IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2097 OF 2017

Shri Dadasaheb Gajmal Cooperative Bank Ltd. Gandhi Chowk, Pachora, Tq. Pachora, Dist. Jalgaon, Through its Chairman- Sahebrao Gajmal Patil, Age 74 years, Occu: Agri, R/o Pachora, Tq. Pachora, District Jalgaon. ... **Petitioners**

VERSUS

1. Reserve Bank of India, Through Regional Director, Maharashtra & Goa, Mumbai. Department of Cooperative Bank Supervision, MRO, C-8, Ground Floor, Bandra Kurla Complex, Bandra (East), Mumbai.

2. The Assistant General Manager, Reserve Bank of India, Department of Cooperative Bank Supervision, MRO, C-8, Ground Floor, Bandra Kurla Complex, Bandra (East), Mumbai.

3. The Deputy General Manager, Reserve Bank of India, Department of Cooperative Bank Supervision, MRO, C-8, Ground Floor, Bandra Kurla Complex, Bandra (East), Mumbai. ... **Respondents**

Mr Milind M. Joshi, Advocate for the petitioner,
Mr. S.V. Adwant, Advocate for the respondents.

CORAM : PRASANNA B. VARALE & ANIL S. KILOR, JJ.

DATE : 13th January, 2020

ORAL JUDGMENT (Per Anil S. Kilor, J.):

1. The petitioner Cooperative Bank, by way of present writ petition, has called in question the order dated 16.08.2016 issued by the

respondents- Reserve Bank of India, imposing penalty of Rs.1 lakh on the petitioner Cooperative Bank in terms of provisions under Section 47-A(1) (b) read with section 46 (4) of the Banking Regulations Act, 1949

2. The facts leading to the present petition are that the petitioner Bank is having banking licence under section 22 read with section 57(o) of the Banking Regulation Act 1949, to conduct banking business. From the date of licence i.e. from 08.09.2001, the petitioner bank is conducting banking business.

3. The petitioner bank availed renewal of cash credit loan facility of Rs.80 lakh with interest @ 11.50% per annum from the Maharashtra State Cooperative Bank Ltd., Mumbai (MSC Bank). The said cash credit facility was renewed from time to time. The petitioner availed the said refinance facility without any security or creating any charge over the properties or without any mortgage or hypothetication etc. in favour of the MSC Bank and merely on personal guarantee of the office bearers of the petitioner bank like Directors, Chairman and Vice Chairman etc. t

4. The respondents Reserve Bank of India had conducted statutory inspection under section 35 of the Banking Regulations Act, in respect of financial position of the petitioner Bank on 31.03.2011. In the said inspection, the respondent Reserve Bank of India had arrived at the conclusion that the petitioner bank had borrowed from MSC Bank and created floating charge over its assets without obtaining certification from

Reserve Bank of India that such borrowing was not detrimental to the interest of the depositors and thereby violated Section 14(A) of the Banking Regulations Act.

5. Accordingly Respondents-Reserve Bank called explanation by issuing show cause notice dated 05.10.2011, to the petitioner bank that as to why monetary penalty should not be imposed on the bank and the Board of Directors.

6. Thereafter there was continuous exchange of correspondence from the respondent Reserve Bank of India as well as from the petitioner Bank. The respondents Reserve Bank issued more than one show cause notices to the petitioner Bank on the same issue, to which the petitioner Bank had submitted its reply.

7. The respondent Reserve Bank, finding the explanation and replies submitted by the petitioner Bank not satisfactory, lastly issued show cause notice dated 17th March, 2016.

8. The petitioner bank submitted detailed reply to the said show cause notice on 04.04.2016, inter alia pointing out that the petitioner Bank had already completed the risk profiting of all customers as on reporting date.

9. Thereafter the petitioner was given personal hearing in the matter, on 19.07.2016, where upon, on 01.08.2016, respondent No.3 issued communication to the petitioner Bank informing that violation

warranted imposition of monetary penalty, however lenient view was being taken by issuing warning to avoid violation of RBI guidelines/ directives in future and also advised to take effective steps to comply with the requirements as mentioned in the communication.

10. However, thereafter the petitioner Bank was served with the impugned order dated 16th July, 2016, which is under challenge in the present writ petition.

11. Heard Shri Milind Joshi, learned counsel for the petitioner Bank and Shri S. V. Adwant, learned counsel for respondent Nos.1 to 3- Reserve Bank of India.

12. Learned counsel for the petitioner bank has pointed out that on more than one occasion, explanations were sought by the respondent Reserve Bank of India by issuing show cause notices and every time, the petitioner Bank submitted its detailed reply to each of the show cause notices. He further submits that the decision whereby the warning was issued to the petitioner Bank was taken by the respondent Reserve Bank of India after hearing the petitioner. Thus, according to him, in case of change in the said decision, the respondent Reserve Bank of India ought to have given hearing to the petitioner bank.

13. Moreover, the learned counsel for the petitioner Bank points out that even after going though the contents of the impugned order dated 16.08.2016, it will be revealed that no reason is given in the said order

while imposing the penalty on the petitioner bank.

14. Learned counsel further points out that from the contents of the impugned order, it is difficult to gather the grounds on which, the points raised in defence by the petitioner Bank in its reply, are rejected by the respondent Reserve Bank. Thus according to him, the impugned order is without reasons and it is in violation of principles of natural justice.

15. Mr. Adwant, learned counsel for the respondents Reserve Bank tried to justify the order and submits that even though the order does not disclose any reason it mentions in clear terms that the explanation of the petitioner bank found unsatisfactory. According to the learned counsel, it is not a case where the detailed reasoned order is necessary.

16. Learned counsel for the petitioner also argued on other aspects of the matter on merits, however, since, we find substance in the first argument advanced by the learned counsel for the petitioner that the impugned order is in violation of the principles of natural justice, at this stage, we think it proper not to go into the merits of the matter.

17. To consider the rival contentions of the parties, at this stage, it is necessary to refer to the relevant portion of the impugned order dated 16.08.2016 which reads thus:

> "2. During the course of statutory inspection of the bank with reference to its financial position as on March, 31, 2014, it was observed that the bank had created floating charge on its assets for forwarding from MSC

> bank without obtaining requisite certificate from RBI that the borrowing was not detrimental to the interest of the depositors of Bank. This was in violation of the provisions of Section 14A of the Banking Regulations Act, 1949 (AACS).
>
> 3. Explanation for the violation was called for from the bank which was furnished by the bank. As the explanation was not found to be satisfactory, a Show Cause Notice was issued to the bank vide DCBS.MRO BSS.I/6503/12.07.483/2015-16 dated March 17, 2016. The bank was also granted a personal hearing upon its request, by the Regional Director, Maharashtra & Goa, RBI, Mumbai. The submissions by the bank were not found to be convincing and were therefore, not acceptable.
>
> 4. The aforesaid violation has been established. The bank has, therefore, rendered itself liable for penalty in terms of the provisions under section 47(1)(b) of the Act *ibid*.
>
> 5. In view of the foregoing, a penalty of Rs.1.00 lakh (Rupees One lakh only) is imposed on the bank in terms of provisions under section 47A (1)(b) read with section 46(4) of the Act,ibid, for the above mentioned violation. The bank is directed to make payment to Reserve Bank of India within a period of 14 working days from the date of receipt of this order.

18. From the impugned order referred above, it is clear that the show cause notice dated 17.03.2017, was served upon the petitioner bank and also granted a personal hearing by the Regional Director, Maharashtra & Goa, RBI, Mumbai. However, in the order, there is no mention about the points raised by the petitioner Bank during hearing or even there is no mention of points raised in the reply to the show cause notice. The only reason given in the impugned order is that the submissions by the bank were not found to be convincing and were therefore, not acceptable. Thus, it is apparent on the face of the

impugned order that the respondent RBI, while issuing impugned order, did not disclose any reason for rejection of the stand taken by the petitioner Bank during hearing or in the reply to the show cause notice or the reasons for imposition of penalty.

19. The Hon'ble Supreme Court, in the case of **J. Ashoka Vs. University of Agricultural Sciences and others, reported in (2017) 2 supreme Court Cases 609**, observed that-

> "24. Reasons are the link in between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quashi-judicial. They should reveal a rational nexus between the facts considered and the conclusion reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We, therefore, are of the considered opinion that the relevant provisions of the Statute were fully complied with."

Further, in the case of **Kranti Associates Private Limited and another Vs. Masood Ahmed Khan and others, reported in (2010) 9 Supreme Court Cases 496, in para 47**, the Hon'ble Apex Court held as follows:

> "a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
> b. A quasi-judicial authority must record reasons in support of its conclusions.
>
> c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
>
> d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even

administrative power. e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of

European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

20. Thus, in view of above well settled principles of law, we find no hesitation to hold that the impugned order does not disclose reasons for change of decision from warning to imposition of penalty of Rs. One lakh. Since the impugned order is punitive, it is mandatory for the respondents Reserve Bank to give reasons while imposing penalty on the Petitioner Bank.

21. In the backdrop of the above said observation, we hold that the impugned order dated 16.08.2016 is in violation of principles of natural justice and the same needs to be set aside by allowing the present petition.

22. Accordingly, the Writ petition is partly allowed by quashing and setting aside the order dated 16th August, 2016, impugned in the petition, with a direction to the appropriate authorities to pass orders afresh within a period of two weeks from the date of receipt of order of this Court.

(ANIL S. KILOR, J.) **(PRASANNA B. VARALE , J.)**

JPC