IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

11 WRIT PETITION NO.10630 OF 2022
WITH WP/9061/2023 WITH WP/7101/2023

GOKULDAS ANANDRAM MEHER
VERSUS
THE NAGAR URBAN CO-OPERATIVE BANK LIMITED THROUGH THE BRANCH MANAGER AND ANOTHER

Mr.A.A.Yadkikar, Advocate for the Petitioner.
Mr.S.S.Thombre h/f Mr.Shaikh M.A.Jahagirdar, Advocate for respondent No.1.
Mr.S.V.Adwant, Advocate for Respondent No.2.

(CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.)

DATE : AUGUST 17, 2023

PER COURT :

1. In all these matters, the Petitioners are Fixed Deposit Holders / Account Holders. All of them desire that the restrictions imposed by the RBI, by it's first order dated 06.12.2021, upon the Ahmednagar Urban Co-operative Bank Limited, Ahmednagar should be lifted and the Bank should be relieved of the RBI restrictions only because the Bank contends that the financial condition of the Bank is extremely healthy.

2. The Respondent no.1 Bank also submits that they have the amounts/ financial strength to repay the depositors. Our attention is drawn to paragraph No.7 of the affidavit in reply dated 07.08.2023 filed by the Bank, which reads as under :-

"7. I say that Section 56 of the Banking Regulation Act, 1949, contains a non-obstante clause. In view of the extension of the BR Act to the Co-operative Banks, by incorporating Part V in the Banking Regulation Act, the Reserve Bank has the power to issue directions to the Co-operative Banks. I say that the circulars/directions issued under section 35A of the BR Act, 1949, read with Section 56 thereunder have statutory force; is a regulatory mechanism and is in conformity with the BR Act, as amended by the BR Amendment Act."

3. The learned Advocate representing the RBI has drawn our attention to the detailed affidavit in reply dated 07.08.2023. It is an extensive affidavit in reply wherein it has been contended that the exercise of the statutory powers of the RBI u/s 35-A r/w Section 56 of the Banking Regulations Act, 1949, can not be interjected by the High Court. The RBI is a nodal body, which uniformly applies it's rules to the banking entities, all over the country. As and when it is noticed that a Bank is not functioning in tune with the Regulations and has put the depositors in jeopardy, the RBI can exercise it’s authority in the larger

interest of the depositors.

4. It is further contended in paragraph Nos. 8 to 16, as under :-

"8. I say that Section 56 of the Banking Regulation Act, 1949, contains a non-obstante clause. In view of the extension of the BR Act to the Co-operative Banks by virtue of section 56 of the B.R.Act, the Reserve Bank has the power to issue directions to the co-operative banks. I say that the circulars and directions issued under section 35A read with section 56 of the BR Act, 1949, have statutory force; is a regulatory mechanism and is in conformity with the BR Act, as amended by the BR Amendment Act.

9. I say that the BR Act governs the 'banking' business of Co-operative banks in all respects. Though the Co-operative banks are registered as Co-operative Societies, after obtaining the banking license, they are banks and shall comply with the provisions of the Banking Regulation Act, 1949 and the directions/ circulars etc issued thereunder. Therefore, co-operative societies registered either under a state enactment or under any central legislation, carrying on banking business under a license issued by the Reserve Bank, are governed by the statutory and regulatory provisions of the BR Act. I say that regulation of banking business necessarily includes in its wake, control over the banking business of such co-operative society. Some of the relevant provisions of the BR Act are as follows:

Banking is defined under section 5(b) of the BR Act as follows:

> *"(b) 'Banking' means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise."*

Section 5(ca) defines "banking policy" to mean:

> *"any policy which is specified from time to time by the Reserve Bank in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources."*

10. I say that the respondent No.2 - Reserve Bank, is empowered under the BR Act to issue directions/ instructions, prescribe parameters for the operation, management, banking business activities of banking companies and co-operative banks and as such, they are bound to comply with such directions.

I say that Section 35A read with section 56 of the BR Act confers specific powers on the Reserve Bank to give directions to co-operative banks in depositors' interest, public interest, in the interest of the banking policy and to secure the proper management of the banking business of any co-operative bank.

11. I say that it is clearly provided that the directions may be general in nature or to any co-operative bank in particular and that the co-

operative bank or banks shall be bound to comply with such directions. Any bank which commits a breach of the directives is liable to be penalized under section 47A of the BR Act.

12. I further say that the directions issued by the Reserve Bank under sections 21 and 35A of the BR Act have statutory force and are binding on banks including co-operative banks. In this regard, the Reserve Bank craves the indulgence of this Hon'ble Court to rely upon the following judgments:

A. Hon'ble Supreme Court in B.O.I. Finance Ltd. v. Custodian and others, reported in (1997) 10 SCC 488, has observed as under -

> *"26. There can obviously be no doubt, as is evident from the plain reading of the said provisions, that the directions issued under Sections 21 and 35-A are binding on the banking companies (and also to Coop. Banks)..."*

B. The Hon'ble Supreme Court of India in ICICI Bank Ltd. v. Official Liquidator of APS Star Industries Ltd. and others, reported in (2010) 10 SCC 1, has observed as under:-

> *"35… Under Section 21(3) every banking company is bound to comply with directions given by RBI at the peril of penalty being levied for non-compliance. Section 35-A says that where RBI is satisfied that in the interest of banking policy it is necessary to issue directions to banking companies it may do so from time to time and the banking companies shall be bound to comply with such directions. Thus, in exercise of the powers conferred by Sections 21 and 35-A of the said Act, RBI can issue directions having statutory force of law ….."*

C. I say that legality of the directions issued by the RBI under section 35A of the BR Act, came up for consideration before the Hon'ble High Court of Bombay in HARESH TEKCHAND RAISINGHANI AND OTHERS v. UNION OF INDIA AND OTHERS, Writ Petition No.3030/2019. The Hon'ble High Court by order dated 05.12.2019 refused to interfere with the directions imposed by the RBI and held as under:

> *"We do not think that we can, in writ jurisdiction, substitute the opinion or satisfaction of the RBI with our order or direction, much less to the contrary. We possess no experience and expertise in financial and fiscal matters. In matters of banking practices and the business of banking and its regulation, we must leave everything to the wisdom of the RBI. In fact, the presumption is that it will prevent the acts conducted in a manner prejudicial to the interest of depositors."*

D. I say that the Hon'ble Supreme Court vide order dated 31.07.2020 in SLP (Civil) Diary No(s)13047/2020, upheld the above order dated 05.12.2019 of Hon'ble High Court of Bombay and refrained from interfering with the RBI's Directions.

E. I say that the Division Bench of the High Court of Allahabad in M/S. ASHOK KUMAR & CO. v. RBI AND OTHERS, reported in 2014 SCC OnLine All 15546, wherein the direction issued by the RBI under section 35A of the BR Act was challenged, observed vide order dated 18.07.2014 as under:

> *"The Reserve Bank, it is well settled, is an expert statutory body which is vested with control over the banking system. This power is vested in the Reserve Bank of India to foster*

public interest and to ensure a suitable financial and monetary system. It is well settled that in matters governed by expert determination, the jurisdiction of the Court to interfere in the exercise of the power of judicial review is extremely limited. The Court may interfere whether the action which has been taken is wholly extraneous to the object and purpose underlying the conferment of the power or where ex-facie the decision is found to be perverse and contrary to binding statutory norms."

The Hon'ble High Court has further observed as follows:

"…15. The order which has been passed by the Executive Director in the present case, following the objections which were received from the bank, did not consider any matter which was not relevant and germane to the exercise of power under section 35- A. In the exercise of the writ jurisdiction, it would not be open to the Court to substitute this conclusion which has been drawn by the Reserve Bank as an expert statutory body. The Reserve Bank has acted in the interest of the depositors since it is evident that there was a serious financial crisis in respect of the affairs of the bank. 16. Hence, considering the matter from all perspectives, it would not be possible for the Court to issue a direction to the effect that the deposit which has been made by one depositor should be allowed to be withdrawn. <u>Allowing the operation of the current account of the petitioner in the manner as sought, would be completely destructive of the interest of a large body of depositors. The grant of such a relief would not be permissible. Hence, no case for interference is made out….</u>"

F. I say that the matters related to imposition of All-inclusive Directions imposed by RBI in exercise of section 35 A read with section 56 of the Banking Regulation Act on Urban Co-operative Banks have been attended by various Courts as well as the Hon'ble Supreme Court from time to time. One such similar matter was of imposition of All-inclusive Directions on (erstwhile) Punjab and Maharashtra Cooperative Bank, wherein, a number of Writ Petitions were filed with prayers for removal of restrictions imposed under the All-inclusive Directions - Writ Petition (L) Nos. 3030, 2918, 3044, of 2019, Public Interest Litigation (L) No. 90 of 2019, Writ Petition No. 11889 of 2019 and Writ Petition (ST) No. 28121 of 2019 were examined by Hon'ble High Court of Bombay and dismissed vide order dated December 5, 2019.

I say that the Order dated December 5, 2019, passed by the Hon'ble Bombay High Court, was upheld by the Hon'ble Supreme Court of India in SLP (Civil) Diary No(s)13047/2020 - Guru Nanak Vidhyak Society Vs. RBI & Ors. I say that in the Order dated July 31, 2020, the Hon'ble Supreme Court of India has, inter-alia observed that,

> *"The High Court has furnished cogent reasons for not interfering with the directive of the Reserve Bank of India under Section 35A of the Banking Regulation Act 1949. We are not inclined to interfere with the carefully reasoned judgment of the High Court. We decline to entertain the Special Leave Petitions under Article 136 of the Constitution."*

I say that since the Petitioner has prayed for the similar relief of quashing of RBI imposed All-inclusive Directions on an Urban

Cooperative Bank, this Hon'ble High Court, is urged not to accede to the prayer of the Petitioner.

13. I say that the respondent No.1 is presently functioning as per the directions issued by RBI. The maximum withdrawal limit under the direction is Rs.10,000/-. I say that the withdrawal limit is based on the liquidity position of the bank and its ability to pay all its depositors. Depositors are also allowed to withdraw on hardship grounds an amount upto Rs.1 lakh, with a sub-ceiling of Rs.50,000 for non-medical hardships. I say that upto Rs.5 lakh can be withdrawn for treatment of serious-life threatening illnesses. Further, insured deposits up to Rs. 5 lakh are payable by DICGC to eligible depositors of the bank. Under the provisions of Section 18A of the DICGC Act 1961, as on March 8, 2023, DICGC has sanctioned an amount of ₹294.85 crore to the insured depositors based on the valid claims received from the willing depositors of the bank.

14. I say that these all-inclusive Directions have been imposed to preserve the scarce resources of the bank, stop reckless lending or preferential payment of deposits in the interregnum while providing an opportunity to the respondent No.1 bank to initiate corrective measures. The above action has been taken to protect the interest of the depositors of the bank, hence the petitioner cannot call upon this Hon'ble Court to allow them to withdraw amount deposited with the respondent No.1, contrary to directions of RBI. I say that the prayer/relief claimed by the Petitioner can seriously jeopardize the interest of other stakeholders in the respondent No.1 bank, therefore *the claim is unsustainable at law.*

15. I say that the financial position of the bank has been precarious with net-worth, CRAR and deposit erosion at ₹ (-) 56.11 crore, (-) 18.49% and 11.74 % respectively as audited on March 31, 2022. These major financial parameters were further deteriorated with net-worth, CRAR and deposit erosion at ₹ (-) 112.11 crore, (-) 82.76% and 33.05% respectively as audited on March 31, 2023. Gross and Net NPAs which were 64.24% and 49.92% as audited on March 31, 2021, increased to 81.54% and 63.55% as audited on March 31, 2022. Gross and Net NPAs were further deteriorated to 97.28% and 85.15% as audited on March 31, 2023. Thus owing to the deteriorated financial position of the respondent No.1 bank, it is not having enough liquid assets to meet all its liabilities.

I say that the statutory inspection of the respondent No.1 bank, as on March 31, 2021 revealed sharp deterioration in the bank's financial position. Further, there were serious supervisory concerns besides rapid deterioration of financials, such as violation of RBI guidelines and issues in corporate governance.

16. I say that in view of the fact that the affairs of the respondent No. 1, bank were being conducted in a manner detrimental to the interest of the depositors, the Reserve Bank of India, had placed the respondent No.1 bank under Directions under Section 35A read with Section 56 of the Banking Regulation Act, 1949, vide Directive DoS.CO.SUCBs-West/ S2399/ 12.22.159/2021-22 dated December 6, 2021, which was modified from time to time and was last extended upto September 6, *2023, vide DOR.MON.D-29/12.22.159/2023-24 dated June 06, 2023. Copies of the directions dated December 6, 2021, and June 6, 2023, are enclosed and marked as* ***Annexures A and B*** *respectively."*

5. The RBI has placed before us certain facts and figures. The reproduced paragraphs, as above, would indicate the health of the Bank. The averments of the RBI are based and founded upon the actual data that it has before it. The RBI has been routinely conducting a review and recently it has already informed the Chief General Manager (Incharge) vide communication dated 06.06.2023, that the next review would be around 06.09.2023, since the validity of the earlier order dated 06.12.2021 was extended upto 06.06.2023 and was further continued from 07.06.2023 to 06.09.2023.

6. The grounds put forth by these Petitioners before us practically call upon the Court to assess the steps taken by the RBI on the basis of the statements made by the Bank. We are afraid that this would not be the scope of the Writ jurisdiction of this Court to assess as to whether the figures, the calculations and the data available before the RBI, while initiating appropriate steps against the Bank, are well placed or whether they need interference in the light of the contentions

of the Petitioners that the statements of the RBI are not accurate.

7. The Petition directed against the restrictions imposed by the RBI, cannot be entertained even for the reason that, the Petitioners do not have adequate date with them, except making a statement that the financial status of the Bank is very healthy. This is based on the statements made by the concerned Bank which is under restrictions. If the Bank can establish on the basis of it's records, it's deposits as well as the loans extended and the assets available, that the Bank is in a very healthy condition and has minimal NPA, this data will have to be placed before the RBI so as to be considered while exercising jurisdiction under Section 35-A of the Banking Regulations Act, 1949.

8. The learned Advocate for the Petitioner relies upon a communication issued by the Chairman of the concerned Bank dated 07.08.2023, addressed to the Chief General Manager, Department of Regulation, RBI pointing out that the Bank has a net surplus of liquidity of around 265 crores in order to disburse the amounts in percentages to the depositors, on a proportionate basis upto 25% of each of the depositors, within the maximum limit of Rs.5,00,000/- per individual

depositor. The RBI could consider this aspect while causing a review of the condition of the Bank.

9. In view of the above, **these petitions are disposed off**. Nevertheless, the Bank is at liberty to place accurate data supported with documentary evidence before the RBI prior to the next review, which is likely to occur around 06.09.2023, to convince the RBI that the NPA are within the permissible parameters and the financial health, in the light of the funds/deposits/ total liquidity of the Bank, is also within the permissible parameters, so as to convince the RBI that it could lift it's restrictions either partially or wholly. This would be in the domain of the RBI. We would expect appropriate steps to be taken by the RBI in the interest of the depositors.

10. In similar circumstances, it has observed by the Hon'ble Supreme Court in it's order dated 31.07.2020 passed in Special Leave Petition (Civil) No.13047/2020 filed by Gurunanak Vidhya Society Vs. The Reserve Bank of India and others, that liberty would be available to a genuine depositor, who has a genuine grievance (need) with regard to an urgent requirement for dealing with his/her serious medical

condition or of a dependent or an educational requirement in connection with a dependent, requiring disbursement of amounts. Such a genuine (case) depositor would be at liberty to address a representation to the RBI or the concerned Administrator appointed by the RBI. In terms of such order of the Hon'ble Supreme court, we direct the Administrator / RBI to devise appropriate modalities to ensure that genuine cases of hardships on medical or educational grounds or even marriage, are duly considered and attended to.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**