

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 205 OF 2020

1. Mrs. Suniti Anand Prabhu, Major in age, Indian National, Resident of H No. 251, Barazan, Usgaon, Ponda, Goa.

2. Mrs. Pratima Divakar Gosavi, Major in age, Indian National, Resident of H No. 341, Gosaviwada, Usgaon, Ponda, Goa.

3. Mrs. Shali Mukund Gaude, Major in age, Indian National, Resident of H No. 25, Nanus, Usgaon, Ponda, Goa.

4. Mrs. Kavita Kamlakant Gaude, Major in age, Indian National, Resident of H No. 25, Nanus, Usgaon, Ponda, Goa.

5. Mrs. Prachi Premanand Prabhu, Major in age, Indian National, Resident of H No. 127, Zarichwada, Usgaon, Ponda, Goa.

6. Mrs. Dipika Dipak Naik, Major in age, Indian National, Resident of H. No. 334, Takwada, Usgaon, Ponda, Goa.

7. Mrs. Mangal Gopinath Naik, Major in age, Indian National, Resident of H No. 12, Kerwada, Usgaon, Ponda, Goa.

8. Mrs. Shali Ramnath Gaude,
Major in age, Indian National,
Resident of H No. 305, Uddliwada,
Usgaon, Ponda, Goa.

9. Mrs. Vijaya Dattaram Gaude,
Major in age, Indian National,
Resident of H No. 375, Palwada,
Usgaon, Ponda, Goa.

...Petitioners

Versus

1. Smt. Pranita F. Tilve, Major in
age, Indian National, Resident of H
No. 188, Zarichawada, Usgaon,
Ponda, Goa.

2. The Registrar, Office of the
Registrar of Cooperative Society,
Sahakar Sankul, Patto, Panaji, Goa.

...Respondents

Mr. Vivek Rodrigues, Advocate for the Petitioners.

Mr. Jatin Ramaiya, Advocate for the Respondent no.1.

**Ms. Sulekha Kamat, Additional Government Advocate for
the Respondent no.2.**

CORAM: MANISH PITALE, J

Reserved on: 5th October 2021

Pronounced on: 8th October 2021

JUDGMENT

1. Heard Mr. Rodrigues, learned Counsel appearing for the
Petitioners, Mr. Jatin Ramaiya, learned Counsel appearing for
Respondent no.1 and Ms. Kamat, learned Additional
Government Advocate appearing for Respondent no.2.

2. Rule.

3. The learned Counsel appearing for the Respondents, waive notice on rule.

4. The Petitioners herein are invoking the principles of natural justice as a ground to demonstrate the error committed by the Cooperative Tribunal, Goa, in passing the impugned order. According to the Petitioners, while the directions given by the Tribunal in the impugned order are adverse to their interest, they were not made parties in the appeal before the Tribunal, despite the fact that they were parties before the Registrar of Cooperative Societies and the order passed by the said authority was made subject matter of challenge in the appeal.

5. The Petitioners are elected members of the Board of Directors of a Cooperative Bank. On 06.04.2017, an Auditor/Inspector of Cooperative Societies sent a communication to Respondent no.2-i.e. the Registrar of Cooperative Societies on the subject of misfeasance report in the working of the said Bank. After referring to an audit report, the said Auditor requested Respondent no.2 to take necessary action under Section 82 of the Goa Co-operative Societies Act, 2001 (the said Act), for recovery of the amount of ₹51,987.17, from the concerned staff of the Society. On this basis, the Respondent no.2 initiated proceedings under Section 82 of the aforesaid Act. On 29.09.2017, Respondent no.2 passed an order holding that there was indeed misfeasance in the working of the said Bank and it was found that Respondent no.1, who was then working as Secretary of the Co-operative Bank/Society, was responsible for such misfeasance. On

this basis, it was directed that the aforesaid amount be recovered from Respondent no. 1 with interest at the rate of 10% till the entire amount was recovered.

6. Aggrieved by the said order, Respondent no. 1 filed an appeal before the Co-operative Tribunal under Section 82(3) of the aforesaid Act. In this appeal, only Respondent no. 2 was made a party-Respondent.

7. On 27.11.2018, the Tribunal passed the impugned judgment and order. After considering the contentions raised on behalf of Respondent no.1, the Tribunal found that the Respondent no.2-Registrar had not considered all the material facts and proper reasoning was not given while absolving the Directors i.e. the Petitioners herein, from liability while holding that the Respondent no.1 alone was responsible for the financial losses suffered by the said Bank. After reaching such conclusions, the Tribunal allowed the appeal, set aside the order dated 29.09.2017 passed by Respondent no.2 and thereupon remanded the matter to Respondent no.2 for fresh decision in accordance with law, after giving reasonable opportunity of hearing to the parties. Aggrieved by the said judgment and order, the Petitioners have filed the present Writ Petition.

8. Mr. Vivek Rodrigues, the learned Counsel appearing for the Petitioners, submitted that the impugned judgment and order deserved to be set aside as there was flagrant violation of the principles of natural justice. It was submitted that the Tribunal reached findings adverse to the Petitioners while they were not made parties to the appeal filed by Respondent no.1. It was

submitted that in such a situation, the Tribunal could not have remanded the matter back to Respondent no.2 for consideration afresh. It was submitted that the only limited inquiry that the Tribunal could have undertaken, was to have decided as to whether Respondent no. 1 was responsible for the financial losses allegedly suffered by the Bank. The inquiry in the appeal could not have gone beyond ascertaining whether Respondent no. 2 was justified in holding Respondent no.1 responsible for the financial losses. It was submitted that Section 82(4) of the aforesaid Act mandated that only the person who had filed an application before the Registrar or his representative, shall be the sole respondent thereto and that the Applicant shall not make any other person a party to the proceedings. Therefore, as per the statutory mandate which had to be strictly construed, there was no scope for the Tribunal to have remanded the same for fresh consideration. It was submitted that the Tribunal failed to appreciate this aspect of the matter and that, therefore, the impugned order deserved to be set aside.

9. On the other hand, Mr. Ramaiya, the learned Counsel appearing for the Respondent no.1, submitted that no fault could be found with the said Respondent in having failed to join the Petitioners as party-Respondents in the appeal, in view of the mandate of Section 82(4) of the aforesaid Act. It was submitted that the Tribunal in paragraph 14 of the impugned order had specifically stated that the observations made in the judgment were only for the purpose of deciding the legality of the order of the Respondent no. 2 and that no opinion had been expressed on the merits of the matter, one way or the other. On this basis, it was submitted that there was no adverse observation or finding

against the Petitioners on the merits of the matter and that merely because the matter was remanded to the Respondent no.2, the Petitioners could not claim that there was violation of principles of natural justice. On this basis, it was submitted that the Writ Petition deserved to be dismissed.

10. Ms. Sulekha Kamat, learned Additional Government Advocate, has appeared on behalf of Respondent no. 2 i.e. the Registrar of Co-operative Societies.

11. Before examining the rival contentions raised before this Court, it would be appropriate to first examine as to whether the Petitioners are justified in claiming that there has been violation of principles of natural justice in the present case. A perusal of the impugned judgment and order shows that the Tribunal has given a finding that Respondent no. 2 did not give proper reasons for absolving the Directors i.e. the Petitioners herein from the liability regarding financial losses suffered by the Bank. This is a clear adverse finding, insofar as the Petitioners are concerned. Apart from this, the Tribunal set aside the order of the Registrar, wherein the Petitioners, as Directors of the Co-operative Bank, were absolved of liability. The matter stood remanded to the Registrar for fresh consideration, thereby indicating that a cloud of doubt did appear as regards the role of the Petitioners in the alleged financial losses suffered by the Bank. The Tribunal rendered such adverse findings against the Petitioners, even when they were not made party-Respondents in the appeal. This indicates a clear violation of the principles of natural justice.

12. But, in this context, the mandate of Section 82(4) of the said Act, needs to be considered, as Respondent no.1, being the Appellant before the Tribunal, states that she was required to implead only the Registrar or his representative as the sole Respondent and she could not have made any other person a party to the appeal. Therefore, the question is, as to whether the failure in joining the Petitioners as party-Respondents in the appeal before the Tribunal could be said to be violative of the principles of natural justice, even when such an act on the part of the Respondent no.1 was in terms of the mandate of Section 82(4) of the said Act.

13. In this context, it would be appropriate to refer to the relevant provisions of the aforesaid Act. The said provisions are as follows:

“82. Power of the Registrar to order recovery of losses. — (1) A member, director, chairman of the society, or any officer authorized by the Registrar may, file a copy of the report of the auditor or the special auditor or the inquiry officer, before the Registrar with an application for necessary action against the person on account of whose conduct the society has incurred loss. The Registrar may, on the basis of such report, disallow every item of expenditure incurred contrary to law and order recovery of the same from the person incurring or authorizing the incurring of such expenditure, or held responsible in the said report for any

deficiency, loss or unprofitable outlay occasioned by his negligence or misconduct of any such amount which ought to have been accounted but is not brought into account by that person and shall, in every such case, specify the amount liable to be paid by such person to the society.

Explanation:— *It shall not be open to any person whose negligence or misconduct has caused or contributed to any such deficiency or loss, to contend that notwithstanding his negligence or misconduct, the deficiency or loss would not have occurred, but for the negligence or misconduct of some other person.*

(2) The Registrar or the person authorized by him shall state in writing the reasons for its decision in respect of every dis-allowance or surcharge and a copy of such decision shall be served on the person against whom it is made in the manner laid down for the service of summons in the Code of Civil Procedure, 1908 (V of 1908): Provided that the 106[Registrar] shall not pass any order of recovery under this section unless the person against whom any such order is passed had an opportunity of making a representation either by himself or through a Counsel.

(3) Any person aggrieved by an order passed under this section may, within sixty days after the date of service on him of the order by the Registrar, file an appeal against such order in the Cooperative tribunal.

(4) Where an appeal is filed in the Co-operative

Tribunal under sub-section (3), the persons who filed the application before the Registrar or his representative shall be the sole respondent thereto, and the applicant shall not make any other person a party to the proceedings.

(5) Every order passed by the Registrar or order passed by the Co-operative Tribunal shall be executed in the same manner as a decree of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908).

(6) Where a person is held liable by the Registrar for misappropriation, fraud, breach of trust, cheating or any other act involving moral turpitude, resulting in a loss to the society, he shall be punishable under the relevant provisions of the Indian Penal Code, 1860 (45 of 1860).

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114. Goa Co-operative Tribunal. — *(1) The Government shall constitute a Tribunal called the Goa Co-operative Tribunal to exercise the powers and to discharge the functions conferred on it by or under this Act.*

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Explanation. — The Co-operative Tribunal hearing an appeal under this Act shall exercise all the powers conferred upon an Appellate Court by section 97 and Order XLI in the First Schedule of the Code of Civil Procedure, 1908 (V of 1908).

14. Since the explanation to Section 114 of the aforesaid Act refers to Order XLI of the CPC, it would be relevant to refer to Order XLI Rule 20 of the CPC, which reads as follows:

“20. Power to adjourn hearing and direct persons appearing interested to be made respondents. -

(1) Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

(2) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.”

15. Considering the specific provision of Section 82(4) of the said Act, no fault can be found with the Respondent no.1 in adding only the Respondent no. 2 as a party-Respondent in her appeal filed before the Tribunal. As per the mandate of the said provision, she could not have made any other person party to the proceedings. To that extent, the learned Counsel appearing for the Respondent no.1 is justified in contending that the Respondent No.1 could not have made the Petitioners parties to the appeal.

16. The learned Counsel appearing for the Petitioners has also submitted that restrictive interpretation ought to be given to Section 82(4) of the said Act, thereby meaning that the

Petitioners could not have been made parties and, consequently, the Tribunal could not have made any adverse observations or findings against the Petitioners. It was further submitted that there was no question of setting aside the order of the Registrar, insofar as it absolved the Petitioners and the matter could not have been remanded for fresh consideration.

17. But, there can be no doubt about the fact that the Tribunal while hearing the Appeal ought to adhere to the principles of natural justice. By restrictively interpreting Section 82(4) of the said Act, the power of the Tribunal in a given case to remand the matter to the Respondent no.2-Registrar cannot be truncated, on the ground that such an order remanding the matter would adversely affect the interest of persons who are not parties before the Tribunal and who cannot be made parties as per the mandate of Section 82(4) of the said Act. The object of the power available to the Registrar under Section 82 of the said Act is to identify the persons responsible for causing financial loss to the Society and to take appropriate action against them, including causing recovery of such loss.

18. The principles of natural justice have to be read into statutory provisions, failing which, such provisions would be left vulnerable to the attack of being invalid and unsustainable. The Co-operative Tribunal constituted under Section 114 of the said Act, ought to exercise its powers by adhering to the principles of natural justice, particularly when findings are rendered and directions are issued adverse to the interest of certain parties. This is all the more significant because under Section 82(6) of the said Act, criminal liability can also be imposed on the order of the

Registrar finding a person guilty of any action causing financial loss to the Society.

19. In the present case, there can be no doubt about the fact, that in the impugned order, the Tribunal rendered findings adverse to the interest of the Petitioners, and by remanding the matter back to the Registrar, the Petitioners faced the possibility of action against them for financial loss and consequent recoveries. Therefore, Section 82, particularly sub-Section (4) of the said Act, has to be interpreted in a manner that it is in consonance with the principles of natural justice. A perusal of the said provision shows that while the embargo of not making any person other than the person who filed the application before the Registrar or his representative, as a party in the appeal, applies to the Appellant, such an embargo cannot be read in the context of the Tribunal itself. At this stage, it is relevant to note that the word "*applicant*" used in the latter part of sub-section (4) to Section 82 of the aforesaid Act, appears to be an error because the word "*appellant*" ought to be read in the context of the said provision. The learned Counsel appearing for the parties submitted that there could be no dispute about the same.

20. This Court is of the opinion that while the appellant is prohibited from adding any other person as a party to the appeal, the Tribunal is not prohibited in a given case to exercise power for adding all such persons likely to be affected by the proceedings in the appeal or those interested in the appeal, as parties to the appeal. In this context, order XLI Rule 20 of the CPC assumes significance because it gives power to the Court to adjourn the hearing of an appeal for adding a person interested, who was

party to the original proceedings, to be added as a respondent in the appeal. As noted above, explanation to Section 114 of the aforesaid Act, specifically provides that the Co-operative Tribunal hearing the appeal under the provisions of the said Act can exercise all powers conferred upon the Appellate Court under Order XLI of the CPC. Therefore, the Tribunal can certainly exercise power to add interested persons who were parties to the proceedings before the Registrar, as Respondents in the appeal.

21. In the present case, if the Tribunal was of the opinion that it desired to enter into the aspect of the role of the Petitioners in the alleged financial loss suffered by the Bank, it ought to have directed the Petitioners to be added as Respondents in the appeal. This would have obviated the attack on the impugned order on the ground of violation of principles of natural justice. The Petitioners being impleaded as Respondents in the appeal would have facilitated their participation in the proceedings, affording them an opportunity to put their contentions before the Tribunal, so that appropriate order could have been passed for disposing of the appeal.

22. The Tribunal failed to appreciate this aspect of the matter while passing the impugned order. Merely by observing in the impugned order that the Tribunal had not expressed any opinion on the merits of the matter, one way or the other, would not take away the defect of violation of principles of natural justice.

23. In view of the above, this Court is of the opinion that the Writ Petition deserves to be partly allowed.

24. Accordingly, the Writ Petition is partly allowed. The impugned order passed by the Tribunal is quashed and set aside. The matter is remanded to the Tribunal for consideration of the appeal afresh. The Tribunal is directed to add the Petitioners as party-Respondents in the aforesaid appeal and after giving proper opportunity to all parties, including the Petitioners herein, the Tribunal shall dispose of the appeal in accordance with law.

25. Rule made absolute in above terms.

MANISH PITALE, J.

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