

(2011) 03 BOM CK 0190

In the Bombay High Court

Case No : Civil Application (Review) No. 27 of 2010 IN Writ Petition No. 502 of 2010

Mr. Siddhakumar D. Amonkar

APPELLANT

Vs

The Madgaum Urban Co-operative Bank Ltd. Head Office at:
"Varsha", Aquem Alto, Margao Goa 403601

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2011) 03 BOM CK 0190

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : S. Gaonkar, for the Appellant; M.S. Sonak, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—Heard Mr. Gaonkar, learned Counsel for the applicant and Mr. Sonak, learned Counsel for the respondent. By this application, the applicant-petitioner in Writ Petition No. 502/2010 seeks review of order dated 27th August, 2010 dismissing Writ Petition No. 502/2010 filed by the petitioner on the ground that the same was not maintainable.

2. The petitioner who was serving with the respondent Bank was terminated and by filing the above petition, the petitioner challenged his termination. On behalf of the respondent, an objection was taken to the maintainability of Writ Petition. By order dated 27th August, 2010, this Court dismissed Writ Petition holding that Writ Petition was not maintainable.

3. Mr. Gaonkar, learned Counsel appearing for the applicant at the outset submitted that review application is maintainable since the judgment of the Apex Court in the case of U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, was not considered by this Court. He further submitted that failure to consider the judgment of the Apex Court is a ground for

review. Learned Counsel placed reliance upon the judgment of M.P. High Court in the case of Commissioner of Sales Tax Vs. Hukumchand Mills, MP and Himachal Pradesh High in the case of The Nalagarh Dehati Co-operative Transport Society Ltd., Nalagarh Vs. Beli Ram etc., . Learned Counsel further submitted that any mistake on the part of Advocate or even Court could be corrected in exercise of review jurisdiction. In support of this submission, learned Counsel placed reliance upon the judgment of the Apex Court in the case of Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, . Learned Counsel also placed reliance upon the Full Bench decision of the Madras High Court in the case of K. Marappan Vs. Deputy Registrar of Co-operative Society and others; CDJ 2006 MHC 2470 in support of his submission that against the Co-operative society Writ Petition is maintainable. Learned Counsel also placed reliance upon the Division Bench judgment of this Court in the case of Vinod Shinde, Deepak Deshmukh, Sanjay Gaikwad and Gajanan Sable Vs. The State of Maharashtra, The District Employment Exchange cum Guidance Center and The Yavatmal District Central Cooperative Bank Limited, in support of his submission that Writ Petition against a Co-operative Society is maintainable. Learned Counsel, therefore, submitted that the order dated 27th August, 2010 passed by this Court discloses an error apparent on the face of record and deserves to be reviewed and consequently, Mr. Gaonkar submitted that Section 64 Fg of the Goa Co-operative Societies Act, 2001 discloses that the Bank is discharging statutory public duty and therefore, Writ Petition against the Bank is maintainable. Writ Petition filed by the petitioner deserves to be admitted.

4. Per contra, Mr. Sonak, learned Counsel appearing for the respondent submitted that the judgment in the case of U.P. State Co operative Land Development Bank Ltd. (supra) does not advance the case of the petitioner in as much as in the said case, the Apex Court was dealing with the Bank which was controlled by the State Government and in the judgment of the Apex Court in Federal Bank Ltd. Vs. Sagar Thomas & others (203) 10 SCC 733 . The judgment in the above case has been considered. According to Mr. Sonak, the case of the U.P. State Co-operative Land Development Bank Ltd (supra) has been considered by the Apex Court in paragraph nos. 8 and 9 and after considering the constitution and functions of the said bank and the control exercised by the State Government, the Apex Court has held that Writ Petition filed against Federal Bank Ltd. would not be maintainable. According to Mr. Sonak, the petitioner is not entitled to seek review of the order dated 27th August, 2010 dismissing Writ Petition since the scope of review is very limited. In support of this submission, Mr. Sonak relied upon the judgment of the Apex Court in the case of Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, . Learned Counsel further submitted that omission on the part of the Counsel to cite an authority of law does not amount to error apparent on the face of record so as to constitute ground for reviewing prior judgment. In support of this submission, Mr. Sonak relied upon the judgment of the Apex Court in the case of Dokka Samuel Vs. Dr Jacob Lazarus Chelly, . Mr. Sonak further urged that this Court while dismissing

Writ Petition has rightly placed reliance upon the judgment of the Apex Court in the case of Federal Bank Ltd. (supra).

5. I have considered the rival submissions, perused the record and the judgments relied upon.

6. In the case of Federal Bank Ltd. (supra), the Apex Court in Paragraph Nos.8 and 9 considered the judgment in the case of U. P. State Co-operative Land Development Bank Ltd. (supra) in which the Apex Court had held that Writ Petition against the said bank was maintainable. The Apex Court noted that the said bank was constituted under the provisions of U. P. Co-operative Land Development Bank Act, 1964 ("The Act" for short); the managing director and chief general manager of the Bank were officers of the State; the service rules for the employees and officers of the Bank were framed by the State Government in exercise of the powers u/s 30 of The Act Rules framed under the Act laid down the conditions of service of the employees; the said Bank was the only bank constituted under "The Act" and there could not be any other State level development bank for the whole of the State. Apart from the above facts, the bank had exclusive jurisdiction of the whole State of Uttar Pradesh; the Registrar of Societies was the trustee for the purpose of securing the fulfillment of the obligation of the State Land Development Bank to the holders of the debentures issued by the Board of Directors; the Board of Directors was entitled to issue debentures from time to time with previous sanction of the State Government; the State Government constitutes a guarantee fund u/s 9 of The Act for the purpose of meeting losses that might accrue on account of loans advanced by the Land Development Bank and the said fund was maintained by the Finance Department of the State Government. The Apex Court noted that on the backdrop of these facts, the U.P. State Co-operative Land Development Bank Ltd. though registered as co-operative society, was an instrumentality of the State and its employees have a statutory protection under the statutory rules. The Apex Court further held that these factors were not present in the case of Federal Bank and as such, Writ Petition against the said bank was not maintainable.

7. In view of the above, it is evident that the judgment in the case of Federal Bank Ltd. (supra) does not advance the case of the petitioner. In the order dated 27th August, 2010, the judgment in the case of Federal Bank Ltd. (supra) has been considered and after placing reliance upon the said judgment it has been held that Writ Petition was not maintainable.

8. In so far as the argument of Mr. Gaonkar that Section 64(F) of The Goa Co-operative Societies Act, 2001 ("The Act of 2001" for short) discloses that the bank is exercising statutory public duty is concerned, I do not find any merit in the said submission. Section 64(F) of The Act states that the chief executive of the bank shall exercise the powers and discharge the functions of making appointment to the posts of society in accordance with the directions of the Court. From the said provision, it cannot be inferred that the chief executive is

discharging public duty so as to hold that Writ Petition against the order dismissing the petitioner is maintainable.

9. In so far as the judgment in the case of Vinod Shinde (supra) is concerned, the same also does not advance the case of the applicant. In the said judgment, the Division Bench of this Court considered the circular dated 19th November, 2003 issued by the Government of Maharashtra and held that it had statutory force since it was issued in the light of the judgment of the Apex Court in the case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, . In this factual background, the Division Bench of this Court has held that Writ Petition filed against respondent No. 4 -Yavatmal District Central Co-operative Bank Limited, was maintainable.

10. The Full Bench judgment of Madras High Court in the case of Marappan (supra) also does not advance the case of the applicant in as much as in the said judgment, it has been held that even if the society cannot be characterized as State within the meaning of Article 12 of the Constitution,. a writ would lie against it to enforce public duty cast upon the society. It has been further held that a society which is not a State would not normally be amenable to writ jurisdiction under Article 226 of the Constitution of India, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies and if they violate such statutory provisions, a writ would be issued for compliance of those provisions. Having regard to the factual background in the present case, the ratio laid down in the said case does not help the petitioner.

11. In view of the above, I do not deem it necessary to refer to the other authorities cited by the learned Counsel appearing for both sides. In view of the above discussion, I am of the considered opinion that the order dated 27th August, 2010 dismissing Writ Petition does not disclose an error apparent on the face of record. Therefore, no case is made out for reviewing the said order. Hence, the application stands dismissed.