

16.07.2021
Court No. 19
Item no.90
srm/cp

WPA 10710 of 2021

Contai Co-operative Bank Limited & anr.
VS
State of West Bengal & ors.

(via video conference)

Mr. Jaydip Kar, Sr. Adv.
Mr. Billwadal Bhattacharyya
Mr. Anish Kumar Mukherjee

....for the petitioners.

Mr. Kishore Datta, Ld. Adv. General
Mr. Anirban Ray, Ld. G.P.
Mr. Sayan Sinha

....for the respondents 1, 2, 3, 6 & 7.

Mr. S. N. Mookherjee, Sr. Adv.
Mr. Sanjay Basu
Mr. Samik K. Chakraborty
Mr. Piyush Agrawal
Ms. U. Dasgupta

...for the respondent nos. 4, 5, 8, 9 and 10.

Although the General Manager, Department of Co-operative Banking Service, the Reserve Bank of India has been added as the respondent No.3 to the writ petition, none appears on behalf of the Reserve Bank of India. The learned Advocate on record for the petitioners is directed to add the Reserve Bank of India and the Executive Director, Reserve Bank of India, as the respondent Nos.11 and 12 to the writ petition.

Service of the writ petition upon the newly added respondent Nos.11 and 12.

The petitioner No.1, is a primary co-operative society, registered under the provisions of the West Bengal Co-operative Societies Act, 1983 and is engaged in the banking business upon obtaining a licence from the Reserve Bank of India. The petitioners have challenged the decisions of the Government of West Bengal, Co-operative Department dated June 12, 2021 and June 14, 2021.

By the order dated June 12, 2021 the Co-operation Department, Government of West Bengal took a decision to hold a special Audit in respect of the petitioner No.1/Bank along with other banks. By the order dated June 14, 2021, the Co-operation Department, Government of West Bengal decided to conduct an inspection under the provisions of Section 99(1)(a) of the West Bengal Co-operative Societies Act, 2006. The impugned orders are challenged on the ground that the petitioner No.1 being a banking company was guided by the provisions of Banking Regulation Act, 1949. Section 56 of the Banking Regulation Act, 1949 made the Banking Regulation Act applicable in respect of the co-operative banks. Reliance is placed on Sections 30

and 31 of the Banking Regulation Act, 1949, which provide for audit and submission of returns.

It is submitted by Mr. Kar, learned Senior Advocate appearing on behalf of the petitioners, that neither the Government of West Bengal, Finance Department, nor the Additional Registrar of Co-operative Societies, (Urban Credit), West Bengal has any control over the internal management and finances of the petitioner No.1. It is the Reserve Bank of India which has the power to audit and conduct a special audit in respect of the petitioner No.1. It is further urged that when Section 35 of the Banking Regulation Act specifically provides for an inspection by the Reserve Bank of India on a direction by the Central Government of the book of accounts of such banks, in case any anomaly and/or discrepancy is detected, the Co-operation department shall not have any jurisdiction to cause the alleged inspection in terms of Section 99(1)(a) of the West Bengal Co-operative Societies Act in furtherance of a special audit. It is the contention of Mr. Kar that the petitioner No.1 has been singled out on various occasions and there have been instances of interference with its internal control and management by the state respondents. Reliance is also placed on Chapter XIII A of the West Bengal Co-operative Societies Act, 2006, especially Section 134A

and Section 134C thereof. Section 134A states that the provisions of the said chapter has an overriding effect over all provisions of the said Act or Rules or by-laws of a registered society. Section 134C(2) states that the Co-operative Credit Structure Entities shall have autonomy in all financial matters and matters relating to internal administration, which include, internal control system, appointment of auditors and compensation for audit, etc. Mr. Kar draws the attention of the Court to some documents, which have been handed over by the State-respondents. One such being a forwarding letter dated September 25, 2020 by which the audited balance sheet and profit & loss account and audit report of the petitioner No.1 has been submitted before the General Manager, Reserve Bank of India, Department of Co-operative Bank Supervision. Mr. Kar has strongly urged that the documents annexed to the writ petition and also to the bunch handed up by the State-respondents, would indicate that the petitioners have always co-operated with the statutory audit. All compliances have been done and the audit reports have been filed with the Reserve Bank of India. No queries have been raised by the Reserve Bank of India. Accordingly, there was no scope for any further interference or special audit by the State-respondents with respect to the finance

and accounts of the petitioner No.1. Mr. Kar specifically urged that it is only the Reserve Bank of India which has any power of special audit and that too, under special circumstances. According to Mr. Kar, the State-respondents could not independently decide to hold the special audit without reference to the Reserve Bank of India. Even the Memorandum of Understanding provides thus.

The learned Advocate General appears on behalf of the Co-operation Department. He has handed up a bunch of papers before this Court. First, he relies on a Memorandum of Understanding between the Reserve Bank of India and the State of West Bengal represented by the Principal Secretary, Finance Department, Government of West Bengal. In terms of the said Memorandum of Understanding, the State Government and the Reserve Bank of India both reserved the right to have concurrent regulatory powers over all Urban Co-operative Banks (for short UCB). The Memorandum of Understanding also provides that a co-ordination between the State Government and the Reserve Bank of India was essential for the future set up of UCBs and for facilitating proper measures to be adopted in order to make such banks strong and vibrant. The learned Advocate General further submits that the petitioner No.1 is a co-operative society registered under the

West Bengal Co-operative Societies Act, 2006 having the licence to do banking operations. Thus, the State Government would not lose control or the powers conferred upon it under the West Bengal Co-operative Societies Act, 2006 to inspect, regulate and take appropriate measures in order to reform the co-operative banks and ensure proper functioning including prevention of misappropriation, misuse and activities detrimental to the interest of the members of the society and the public. Reliance is also placed on several orders issued by the Government of West Bengal, Co-operation Directorate, appointing auditors to conduct the statutory audit of the said bank since 2016.

Reliance is also placed on a communication dated December 6, 2020 which is a letter written to the Secretary, Contai Co-operative Bank Limited requiring audit compliances which had been identified in the statutory audit report for the year 2019-20. The said letter is at page 10 of the bunch of documents handed over by the State-respondents. Some compliances have also been annexed to the bunch of documents in order to indicate that the Additional Registrar of Co-operative Societies and the Co-operation Directorate have been involved with the statutory audit process of the bank since 2016.

Attention is drawn to page 55 of the writ petition, which is a letter sent by e-mail dated June 17, 2021 by the Assistant Secretary, Finance Department, Government of West Bengal to the bank, indicating that an inspection would be held with regard to the special audit requisitions and the documents stated in the audit requisition memo would be looked into by the concerned authority conducting such inspection.

Mr. S. N. Mukherjee, learned senior advocate appearing on behalf of the Finance Department, submits that the Banking Regulation Act, 1949 was an Act, in addition to and not in derogation of other laws. He submitted that other provisions of audit, re-audit and inspection as provided for in the West Bengal Cooperative Societies Act, 2006 were not overridden by the provisions of the Banking Regulation Act, 1949. He emphasized that the powers exercised by the Reserve Bank of India under the Banking Regulation Act, 1949 in respect of audit/special audit etc. of cooperative banks were in addition to the powers that the State of West Bengal had over these banks through the Finance Department. According to him, even though the Cooperative Societies Act, 2006 did not use the term 'special audit', the State of West Bengal as a regulatory measure retains the power to do any act

that may be necessary to prevent misuse, misappropriation of funds and protect the interest of the investors in such cooperative banks. He also points out to the provisions of Sections 97, 98 and 99 of the West Bengal Cooperative Societies Act, 2006 where the entire procedure of conducting an audit and re-audit, if necessary, of such cooperative societies have been provided for. He submits that special audit would be in the nature of a re-audit which is permitted under the West Bengal Cooperative Societies Act, 2006 and the decision to hold a special audit does not offend the provisions of Chapter XIII A of the West Bengal Cooperative Societies Act, 2006, especially because the records would reveal that since 2016 the statutory auditors have been appointed by the Additional Registrar of Cooperative Societies (Urban Credit), West Bengal.

I have heard the contentions of the respective parties. The records reveal that the Government of West Bengal, Cooperation Directorate has been appointing the statutory auditors in respect of the said banks since 2016. Records also reveal that some audit queries were raised and the petitioners were intimated about the same by letter dated December 6, 2020. By a letter dated June 3, 2021 the Secretary, Contai Cooperative Bank was also informed by the Cooperation Directorate that certain

compliances had not been done by the petitioners and the anomalies had not been rectified. Also, list of compliance to certain audit observations have been handed up. Prima facie, I find that the Co-operation Department and Assistant Registrar of Co-operative societies have all along been connected with the statutory audit.

The Memorandum of Understanding at Clause 2, categorically provides that the State Government would undertake to introduce a long form audit report for statutory audit and modify audit rating models in alignment with the gradation system adopted by the Reserve Bank of India for all UCBs and provide for statutory audit by Chartered Accountants (CAs) appointed in consultation with the Bank for UCBs with deposit over Rs.25 crores and special audit by CAs, if required by the Bank, for any UCB.

The question is whether the special audit should have been undertaken at this juncture. The inspection to be undertaken under Section 99(1)(a) is in response to the audit requisition. Prima facie, it is seen that some audit compliances have been done, and some have not. The audited balance sheets have been deposited with the Reserve Bank of India. The jurisdiction with regard to the special audit shall be decided only upon consideration of the documents to

be filed by the parties by way of an affidavit. The stand of the Reserve Bank of India is also to be taken into account.

However, as it appears that notices of non-compliances as transpired in the statutory audit report had been given to the petitioners and the petitioners had failed to comply with them, which is disputed by the petitioners, this court is inclined to allow the inspection. The inspection shall continue on the basis of the audit requisitions, as mentioned in the letters dated December 6, 2020 and June 3, 2021.

The special audit shall not be conducted without the leave of the court. Special audits are needed when it is suspected that the laws and regulations have been violated in the management of an organization. The reasons for the special audit have not been disclosed in the notice issued to the petitioners. The subjective satisfaction of the Finance Department to hold the special audit in respect of the said bank has to be brought on record. The inspection of the books of accounts other records and documents are allowed. Inspection shall be with regard to the non-compliances which were detected in the statutory audit report for 2019-20 as appearing in letters dated December 6, 2020 and June 3, 2021.

The petitioners shall cooperate with the inspection, produce all documents, books of accounts etc. and answer queries which are raised during such inspection. All defects and non-compliances should be removed and rectified by the petitioners in accordance with law, if called upon to do so. The respondents shall be at liberty to prepare a report and file the same before the appropriate department with a copy to the bank.

Affidavit-in-opposition to be filed within four weeks by all the respondents including RBI. Reply thereto, if any, to be filed within two weeks thereafter. The question of jurisdiction and power of the State Government shall be decided at the final hearing. This order is restricted only to the petitioners.

Liberty to mention.

Parties to act on the basis of a server copy of the order.

(Shampa Sarkar, J.)