
(2013) 12 BOM CK 0158
In the Bombay High Court
Case No : Writ Petition No. 8393 of 2012

Mr. Surendra K. Kambli and Another

APPELLANT

Vs

Bhandari Co-op. Bank Ltd. and Others

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2013) 12 BOM CK 0158

Hon'ble Judges : S.C. Gupte, J;A.S. Oka, J

Bench : Division Bench

Advocate : A.S. Desai, for the Appellant; P.B. Naiknaware for Respondent No. 1, Ms. M.P. Thakur, AGP for Respondent Nos. 3 and 6, Mr. S.K. Talsania , Mr. Parag Sharma instructed by . Udwadia Udeshi and Argus Partners, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Gupte, J.—The Petitioners, who are members and shareholders of the First Respondent Bank, have challenged the order passed by Reserve Bank of India and confirmed in appeal by the Appellate Authority, Department of Economic Affairs, cancelling the banking licence of the First Respondent Bank, in this writ petition. The First Respondent is established as a co-operative bank under the provisions of the Maharashtra Co-operative Societies Act ("MCS Act"). It held a banking licence issued by Reserve Bank of India. The Managing Committee of the First Respondent committed various irregularities. The Registrar of Cooperative Societies initiated action u/s 88 of the MSC Act against the Managing Committee members of the First Respondent for the loss caused to the bank due to their negligence and sanctioning of bogus loans. F.I. Rs. were registered against the Managing Committee members under various provisions of the Indian Penal Code and Prevention of Corruption Act. In these circumstances, the Reserve Bank of India issued an order u/s 35A of the Banking Regulation Act ("BR Act") imposing financial restrictions on the First Respondent for a period of six months. This order was passed on 11 August 2011. On 17 August 2011, the Reserve Bank issued directives u/s 110A of the MCS Act for appointment of administrator of the

bank. This was followed by a show cause notice u/s 22 of the BR Act for cancellation of the banking licence of the First Respondent. Replies were furnished by the Administrator and progress reports filed. In the meantime, on the representation of the Petitioners and others, the Board of Administrators was reconstituted on 7 October 2011. The reconstituted Board included the First and Second Petitioners among others. Further recoveries were made and progress reports were submitted by the reconstituted Board. Not satisfied with the financial position of the bank, the Reserve Bank, on 11 November 2011, cancelled the banking licence of the First Respondent u/s 22(4) of the BR Act. The matter was carried in appeal u/s 22(5) of the BR Act. The Appellate Authority rejected the appeal and upheld the Reserve Bank order of cancellation of the banking licence. Being aggrieved, the Petitioners have invoked the writ jurisdiction of this Court.

2. The learned Counsel appearing for the Petitioners submits that the impugned order of cancellation of licence has not been passed judiciously; that though six months' time was granted to the Board of Administrators u/s 35A of the BR Act, even before the expiry of that period the order of cancellation of licence was passed without considering the following, namely,

(i) The Board of Directors of the First Respondent was removed on the basis of the financial position as of 31 March 2011;

(ii) Due to unsatisfactory progress after the order u/s 35A, the earlier Board of Administrators was substituted by a new Board;

(iii) There were various steps taken and good recoveries made by the new Board of Administrators after the substitution;

(iv) There were liabilities of only Rs. 84 crores owed by the First Respondent Bank; and

(v) There were funds of Rs. 34 crores lying with the Bank and other assets including immovable properties were sufficient for clearing the Bank's liabilities.

It was urged by the learned Counsel that the First Respondent Bank ought to have been given more time to come out of the red, and the Petitioners were willing to bring in funds to that end.

3. The learned Senior Counsel for Respondent No. 4 and the learned AGP for Respondents No. 3 and 6 supported the impugned order.

4. The Banking Regulation Act, 1949 ("BR Act") is a consolidating and amending Act relating to the law of banking. Part II of the BR Act concerns the business of banking companies and contains various regulatory provisions. Section 22, forming part thereof, deals with licensing of a banking company. Sub-section (1) of Section 22 makes it compulsory for any company proposing to carry on banking business in India to hold a licence issued by the Reserve Bank of India. Such licence is issued subject to such conditions as the Reserve Bank may think

fit to impose. Sub-section (2) provides for an application for such licence. Sub-section (3) provides for the conditions, fulfillment of which the Reserve Bank may require to be satisfied about, before granting any licence. These conditions are as follows:

- (a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;
- (b) that the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the interests of its present or future depositors;
- (c) that the general character of the proposed management of the company will not be prejudicial to the public interest or the interest of its depositors;
- (d) that the company has adequate capital structure and earning prospects;
- (e) that the public interest will be served by the grant of a license to the company to carry on banking business in India;
- (f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the license would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;
- (g) any other condition, the fulfillment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.

Sub-section (3-A) deals with satisfaction of conditions before granting banking licence to a company incorporated outside India. Sub-section (4) provides for cancellation of the banking licence and is in the following terms.

(4) The Reserve Bank may cancel a license granted to a banking company under this section-

- (i) if the company ceases to carry on banking business in India; or
- (ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or
- (iii) if at any time, any of the conditions referred to in sub-section (3) and sub-section (3-A)] is not fulfilled:

PROVIDED that before cancelling a license under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfill any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as

it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

Sub-section (5) provides for an appeal from the order of cancellation of licence. Sub-section (6) makes the decision, appellate or original where no appeal is preferred, as the case may be, final. Section 35A of the BR Act provides for the power of the Reserve Bank to give directions and is in the following terms.

35-A. Power of the Reserve Bank to give directions.-(1) Where the Reserve Bank is satisfied that-

(a) in the public interest; or

(aa) in the interest of banking policy; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

5. At the outset, it may be noted that the powers of the Reserve Bank under Sections 22(4) and 35A are distinct and separate. If the Reserve Bank is satisfied that any of the conditions stipulated in Section 35A exists, and it is necessary to issue directions, generally or to any banking company in particular, the Reserve Bank may issue such directions and the banking companies generally, or the particular banking company, as the case may be, are or is bound to comply with such directions. On the other hand, if any of the conditions provided in sub-section (3) of Section 22 of the BR Act is not fulfilled, the Reserve Bank may cancel the banking licence issued to any banking company. It may well be that there is an overlap in a given case between the jurisdictional facts provided in Section 35A and Section 22(3) for the Reserve Bank to act. In such a case, the Reserve Bank has an option to act under either or both the provisions. The action under one cannot be faulted on the ground of recourse to the other provision.

6. But, submits the learned Counsel for the Petitioners, before taking any action for cancellation of the banking licence, the Reserve Bank ought to have given an opportunity to the banking company of fulfilling the conditions of sub-section (3) of Section 22. The learned Counsel submits that directions u/s 35A were already passed and the Reserve Bank ought to have waited for the expiry of the six

months" time given by the order u/s 35A.

7. In this behalf, it may be noted that ordinarily the Reserve Bank is required to grant an opportunity to the banking company of taking necessary steps for fulfilling conditions set out in sub-section (3) of Section 22 of the BR Act before cancelling its licence. But in a case where the Reserve Bank is of opinion that the delay ensuing in the process of granting such opportunity will be prejudicial to the interests of the banking company's depositors or the public, the Reserve Bank may decline to grant any such opportunity to the banking company. That is the plain mandate of the proviso to sub-section (4) of Section 22.

8. Now it needs to be seen if the Reserve Bank has come to form any such opinion in the present case and therefore, is within its authority to not grant any further time to the First Respondent despite appointment of a Board of Administrators for six months. The impugned order of the Reserve Bank dated 11 November 2011 notes the parameters such as Net Worth, CRAR, Deposit Erosion and Net Profit/Loss of the First Respondent as disclosed in the inspection on 31 March 2009, 31 March 2010 and 31 March 2011. Secondly, it notes the various deficiencies/irregularities revealed in the inspection report of 31 March 2011. In particular, it takes into account (a) that the erosion in the value of assets has not only wiped out the entire owned funds but the deposits have been eroded to the extent of 25.6% of total deposits, (b) that net NPAs had sharply increased from 26.6% as on 31 March 2010 to 42.3% as on 31 March 2011, (c) that the recoveries of NPA were not satisfactory, (d) that there were frauds in various loan accounts and (e) that the First Respondent had not adhered to prudential norms relating to income recognition, asset classification and provisioning, etc. The Reserve Bank also took into account the compliance report submitted by the First Respondent on 30 August 2011 and the same was not found satisfactory. The Reserve Bank also noted that fresh cases of fraud were coming to light. In view of these circumstances, a show cause notice before cancellation of licence was served by the Reserve Bank to the First Respondent. The reply of the First Respondent dated 14 September 2011 was examined and found to be unsatisfactory specially having regard to the facts that (a) the First Respondent bank had admitted to the precarious financial position and (b) the gross and net NPAs had increased to Rs. 3156.00 lakh and Rs. 1981.00 lakh of gross and net advances respectively on 31 August 2011. Based on the material adverted to by it, the Reserve Bank came to the conclusion that-

- i) The financial position of the bank is precarious and there is no scope for its revival.
- ii) The bank is not in a position to pay its present and future depositors in full, as and when their claims accrue.
- iii) The bank does not comply with the provisions of Section 11(1), 22(3)(a) and (b) of the Act.
- iv) The affairs of the bank are being conducted in a manner detrimental to the

interest of its present and future depositors.

v) The public interest would be adversely affected if the bank is allowed to carry on its banking business any further.

Based on the above findings, the Reserve Bank formed an opinion that allowing the bank to carry on banking business any further would be detrimental to the interests of the present and future depositors and hence, the licence granted to the bank to conduct banking business deserves to be cancelled. In these premises, the Reserve Bank cancelled the banking licence of the First Respondent u/s 22(4) of the BR Act with immediate effect.

9. The impugned order, as noted above, is based on relevant and germane considerations and satisfied the requirements of sub-section (4) of Section 22 including the proviso to that sub-section.

10. The Appellate Authority, acting under sub-section (5) of Section 22 of the BR Act, has duly considered the grounds of appeal raised by the First Respondent and the Petitioners and found the impugned order to be valid and justified. The Appellate Authority has accordingly rejected the appeal. The Appellate Authority, in particular, noted as follows:

As regards the contentions of the appellant bank regarding improvement of the financial position after cancellation of licence, there is no convincing evidence placed before me to prove the claim. The audit for the year 2011-12 is yet to be completed which would bring out the latest financial position of the bank. The appellant bank was given ample opportunity to improve its financial position since 2005. However no improvement was noticed. In fact, the financial position continued to deteriorate. The appellant has not alleged any arbitrariness or illegality on the part of RBI while passing the order.

11. It is not for this Court to question the wisdom of two expert bodies on the matter of banking business generally and fulfillment or otherwise of conditions requisite for continuing banking business in particular, whilst exercising its writ jurisdiction. It is trite saying that a Writ Court is concerned rather with the decision making process than the decision itself. We find nothing wrong with that decision making process here. The merits of the decision are best left to the expert body. The Court is not equipped to question the wisdom of such expert body in the matter.

12. The Supreme Court in the case of Federation of Railway Officers Association and Others Vs. Union of India (UOI), , whilst examining the scope of judicial review of a policy decision by the executive, held as follows:

12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for

decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the court will not interfere with such matters.

13. The impugned orders of the Reserve Bank and the Appellate Authority in cancelling, and affirming cancellation of, the banking licence of the First Respondent cannot be said to be inconsistent with the Constitution or in breach of any law or arbitrary or irrational or abuse of power. The orders, in the premises, are unassailable in the writ jurisdiction of this Court. In that view of the matter, there is no merit in the challenge. The writ petition is accordingly dismissed. There shall be no order as to costs.