

(2002) 03 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 890 of 2002 with Civil Application No. 337 of 2002

Ishwardas Premkumar Choradiya and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-03-2002

Acts Referred:

Banking Regulation Act, 1949 — Section 35

Citation : (2002) 2 ALLMR 892 : (2002) 4 BomCR 1 : (2002) 3 BOMLR 557 :
(2002) 2 MhLj 844

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Milind Vasudeo, instructed by M.G. Gawde, for the Appellant; P.M. Pradhan, for respondent No. 2, Y.D. Mulani, A.G.P. for respondent Nos. 1, 5 and 6, V.V. Tulzapurkar, Virag V. Tulzapurkar and K.G. Munshi, instructed by Udwadia, Udershi and Berjis, for respondents Nos. 3, 4 and 11, R.D. Soni, instructed by Ram and Co. in C.A. 337 of 2002, for the Respondent

Judgement

F.I. Rebello, J.—Rule. Respondents waive service. Heard forthwith.

2. The petitioners by the present petition are impugning the order dated 11-2-2002. Respondent No. 5 has issued the order u/s 110-A of the Maharashtra Co-operative Societies Act, 1960 superseding the Board of Directors of respondent No. 7 and appointing Administrator. At the hearing of the petition, on behalf of the petitioners, it is contended that the order of respondent No. 5 is contrary to the principles of natural justice and fair-play. It is submitted that respondent No. 5 has acted on the directions issued by the Reserve Bank of India based on a report prepared while carrying out inspection. Inspection can be carried out u/s 35 of the Banking Regulation Act, 1949. Pursuant to such inspection, a report was prepared. It is contended that the said report was not made available to the Board of Directors of respondent No. 7 before the impugned order was issued. In these circumstances, it is contended that respondent No. 5 was duty bound to make available the report or, at least, the Reserve Bank of India respondent No. 3, before issuing directions, ought to have

made available the report to the Board of Directors of respondent No. 7, as the effect of supersession has resulted in civil consequences.

3. Under the Maharashtra Co-operative Societies Act, 1960, there are two provisions under which the Board of Directors can be superseded. The first of such provisions is section 78 of the Maharashtra Co-operative Societies Act, 1960. When the authority u/s 78 exercises those powers, the authority is duty bound to issue a show cause notice. In other words, the right of hearing is mandatory. The section itself has so provided. The other provision is section 110-A. u/s 110-A of the Maharashtra Co-operative Societies Act, 1960, notwithstanding anything contained in the Act in the case of an insured Co-operative Bank if an order for winding up, or an order sanctioning a scheme of compromise, or arrangement or amalgamation, or reconstruction (including division or reorganization) of a bank may be made only with the previous sanction in writing of the Reserve Bank of India, such an order can be made in the public interest, or for preventing the affairs of the Bank being conducted in a manner detrimental to the interests of the depositors, or for securing the proper management of the bank, the Registrar shall make an order for the supersession (removal) of the committee and the appointment of an administrator thereof for such period or periods, not exceeding five years in the aggregate as may from time to time be specified by the Reserve Bank of India and the administrator so appointed shall after the expiry of his term of office continue in office until the day immediately preceding the date of the first meeting of the new committee.

4. The question is; whether u/s 110-A of the Maharashtra Cooperative Societies Act, 1960, respondent No. 5 was duty bound to give a show cause notice to the petitioners herein. In the first instance, the section does not provide for a show cause notice. Once that be so, the question is : whether it can be implied in the absence of provision of show cause notice whether by implication it is required that a show cause notice must be issued as it involves civil consequences. Sub-section (3) of section 110-A of the Maharashtra Co-operative Societies Act, 1960, came up for consideration before a Division Bench of this Court in the case of Mahendra Husanji v. State of Maharashtra, 1992 Mh.L.J. 1442. The Division Bench of this Court, after considering the provisions of sub-section (3) of section 110-A of the Maharashtra Co-operative Societies Act, has held that Reserve Bank of India can issue directions only when the situation contemplated by section 110-A of the Act exists. The directions issued are binding on the Registrar. In other words, once a direction is issued by the Reserve Bank of India, the Registrar has no discretion in the matter, but to supercede and appoint an administrator. Once that be so, and as there is no discretion left in respondent No. 5, it must mean that the right of hearing is excluded. Once that be so, there was no question of issuing a show cause notice to the petitioner herein before passing the impugned order. In fact, though not directly in issue in the case of L.V. Sasmile v. State of Maharashtra, 1992 C.T.J. 729, another Division Bench, considering the material on record, had directed the appointment of an administrator u/s 110-A of the Maharashtra Co-operative Societies Act. That also

would indicate that there is no requirement u/s 110 for hearing.

5. The object of introducing section 110-A of the Maharashtra Co-operative Societies Act is in public interest. There are a large number of small depositors who deposit their monies in such Banks. Public interest, therefore, requires that the statutory institutions, like the Reserve Bank of India which oversees the functioning of such banks, are empowered where public interest requires to issue direction to the Registrar. The issue of show cause notice, or hearing, or opportunity to show cause will arise if the direction issued by the Reserve Bank of India is directory and not mandatory. Once the Reserve Bank of India issues a direction to the Registrar, it is binding on the Registrar. The language used is: "if so desired by the Reserve Bank of India". Once, therefore, the Reserve Bank of India issues a direction desiring that the Board of Directors should be superseded, there is no discretion left in Registrar, but to issue the notice. The right to issue show cause, or hearing, or fair opportunity from the Registrar before issuing of the order is excluded. It was contended on behalf of the petitioners that they had no knowledge whatsoever about the material based on which the said direction was given. That is belied by the letter dated 4th February, 2002, written on behalf of the Bank to the 3rd respondent Reserve Bank of India. One of the items set out there is:

"The present Board of Directors may either be dissolved or nominees of RBI and/or State Government shall be appeared on the board."

In other words, the petitioners were aware that the Reserve Bank of India, after inspection, was contemplating a drastic action in the matter. In my opinion, the powers conferred u/s 110-A of the Maharashtra Cooperative Societies Act should not be hindered by reading into it the requirement of a show cause notice. The Reserve Bank of India is the apex statutory body overseeing the functioning of the financial institutions, including Banks. Whether there is compliance by the Reserve Bank of India in issuing a report or not is irrelevant to section 110-A. Even otherwise, the Reserve Bank of India has submitted the report to respondent No. 7 for compliance. The order of respondent No. 5 discloses the reasons as to why action has been taken. From the excerpts from the report of the Reserve Bank of India, it cannot be said that these reasons are irrelevant or not germane. Even otherwise, as pointed out earlier, it was not open for respondent No. 5 to consider whether the reasons are germane.

6. It may be mentioned here that on behalf of the petitioners, learned Counsel relied upon several judgments, which are : Swadeshi Cotton Mills Vs. Union of India (UOI), ; Ashok Kumar Vs. State of Jammu & Kashmir, ; Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, ; O.P. Gupta Vs. Union of India (UOI) and Others, ; K.I. Shephard and Others Vs. Union of India (UOI) and Others, ; Appabhai and Another Vs. State of Gujarat, ; State of Haryana Vs. Ram Kishan and Others, ; H.L. Trehan and Others Vs. Union of India (UOI) and Others, ; Brij Sunder Kapoor Vs. I Additional District Judge and Others, Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, ; The Scheduled

Caste and Weaker Section Welfare Association (Regd.) and anothers Vs. State of Karnataka and others, ; The Associated Cement Companies Ltd., Kymore Ors. Vs. Commissioner of Sales Tax, Indore etc. etc., ; C.B. Gautam Vs. Union of India and Others, ; State of Tamil Nadu v. K. Sabanayagam, AIR 1998 S.C. 344; Kanhaiya Lal Sethia v. Union of India, AIR 1998 S.C. 365.

Reference was also made to the commentary by H.W. R. Wade on Administrative Law.

7. It is by now a well-settled principle of law that an order, including an administrative order, which involves civil consequences, the requirement to show cause is necessary unless it is excluded. In the instant case, as discussed above, it is excluded. The Division Bench of this Court has held that respondent No. 5 was duty bound to comply with the directions issued by the Reserve Bank of India. The judgments cited are not on the interpretation of section 110-A of the Act and they would not directly have a bearing on the matter, eventhough they deal with the right of hearing and principles of fair-play and justice.

8. The direction was issued by the Reserve Bank of India. The petitioners have challenged the order of 11th February, 2002. It is open for the petitioners in such a challenge to attack the direction itself by the Reserve Bank of India, if it does not conform to the requirements of section 110-A(iv). It was sought to be contended that the directions are based on no material, or on extraneous considerations. There are other Banks against whom respondent No. 3 has taken no action. There was a statutory inspection carried out by Reserve Bank of India, based on which the directions have been issued. There are no allegations by way of pleadings of mala fides or arbitrariness against respondent No. 3 by the petitioners. Where a party seeks to quash a direction on the ground of mala fides or arbitrariness, there must be specific pleadings. In the instant case, there are none. The order passed by respondent No. 5 disclosed the reasons. They are based on the report and directions of respondent No. 3. They cannot be said to be irrelevant or not germane. The challenge to the direction must, therefore, be rejected.

9. Considering the provisions of the Maharashtra Co-operative Societies Act, 1960 and the rules framed thereunder as the report has been sent to the Bank, a copy of the report may be made available to petitioner No. 1 by respondent No. 5.

10. There was an application for intervention, being Civil Application No. 337 of 2002. The application was by the union of employees supporting the petitioners, considering that under the scheme a member of the union from amongst the employees is on the Board of Directors. Learned Counsel has been heard. At the highest, therefore, it can be said that the applicants herein can be heard in the matter. However, as already held earlier, I find no cause for interfering with the impugned order.

11. In the light of that, rule is discharged. The civil application is disposed of with

no order as to costs. Certified copy expedited. The parties to act on an ordinary copy of the order duly authenticated by the concerned personal secretary.