, after filing of this writ petition, the petitioner has deposited Rs.15,00,000/- as per the order of this Court dated

06.04.2018 and thereafter, an amount of Rs.64,00,000/- as per order dated 10.07.2018.

4. Mr. Bangar, learned counsel for respondents submits that the State Government could not have floated the policy of one time settlement. The respondent no.6 is a Co-operative Bank and banking is a subject matter of Union list. The learned counsel further submits that the petitioner was sanctioned loan amount of Rs.1,52,00,000/- between the period 1997-2004 through five different accounts and the same is disbursed to the petitioner after executing necessary documents. The outstanding amount is increasing day by day. Recovery certificates under Section 101 of the Maharashtra Co-operative Societies Act are also issued against the petitioner-institution. The Banks are under loss because of big defaulters like the petitioner who obtained crores of loan but did not repay for one or the other reasons. The recovery certificates are intact and same can be enforced. The prayer of the petitioner for settling the loan account as per the OTS Scheme is not maintainable. The petitioner is a willful defaulter. The petitioner is not entitled for the benefit under the Scheme. The policy of one time settlement scheme cannot be said to be invoked as the Reserve Bank of India has canceled the earlier policy by its circular dated 12.02.2018. The petition be dismissed.

5. Whether one time settlement scheme as floated by the Government would be applicable to the petitioner or not will depend upon the various factors enumerated in the said scheme. Clause 3 of Annexure A to the Government Resolution dated 15.11.2017 details the circumstances under which the borrower is not entitled for benefit of one time settlement scheme. Whether the petitioner's case can be considered for one time settlement or not would have to be considered by the Authority.

6. It appears that Resolution was passed by the respondent-Bank to accept the one time settlement scheme.

7. It will be appropriate for the Commissioner of Co-operation to consider the scheme as in force today and to take decision whether the petitioner is disqualified or not from taking benefit of the said scheme. The respondent has also contended that as per the circular of the Reserve Bank of India dated 12.02.2018 one time settlement now cannot be entered into. The same will have to be considered by the Commissioner of Co-operation. He would be a competent person to consider the said aspect.

8. In light of the above, parties may appear before the Commissioner of Co-operation, Pune on 07.03.2019. The Commissioner of Co-operation, Pune shall call for the say of the Bank, so also consider the stand of the petitioner and take a decision as to whether the petitioner is entitled

for benefit of OTS scheme as relied by the petitioner, so also the impact of circular of Reserve Bank of India dated 12.02.2018 as may be produced by the Bank. The petitioner and the respondent-Bank may produce all such necessary documents before the Commissioner of Co-operation, Pune on the said date.

9. The Commissioner of Co-operation, Pune shall consider the record that would be produced before him and shall take decision as to whether one time settlement scheme is still in force and as to whether the petitioner is entitled for the benefit of the said scheme. The said decision shall be taken on or before 25.03.2019. The Bank was allowed to withdraw Rs.50,00,000/- under the orders of this Court dated 05.09.2018. The respondent-Bank is allowed to withdraw remaining Rs.14,00,000/- with accrued interest, if any, deposited in this Court. The same would be subject to the decision taken by the Commissioner of Co-operation, Pune.

10. Parties to act on the authenticated copy of this order.

11. Writ Petitions are disposed of. No costs.

(A. M. DHAVALE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/February-19