Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 125 OF 2019

Mapusa Urban Co-op. Bank
Officers' Association and Another. …... Petitioners.
V/s.
The Reserve Bank of India and ors. …... Respondents.

Mr. Avinash Fatangare, with Mr. Sarveh P. Naik, Advocate for the Petitioners.

Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.

Date : 29 January 2019.

<u>P.C.:</u>

1. Heard Mr. Fatangare for the Petitioners.

2. In this Petition under Articles 226 and 227 of the Constitution of India, the Petitioners seek the following substantive reliefs :

> "(a) *That, Hon'ble Court be pleased to issue a Writ, Order or direction or a Writ of Mandamus or any other appropriate writ against the Respondent No. 1 directing to produce entire material basis of which impugn notice dated 27/12/2018 is issued to the Respondent No. 3 and after going through its legality and validity be pleased to direct the Respondent No. 1 to withdraw the same.*
>
> *(b) That, Hon'ble Court be pleased to direct the Respondent No. 1 and 5 to appoint Board of Administrator consisting one member of depositor, one*

member of shareholder, one member from the employees who are expert in banking field in the place of present Board of Director with all powers as an Administrator to administrate the affairs of the Respondent no.3 Bank.

(c) That, Hon'ble Court be pleased to direct to the Respondent No. 2 to hold an enquiry and complete the same within the period of 3 month as per section 78 to 83 of MCSA Act against the Board of Directors of Respondent No. 3 Bank and recover the amount from the Board of Director by fixing their liabilities.

(d) That, Hon'ble Court be pleased to issue directions to the Respondent No. 1, 2 and 5 to register an offence against the persons who are responsible for the losses of the Respondent no.3 bank.

(e) That, Hon'ble Court be pleased to restrained the Board of Directors of Respondent No. 3 from disposing off their moveable and immovable properties till the enquiry is concluded.

(f) That, Hon'ble Court be pleased to direct the trial court before whom the recovery proceedings filed by the Respondent No. 3 Bank are pending against the borrowers and vice versa shall be expedited with direction to trial court to decide the same without the period of 3 months.

(g) That, Hon'ble Court be pleased to direct the Respondent No. 1, 3 and 5 to merge the Respondent No. 3 bank to any other nationalized or co-operative bank.

(h) That, Hon'ble Court be pleased to direct the Respondent No. 1, 4 and 5 to help financially to the Respondent No. 3 Bank in order to review its banking business in the manner in which the financial assistance is extended to the nationalized banks.

(i) That pending the hearing and final disposal of the Petition the impugn notice dated 27/12/2018 issued by Respondent no.1 to the Respondent No. 3 be stayed.

(j) That pending the hearing and final disposal of the Petition this Hon'ble Court be pleased to direct the Respondent No. 1 and 5 to appoint Board of Administrator consisting one member of depositor, one member of shareholder, one member from the employees who are expert in banking field in the place of present Board of Director with all powers as an Administrator to administrate the affairs of the Respondent no.3 Bank.

(k) That pending the hearing and final disposal of the Petition this Hon'ble Court be pleased to direct the Respondent No. 2 to hold an enquiry and complete the same within the period of 3 month as per section 78 to 83 of MCSA Act against the Board of Directors of Respondent No. 3 Bank and recover the amount from the Board of Director by fixing their liabilities.

(l) That pending the hearing and final disposal of the Petition this Hon'ble Court be pleased to direct the Respondent No. 1, 2 and 5 to register an offence against the persons who are responsible for the losses of the Respondent no.3 bank.

(m) That pending the hearing and final disposal of the Petition this Hon'ble Court be pleased to restrain the Board of Directors of Respondent No. 3 from disposing off their moveable and immovable properties till the enquiry is concluded.

(n) That pending the hearing and final disposal of the Petition this Hon'ble Court be pleased to direct the trial court before whom the recovery proceedings filed by the Respondent No. 3 Bank are pending against the borrowers and vice versa shall be expedited with direction to trial court to decide the same without the

period of 3 months.

(o) That pending the hearing and final disposal of the Petition this Hon'ble Court be pleased to direct the Respondent No. 1, 3 and 5 to merge the Respondent No. 3 bank to any other nationalized or co-operative bank.

(p) That pending the hearing and final disposal of the Petition this Hon'ble Court be pleased to direct the No. 1, 4 and 5 to help financially to the Respondent No. 3 Bank in order to review its banking business in the manner in which the financial assistance is extended to the nationalized banks.

(q) Any other and further reliefs as nature and circumstances of the case may deem fit and proper."

3. Mr. Fatangare, the learned Counsel for the Petitioners submits that the show cause notice dated 27 December 2018 issued by the Reserve Bank of India, invoking the provisions of Section 22(4), and Section 56 of the Banking Regulation Act, 1949, warrants interference, because the cancellation of the banking licence is required to be resorted to as a matter of last resort. He points out that under the Banking Regulation Act, 1949 (Act) itself, the Reserve Bank of India has several options open before it, in case of any alleged mismanagement in the affairs of a bank. He points out that under Section 36 of the said Act, as applicable to the Co-operative Banks, the Reserve Bank of India is empowered to depute one or more of its officers to which the proceedings at any meeting of the Co-operative Bank, require the Co-operative Bank to give an opportunity to the

officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Reserve Bank. He points out that the Reserve Bank of India, under the very same provision, is also empowered to appoint one or more of its officers to observe the manner in which the affairs of the Co-operative Bank or its offices or branches are being conducted and make a report thereof.

4. Mr. Fatangare also made a reference to Section 36AAA of the Act provides which provides for Supersession of Board of directors of a multi-State co-operative bank where the Reserve Bank of India is satisfied that in the public interest or for preventing the affairs of a multi-State co-operative bank being conducted in a manner detrimental to the interest of the depositors as also other matters. Mr. Fatangare submits that there are other provisions under the Multi-State Co-operative Societies Act, 2002 as well, which empower the Central Registrar to take action in case of mismanagement of the affairs of the Multi-State Co-operative Society. He points out that the statutory authorities, instead of first exploring these options, are not entitled to straight away invoke the provisions of Section 22(4) of the Act, and seek to cancel the banking licence. He submits that neither the officers of the Bank, nor the depositors of the Bank are, in any manner, responsible for any lapse on the part of the Board of Directors of the Bank. Mr. Fatangare, in fact made a statement that admittedly, there are violations of the directions

issued by the Reserve Bank of India from time to time by the Board of Directors. His contention, however, was that the officers, as well as the depositors of the Bank, should not suffer on account of such failure or for such lapses on the part of the Board of Directors. Mr. Fatangare referred to the order dated 12 September 2017 in Writ Petition No.2928 of 2014 and connected matters in which the Petitioners in the said Petition, which included the Bank Employees' Union, were given opportunity to apply to the Reserve Bank of India and the Reserve Bank of India was directed to consider such reply and make appropriate orders on the show cause notice which was impugned in the said Petition. Certain protection was also granted in the event the Reserve Bank of India were to take any adverse decision. Mr. Fatangare submits that since facts in the present case are similar, similar order is required to be made.

5. We have considered the submissions made by Mr. Fatangare, as also perused the material on record. In our judgment, no case is made out by the Petitioners to warrant interference with the impugned show cause notice issued by the Reserve Bank of India. In fact, we note that not a single submission was advanced to even suggest that the exercise of issuance of the show cause notice by the Reserve Bank of India, was an exercise without jurisdiction or in excess of jurisdiction.

6. In the first place, the show cause notice has not been issued to any of the Petitioners. Assuming that the Petitioners are also interested in ensuring that the banking licence is not cancelled, it is necessary to note that the Reserve Bank of India, at the present stage, has only issued a show cause notice. As noted earlier, not even a submission was advanced to suggest that the show cause notice, so issued, is without jurisdiction or in excess of jurisdiction. A perusal of the provisions of Section 22, read with Section 56 of the Act, indicates that the Reserve Bank of India has sufficient powers to issue a show cause notice of this nature. The circumstances in which the show cause notice is issued, have been set out in the show cause notice itself. There is a particular reference to Writ Petition No.588 of 2015 which was instituted by the Bank before this Court, but was ultimately dismissed as withdrawn as recorded in our order dated 23 August 2018. Mr. Fatangare himself admitted that in this case, the Board of Directors have failed to abide by the directions issued by the Reserve Bank of India from time to time. This is not to suggest that such admissions bind the bank or its Board of Directors, but it is recorded only to demonstrate that it is not the case of the Petitioners that the show cause notice has been issued for any extraneous reasons.

7. The only contention seriously raised and pressed before us is that the Reserve Bank of India, or the Central Registrar, have

other options open to deal with the situation arising out of the mismanagement of the affairs of the bank. According to us, this is not a good ground for interfering with the show cause notice itself. Assuming that certain other options are also available to the Reserve Bank of India to deal with the situation of this nature, there is really nothing on record to suggest that the Reserve Bank of India has foreclosed all these options. Nothing prevents even the Petitioners from making a representation to the Reserve Bank of India on this count. However, this cannot be a ground to set aside the show cause notice issued by the Reserve Bank of India based upon its subjective satisfaction.

8. From the order dated September 12, 2017 in Writ Petition No.2938 of 2014 and connected matters, it is not possible to ascertain the fact situation involved in the said writ petitions in which such order came to be made. The Petitioners, apart from orally contending that the fact situation was similar, have produced no material whatsoever on record to suggest any similarity. Accordingly, on the basis of the order dated September 12, 2017, it is not possible to grant the Petitioners any relief in the present matter.

9. We do not propose to enter into the merits or demerits of the reasons set out in the show cause notice, particularly because this show cause notice has not been challenged by the Bank to which the

same has been issued. In any case, we do not propose to foreclose the defences available to any of the parties. At this stage, limited issue before us is, whether the very exercise of issuance of the show cause notice dated 27 December 2018 is an exercise without jurisdiction or in excess of jurisdiction. According to us, this is certainly not a case of such a nature. The show cause notice is yet to be disposed of by the Reserve Bank of India. Against the final decision of the Reserve Bank of India, assuming that the same is adverse, the persons who may be aggrieved, have remedies available under the Statute. In the absence of the Petitioners making out a case that the show cause notice is *ex facie* in excess of jurisdiction, we do not deem it appropriate to entertain the present Petition.

10. The rest of the reliefs prayed for by the Petitioners, also cannot be considered at this stage. The Petitioners are, no doubt, free to move the regulatory authorities in that regard. However, taking into consideration that the main challenge in this Petition was to the show cause notice issued by the Reserve Bank of India, we do not deem it appropriate to issue any directions in relation to the remaining reliefs. From the nature of reliefs applied for by the Petitioners, it does appear that even the Petitioners agree with the *prima facie* satisfaction recorded by the Reserve Bank of India in the show cause notice that all is not well with the affairs of the Bank and some action is necessary to restrain the Board of Directors from

disposing of movable and immovable properties. Besides, in matters of this nature, it is not for the Courts to direct the statutory authorities to resort to one or more options available to them under the statutes which govern them. This has to be essentially left to their discretion and as long as such discretion is exercised fairly and within the bounds of the statutes which govern them, ordinarily there is no scope for interference.

11. Accordingly, for all the aforesaid reasons, we dismiss this Petition. There shall be no order as to costs.

(Prithviraj K. Chavan, J.) ***(M.S. Sonak, J.)***