Bombay High Court
Jalgoan Jilha Urban Co-Op Banks ... vs The State Of Maharashtra And Ors on 13 February, 2017
Bench: T.V. Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

Writ Petition No.1304 of 2008
With
Civil Application No.15469 of 2016

* Jalgaon Jillha Urban Cooperative

Banks Association Ltd., Jalgaon,
District Jalgaon
Through its Expert Director,
Shri. J.M. Agrawal. .. Petitioner.

Versus

1) The State of Maharashtra
Through Chief Secretary,

Mantralaya, Mumbai.

2) The Principal Secretary,
Cooperation and Textile Department,
State of Maharashtra,

Mantralaya, Mumbai.

3) The Commissioner and Registrar,
Cooperative Societies,
Maharashtra State,
Central Building Pune.

4) The Divisional Joint Registrar,
Cooperative Societies,
Nashik Division, Nashik.

5) Satyasheel Avinash Akole,
Age 57 years,
Occupation : Agriculture,
R/o Purnaved Bhavan,
Purnaved Nagar, Ring Road,
Jalgaon,
Taluka & District Jalgaon. .. Respondents.

Shri. N.B. Suryawanshi, Advocate, for petitioner.

Shri. S.B. Joshi, Assistant Government Pleader,
for respondent Nos.1 to 4.

Shri. S.M. Kulkarni, Advocate, for applicant in
Civil Application No.15469 of 2016.

CORAM: T.V. NALAWADE &
SANGITRAO S. PATIL, JJ.

JDGMENT RESERVED ON : 7 FEBRUARY 2017 JUDGMENT DELIVERED ON: 13 FEBRUARY2017 JUDGMENT:(Per T.V. Nalawade, J.) The petition is filed by the association of Jalgaon Zilla Urban Cooperative Banks, Credit Societies and other financial institutions registered under the Maharashtra Cooperative Societies Act 1960. It is the contention of the petitioner that in view of the provisions of section 2(h) and section 8 of the Right to Information Act 2005 (hereinafter referred to as "the Act"), cooperative institutions registered under the Cooperative Societies Act cannot be treated as public authority. It is also contention of the petitioner that in view of the provision of section 34A of the Banking 3 WP 1304 of 2008 Regulation Act, 1949 these institutions are not bound to disclose certain information which, according to them, is confidential in nature. It is also contention that these institutions are not receiving financial aid from the Government directly or indirectly and so the provisions of the Act cannot be made applicable to them.

2) It is the grievance of the petitioner that inspite of the aforesaid provisions, the authorities created under the Cooperative Societies Act are insisting the institutions to pass on information in respect of the conduct of business and other things of the societies to the members or even general public under the provisions of the Act.

3) The petition is filed under provisions of Articles 226 and 227 of the Constitution of India and following reliefs are claimed :

(a) Call for record and proceedings of the case.

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(b) Hold and declare that the urban cooperative banks, cooperative financial institutions, Patpedhis and other cooperative societies which are registered under the Maharashtra Cooperative Societies Act 1960, are not the public authorities within the meaning of Section 2(h) of the Right to Information Act and for that purpose issue necessary orders.

Or in the alternative and without prejudice to the above prayer

(b) Hold and declare that the urban cooperative bank, cooperative financial institution, Patpedhis and other cooperative societies, which are registered under the Maharashtra Cooperative Societies Act 1960 stand exempted from disclosure of information u/s 8)1 (d), (e) and (j) of the Right to Information Act and for that purpose issue necessary orders.

(c) Issue a writ, order or direction or any other oder in the nature of writ of mandamus thereby restraining the officers of the cooperative department and/or their subordinates from supplying any information to the members or general public, which is, according to the said societies is confidential in the commercial interests of the said societies and for that purpose issue necessary orders.

(d) Pending the hearing and final decision of this writ petition restrain the respondent and/or offices and subordinates from disclosing any information other than balance sheet and profit and loss accounts of the cooperative societies, urban banks and Patpedhis to the general public and/or members, under Right to Information Act and for that purpose issue necessary orders."

4) Learned counsel for the petitioner submitted that many such proceedings were filed by different cooperative institutions and by order dated 17-2-2009 this Court had tagged the present matter with Writ Petition No.187/2008.

Learned counsel submitted that Writ Petition No.187/2008 came to be decided along with other similar petitions on 10-4-2015 and this Court by referring the case reported as 2011(5) Bom.C.R. 128 (Agricultural Produce Market Committee v. Meghraj Pundlikrao Dongre and Others) held that the provision of the Act cannot be used against cooperative institutions registered under the Maharashtra Cooperative Societies Act, 1960. By the said decision, the orders made by the authorities created by the Government under the Maharashtra Cooperative Societies Act, 1960 against the institutions to direct them to supply information as it was required to be supplied by the authorities to the persons who had filed applications, are quashed and set aside by this Court. Learned counsel submitted that when the 6 WP 1304 of 2008 present matter was tagged with Writ Petition No.187/2008 and the said petition is decided in aforesaid terms, the present petition needs to be allowed in those terms. He submitted that due to over sight the present proceeding along with the civil application remained pending.

5) Learned counsel who is appearing in Civil Application No.15469/2016 filed in the writ petition submitted that the law laid down by this Court in the cases cited supra, cannot be used now in view of the decision given by the Apex Court on 16-12-2015, in similar cases,in the case reported as (2016) 3 SCC 525 - [RBI v. Jayantilal N. Mistry]. The decision shows that most of the proceedings were filed by Reserved Bank of India and one proceeding was filed by National Bank for Agriculture and Rural Development. In many cases the information sought from Reserve Bank of India was with regard to cooperative institutions registered under the Cooperative Societies Act and some were from Maharashtra also.

6) In the case cited supra, the Apex Court

has discussed the effect of the provisions of the Banking Regulation Act,1949, Reserved Bank of India Act,1934, The Credit Information Companies (Regulation) Act,2005, the State Bank of India Act,1955; and, the Official Secrets Act,1923 on the provisions made under Act. The Apex Court has also discussed the rights given under Article 19(1)(a) of the Constitution of India and the rights given under the Act. The interpretation of the provision of Section 8 of the Act is also done by the Apex Court. The defence taken for such institutions of fiduciary relationship and possible adverse effect on economic interests of the States are considered by the Apex Court. The purpose behind making the Act is discussed by the Apex Court. For the present purpose, the relevant observations are at paragraphs 58,59,60 & 62 to

68.

> "58. In the instant case, the RBI does not place itself in a fiduciary relationship with the Financial institutions (though, in word it puts itself to be in that position) because, the reports of the inspections, 8 WP 1304 of 2008 statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case neither the RBI nor the Banks act in the interest of each other. By attaching an additional "fiduciary" label to the statutory duty , the Regulatory authorities have intentionally or unintentionally created an in terrorem effect.
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> 59. RBI is a statutory body set up by the RBI Act as India's Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country's banking sector. Under Section 35A of the Banking Regulation Act, RBI has been given powers to issue any direction to the banks in public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far- reaching statutory powers.
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> 60. RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein.

62. The exemption contained in Section 8(1)

(e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary 9 WP 1304 of 2008 relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. As in the instant case, the Financial institutions have an obligation to provide all the information to the RBI and such an information shared under an obligation/ duty cannot be considered to come under the purview of being shared in fiduciary relationship. One of the main characteristic of a Fiduciary relationship is "Trust and Confidence". Something that RBI and the Banks lack between them.

63. In the present case, we have to weigh between the public interest and fiduciary relationship (which is being shared between the RBI and the Banks). Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economic interests of the country? To what extent the public should be allowed to get information?

64. In the context of above questions, it had long since come to our attention that the Public Information Officers (PIO) under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to.

65. And in this case the RBI and the Banks have sidestepped the General public's demand to give the requisite information on the pretext of "Fiduciary relationship" and "Economic Interest". This attitude of the RBI will only attract more suspicion and disbelief 10 WP 1304 of 2008 in them. RBI as a regulatory authority should work to make the Banks accountable to their actions.

66. Furthermore, the RTI Act under Section 2(f) clearly provides that the inspection reports, documents etc. fall under the purview of "Information" which is obtained by the public authority (RBI) from a private body. Section 2(f), reads thus:

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

67. From reading of the above section it can be inferred that the Legislature's intent was to make available to the general public such information which had been

obtained by the public authorities from the private body. Had it been the case where only information related to public authorities was to be provided, the Legislature would not have included the word "private body". As in this case, the RBI is liable to provide information regarding inspection report and other documents to the general public.

68. Even if we were to consider that RBI and the Financial Institutions shared a "Fiduciary Relationship", Section 2(f) would still make the information shared between them to be accessible by the public. The facts reveal that Banks are trying to cover up their underhand actions, they are even more liable to be subjected to public scrutiny. "

7) By making aforesaid observations the

Apex Court held that the decision given by the Chief Information Officer directing these institutions to supply information cannot be set aside. Thus, the contention of the present petitioner that it is private body was dealt with by the Apex Court.

8) The petitioner and its members, cooperative institutions, are registered under the Maharashtra Cooperative Societies Act, 1960.

They are bodies created by the statute. But right from the registration till the liquidation there is control over these institutions of the authority created under the same Act. The authority steps in to take decision on the rights of the members. The authority has control over the manner in which the funds are invested or the distribution of the funds is made for different purpose. Such institutions cannot act independently and the apex bodies are created for such institutions. Under Chapter V the 12 WP 1304 of 2008 possibility of State aid and even giving subsidies to such institution is kept open and that is done to protect the cooperative movement.

Even Articles 38,39,43 and 48 of the Directive Principles of State Policy of the Constitution of India show that to some extent such institutions are discharging duty of State.

9) The provisions of the Maharashtra Cooperative Societies Act show that the authority under the Act can do the audit and inquiry into irregularities. If loss is caused to the institution, the Directors, Promoters etc. the authority can assess the damage, and the loss caused to the institution can be recovered from those persons. There is the power of suspension of managing committee and removal of members with the authority created under the Act. For all the aforesaid purposes and other purposes mentioned in the Cooperative Societies Act, the cooperative institution is bound to supply the record to the authority.

10) The provisions of the Maharashtra

Cooperative Societies Act if read with the definition of information given in section 2(f) of the Act, it can be said that everything which is mentioned in the definition of information needs to be supplied by the cooperative institution to the authority created under the Cooperative Societies Act. The definition of 'Public Authority' given in section 2(h) shows that such public authority can be created by any law made by the State Legislature. It is already observed that the officers like Registrar and his subordinate officers are appointed under the Cooperative Societies Act and they have the control over the aforesaid things. In view of these circumstances, the observations made by the Apex Court in the paragraphs already quoted can be used safely when the information is sought from the authority like Registrar or his subordinates under the Cooperative Societies Act.

Thus, the reliefs claimed in the present petition cannot be granted as the reliefs can be used 14 WP 1304 of 2008 directly or indirectly by the cooperative institutions to deny the supply of the information. The circumstances that the other matters were allowed by this Court, other Bench of this Court, cannot come in the way of giving present decision by this Court as the decision of the Supreme Court was not there when other matters were decided by this Court. This Court holds that no relief which is claimed in the present petition can be given to the petitioner.

The previous interpretation made by this Court is not correct interpretation in view of the law laid down by the Apex Court. In the result, the petition stands dismissed. Rule is discharged.

Civil Application is disposed of.

Sd/- Sd/-
(SANGITRAO S PATIL, J.) (T.V. NALAWADE, J.)

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