



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3543/2023

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<u>PETITIONERS</u>	1. Babaji Date Mahila Co-operative Bank Limited, "Annapurna" Mainde Square, Tilakwadi, Yavatmal – 445001 through its Chairman, Smt. Jyoti Ashok Yerawar, R/o Datta Chowk, Yavatmal. 2. Smt. Jyoti Ashok Yerawar, Aged about 65 years, Occu. Housewife, R/o Datta Chowk, Yavatmal. 3. Ms. Manisha Pradip Kulkarni, Aged about 50 years Occu. Advocate, District Court, Yavatmal, R/o Plot No.5, Shraddha Nagar, Yavatmal.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	1. Appellate Authority, Department of Financial Services, Ministry of Finance, Government of India (AC Section) Jivandeep building, Parliament Street, New Delhi. 2. The Reserve Bank of India, Central Office Building, Shaheed Bhagat Singh Marg, Fort, Mumbai. 3. The Commissioner of Cooperation & Registrar, Cooperative Societies, Maharashtra State, Pune.
Mr. M.G. Bhangde, Sr. Advocate a/b Mr. A.H. Lohiya, Advocate for petitioner Mr. C.J. Dhumne, Advocate for respondent no.1 Mr. S.V. Manohar, Sr. Advocate a/b Mr. S.N. Kumar, Advocate for respdt. no.2 Mrs. S.S. Jachak, Add. G.P for respondent no.3	

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 10/10/2023

Date of pronouncing the judgment : 29/11/2023

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J U D G M E N T

1. Heard Mr. M.G. Bhangde, learned Senior Counsel for the petitioners; Mr. C.J. Dhumne, learned Counsel for the respondent no.1; Mr. S.V. Monohar, learned Senior Counsel for the respondent no.2 and Mrs. S.S. Jachak, learned Additional Government Pleader for the respondent no.3. Rule. Rule made returnable forthwith. Heard finally with the consent of learned Counsels for the rival parties. 10

2. The Banking licence issued by the respondent no.2/ Reserve Bank of India to the petitioner no.1, was cancelled on 09/11/2022, which cancellation was challenged by the petitioner nos.2 and 3, by filing an appeal under Section 22(5) of the Banking Regulation Act, 1949. This appeal has been rejected by the impugned order dated 20/03/2023, by the Appellate Authority on the ground that the same being filed by the petitioner nos.2 and 3 and not by the petitioner no.1/Bank, was infirm and thus not maintainable. 15 20

3. Mr. M. G. Bhangde, learned Senior Counsel, for the petitioners, submits that the appeal has been filed by the petitioner nos.2 and 3, who were the Chairman and Vice-Chairman of the petitioner no.1/Bank and therefore could not have been dismissed as infirm and not maintainable. He further contends that the entire text of the memo of appeal would indicate that there is no ventilation of the grievance of the petitioner nos.2 and 3 in their personal capacity but what is being canvassed is the cause of the petitioner no.1/Bank and therefore the same cannot be held to be not maintainable. He contends that it is the substance and not the form that is material and the substance would indicate that the licence of the Bank which was cancelled by the respondent no.2 is being sought to be restored. The impugned order, therefore, in his contention is incorrect and is required to be quashed and set aside and the matter be remitted back to the Appellate Authority for deciding the appeal on merits. Mr. M.G. Bhangde, learned Senior Counsel relies upon *Secretary, Ministry of Works and Housing Govt. of India and others Vs. Mohinder Singh Jagdev and others (1996) 6 SCC 229* (paras 4 & 5) and *Sub-Area Manager, Western Coalfields Ltd., Kamptee and another Vs. General Manager, South Eastern*

Railways, Calcutta and others 2010 (2) Mh. L.J. 329 (para 8) in support of his submissions.

4. Mr. S.V. Manohar, learned Senior Counsel for the respondent no.2/RBI opposes the submission contending that consequent to the cancellation of the licence on 09/11/2022, a Liquidator has been appointed on 11/11/2022 and therefore the appeal filed on 08/12/2022 ought to have been by the Bank and not the petitioner nos.2 and 3. According to him, Section 22(5) of the Banking Regulation Act, provides for an appeal only by the Bank and not to anyone else. Since the Bank had been superseded by appointment of a Liquidator, the petitioners had no locus standi to file the appeal. Mr. S.V. Manohar, learned Senior Counsel relies upon *Arcot Textile Mills Limited Vs. Regional Provident Fund Commissioner and others (2013) 16 SCC 1* (para 20) in support of his submissions.

5. Mr. Dhumne, learned Counsel for the respondent no.1 and Mrs. Jachak, learned Additional Government Pleader for the respondent no.3 have supported the stand taken by the learned Senior Counsel for the respondent no.2.

6. The limited question for consideration is the maintainability of the appeal filed by the petitioner nos.2 and 3

before the Appellate Authority, which has been filed not by the petitioner no.1/Bank but by the petitioner nos.2 and 3. A perusal of the memo of appeal, would indicate that though the appeal has been filed by the petitioner nos.2 and 3, it is not in their personal capacity, but as Chairman and Vice Chairman of the petitioner no.1/ Bank and is for ventilation of the grievance of the petitioner no.1/Bank. The mere fact that consequent to the cancellation of the licence on 09/11/2022, a Liquidator has been appointed on 11/11/2022, that would not denude the petitioner nos.2 and 3, who admittedly were the Chairman and Vice-Chairman of the petitioner no.1/Bank, at that time, to file the appeal, as it is not expected for the Liquidator to file an appeal challenging the cancellation of the licence of the petitioner no.1/Bank, as he is not a party aggrieved by the decision of cancellation of the licence of the petitioner no.1/Bank and therefore would not have any reason or cause to challenge the said decision. 5 10 15

7. The petitioner no.1, is a juristic entity and has to function through the decisions of the Managing Committee/ Board of Directors. Merely because the banking licence of the petitioner no.1/ Bank has been cancelled by the respondent no.2/ RBI, that by itself would not mean that the Board of Directors of 20

the petitioner no.1/Bank, stands superseded, vis-a-vis the existence of the petitioner no.1. May be for some time, on account of the cancellation of the licence, the banking business of the petitioner no.1/Bank, is being stopped and the reins have been given in the hands of the Liquidator, that however would not mean that the Board of Directors of the petitioner no.1/ Bank, have lost all its powers. The appointment of the Liquidator, is under Section 22(5) of the Banking Regulation Act, and not under the provisions of the Maharashtra Co-operative Societies Act, 1960 and even if it had been so, the right and authority of the petitioner nos.2 and 3 to challenge the order of liquidation, cannot be said to have been taken away. It is only the office bearers of the petitioner no.1/Bank, who, in addition to the petitioner no.1/ Bank, can be said to be aggrieved persons giving them a right to file an appeal challenging the order of cancellation of license. The action on part of the petitioner nos.2 and 3, in filing an appeal thus cannot be said to be without any authority in law.

8. Though *Arcot Textiles Mills Limited* (supra) has been relied upon by Mr. Manohar learned Senior Counsel for the respondent no.2, what it holds is that a right of appeal is a

creature of statute and inheres in no one and therefore for maintainability of an appeal there must be an authority in law. In the facts of the present case as indicated above, it would be apparent that the petitioner nos.2 and 3 being the office bearers of the petitioner no.1, would definitely have the authority in law, 5 to question the action of the respondent no.2/RBI, in cancellation of the banking licence of the petitioner no.1/Bank, in view of which, in my considered opinion, ***Arcot Textiles Mills Limited*** (supra) does not assist the argument canvassed by Mr. Manohar, learned Senior Counsel for the respondent no.2. 10

9. Mr. Bhangde, learned Senior Counsel for the petitioners is right in contending that it is the substance and not the form, which is material and the nomenclature would not matter, so far as the right and authority exists, relying on ***Secretary, Ministry of Works and Housing Govt. of India*** and ***Sub- 15 Area Manager, Western Coalfields Ltd.*** (supra).

10. In view of what has been discussed above, the impugned order dated 20/03/2023 passed by the respondent no.1, is hereby quashed and set aside and the matter is remitted back to the respondent no.1, to hear and decide the appeal on 20 merits. The parties are directed to appear before the respondent

no.1 on 11/12/2023, who will decide the appeal within a reasonable period. The writ petition is thus allowed in the above terms.

11. Rule is made absolute in the aforesaid terms.

No order as to costs.

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(AVINASH G. GHAROTE, J.)

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