
(2010) 08 BOM CK 0221
In the Bombay High Court
Case No : 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 : 27-08-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2010) 08 BOM CK 0221

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

Bench : Single Bench

Advocate : Shivraj Gaonkar, for the Appellant; M.S. Sonak and Mr. Pulkit Bandodkar, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—By this petition, the petitioner has challenged the order dated 23rd April, 2010 passed by the respondent dismissing the petitioner from service. Mr. Sonak, learned Counsel appearing for the respondent challenged the maintainability of this petition primarily on the ground that the present petition does not lie against the respondent, which is a Co-operative society registered under Goa Co-operative Societies Act, 2001. Mr. Sonak placing reliance upon the Full Bench judgment of this Court in Shamrao Vithal Co-operative Bank Ltd. Vs. Padubidri Pattabhiram Bhat and another; 1993 MLJ 1 submitted that the ratio laid down in the said case is squarely applicable and as such, the present petition is not maintainable. He also placed reliance upon the Division Bench Judgment of this Court in the case of Dnyandeo Dattatraya Kale and Others Vs. The State of Maharashtra and others; 1995(3) BCR 86 and submitted that the respondent bank is not discharging any public functions and as such, that this petition filed against the respondent is not maintainable. Mr. Sonak also placed reliance upon the judgment of the Apex Court in Federal Bank Ltd. Vs. Sagar Thomas and Others, and submitted that having regard to the tests laid down in the said case,

the present petition filed against the respondent, is not maintainable. According to Mr. Sonak, the petitioner is trying to enforce the contract between the parties and as such this petition is not maintainable. In the alternative, Mr. Sonak submitted that the petitioner has an effective alternate remedy of approaching the Co-operative Court constituted under the provisions of Goa Co-operative Societies Act, 2001, and, therefore, the present petition be not entertained.

2. Per contra, Mr. Gaonkar, learned Counsel for the petitioner placing reliance upon the Division Bench judgment of this Court in the case of Ganesh Morto Naik Vs. Goa State Co-operative Bank Ltd. and another; 1992 (1) BCR 610 submitted that the present petition filed is maintainable since the bank is discharging public functions and performing statutory duties. Placing reliance upon Section 64(f) of the Act, Mr. Gaonkar submitted that the respondent's chief executive in terms of Section 64(f) is discharging statutory duties and, therefore, the present petition is maintainable. He further urged that the petitioner has been dismissed without following principle of natural justice and, therefore, the fundamental rights of the petitioner under the Constitution of India have been violated. He placed reliance upon the by-laws of the respondent and submitted that the respondent is discharging public functions and, therefore, the present petition is maintainable. He further submitted that availability of the alternate remedy is not an absolute bar for entertaining the writ petition and placed reliance upon the judgment of the Division Bench of this Court in the case of Kellogg India Private Limited and Madhukar Patil Vs. Union of India; 2005 (6) BCR 492.

3. I have considered the rival submissions and perused the record and the judgments relied upon. In the case of Shamrao Vithal Co-operative Bank Ltd. (supra), the Full Bench of this Court held that the appellant bank which was a co-operative society registered under the provisions of Maharashtra Co-operative Societies Act and under the Multi-State Co-operative Societies Act, 1984 was not "State" under Article 12 of the Constitution of India. In the case of Dnyandeo Dattatray Kale (supra) relied upon by Mr. Sonak, the Division Bench held that the respondent No. 8 Ahmednagar District Central Co-operative Bank Ltd. was not discharging any public or statutory public duties. The Division Bench further held that the bank was neither the State nor any instrumentality of the State and the employment with bank could not be said to be a public employment and as such, writ of mandamus could not be issued. The Division Bench further held that the employees were governed by standing order -implied terms of contract. In the Federal Bank Ltd.'s case (supra), the Apex Court held that a writ petition under Article 226 of Constitution of India may be maintainable against (i) State (Government) (ii) an authority (iii) a statutory body (iv) an instrumentality or agency of the State (v) a company which is financed and owned by the State (vi) a private body run substantially on State funding (vii) a private body discharging a public duty or positive obligation of a public nature and (viii) a person or a body under a liability to discharge any function under any Statute to compel it to perform such statutory function.

4. The ratio laid down in the case of Shamrao Vithal Co-operative Bank Ltd. that a Co-operative society registered under the Maharashtra Co-operative Societies Act, 1960 and Multi-State Co-operative Societies Act, 1984 carrying business of banking is not "State" under Article 12 of the Constitution of India, is binding on this Court. The question is whether the respondent is discharging any public duties or positive obligation of public nature. The fact remains that the respondent is a society registered under Co-operative Societies Act. Its by-laws do not disclose that the respondent is discharging any public duty or positive obligation of a public nature. I am unable to accept the submission of Mr. Gaonkar that the respondent is discharging any public duty. Insofar as the judgment in the case of Ganesh Morto Naik relied upon by Mr. Gaonkar is concerned, in my view, in view of the subsequent Full Bench judgment in the case of Shamrao Vithal Co-operative Bank Ltd., the ratio of the said judgment stands impliedly overruled. In view of the above, in my considered view, the petition filed by the petitioner as against the respondent challenging his dismissal, is not maintainable. I do not deem it necessary to deal with the aspect of alternate remedy in view of the finding recorded that the petition itself is not maintainable against the respondent. Accordingly, the petition stands dismissed.