

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7131 OF 2018

WITH

CIVIL APPLICATION NO.122 OF 2019

WITH

CIVIL APPLICATION NO.205 OF 2019

WITH

CIVIL APPLICATION (STAMP) NO.1874 OF 2019

Shri Bharat Sudam Sutkar & Anr.] ... Petitioners

Versus

The State of Maharashtra,]
Through Department of Cooperation & Ors.] ... Respondents

ALONG WITH

WRIT PETITION NO.1123 OF 2019

WITH

CIVIL APPLICATION NO.1651 OF 2018

Shri Shivanand Siddramappa Patil.] ... Petitioner

Versus

The State of Maharashtra,]
Through Department of Cooperation & Ors.] ... Respondents

Mr. M. V. Thorat for Petitioners in WP No.7131/2018.

Mr. Y. S. Jahagirdar, Senior Advocate a/w Mr. Abhijit Kulkarni i/b D.D. & Abhijit Associates for Petitioner in WP No.1123/2019.

Mr. Rajendra Raghuvanshi, Spl. Counsel a/w Mr. A. P. Vanarse, AGP a/w Mr. A. A. Alaspurkar, AGP for State – Respondent Nos.1 to 4 in both WPs.

Mr. Prasad Shenoy i/b Ms. Aditi Phatak i/b Udwadia & Co. for Respondent No.5 in both WPs.

Mr. R. V. Govilkar a/w Mr. Y. G. Thorat i/b Mr. A. B. Tajane for Respondent Nos.6 & 7 on both WPs.

Ms. Sneha G. Sanap i/b Mr. Deelip N. PatilBankar for Respondent No.8 in both WPs.

Mr. Ratnesh Dube i/b Ms. Rutuja Ambekar for Applicant in Civil Application No.205/2019.

**CORAM :- INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.**
DATE :- 31 JANUARY, 2019

P. C. :-

1. Heard the learned Counsel for respective parties.
2. It is suffice to note herein, that the challenge in the present Writ Petitions by the Petitioners who were the erstwhile Directors of The Solapur District Central Cooperative Bank. It is an

admitted fact that the Managing Committee of the Central Cooperation Bank came to be superseded by the orders passed under Section 110-A of the Maharashtra Cooperative Societies Act, 1960 (for short, 'the said Act') pursuant to the directions issued by the Reserve Bank of India (for short, 'RBI') which, in turn, relied upon report received by it from NABARD and other agencies.

3. The main relief sought for in the present Writ Petitions by the individual Directors, is that, the orders of supersession were passed without affording the Directors any opportunity of hearing prior to passing of such orders of supersession.

4. Learned Counsel for the Petitioners, in all fairness, brought to our notice a Judgment of the Hon'ble Supreme Court in the case of *Reserve Bank of India Vs. M. Hanumaiah and Others reported in (2008) 1 Supreme Court Cases 770.* In the said Judgment, the very same issue that has been raised in the present Writ Petitions, has been dealt with and determined and consequently the issue is no longer *res interga*. We can do no more than take note of para 19 of the said Judgment which reads thus :-

“19. Mr. Trivedi also submitted that the Maharashtra Cooperative Societies Act, 1960 had a similar provision in Section 110-A like the one contained in Section 30(5) of the Karnataka Act. Sub-section (ii) of Section 110-A provided that an order for the winding up of the bank would be made by the Registrar, if so required by Reserve Bank of India in the circumstances referred in Section 13-D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961. Dealing with the provisions the Bombay High Court had held that the power conferred under Section 110-A of the Maharashtra Cooperative Societies Act should not be hindered by reading into it the requirement of show-cause notice. Learned counsel cited before us two decisions of the Bombay High Court. One in Mahendra Husanji Gadkari Vs. State of Maharashtra and the other in Ishwardas Premkumar Choradiya Vs. State of Maharashtra. In the latter decision, a learned Single Judge of the Bombay High Court held as follows (Ishwardas case, Mah LJ pp.846-47, para 4) :-

“4. The question is : whether under Section 110-A of the Maharashtra Cooperative Societies Act, 1960, Respondent No.5 was duty-bound to give a show-cause notice to the petitioners herein. In the first instance, the section does not provide for a show-cause notice. Once that be so, the question is : whether it can be implied in the absence of provision of show-cause notice must be issued as it involves civil consequences. Sub-section (3) of Section 110-A of the Maharashtra Cooperative Societies Act, 1960, came up for consideration before a Division Bench of this Court in Mahendra Husanji Gadkari Vs. State of Maharashtra. The Division Bench of this Court, after considering the provisions of sub-section (3) of Section 110-A of the Maharashtra Cooperative Societies Act, has held that Reserve Bank of India can issue directions only when the situation contemplated by Section 110-A of the Act exists. The directions issued are binding on the Registrar. In other words, once a direction is issued by

Reserve Bank of India, the Registrar has no discretion in the matter, but to supersede and appoint a administrator. Once that be so, and as there is no discretion left in Respondent No.5, it must mean that the right of hearing is excluded. Once that be so, there was no question of issuing a show-cause notice to the Petitioner herein before passing the impugned order. In fact, though not directly in issue In L. V. Sasmile Vs. State of Maharashtra another Division Bench, considering the material on record, had directed the appointment of an administrator under Section 110-A of the Maharashtra Cooperative Societies Act. That also would indicate that there is no requirement under Section 110 for hearing.”

In our opinion, the Bombay High Court has taken the correct view of the matter.”

5. In view of the findings of the Hon'ble Supreme Court as noted hereinabove, their Lordships of the Supreme Court have confirmed the view expressed by the Bombay High Court in the case of Ishwardas Premkumar Choradiya Vs. State of Maharashtra reported in (2002) 2 Mah LJ 844 as well as a Division Bench of the Bombay High Court, in the case of L.V. Sasmile Vs. State of Maharashtra reported in 5 1992 CTJ 729.

The Hon'ble Apex Court has come to the conclusion that under the provisions of sub-section (3) of Section 100-A of the said Act, the directions issued by the RBI are binding on the Registrar of

the Cooperative Societies and the Registrar has no discretion in the matter but to supersede and appoint an administrator. their Lordships have also concluded that once that be so, as there is no discretion left with the Registrar, it must mean that '*right of hearing is excluded*'.

6. In view of the aforesaid Judgment of the Hon'ble Supreme Court and after hearing the learned Counsel for the respective parties, since the issue raised has already been determined and adjudicated by the Hon'ble Apex Court, nothing further remains, for our consideration, in the present Writ Petitions and hence we direct dismissal of the same.

7. Learned Counsel for the Petitioners also placed reliance upon paragraph 21 of the aforesaid Judgment (*supra*) which reads thus :

“21. The question may here arise whether the principles of natural justice are completely excluded from the process or it may be that against requisition, the affected bank may move Reserve Bank itself and try to show that it had wrongly arrived at the decision for its supersession. The other course may be that after the supersession order was issued by the Registrar that may be challenged before a court of law and in that proceeding one of grounds for assailing the order might

be that the decision of Reserve Bank was arrived at without giving the affected cooperative bank a proper (sic prior) opportunity of hearing. We, however, refrain from going into that question as it does not arise in the facts of the present case.”

8. Admittedly, the circumstances of the present case where individual Directors have sought to challenge the order of supersession, we are of the considered view that the Petitioners are not competent to raise any issue regarding the directions issued by the RBI.

9. We further make it clear that other issues raised herein are left open for adjudication in an appropriate proceeding.

10. In view of disposal of the Writ Petitions, Civil Applications do not survive and the same are also disposed of.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)