Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2507 OF 2023

1. Bhagini Nivedita Sahakari Bank Ltd.
Through its Managing Director, Nivedita Bhavan,
CTS No. 34/7, Plot No. 35/7B, Lane No. 8,
Prabhat Road, Erandwana, Pune-411004.

2. Chief Executive Officer, Bhagini Nivedita
Sahakari Bank Ltd., Nevedita Bhavan, CTS No. 34/7,
Plot No. 35/7B, Lane No. 8, Prabhat Road,
Erandwana, Pune – 411004.

3. General Manager, Bhagini Nivedita Shakar Bank
Ltd., Nivedita Bhavan, CTS No. 34/7,
Plot No. 35/7B, Lane No. 8, Prabhat Road,
Erandwana, Pune – 411004. **...Petitioners**

Versus

Shri. Nitin Murlidhar Shelar
20- Sunrise Apartment, Vishal Nagar,
Pimpale Nilakh, Pune – 411027 **...Respondent**

Mr. Kiran S. Bapat, Sr. Advocate i/b Gaurav S. Gawande for the Petitioner.

Mr. S. L. Vaswani for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : FEBRUARY 13, 2024

ORAL JUDGMENT :

1. Rule. Mr. S. L. Vaswani vaives notice on behalf of Respondent.

Rule made returnable forthwith and heard finally with consent of parties.

2. By this Petition filed under Article 227 of the Constitution of India, the Petitioners takes exception to the order dated 15th December, 2022 passed by the Commissioner in Application No. 20 of 2022 filed under Rights of Persons with Disabilities Act, 2016 (hereinafter referred to Disabilities Act) directing the Petitioners to reinstate the Respondent with continuity of service and all consequential benefits.

3. The admitted facts of the case are that the Respondent was appointed as a security guard on 4th April 2012 by the Petitioners i.e. Bhagini Nivedita Sahakari Bank Ltd. which is a Co-operative bank registered under the provisions of Maharashtra Co-operative Societies Act 1960. The Respondent was confirmed in service on 30th September, 2013 and from 18th November, 2013 the Respondent was absent from service on account of paralytic attack. After a period of 7 months, the Respondent was terminated on 30th June, 2014 on the ground of continued ill-health.

4. The Respondent first approached the Labour Commissioner and after the proceedings were closed by Labour Commissioner on 22nd September, 2022, filed an Application before the Commissioner invoking the provisions of the Disabilities Act in the month of May 2022 and an Application for condonation of delay was filed on 15th November, 2022.

5. The contention of the Petitioners before the Commissioner was that as the Petitioner was Co-operative society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 the Petitioner Bank does not fall within the the definition of the “government establishment” as defined under Section 2(k) of the Disabilities Act and the provisions of Section 20 of the Disabilities Act pertaining to the non discrimination in employment will not be applicable to the Petitioner Bank.

6. Vide the impugned order dated 15th December, 2022, the Commissioner after noting the facts of the case observed that the Respondent has suffered a disability due to his medical ailment and under the provisions of Section 20 of the Disabilities Act, no government establishment can terminate the employment of person suffering from disability or deny the benefits to the disabled. The Commissioner held that for the purpose of exempting any establishment, the proviso to Order 20 Rule 1 provides for exemption to be granted by the appropriate government by way of notification and in the present case, there is no notification exempting the bank from the provisions of Section 20 of the Disabilities Act.

7. Relying upon the decision of the Apex Court in the case of ***Daman Sing & Ors. vs. State of Punjab & Ors, [(1985) 2 SCC 670]*** and the decision of the Rajasthan High Court dated 6th August, 2014 passed in ***Writ Petition No. 8549 of 2014 in Alwar Urban Co-operative Bank Ltd., Alwar vs. Dinesh Chand Choudhary***, the Commissioner held that Section 20 of the Disabilities Act was applicable. The Commissioner further held that the bank is a society which is registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and was under the control of State. It was held that as the bank was established under the provisions of statute it falls within the purview of government establishment as contemplated under Section 2(k) of the Disabilities Act. The Commissioner thus directed the reinstatement of the Respondent along with continuity of service and all consequential benefits.

8. Heard Mr. Bapat, learned Senior Advocate for the Petitioners and Mr. Vaswani, learned Advocate for the Respondent.

9. Mr. Bapat, learned Senior Advocate for the Petitioners would submit that the question of law involved is as regards the applicability of the Disabilities Act to the Petitioner Bank, which is a Co-operative bank registered under the Maharashtra Co-operative Societies Act, 1960. Drawing attention of this Court to the definition of the government establishment under Section 2(k) of the said Act, he submits that the definition takes within its purview a corporation established by or under a Central Act or State Act or an Authority owned or controlled by the government or aided by the government. He submits that in other words to satisfy the definition of the government establishment under Section 2(k) of the said Act what is required to be seen is whether the entity is a "State" under Article 12 of the Constitution of India. He submits that the issue as to whether a private company would be governed by the definition of the "government establishment" fell for consideration of the Apex Court in the case of ***Dalco Engineering Pvt. Ltd. vs. Satish Prabhakar Padhye & Ors., [(2010) 4SCC 378]***. He submits that while considering the provisions of the Disabilities Act of 1995 which according to him, is parametaria with the provisions of the Disabilities Act of 2016, the Apex Court has clearly held that the legislative intent was to define establishments so as to be synonymous with the definition of "State" under Article 12 of the Constitution of India. He would further submit that there is a fine distinction between a Society which has been established by the statute and a society registered under the statute and in the later case, the same would not fall within the definition of Section 2(k) of the Disabilities Act. He has further invited the attention of this Court to the decision of the Apex Court in the case of ***Thalappalam Service Co-operative Bank Ltd. vs. State of Kerala [(2013) 16 SSC]*** in which it is clearly held that the co-operative bank is not a State within the meaning of Article 12 of the Constitution of India. He further submits that the reliance on the decision in the case of ***Daman Singh& ors. vs. State of Punjab & Ors., [(1985) 2 SCC 670]*** is not applicable as in the facts of that case, the Apex Court was not determining the issue as to whether a co-operative society which is a corporation would be corporation established by or under a State Act. He further submits that similar view has been taken by a full Bench decision of this Court in the case of ***Vassudev Madkaikar & Ors. vs. State of Goa, through it's chief Secretary & Ors., [2021 SCC OnLine Bom 479]*** where it is held that Goa State Co-operative Bank was not a State within the meaning of Article 12 of the Constitution of India.

10. *Per contra*, learned counsel appearing for the Respondent would submit that Section 2 (i) of the Disability Act defines establishment to include a government establishment and private establishment. He would further submit that the provisions of Section 3(3) of Disabilities Act prohibits discrimination against any person on the ground of disability. He submits that exempting the bank from the purview of the Disabilities Act would defeat the purpose of the Act which prohibits discrimination in employment. He submits that in the present case, there was neither any inquiry held nor appropriate compensation paid and the services have come to be terminated.

11. Considered the submissions and perused the record.

12. The only issue raised for consideration is the applicability of the Disabilities Act to the Petitioner which is Co-operative Bank registered under provisions of Maharashtra Co-operative Societies Act, 2016. The Disabilities Act was enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities and the matters connected therewith or incidental thereto. It is a special enactment concerned exclusively with the rights of disabled ensuring empowerment of the disabled by promising equality and removal of discrimination. The object of the Act is laudable, , however the statute itself provides for the applicability of provisions of Section 20 of the Disabilities Act to government establishment. Section 20 of the Disabilities Act specifically reads thus.

> "**20. Non-discrimination in employment** – (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment :
>
> Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.
>
> (2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.
>
> (3) No promotion shall be denied to a person merely on the ground of disability.

> (4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:
>
> Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits :
>
> Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever, is earlier.
>
> (5) The appropriate Government may frame policies for posting and transfer of employees with disabilities."

13. Plain reading of the provision would indicate that there is a bar on discrimination by Government establishment against any person with disability in any matter relating to employment. Even though establishment is defined under Section 2(i) of the Disabilities Act to include a "government establishment" and "private establishment", Section 20 of the Disabilities Act applies to a government establishment which is defined under Section 2(k) of the Disabilities Act as under:

> **2. Definitions**. –
>
> (k) "Government establishment" means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the government or a local authority or a Government company as defined in section 2 of the companies Act, 2013 (18 of 2013) and includes a

Department of the Government ;

14. The definition covers corporation established by or under Central, Provincial or State Act or an authority or body owned or controlled or aided by the Government. That being the legislative mandate, the object of the Act not withstanding, the prohibition will apply only to government establishment prohibiting the government establishment from discriminating against any person with disability.

15. The issue as to whether a Co-operative bank is government establishment is no longer res integra and has been settled by the decision of the Apex Court in the case of ***Dalco Engineering Pvt. Ltd (supra)***. In that case, the Apex Court was considering the provisions of Section 47 of the Disability Act, 1995. The issue before the Apex Court was whether the company incorporated under the Companies Act is an establishment as defined in Section 2(k) of the Disability Act. After referring to the various decisions on the subject the distinction which was drawn by the Apex Court was that the company incorporated under the Companies Act is not established by the Companies Act and it does not owe its existence to the Companies Act though it may owe its status as a body corporate to an Act of legislature. The Apex Court emphasized the fine distinction between a corporation established by the Act and body incorporated under the Act. The Apex Court held that company is not established under the Companies Act but incorporated and registered under the Companies Act. Applying the same analogy in the present case the Co-operative Bank is not established by a statute as in case of State Bank of India Act, 1955, but is registered under the State Co-operative Societies Act and thus, cannot constitute a corporation established under statute or a body owned or controlled or aided by the Government.

16. Learned Senior Advocate has rightly placed reliance on the decision of the Apex Court in the case of ***Thalappalam Service Co-operative Bank Ltd., vs. State of Kerala [(2013) 16 SCC 82],*** which held that the Co-operative society registered under **the Kerala Co-operative Societies Act, 1969** which are not owned control or substantially financed by the State or Central government do not fall within the expression of "State". Full bench decision of this Court in the case of **Vassudev Madkaikar & Ors.** (supra) has held that the State Co-operative Bank was not a "State" within the meaning of Article 12 of the Constitution of India.

17. The decisions which are noted above make it amply clear that the Petitioner which is a Co-operative bank registered with the Maharashtra Co-operative Society Act, 1960 is not established by or under a Central Act or State Act nor controlled or aided by the government but is in fact a society which is registered under the State Act and does not owe its existence to the State Act.

18. The definition of government establishment under Section 2(k) of the Disabilities Act being clear and specific and having regard to the decisions noted above with which I am respectfully bound, the provisions of Section 20 of the Disabilities Act cannot be said to be applicable to the Petitioner which is not a "government establishment". As such, the Commissioner under the Disabilities Act does not have the jurisdiction to entertain the Application and pass directions directing reinstatement of the Respondent with continuity of service and consequential benefits.

19. Having regard to the discussion above, Petition succeeds. The impugned order dated 15th December, 2022 is hereby quashed and set aside.

(SHARMILA U. DESHMUKH, J.)

The said order is corrected as per Speaking to the Minutes order dated 22nd February, 2024.