

(2011) 04 BOM CK 0057
In the Bombay High Court
Case No : Writ Petition No. 275 of 2011

Arif Mohd. Ghasswala

APPELLANT

Vs

Shri R.V. Iyer and Others

RESPONDENT

Date of Decision : 15-04-2011

Acts Referred:

Banking Regulation Act, 1949 — Section 36
Constitution of India, 1950 — Article 226

Citation : (2011) 4 ALLMR 334 : (2012) 1 BomCR 239 : (2011) 4 MhLj 866

Hon'ble Judges : Mridula Bhatkar, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : J.P. Cama, instructed by R.A. Bhat, for the Appellant; Gopal Krishnan, instructed by Rony Joseph, for Respondent Nos. 1 and 2 and S.V. Kher and Gaurangi Pujara, instructed by Little and Co. for Respondent No. 3., for the Respondent

Judgement

1. Heard Counsel for the parties.
2. By this Writ petition under Article 226 of the Constitution of India, order passed by the General Manager of Memon Coop. Bank Ltd., dated 18.12.2010 (ExhibitM), dismissing the Petitioner from service is under challenge. The Petitioner prays that the same be set aside and the Petitioner be reinstated with full back sxw wages and attendant benefits on or from 18.12.2010 in the original post. Consequential relief"s have also been prayed in this petition.
3. Learned Counsels for Respondent Nos. 1 & 2 has raised preliminary objection regarding maintainability of this petition. He has placed reliance on the decision of the Apex Court in the case of Federal Bank Ltd., v. Sagar Thomas and Ors. reported in 2003 3 CLR 801 to contend that no writ can be issued against the co operative society. Going by this decision, the petition will have to be dismissed with liberty to the Petitioner to pursue such other remedy as may be permissible in law.
4. However, in the present case, it is indisputable that the Board of Directors of

the said Respondent bank has been superseded on 23.1.2009 under orders passed by the competent authority in exercise of powers u/s 36(kkk) of the Banking Regulation Act. Consequent to the said order, the Respondent R.V. Iyer has been appointed as Administrator. In this background, Counsel for the Petitioner placing reliance on the decision of the Apex Court in the case of Gayatri De Vs. Mousumi Co-operative Housing Society Ltd. and Others, , in particular the dictum in paragraph47 of the reported decision contends that since Administrator has been appointed to supersede the Board of Directors of the Co operative bank in question, a writ would lie. Paragraph47 reads thus:

The Appellant herein filed a writ petition in question in the nature of mandamus commanding the Respondent therein not to give effect to the letter dated 1111988 issued by the Special Officer of the Society and to forbear from acting on the basis thereof and pursuant thereto. Thus it is seen that since the subject matter of the writ petition is the order passed by the Special Officer in discharging of his statutory functions, the writ petition is maintainable in law. The Special Officer is appointed under the provisions of the Act and as such he is a statutory officer and, therefore, he should be regarded as a public authority. Apart from that, Article 226 of the Constitution is not confined to issue of writ only to a public authority, the bar extends also to issue directions to any person. In our opinion, in a case where the cooperative society is under the control of a Special Officer, a writ would lie.

5. In view of the legal position expounded by the Apex Court, specific to cases where Special Officer such as Administrator is appointed in discharging statutory functions, the grievance regarding order passed by such Officer is amenable to writ jurisdiction. As a result, Writ petition will have to proceed on merits.

6. Insofar as merits is concerned, it is not in dispute that the Petitioner was employed as Assistant General Manager (Legal & Recovery, main branch) by the then Board of Directors of the Respondent bank. However, the impugned order of dismissal from service, has been issued under the signature of General Manager (CEO) presumably on the basis of direction given by the Administrator to issue such order against the Petitioner. The Administrator having stepped into the shoes of Board of Directors would therefore, be the appointing authority. The appointing authority alone would be competent to take action such as dismissal from service against the employee of the bank.

7. In the present case, the order, however has been issued under the signature of General Manager/CEO of the bank and not the Board of Directors or the Administrator of the bank as such. If it is so, the impugned order cannot be sustained in the eyes of law. Faced with this situation, the counsel for the Respondent Bank prays for time to place on record express provision which enables the Board of Directors/Administrator to delegate powers of dismissal to some other Officer such as General Manager/CEO. Alternatively, if such provision is absent, the Administrator would take appropriate measures in that behalf and issue orders as may be necessary in the fact situation of the present case. He

further submits that now Notification has been issued, as a result of which, the Respondent bank would cease to exist in the eye of law w.e.f 18.4.2011. He submits that as per the scheme of Reserve Bank of India, the Petitioner in any case, would not be entitled for being absorbed in some other bank as that absorption is limited to the workers covered under Industrial Disputes Act. We are not expressing any opinion on these matters for the present. If under the scheme, the Petitioner is required to be absorbed, in the event of setting aside of the impugned decision, it would necessarily follow that the appropriate authority under whose employment the Petitioner would be placed, will be required to take necessary steps as may be advised. Respondent Nos. 1 & 2 may consider these aspects of the matter.

8. We make it clear that Administrator or the new authority as the case may be, is free to pass appropriate order in spite of pendency of this petition, by treating the impugned order passed by the General Manager as nonexistant in law.

9. We hope and trust that such decision will be taken by the Administrator or appropriate authority as the case may be after following principles of natural justice.

10. Stand over to 6.5.2011. To be listed under caption "direction".