

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4024 OF 2023

Bassein Catholic Co.op Bank Ltd.
Through its Chief Executive OfficerPetitioner

V/s.
The State of Maharashtra and Ors. ...Respondents

**ALONGWITH
INTERIM APPLICATION (ST) NO. 9281 OF 2023
IN
WRIT PETITION NO. 4024 OF 2023**

Makvel Nazreth Misquitta
Shareholder of Bassein Catholic
Co. operative Bank Ltd.Applicant

In The Matter Between
Bassein Catholic Co.op Bank Ltd.
Through its Chief Executive OfficerPetitioner

V/s.
The State of Maharashtra and Ors. ...Respondents

**ALONGWITH
INTERIM APPLICATION (ST) NO. 9324 OF 2023
IN
WRIT PETITION NO. 4024 OF 2023**

Jimmy Mates GonsalvesApplicant

V/s.
In The Matter Between
Bassein Catholic Co.op Bank Ltd.
Through its Chief Executive OfficerPetitioner

V/s.
The State of Maharashtra and Ors. ...Respondents

Mr. Vineet B. Naik, Senior Counsel a/w Mr. P.D. Naik, Mr. Pavan Patil,
Mr.Vaibhav Shah i/b Mulla & Mulla & Craigie Blunt & Caroe for Petitioners.
Mr. K.S. Thorat, AGP for Respondent Nos. 1 to 4.
Mr. Shrirang Katneshwarkar a/w Mr. Anthony Floriyeen Foss for Intervener/
Applicant in IA(ST) No. 9281 of 2023.

Mr. Saurabh Utangale a/w Mr. Anthony Floriyan Foss for Intervener/
Applicant in IA(ST) No. 9324 of 2023.

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL, JJ.**
DATED : 5th APRIL 2023

P.C. :

1. Considering the averments and the reliefs sought in the petition, with the consent of the parties, we decided to hear the petition finally and dispose the same at the admission stage only.

2. Following are the substantial prayers sought in the petition

B) This Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ, order or direction in the nature of Certiorari

i. thereby quashing and setting aside Preliminary Enquiry Report dated 16.12.2022 (Exhibit – J) submitted by the Respondent No.4 whereby opinioned to conduct enquiry under Section 83 of the Maharashtra Co-operative Society Act, 1960.

ii. thereby quashing and setting aside Order dated 02.03.2023 (Exhibit – K) passed by the Respondent No.2 whereby Mr.Dinesh Chandel, Deputy Registrar, Co-operative Society, Dombivali was appointed as Inquiry Officer in the matter.

iii. thereby quashing and setting aside letter dated 03.03.2023 (Exhibit – M) issued by the Respondent No.2.

C) This Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ, order or direction in the nature of Mandamus directing the Respondents herein to give substantial hearing to the Petitioner Bank.

3. Petitioner is a Co-operative Bank registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (the said

Act) and is also a Scheduled Co-operative Bank within the meaning of Section 5 of the Banking Regulation Act, 1949. Petitioner is an institution over 105 years old with 64 branches, 98319 members and 556370 customers all over the State of Maharashtra. Petitioner has business in excess of Rs.12,546/- Crores (Rupees Twelve Thousand Five Hundred and Forty Six Crores only).

4. In March 2021, petitioner was to recover an amount of Rs.444.30 Crores from 3419 NPA Bank Accounts. Petitioner, pursuant to the Reserve Bank of India's directions also submitted Risk Mitigation Plan to reduce NPA.

5. Due to Covid pandemic 2019 lot of borrowers faced difficulty in repaying the amount borrowed. Therefore, petitioner constituted a Legal and Recovery Sub Committee and selected around 337 NPA/Stress Accounts under a scheme to mitigate and reduce NPA. The committee scrutinized and negotiated one time settlement (OTS) with these 337 NPA/Stress Account holders. 233 out of these 337 have repaid the amount as finalized by the scheme. Balance 104 NPA/Stress Account holders could not repay due to financial difficulties. Out of these 233 accounts, 45 accounts became NPA due to death of borrower, 10 due to death of family member, 16 due to health issue and incurring heavy medical expenses, 93 due to loss of business due to Covid 19 and 19 due to loss of job due to Covid 19 etc. By

settling with these 233 NPA/Stress Account holders petitioner recovered Rs.21,39,00,541/-. In the OTS petitioner admittedly has given relief on payment of interest and penal interest but has not waived any principal loan amount.

6. The accounts have been audited and has also been cleared by the General Body. Two individual share holders one Makvel Nazreth Misquitta and Reynold Pascal Lopes lodged a complaint with police as also with Respondent No.4. Respondent No.4 issued a notice to petitioner on 9th November 2022 giving eight days to petitioner to respond from the receipt of the notice. Petitioner replied on 24th November 2022 and sought extension of ten days to respond. This was followed by petitioner's letter dated 15th December 2022 by which petitioner submitted copious documents. On 16th December 2022 Respondent No.4 issued a document called Preliminary Enquiry Report, copy whereof is at page no. 103, running into about 23 pages. We are surprised with the efficiency of Respondent No.4 in as much as from a copy of the letter dated 15th December 2022 annexed at Exhibit "I" to the petition, it appears that the same along with copious documents was submitted only at 5.00 p.m. on 15th December 2022. Though we are not making any observations on the contents of the said preliminary enquiry report dated 16th December 2022, the report has been prepared without even hearing petitioner or the two complainants Makvel Nazreth Misquitta and Reynold Pascal Lopes.

7. This is followed by the other impugned communication dated 2nd March 2023 issued by Respondent No.2 and letter dated 3rd March 2023 also issued by Respondent No.2. The communication dated 2nd March 2023 is actually an order under Section 83(1) of the said Act directing that an enquiry be held into the constitution, working and financial condition of petitioner. We are satisfied that this order passed by Respondent No.2 under Section 83(1) of the said Act cannot be sustained.

8. We say this because under Section 83(1) of the said Act, the Registrar may suo moto, or, on the application of 1/5th members of the society or on the basis of special report under the 3rd proviso to Sub Section (5B) of Section 81 of the said Act, himself or by a person duly authorized by him in writing, in this behalf, shall hold an enquiry into the constitution, working and financial condition of the society. We have considered the impugned order dated 2nd March 2023 with the assistance of Mr. Naik, counsel for petitioner and it appears that this has not been issued suo moto or, on the application of 1/5th members. As noted earlier only two members out of 98319 members have lodged a complaint. Respondent No.2 has relied upon the preliminary enquiry report dated 16th December 2022 issued by Respondent No.4 as also a report that he has allegedly received under Section 81(5B) of the said Act. Section 81(5B) of the said Act provides as under :

Section 81 (5B)

The auditor shall submit an audit memorandum duly signed by him to the society and to the Registrar in such form as may be specified by the Registrar, on the accounts examined by him and on the balance sheet and profit and loss account as on the date and for the period up to which the accounts have been audited, and shall state whether in his opinion and to the best of his information and according to the explanation given to him by the society the said accounts give all information required by or under this Act and present the true and fair view of the financial transaction of the society.

9. There is nothing to indicate that any such report has been issued by the auditor of petitioner.

10. In the circumstances in our view, this order dated 2nd March 2023 has to be therefore quashed and set aside which we hereby do. Since the letter dated 3rd March 2023 is consequent to this order dated 2nd March 2023, that communication also has to be quashed and the same is hereby quashed. Since the Preliminary Enquiry Report has been issued by Respondent No.4 without hearing petitioner, we quash and set aside the Preliminary Enquiry Report dated 16th December 2022 as well.

11. We dispose the petition with the following directions :

(a) Respondent No.1 shall consider the complaint filed by the two share holders Makvel Nazreth Misquitta and Reynold Pascal Lopes and consider the response filed by petitioner together with the documents submitted by petitioner and pass a reasoned order disposing the complaint.

(b) Before passing any such order Respondent No.4 shall give a personal hearing to petitioner and the two complainants, notice whereof shall be communicated at least seven working days in advance.

(c) After personal hearing, should any of the party wish to file written submissions regarding what transpired during the personal hearing, they may do so within five working days of conclusion of personal hearing.

(c) The order/report prepared by Respondent No.4 shall be reasoned and contain/deal with every submissions made by all the parties.

12. We clarify that we have not made any observations on the merits of the matter.

13. Petition disposed.

14. Consequently, Interim Applications would not survive and the same has to be disposed.

(RAJESH S. PATIL, J.)

(K.R. SHRIRAM, J.)