

\$~2.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+

Date of Decision: 21.10.2021

% **W.P.(C.) No. 13115/2019**

JITENDER GUPTA

..... Petitioner

Through: Mr. Rahul Gupta, Advocate.

versus

THE REGISTRAR OF COOPERATIVE SOCIETIES
& ORS.

..... Respondents

Through: Mr. Gautam Narayan, ASC and
Ms. Asmita Singh, Adv
Mr. Rajesh Shrivastava, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 24.09.2019, passed by the Registrar of Cooperative Societies, New Delhi (F. No. AR/BKG/CD NO./107487/RCS/2018/6248-6254).
2. The petitioner also seeks a stay for proceedings resulting from the said impugned order dated 06.12.2019 passed by the Financial Commissioner, Delhi in Revision Petition No. 256/2019 titled Jitender Gupta v. The Registrar, Cooperative Societies, Delhi & Anr., and also seeks

stay of further proceedings in the said Revision Petition. General direction is sought that the Registrar of Co-operative Societies (ROCS) should perform and discharge his duty in accordance with the provisions of the Delhi Cooperative Societies Act, 2003 (the Act), and not to violate the provisions thereof, or any violation of the Principles of Natural Justice.

3. The brief background and the relevant facts are that the petitioner, at the relevant time, was the head of the Internal Audit Committee of a Cooperative Bank, namely, Delhi Sahkari Cooperative Bank. Respondent No. 3 herein, Mr. Anil Kumar Gaur made complaints about rampant malpractices being indulged in by the management of the bank in the matter of grant of loans and facilities, which were resulting in losses and accounts becoming NPAs. On the basis of the said complaint of respondent No. 3, the ROCS invoked Section 61 of the Act and directed inspection. An auditor's report was prepared on 26.07.2016 under Section 61 of the said Act which was submitted to the ROCS. Founded upon the said inspection report, the ROCS instituted an enquiry under Section 62 of the said Act.

4. The Enquiry Officer submitted his report on 01.12.2017, returning findings of serious malpractices being practiced by the management of the said bank. This report specifically referred to several acts and omissions of the petitioner in relation to particular accounts/transaction. It is pertinent to note that this Enquiry Report has not been filed by the petitioner on record, and has been filed by respondent No.1, the ROCS.

5. After the Enquiry Report under Section 62 of the Act was received, the ROCS proceeded under Section 66 of the Act – the purport whereof is to

enable recovery of the losses suffered by the Cooperative Society due to breach of trust, wilful negligence, misappropriation or fraudulent retention of money or other property belonging to cooperative society. This proceeding under Section 66 was entrusted to one Shri. M.C. Jha on 16.10.2018. Shri. M.C. Jha submitted his report dated 13.12.2018.

6. On 31.12.2018, the ROCS simultaneously issued a show cause notice to the petitioner under Section 121 of the Act, requiring him to show cause as to why the ROCS should not grant sanction for the petitioner's prosecution for offences under Section 118(1) and 118(6) of the said Act, and also issued a communication to Shri. M.C. Jha stating that the report submitted by him under Section 66 of the Act was incomplete – requiring him to submit further report with particulars of the persons involved in wrong doings and the role played by them.

7. The petitioner raised an objection to the maintainability of the show cause notice itself on 14.03.2019. He also responded to the show cause notice, whereafter the impugned order was passed by the ROCS on 24.09.2019, rejecting the petitioner's objections and disposing of the show cause notice. The ROCS proceeded to grant sanction for prosecution of the petitioner under Section 118(1) and 118(6) of the Act.

8. The petitioner then preferred the aforesaid Revision Petition before the Financial Commissioner, being Revision Petition No. 256/2019, to assail the order granting sanction under Section 121(2) of the Act. While entertaining the Revision, the Financial Commissioner granted a stay of the operation of the impugned order dated 24.09.2019 passed by the ROCS on

04.10.2019. The said stay order continued till the passing of the order dated 06.12.2019 by the Financial Commissioner, when the stay was vacated. At that stage, the petitioner preferred the present writ petition.

9. The writ petition came up before the Court on 12.12.2019 when this Court stayed the operation of the impugned order dated 24.09.2019 passed by the ROCS. The stay order has continued till date and, consequently, the prosecution of the petitioner has not proceeded.

10. The first submission of Mr. Rahul Gupta, learned counsel for the petitioner is that grant of sanction for prosecution by the sanctioning authority is not an empty formality. The purpose of requiring grant of sanction is to protect the concerned persons against frivolous prosecution. Therefore, the issue whether sanction should be granted in a particular case, should be seriously examined by the sanctioning authority with due application of mind to all the relevant facts and circumstances of the case. He places reliance on ***Central Bureau of Investigation v. Ashok Kumar Aggarwal***, (2014) 14 SCC 295, and in particular on the following extract from the said decision.

“13. The prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by the competent authority, adequate material for such grant was made available to the said authority. This may also be evident from the sanction order, in case it is extremely comprehensive, as all the facts and circumstances of the case may be spelt out in the sanction order. However, in every individual case, the court has to find out whether there has been an application of mind on the part of the sanctioning authority concerned on the material placed before it. It is so necessary for the reason that there is an obligation on the sanctioning authority to discharge its duty

to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Therefore, the provisions in regard to the sanction must be observed with complete strictness keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

14. It is to be kept in mind that sanction lifts the bar for prosecution. Therefore, it is not an acrimonious exercise but a solemn and sacrosanct act which affords protection to the government servant against frivolous prosecution. Further, it is a weapon to discourage vexatious prosecution and is a safeguard for the innocent, though not a shield for the guilty.

15. Consideration of the material implies application of mind. Therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. In every individual case, the prosecution has to establish and satisfy the court by leading evidence that those facts were placed before the sanctioning authority and the authority had applied its mind on the same. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge-sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. This becomes necessary in case the court is to examine the validity of the order of sanction inter alia on the ground that the order suffers from the vice of total non-application of mind. (Vide Gokulchand Dwarkadas Morarka v. R. [(1947-48) 75 IA 30 : (1948) 61 LW 257 : AIR 1948 PC 82] ; Jaswant Singh v. State of Punjab [AIR 1958 SC 124 : 1958 Cri LJ 265], Mohd. Iqbal Ahmed v. State of A.P. [(1979) 4 SCC 172 : 1979 SCC (Cri) 926] , State v. Krishanchand Khushalchand Jagtiani [(1996) 4 SCC 472 : 1996 SCC (Cri) 755] , State of Punjab v. Mohd. Iqbal Bhatti [(2009) 17 SCC 92 : (2011) 1 SCC (Cri) 949] , Satyavir Singh Rath, ACP v. State [(2011) 6

SCC 1 : (2011) 2 SCC (Cri) 782] and State of Maharashtra v. Mahesh G. Jain [(2013) 8 SCC 119 : (2014) 1 SCC (Cri) 515 : (2014) 1 SCC (L&S) 85] .)”

11. Mr. Gupta submits that the impugned order passed by the Financial Commissioner dated 06.12.2019 vacating the stay is an unreasoned order. He submits that the Financial Commissioner was obliged to record his reasons while vacating the stay of the impugned order dated 24.09.2019, as it adversely affected the rights of the petitioner.

12. In support of his challenge to the order dated 24.09.2019 passed by the ROCS rejecting the objections to the Show Cause Notice and granting sanction of the petitioner’s prosecution, Mr. Gupta has submitted that Rule 158 of the Delhi Cooperative Societies Rules, 2007 (The Rules), specifically provides that *“Before granting sanction for prosecution under sub-section (2) of section 121 of the act the Registrar shall, conduct an inquiry by himself or through police or any other investigating agency which shall seek sanction for prosecution of the person/persons against whom action is being proposed under section 118.”*

13. Mr. Gupta submits that a reading of the aforesaid Rule would show that for consideration of the aspect of grant of sanction for prosecution under Section 121(2) of the Act, the ROCS is obliged to conduct an independent enquiry himself or through the Police, or any other investigating agency. He submits that in the present case, the Registrar did not conduct any enquiry of his own, and did not call upon the police or any other investigating agency to conduct any enquiry, and he issued the show cause notice to the petitioner

without any basis. The submission of Mr. Gupta is that the enquiry report prepared either under Section 62, or Section 66 of the Act, could not be used by the ROCS for consideration of the aspect whether sanction should be accorded under Section 121(2) of the Act for grant of sanction. Mr. Gupta submits that when the ROCS was himself of the view that the enquiry report submitted by Mr. M.C. Jha under Section 66 of the Act was incomplete/ half baked, he could not have proceeded on the basis of the said report to issue the show cause notice under Section 121 of the Act.

14. On the other hand, Mr. Narayan who appears for the ROCS firstly submits that the petitioner is guilty of suppression of a material document viz. the enquiry report under Section 62 of the Act, which forms the basis of the show cause notice issued to the petitioner under Section 121(2) of the Act. He submits that a perusal of the said enquiry report would clearly bring out the role attributed to the petitioner in suppressing the frauds undertaken in the conduct of the business of the Co-operative Bank in question. He further submits that a perusal of the impugned order dated 24.09.2019 itself shows that by the earlier order passed on the aspect of maintainability of show cause notice dated 15.05.2019, the ROCS observed that the show cause notice was premised on the enquiry report made under Section 62 of the Act. That order has not been challenged by the petitioner. Mr. Narayan submits that the purpose and scope of proceedings under Section 66 of the Act is only to fix the monetary liability of the concerned persons, and it is the enquiry under Section 62 of the Act which is the trigger for the purpose of issuance of the Show Cause Notice to the petitioner under Section 121(2) of the Act. He submits that neither the Act, nor the Rules anywhere provide

that for purpose of compliance of Section 121(2) read with Rule 158, a separate and distinct enquiry would have to be held by the ROCS. He submits that the enquiry conducted under Section 62 of the Act, if it discloses involvement of particular persons in commission of offences under the Act, is sufficient and can be made the basis for issuance of sanction under Section 121 of the Act after issuance of the show cause notice and grant of opportunity to the concerned person to respond to the show cause notice. Mr. Narayan further submits that the submission of Mr. Gupta that the ROCS should himself conduct an enquiry, and an enquiry report prepared by any other officer in his office is not suffice, has no basis. In this regard he has drawn the attention of the Court to the definition of “Registrar” as defined in Section 2(w) of the Act, which defines the Registrar to mean “*a person appointed to perform the functions of the Registrar of co-operative societies under this Act and includes any person appointed to assist the Registrar when exercising all or any of the powers of the Registrar;*” (emphasis supplied)

15. Mr. Narayan submits that the decision relied upon by Mr. Gupta in ***Central Bureau Investigation*** (supra) is inapposite in the facts of the present case. In the facts of that case, certain statements recorded during investigation under Section 161 Cr.P.C. had not been placed before the sanctioning authority, and it was in that light that the Supreme Court rendered the aforesaid judgment. However, in the present case, the enquiry report prepared by the Enquiry Officer under Section 62 of the Act was on the record of the ROCS to consider the aspect of grant of sanction in respect of the petitioner.

16. Mr. Gupta in his rejoinder has pointed out that the petitioner has gone on to become the CEO of the said cooperative bank, and the NPAs have declined to a great extent.

17. Mr. Srivastava who appears for respondent No. 3 submits that though the enquiry report prepared under Section 62 of the Act mentions that the NPAs have increased to 25%, as a matter of fact, the position has gone worse with the NPAs touching 45%.

18. We have heard learned counsel for the parties and considered their submissions in the light of the record.

19. We may first deal with the objection raised by Mr. Narayan with regard to the petitioner's conduct in not placing on record the Enquiry Report under Section 62 of the Act. The said report has been filed as Annexure A to the counter affidavit of R-1 i.e. the ROCS. A perusal of the said report shows that the findings returned in the said report, *inter alia*, are the following:

"Findings:

The involvement of the entire officials and officers at branch level, directly involved in the processing, appraisal, verification and scrutiny of the documents, loan committee including CEO at hq level and finally Board of Directors present, while granting loans to members on the fake ITRs cannot be ruled out. A list of the officials involved in the loan application processing, scrutinizing and sanctioning etc in respect of cases mentioned in the Audit Report is at p-274-279(Vol-I). During enquiry, a few Ex.Directors viz. Shri M. K. Bansal (p-30-38 & 732-958 vol-II), Shri Satbir Singh (p-90-96 & 713-731 vol-II) and Shri K. K.Mittal (p-116-711 vol-II) of the banks during various periods submitted that they used to

oppose wrong action of the board their dissent has also been recorded. These statements clearly reveals that lapses on the part of the branch level officers were not only because of negligence and casual approach in processing, appraisal, verification and scrutiny of the documents, loan committee at HQ level but was clearly an deliberate attempt and do not leave an iota of doubt that there was a connivance with the whole set of officials at HQ and Board of Directors who did not attempt to take corrective measures, despite complaints received from time to time and remained silent spectators / turned blind eye , an act which is not expected from Directors rather the master circular of the RBI clearly outlines dos and don'ts for them , which has been overlooked in the present case. They therefore, cannot absolve themselves from any of the charge levelled by the complainant herein.

x x x x x x x x x

Findings:

On scrutiny of the loan cases, mere a look at the collateral security documents was enough to prove the allegation of the complainant at least in the cases where the audit has clearly found the documents invalid. Even the bank itself agreed and filed a complaint against the culprits but it was eyewash as the complaint is yet to be converted into a FIR. The failure of the bank to file an individual FIR in each case has not been explained during hearing. Further no concrete efforts could be shown which justifies the delay in action on the part of the management except filing a case in the court to register a FIR in these cases.

I am of the view that it is a clear manifestation of deliberate attempt on the part of the officials responsible who are protecting the issue to keep the culprits of the bank and its members, scot free to save some people for their vested interest. An exhaustive audit is required immediately atleast of the cases listed by the complainant that may beget a startling revelation of such conspiracy by the loanee members, official and bank management. A criminal case

needs to be filed in the individual loan cases where such discrepancies found in the collateral security documents immediately against the loanee member, official involved and bank management, at least in the five cases mentioned by the audit report. Details thereof are at p -112-114 (vol-1). List of officials involved in processing these cases is at p-274-279 (vol-1) as well as members of the loan sub- committee is at p-516-517 vol-II. Suitable actions can be initiated, after conducting full external audit, in the cases irregularities caused by the conspiracy. Besides, departmental enquiries against official and bank management be initiated immediately, who have been involved and caused loss of cores of rupees unscrupulously, which has not been recommended/ordered by the present administrator, a clear lapse on his part.

x x x x x x x x x

Comments and Findings:

It is shocking to know that despite having a system of membership and verification of documents and details submitted by the prospective member, whole system of verification and scrutiny of membership application has failed and member has been made on wrong information, where it is found that he has not been working in the organization he claimed only when loans have been disbursed.

The whole episode underlines negligence and lapse of entire team of officials and management at all levels. However there may be direct involvement of some of the official who did not verify details submitted by the member at the time of membership or at the time of scrutiny of loan papers. Their gross negligence has caused financial loss to the bank and its members.

During hearing it has been reported that Directors of the bank were also involved in making membership by submitting wrong information, fake affidavit, and fake pay slips etc. A case (Santosh Sharma) has also been referred where an official

account was deposited with lakhs of rupees and amount withdrawn therefrom to pay membership fee. Though the official has been dismissed from the service but recovery of crores of rupees is yet to be made from him. Further, Director who has been reported to have been involved in his statement is still scot free. Suitable disciplinary action should be taken against them and also pecuniary losses to the bank should be considered to be recovered from the responsible officers and other office bearer of the bank management to make good the financial damages caused to the bank.

x x x x x x x x x

Findings:

Despite knowing all facts and report of the investigating team of senior officers of the bank, nothing substantial has been brought to the notice of the undersigned in terms of statement and documentary evidence except a few complaints filed in the police station, EOW who have returned the same with a view that case-wise FIR has to be lodged for proper investigation/probe in the complaint.

Unfortunately, neither management nor administrator has resorted to concrete action against the accused officials nor investigation has also been put on fast track / concluded in time bound manner on the other hand delayed without any justified reasons when all records, evidences are with the bank itself. No criminal action has been initiated against those loanees who have in connivance with-the official, constructively in the notice of the branch as well as top management, conspired against the bank and still scot free. Entire monitoring system, internal audit etc has collapsed and bulldozed by the greed of its officials and management who turned blind eye even the complaints made to them by the whistle blowers members of the bank.

Therefore I find all officials of the Karawal Nagar Branch who were involved in scrutinizing application along with complete documentation and verification of the physical assest./ address of the business etc , loan committee who

recommended those loan/CC/OD application to the HQ and to the board of Directors of the bank guilty of negligence , dereliction of duty and of the conspiracy with the applicants who took money of the bank and not returned the same.

x x x x x x x x x

Comments and findings:

The whole episode again remind the negligent and casual approach of the official as well as the management who are responsible for scrutiny and verification of documents, sanction and finally disbursement of the loan. We cannot blame loanee who might have inadvertently failed to submit part of the papers of the collateral security. Besides negligence, likelihood of the influence of the Asst. CEO Shri Jitender Gupta over the official involved cannot be ruled out who was expected to be more cautious at least in case of loan to his family member. Management should take strict action against the officials committed the lapse in scrutiny of the application alongwith documents and be thankful to the member of the bank who raised alarm before putting the loan in jeopardy and wrong has been undone timely.

3(iv) It has been alleged that the officer who has been responsible for audit of the bank, has not performed his duties properly. There was a committee of three managers as members; they had submitted a report covering all issues. However the head of audit dissolved that committee. The report of this committee clearly highlighted the fact that the bank already knew all frauds, all those responsible to check these frauds were also involved, therefore no action was taken. The NPA of the bank is more than 25%. In order to have proper enquiry it is also prayed that the officer responsible should be kept away from audit and legal department of the bank and copies of all files be taken alongwith soft copy thereof. As there is all possibility of theft of these files. I may also be provided with a copy of the report to give a push to enquiry.

The Auditor has stated that it is complained that Shri Jitender Gupta has been assigned the duty of getting the audit of the bank conducted by the auditors and since he has not produced adequate and required documents/information to the auditors there has been a significant loss to the bank in the form of NPA to the extent of more than 25%.

x x x x x x x x x

Comments and findings:

(i) As is evident from observation of the Audit that malpractices running in the bank and weakness in internal control system could not be reported/identified during the course of internal audit **which shows that bank has poor internal audit control system. Also the clarifications submitted by the Bank management referred to above palpably underline that the negligent , carelessness ,approach at the branch level prevailed all over the bank, which allowed borrower members to have availed multiple loans from different societies/Bank and other sources, thus loans sanctioned are beyond their repaying capacity. Proper appraisal not done in many cases, willful default in some cases considering various factors. It appears that the bank has been enjoying anarchy at the hand of a few managers having full back up, support of the top management including contemporary chairman and directors of the board of the bank who turned blind eye and never attempted to contain this kind of liberty enjoyed by their pet staff. The internal audit which could have played an important roll to identity such lapses leading to bad loans, submission of fake property papers and wrong information. Unfortunately, all remained blind and never cared to find out reasons for this situation.**

During enquiry lame excuses were submitted by the head of Audit branch that they do not have competent staff for proper audit. It appears that internal audit was only for name sake. Naturally compliance of such audit report would also bring about no improvement in the system. **During enquiry Shri Jitendra Gupta failed to submit any concrete idea which could**

counter the allegation and observation of the audit. A strong audit system could have improved the scrutiny of the documentation submitted with the loan application, suggested measures to the management to improve system of the bank and save the bank from defaults caused by the fake documents, collaterals security etc. Even the scrutiny of the Statutory Audit report indicates that how casually bank has processed cases of loans, CC/OD limits without complete documentation and lackadaisical approach in review of the collateral security documents which put the bank money in jeopardy even majority of the such cases have turned NPA or referred to recovery cell. A detailed list of such cases has been obtained from the bank and is placed at p-481-488(vol-1).

It is therefore clear that allegations like failure of internal audit system to identify major loophole proved. I, therefore of the opinion that allegation sustained against the head of Audit Department Shri Jitender Gupta. On the other hand top Management including Board of Directors have equally failed to tighten the noose of the negligent staff despite knowing the lapses in the scrutiny of applications which also proves their full support to have a loose system to take advantage thereof fully in connivance with the members conspiring against the bank for misappropriation of the bank money.

x x x x x x x x x

Comments and findings:

Mere a glance on the above table vindicate the allegations made by the complainant member Shri Anil Gaur. The NPA in the branch Subji mandi, Lajpat nagar , Pitumpura , Shahdara, Badarpur, Krishana Nagar, karawal Nagar, is more than 25% of the loan outstanding as on 31.3.2017. Out of 14 branches 7 branches have NPA more than the average NPA of the Bank. Albeit measures taken by the bank as submitted in their written statement could not bring major change in the position of NPA. But the allegation refers to some other reasons for NPA i.e. loans given to members

submitted fake ITR, Fake property papers, wrong information, weak internal audit system etc.

The bank has failed to counter the allegations herein and the gigantic NPA is clearly attributable to the management, unprofessional handling of the bank affairs by the bank officials , and Board of Directors who acted in a manner supporting to a conspicuous financial malpractices, irregularity, a highly irresponsible act which was prejudicial to the interest of the bank and against the canon of financial propriety caused avoidable financial losses.

x x x x x x x x x

Findings:

*In view of the facts and circumstances enumerated above based on the audit observations, statements in the hearing and written statement of officials, Ex-member of the board, Ex. Directors of the Board during 2011-14 , written submission and documentary evidence by the bank management, analysis made by the undersigned as comments after each of allegations and statements **spelling out reasons for the concluding remarks and findings** ,clearly underscores that Audit observations and the allegations made by complainant bad material facts and following allegations are proved on the basis of preponderance of probability against the Board of directors (2011-14) except Shri M.K.Bansal, Shri Satbir Singh, Shri K.K.Mittal, Ms. Krishna Khatri, Ms. Nirmala and Shri V.K.Gupta, co-opted Director as explained in the forging paras that they*

- a) Failed to perform duties as per the RBI circular for conduct of Directors.*
- b) Failed to show absolute integrity in their conduct.*
- c) Neither ever manifested any endeavor to bring about measures/policy for betterment of the bank nor brought out any idea or a mechanism to put in place to contain fraudulent loan cases, loan default leading to litigation, NPA, on the other hand incurred expenditure on board*

meeting & other Sub-committees w.e.f. Sep-2011 to Aug 2014 to the tune of Rs. 49 lakh. A statement containing expenditure incurred on Sitting charges, Conveyance Charges and entertainment charges is at (p-491 A vol – I).

- d) Despite raising alarms by members, as per the list of complaints at **page- 260-273 vol-I** and fellow directors at the very beginning of the term, the group of directors did not wake up from their slumber and organized plunder continued in the form of granting loans/OD/CC limits on the basis of fake documents, false information deliberately with help of their close aide staff, who conducted scrutiny/verification of documents in a very casual manner, failed to render duties and responsibility in rightful manner for undue financial gain. The combined acts of bank staff, loan sub-Committee and Board of Directors caused huge financial losses to the tune of crores of Rupees to the bank and caused irreparable losses to the interest of innocent /poor members of the bank.*
- e) Failed to envisage the potential danger to the finances of the bank and overlooked all complaints tipping off the irregularities /fraudulent activities causing financial drain, palpably prejudicial to the interest to the bank, continued saga of vested interest, and plunder unabatedly until their terms ended.*
- f) Audit is a pan picture of an organization also a means to identify lapses in the working of the bank. Both internal audit and Sub-committee thereof have failed to do its core function. Observation of Auditor and the allegation of complainant are also proved that they failed to render their duties and responsibility in right perspective*
- g) Failed to follow core principles of the Co-operative and resorted to all acts which were against thereto.”*

20. The aforesaid would show that so far as the petitioner is concerned, he was pointedly named and found instrumental in the frauds that were perpetuated in the conduct of business of the cooperative bank in question at the relevant time. Thus, the aforesaid enquiry report dated 01.12.2017 prepared under Section 62 of the Act is a document which goes against the petitioner. It is this document which the ROCS, while passing the order dated 15.05.2019, referred to as the document/ report which form the basis of the show cause notice issued to the petitioner under Section 121(2) of the Act. The order dated 15.05.2019 passed by the ROCS, *inter alia*, records as under:

“ x x x x x x x x x

The matter was thus further examined in view of the observations made in the audit report of the bank and also in view of the reply submitted by the bank and it was decided that an inquiry u/s 62 of the DCS Act, 2003 should be conducted. Accordingly, Sh. Sanjay Kumar Sharma (the then Additional Deputy Commissioner SDMC) was vide office order dated 23.01.2017 appointed as the inquiry officer U/s 62 of the DCS Act, 2003 who after the conduct of the inquiry submitted his report on 01.12.2017.

x x x x x x x x x

It was noted that the inquiry officer Sh. Sanjay Sharma while looking into the failure of internal audit control system and allegations to the effect that the officer responsible for audit of the bank has not performed his duties properly, had observed that a committee of three managers which had submitted a report covering all issues, was dissolved by the head of audit. The report of this committee clearly highlighted the fact that the bank already knew all frauds, all those responsible to check these frauds were also involved, therefore no action was taken and also that Sh. Jitender Gupta has not produced adequate

and required documents/information to the auditors and there has been a significant loss to the bank due to increase in NPA to the extent of more than 25%. The inquiry officer thus concluded that as is evident from observation of the Audit that malpractices running in the bank and weakness in internal control system could not be reported/identified during the course of internal audit. The internal audit could have played an important role to identify such lapses leading to submission of fake property papers, wrong information and bad loans. The Inquiry officer in his report has further opined that allegation against the head of Audit Department Shri Jitender Gupta are sustained as internal Audit system failed to identify major loopholes.

x x x x x x x x x

The inquiry officer appointed u/62 of DCS Act, 2003 Inter-alia also pointed out certain other violations/lapses on the part of Sh. Jitender Gupta i.e. CC limits and OD facilities were extended in many cases in Trinagar branch without verification of documents/credibility of parties flouting the rules of the bank applicable in such cases and most of the verification in these cases were done by Sh. Sarthak Gupta who was reported to be close to Sh. Jitender Gupta. Further, the departmental inquiry assigned to Sh. Jitender Gupta in this regard should not have been conducted by him and no action was taken against the delinquent officials as departmental inquiry assigned to Sh. Jitender Gupta, remained pending for a considerable period. The inquiry officer also observed that in the case of Sh. Vineet Gupta, CA, who helped his wife Smt. Shweta Gupta in preparing fake ITR, investigation given to Sh. Jitender Gupta has not progressed much. The inquiry against the official was also pending. The inquiry officer while examining the case of loan to Smt. Shashi Gupta has further observed that besides negligence, The likelihood of the influence of the Asst. CEO Shri Jitender Gupta over the official involved cannot be ruled out.

In view of the findings of inquiry conducted u/s 62 of the Act as noted herein above and confirmation of various lapses with regard to the role of Sh. Jitender Gupta the then ACEO and the head of internal audit qua functioning of internal audit of the bank by the Inquiry Officer appointed u/s 66 (1) of the Act, the conduct of Sh. Jitender Gupta was found prima-facie covered under Section 118 (1) & (6) of the DCS Act, 2003 and accordingly he was issued a show cause notice u/s 121 (2) of DCS Act, 2003 read with Rule 159 of DCS Rules, 2007 providing him an opportunity to clarify as to why the prosecution sanction should not be granted for initiating criminal proceedings against him.

x x x x x x x x

It appears that respondent objector is deliberately trying to delay the proceedings by reading the notice dated 31.12.2018 in a totally different context and by making untenable assertions to object to the same. The averments of the respondents that the inquiry u/s 66 (1) has to be followed by an inquiry u/s 66 (2) and no view can be formed merely on the basis of findings of the inquiry under section 66 (1) and also that since the report submitted u/s 66 (1) was found incomplete and the IO was asked to submit a complete and comprehensive report and any action on the basis of the said report at this stage would amount to denial of opportunity etc. are neither relevant to the issue in question nor help the respondents in any manner as the notice in this case was issued u/s 121 (2) of DCS Act for initiating of proceedings u/s 118 (1) & (6). It is further relevant to add that provisions of Section 66 (4) itself clarify that the inquiries u/s 62 & 66 (1) of DCS Act, 2003 and consequential proceedings n/s 66 (2) of the Act which primarily relate to recovery etc. where someone has caused any deficiency in the assets of the society or has misappropriated or fraudulently retained any money or other property belonging to a cooperative society; can run concurrently with the proceedings relating to imposition of criminal liability under DCS Act and is extracted here below:-

Section 66 (4)

(4) This section shall apply notwithstanding that such person or officer or servant have incurred criminal liability by this Act.

The other argument raised by the respondent that even this apparently incomplete report submitted u/s 66 (1) of DCS Act by the inquiry officer does not disclose any ground for initiating action u/s 118 (1) & (6) also does not hold much water.

The perusal of the contents of the notice dated 31.12.2018 which has been objected to by the respondent; would reveal that it is essentially based on the findings of the inquiry u/s 62 of the DCS act, 2003 which stands accepted by the RCS in toto and thus cannot be termed incomplete on any count. Inquiry officer Sh. Sanjay Sharma in view of his detailed observations in the inquiry report as referred to herein above, had concluded that it is evident from observation of the Audit that malpractices running in the bank and weakness in internal control system could not be reported/identified during the course of internal audit. The internal audit could have played an important role to identify such lapses leading to submission of fake property papers, wrong information and bad loans. The Inquiry officer in his report has further opined that allegation against the head of Audit Department Shri Jitender Gupta are sustained as internal Audit system failed to identify major loopholes. Since the initial inquiry report u/s 66 (1) had also been, submitted by Sh. M C Jha by that time and it was noted that the findings of the said inquiry as to the role of Sh. Jitender Gupta as head of internal Audit qua the functioning of internal audit of the bank; were in consonance with the conclusion arrived at in the inquiry u/s 62, a reference of the same was also made in the notice to that extent.

As noted herein above, the Inquiry Officer inter-alia also pointed out certain other violations/lapses on the part of Sh. Jitender Gupta relating to functioning of Trinagar Branch and departmental inquiry/action against Sh. Sarthak Gupta & Smt. Shweta Gupta etc.

Admittedly, the notice dated 31.12.2018 against which the objections have been filed by Sh Jitender Gupta was issued to him u/s 121 (2) of DCS Act read with Rule 159 of DCS Rules, 2007 since various lapses specified by Sh. Sanjay Sharma in his inquiry report u/s 62 of DCS Act as well as the lapses confirmed & pointed out against him by sh. M C Jha in his initial inquiry report u/s 66 (1) clearly attracted the initiation of requisite action against the the objector for prosecution for offences covered o/s 118 (1) & (6) of DCS Act, 2003. The ongoing proceedings u/s 66 (2) or for that matter the further inquiry ordered u/s 66 (1) obviously would have no bearing on the issuance of the said notice dated 31.12.2018 to Sh. Jitender Gupta. It is further relevant to note that the respondent instead of specifically challenging the factual veracity of the grounds noted in the said notice dated 31.12.2018, has apparently filed the objections either under a mistaken impression of law or to merely delay the present proceedings against him.”

21. The aforesaid would show that the ROCS held that the show cause notice issued by him under Section 121(2) was founded upon the enquiry report framed under Section 62 of the Act. In the aforesaid background it is abundantly clear to us that the omission on the part of the petitioner to place before the Court, the enquiry report under Section 62 of the Act dated 01.12.2017 was a deliberate act of omission and concealment. Clearly, the endeavour of the petitioner was that this Court should not peruse the findings returned against him in the enquiry report dated 01.12.2017 framed under Section 62 of the Act. By holding back the said enquiry report, the petitioner sought to mislead this Court, which led to the passing of the order dated 12.12.2019 staying the operation of the impugned order dated 06.12.2019 (wrongly typed as 24.09.2019). Had the petitioner placed on

record the said enquiry report framed under Section 62 of the Act before the Court, it is quite possible that, after perusing the same, the Court would not have granted the interim stay of the impugned order dated 06.12.2019. On account of the aforesaid conduct of the petitioner in withholding a vital and material document, namely, the enquiry report damning him, the petition is liable to be dismissed and the petitioner is liable to be subjected to costs.

22. However, since we have heard the submissions of learned counsels on merits as well, we proceed to deal with those submissions while holding that on the aforesaid ground, the petition is liable to be dismissed since the petitioner has not been fair to the Court while invoking the discretionary writ jurisdiction of this Court. It is well settled that a person who approaches the Court seeking discretionary relief has to do so with clean hands. The petitioner certainly has not come to the Court with clean hands.

23. The grievance of the petitioner that the impugned order passed by the Financial Commissioner is unreasoned, has no merit. A perusal of the impugned order dated 06.12.2019 passed by the Financial Commissioner would show that the Financial Commissioner has recorded his reasons briefly in paragraph 3 of the impugned order dated 06.12.2019, wherein he observed *“In view of the fact that a detailed Show Cause Notice was given to Petitioner and there is a detailed speaking order by the Registrar Cooperative Societies before taking a decision, the stay granted by this Court on 04.10.2019 is vacated.”*

24. The aforesaid would show that the Financial Commissioner perused the detailed show cause notice given to the petitioner, as well as the detailed

speaking order passed by the ROCS before vacating the stay.

25. In fact, a perusal of the order dated 04.10.2019 passed by the Financial Commissioner would show that the initial order staying the operation of the order dated 24.09.2019 passed by the ROCS was itself without any reason. In any event of the matter, we have heard the detailed submissions of the parties and, therefore, no prejudice has been caused to the petitioner.

26. Mr. Gupta has submitted that Rule 158 of the Delhi Cooperative Societies Rules shows that before granting sanction for prosecution under Section 121(2) of the Act, the Registrar has to himself conduct an enquiry, or get one conducted through the Police or any other investigating agency. His submission is that the ROCS was obliged to conduct, himself, another and separate enquiry, or get one conducted through the Police or any other investigating agency and that he could not have relied upon the enquiry report under Section 62 of the Act.

27. This submission of Mr. Gupta is only to be noticed to be rejected. Rule 158 nowhere prescribes that a report, which is already prepared under Section 62 of the Act, cannot form the basis of a proposed action under Section 121 of the Act. Section 62 itself provides that the Registrar may, on the basis of findings of audit or inspection under Section 61, hold an enquiry and direct any of the subordinate officers to hold an enquiry. The ROCS, in the present case, got the enquiry conducted by an officer subordinate to him, namely Sanjay Kumar Sharma. As rightly pointed out by Mr. Narayan, the expression “Registrar” is defined in the Act in Section 2(w) to mean “a

person appointed to perform the functions of the Registrar of co-operative societies under this Act and includes any person appointed to assist the Registrar when exercising all or any of the powers of the Registrar;”
(emphasis supplied)

28. Therefore, Shri Sanjay Kumar Sharma – who acted as the Enquiry Officer under the directions of the Registrar, is also covered by the said expression and the requirements of Rule 158 were satisfied in respect of the enquiry report under Section 62 of the Act.

29. As already noticed, a perusal of the enquiry report shows that the same contains pointed findings against the petitioner with regard to his role in the mismanagement and fraudulent actions taken by the management of the society/ cooperative bank. Thus, the ROCS was completely justified in relying upon the said enquiry report under Section 62 of the Act, and it was not necessary for him to duplicate the same work by undertaking another enquiry, or causing one to be undertaken.

30. The submission of Mr. Gupta founded upon the report prepared by Shri Jha under Section 66 of the Act is completely misplaced. This is for the reason that the said report did not form the basis of the action proposed under Section 121(2) of the Act.

31. The ROCS, while dealing with the objection on maintainability of the show cause notice, clearly and categorically held that he has proceeded to issue the show cause notice on the basis of the enquiry report prepared under Section 62 of the Act, and not the report prepared by Mr. Jha under Section 66 of the Act. Therefore, the submission of Mr. Gupta that the report

prepared under Section 66 of the Act by Mr. Jha was incomplete is neither here, nor there. It certainly cannot be said that the ROCS acted on half baked information or with non application of mind as Mr. Gupta contends. A perusal of the orders passed by the ROCS on the show cause notice issued to the petitioner under Section 121(2) of the Act would show that the same are premised on the enquiry report prepared under Section 62 of the Act, which itself is exhaustive and reasoned. In our view, the order disposing of the show cause notice under Section 121(2) of the Act is well considered, and the same does not suffer from the vice of arbitrariness, mala fide or non-application of mind.

32. In the light of the aforesaid, we are of the view that reliance placed by Mr. Gupta on ***Central Bureau of Investigation*** (supra) is misplaced in the facts of the present case. We may only observe, that while the Sanctioning Authority is obliged to seriously apply his mind to the relevant facts and circumstances while examining the issue of grant of sanction for prosecution – as held by the Supreme Court, it does not mean that while examining the said aspect, the Sanctioning Authority has to himself evaluate the materials/evidences to come to a conclusion of guilt, before grant of sanction.

33. On account of the petitioner's aforesaid conduct, he has stalled his prosecution for over two years. We, therefore, dismiss this petition with costs quantified at Rs.50,000/- to be deposited with the Delhi State Legal Services Authority within 4 weeks. We hope and expect the Court that would deal with the prosecution against the petitioner, to expedite the proceedings in the case, keeping in view that the petitioner has already caused substantial delay.

34. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

JASMEET SINGH, J

OCTOBER 21, 2021

N.Khanna

