

(2014) 11 RAJ CK 0098
In the Rajasthan High Court
Case No : Civil Writ Petition No. 26/2013

Sajjan Singh Bhati

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Banking Regulation Act, 1949 — Section 22

Citation : (2014) 11 RAJ CK 0098

Hon'ble Judges : Sunil Ambwani, Acting C.J.;Prakash Gupta, J

Bench : Division Bench

Advocate : S.P. Sharma, Advocate for the Appellant; S.S. Ladrecha, A.A.G., G.S. Rathore, Gulab Singh Bhati, Ravi Bhansali, Shreyansh Mardia and Pankaj Sharma, Advocate for the Respondent

Judgement

1. In this writ petition filed in public interest, the petitioner, an Advocate, has brought to the notice of the Court large scale banking business done by various Cooperative Societies registered under the Multi-State Cooperative Societies Act, 2002 and the Cooperative Societies registered under the Rajasthan Cooperative Societies Act, 2001 without taking out licence under Section 22, of the Banking Regulation Act, 1949.

2. It is alleged that Sanjivani Credit Cooperative Society Ltd. - respondent No. 9 is a Multi-State Cooperative Society and that respondents Nos. 10, 11 and 12 are State Level Cooperative societies. They are not authorised to carry on banking business by accepting deposits and giving interest to the general public either by opening the accounts directly or after their spot enrolment for which these Cooperative Societies are also operating ATM facility without obtaining licence under the Banking Regulation Act, 1949.

3. A large number of documents have been filed including FIRs which clearly demonstrate and establish on record that respondents Nos. 9 to 12 are actively engaged in the banking business. They are accepting deposits by enrolling the persons as members and giving interest on such deposits. They are giving pass-

books and also offering ATM cards. The petitioner has also annexed a large number of documents to show that amount is collected from the general public by way of deposit on the false promise of getting higher rate of interest, and also prizes to be given by lottery on which winners may be given cars, scooters, mobile phones or gold coins. The deposits are then diverted for private use and for illegal activities. It is alleged that the politicians in the State run these cooperative societies and are regularly opening branches of these cooperative societies commonly known and termed as Cooperative Banks.

4. A preliminary objection has been raised to the maintainability of the writ petition by the petitioner who is an Advocate and was himself engaged in the business of banking under the name of Mateshwari Credit Cooperative Society. It is alleged that several FIRs have been lodged against the petitioner and thus, he is not the person who is competent under the Rules of the Court to file Public Interest Litigation.

5. In response to the preliminary objection raised by learned counsel appearing for the respondents Nos. 9 to 12, the petitioner submits that he was the Chairman of one of such society. The business was, however, closed down and that all accounts have been settled. It is stated that he was in legitimate business of cooperative society but since some of his employees had committed fraud, his business had to be closed. He is no longer in any such business for last many years and that in respect of each of FIRs on the deposit of money, final reports have been submitted. It is submitted that though the petitioner may appear to be a concerned person but since he has suffered himself, he wishes to bring notice of the Court the ill-deeds of the other cooperative societies who are carrying on banking business. He wants to save general public from the losses which they may suffer in the hands of unscrupulous persons.

6. We do not find that the petitioner has approached the Court with any ulterior motive or ill will and, accordingly, the objections are over-ruled.

7. Learned counsel appearing for the respondents Nos. 9 to 12 have contested the averments made in the petition. It is stated that they are registered under the Multi-State Cooperative Societies Act, 2002 and Rajasthan Cooperative Societies Act, 2001 and are carrying on their business in accordance with the bye-laws registered under the aforesaid Acts. It is submitted that respondents Nos. 9 to 12 are not carrying on any banking business. They are engaged in providing loans to its members in accordance with the approved guidelines and registered bye-laws which is perfectly legal activity. The respondents, however, have not given the source of the capital from the amount is advanced to its members. They have also failed to specify the purpose for which the amounts are advanced as loans.

8. The respondent No. 2 - Union of India has filed a counter affidavit stating that respondent No. 9 and 10 are Multi-State Cooperative Societies and respondents Nos. 11 and 12 are State Level Cooperative Societies. It is admitted that no

cooperative society can start banking business unless it is registered as a Cooperative Bank and unless it fulfills all the conditions of registration and obtains a licence for carrying on banking business under the Banking Regulation Act, 1949.

9. The petitioner has annexed a reply given by the Reserve Bank of India under the Right to Information Act, 2005, in which, it is clearly stated that Multi-State Cooperative Society cannot carry on any banking business unless it obtains licence from the Reserve Bank of India.

10. We are, prima facie, satisfied that a large amount of money is being collected from unwary and innocent people by the respondents-societies in the name of attractive banking offering prizes by lottery. Most of the deposits are of poor people. By issuing attractive advertisements for deposits, the respondents Nos. 9 to 12 are engaged in the activities in accepting the deposits by issuing pass-book, opening branches and ATM counters. These activities are nothing but banking activities, which cannot be said to be valid activities of a cooperative society.

11. In *The Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd. Vs. The Maharashtra State Co-operative Bank Ltd. and Others*, , the Hon"ble Supreme Court held that Multi-State Cooperative Society cannot carry out banking business until and unless a licence is issued by the Reserve Bank of India under the Banking Regulation Act. The relevant paras 18 and 46 are quoted below:-

¶18. In view of the above, we hold that the RBI by virtue of its power under Section 22 cannot grant a license to any cooperative bank unless it is a state co-operative bank or a central co-operative bank or a primary co-operative bank. It would be necessary that a declaration under the NABARD Act be first obtained....."

"46. It is to be seen that the RBI can only give a license to a state co-operative bank which has been so declared by a particular State. As the definition of co-operative societies in the NABARD Act is restricted to co-operative societies registered under State Acts and as the provision is for a State to declare a co-operative society as a "state cooperative bank" the license, which can be issued by the RBI, can only be in respect of that State. Merely because one State declares a co-operative society as a "state cooperative bank" would not enable the RBI to issue that society a license to carry on banking business in other States or in the rest of the country. In this case, the RBI was wrong in issuing a license to the Appellants for the States of Maharashtra and Goa when, admittedly, the Appellants had not been declared a state co-operative bank in the State of Goa. Thus, it is held that the banking license could not have been issued for the State of Goa."

12. Let a reply be filed by the Reserve Bank of India, Central Registrar of Multi-Cooperative Society as well as Registrar, Rajasthan Cooperative Society within

four weeks.

13. As an interim measure, until further orders, the Central Registrar, Multi-State Cooperative Society, New Delhi, the Registrar, Cooperative Society, Rajasthan, Jaipur, the District Collectors, Barmer, Jaisalmer and Jodhpur and Director General of Police, Rajasthan will ensure that respondents Nos. 9 to 12 or any other Multi-State Cooperative Society or the State Cooperative Society do not carry on any banking business in the State of Rajasthan, unless they have a licence under the Banking Regulation Act, 1949. These cooperative societies will not be allowed to carry on banking business namely, to take deposits, opening branches for its banking activities, installation and running of ATMs and distributing loans to the depositors. The respondents will not allow any banking business by the Multi-State Cooperative Society and the District Cooperative Society unless they have licence from the Reserve Bank of India under the Banking Regulation Act, 1949.

14. The petitioner is also directed to file audited balance-sheet of Mateshwari Credit Cooperative Society and the latest income-tax returns filed by it. The petitioner will also give details of the settlement of the accounts of the claimants including those who has filed FIRs. The entire financial statement of Mateshwari Credit Cooperative Society may be filed within four weeks.

List on 04.02.2015.