

(2005) 106 FLR 52

Bombay High Court

Case No: Writ Petition No. 323 of 2003

Co-operative Bank
Employees" Union

APPELLANT

Vs

Bharat Co-operative
Bank Ltd. and Others

RESPONDENT

Date of Decision: Sept. 13, 2004

Acts Referred:

Banking Companies Act, 1949 " Section 5#Banking Regulation Act, 1949 " Section 2, 3,
36, 5, 56#Bombay Industrial Relations Act, 1946 " Section 2(3)#Companies Act, 1956 " "
Section 3, 5, 591#Industrial Disputes Act, 1947 " Section 2

Citation: (2005) 106 FLR 52

Hon'ble Judges: F.I. Rebello, J

Bench: Single Bench

Advocate: C.U. Singh and M.D. Nagle, for the Appellant; V.C. Pawaskar, for the Respondent

Judgement

F.I. Rebello, J.

The issue which arises in the present petition is, which is the "Appropriate Government" in respect "of the respondent No.

1 Bank, a Multi State Co-operative Bank carrying on business in more than one State.

A few facts now may be set out:

The petitioner Union had filed a complaint being Complaint (ULP) No. 769 of 2002 before the Industrial Court, Maharashtra, under Item 5 of

Schedule II and Items 3, 5, 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. The Respondent No. 1 raised an objection that

M.R.T.U. & P.U.L.P. Act, is not applicable as the appropriate Government in respect of the Bank is the Central Government. It was contended

that as the Respondent No. 1 is a bank engaged in the business of banking and is Banking Company as defined under Clause (c) of Section 5 of

the Banking Companies Act, 1949 which is now known as Banking Regulation Act, 1949. Considering the definition of appropriate Government,

the appropriate Government would be the Central Government.

The respondent No. 1 was initially registered under the provisions of the Maharashtra State Co-operative Societies Act, 1960. The Bank was

subsequently registered under the provisions of the Multi State Co-operative Societies Act, 1984 and is thus a Multi State Co-operative Bank. It

is carrying on business in more than one State. On these pleadings and facts and objection raised by respondent No. 1 Bank that the appropriate

Government is the Central Government found favour with the learned Industrial Court. The Learned Industrial Court on holding that as the

appropriate Government is the Central Government, accordingly held that the complaint could not be entertained and returned back the plaint to

the petitioner for seeking appropriate relief before appropriate forum.

2. At the hearing of this petition on behalf of the petitioner, their learned Counsel contends that the order of the learned Industrial Court suffers

from an error of law apparent on the face of the record. Considering the provisions of the Industrial Disputes Act read with the definition of

banking"" in the Banking Regulation Act, it is pointed out that the appropriate Government is the State Government and not the Central

Government.

3. To decide the issue, let us consider the provisions of the various Acts relevant for discussion to find out who is the appropriate Government for

a Multi State Co-operative Bank carrying on business in more than one State. Section 5 of Banking Regulation Act, 1949, sets out the various

definitions under the Act. u/s 5(c) the expression "banking company", means any company which transacts the business of banking. Section 5(b)

defines banking to mean the accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand of

otherwise, and withdrawable by cheque, draft, order or otherwise. Company u/s 5(d) means any company as defined in Section 5 of the

Companies Act, 1956 and includes a foreign company within the meaning of Section 591 of that Act. Part V came to be introduced in the Banking

Regulation Act by Act 23 of 1965 with effect from 1.3.1966. By Act 61 of 1981, in Section 5, the definition of Co-operative Bank was included

under (CCL) to mean a State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank. We will refer to Sections 2

and 3 and Section 56 of the Banking Regulation Act in the course of discussion.

The Industrial Disputes Act, 1947 thereafter referred to as the Central Act, came into force with effect from 1.4.1947. The definition of

appropriate Government in Section 2(a) came to be amended by Act 54 of 1949 whereby, in respect of Air Transport Service or a Banking

Company or an Insurance Company the Central Government was made the appropriate Government. Banking Company as inserted by Act 54 of

1949 and substituted by Act 38 of 1959 meant amongst others a banking company as defined in Section 5 of the Banking Companies Act, 1949,

having branches or other establishments in more than one State.

We then have the Bombay Industrial Relations Act, 1946 which thereafter shall be referred to as the State Act of which Section 2(3) reads as

under:

In the areas in which the Bombay Industrial Disputes Act, 1938 was in force immediately before the commencement of this Act, this Act shall

Apply to the industries to which the said Act applied:

Provided that this Act shall cease to apply with effect from the date on which the Bombay Industrial Relations (Amendment) Act, 1949, comes

into force, to the Imperial Bank of India and any banking company as defined in Section 5 of the Banking Companies Act, 1949, having branches

or other establishments in more than one State.

There is yet another legislation known as Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971

(hereinafter referred to as MRTU & PULP Act). Section 2(3) of the said Act reads as under:

Except as otherwise hereinafter provided, this Act shall apply to the Industries to which the Bombay Industrial Relations Act, 1946, (Bom. XI of

1947), for the time being applies, and also to any industry as defined in Clause (j) of Section 2 of the Industrial Disputes Act, 1947, (XIV of

1947), and the State Government in relation to any industrial dispute concerning such industry is the appropriate Government under that Act.

The Banking Regulation Act came to be amended with effect from 1.3.1966 by Act of 1965. By that amendment, several amendments, including

Part V were introduced in the Act. The definition of Banking Company was not amended but by an amendment to Section 5, Section 5(oci) was

introduced to define a Co-operative Bank by Act 62 of 1991. By virtue of Part V, provisions of the Banking Regulations Act, 1949 were made

applicable to Co-operative Societies, carrying on Banking subject to the modification set out therein from the date of the amendment. It may be

pointed out that Section 2 of the Banking Regulation Act provides that the provisions of the Banking Regulation Act are in addition to and not save

as hereinafter expressly provided, in derogation of the Companies Act and any other law for the time being in force. What this would mean will be

that if there be a law in force for Co-operative Banks, that law will apply in addition to the provisions of the Banking Regulation Act to the extent

possible. Section 36 of the Banking Regulation Act, is contained in Part V of the Act, which was introduced by Act 23 of 1965 with effect from

(sic) of the Banking Regulation Act for the time being in force are made applicable to the co-operative societies. Section 3 introduced by the same

amendment excluded certain Co-operative Banks and Co-operative Societies except in the manner and to the extent provided in Part V. It may

also be noted that for the purpose of the Act, it may also be mentioned that by virtue of Section 56(a)(i) reference to a Banking Company or the

company or such company throughout the Act shall be construed as reference to a Co-operative Bank.

4. On a reading of the above provisions, on behalf of the petitioner their learned Counsel submits that the reference to Banking Company as made

applicable to Cooperative Banks with effect from 1.3.1966 by Part V of the Banking Regulation Act will not apply to the definition of Banking

Company under the provisions of the Industrial Disputes Act, 1947. It is firstly submitted that the definition of Banking Company as contained in

the Section 5(c) of the Banking Regulation Act, 1949, has not been amended by Act 23 of 1965 or by any other amendment. It is only by virtue of

Section 56, that the provisions of the Banking Regulation Act have been made applicable to Co-operative Banks, which have been defined by the

Act 61 of 1981, by introducing definition of Co-operative Banks in Section 5(cci). Section 3 of the Banking Regulation Act makes it clear that

nothing in the Act applies amongst to Co-operative Institutions, except in the manner and to the extent provided in Part V. Section 56 makes it

clear that the provisions of that Act shall apply to Co-operative Societies as they apply to Banking-Companies. It is there alternatively contended

that at the highest considering the doctrine of referential incorporation, any amendment of the definition of Banking Company in the Industrial

Disputes Act would be in respect of the Banking Company as it stood when the definition of Banking Company was inserted by the Central Act

54 of 1949 and substituted by Act 36 of 1956. Banking Company as included in the definition, of appropriate Government in Section 2(a), can

only refer to the Banking Company as defined in Section 2(bb) of the Industrial Disputes Act and consequently to, the definition of Banking

Company as it stood in the Banking Regulation Act at the time of insertion of the definition of Banking Company by, Act 54 of 1949 and

substituted by Act 36 of 1956. Learned Counsel for that purpose seeks to place reliance on the judgments in the case of Bolani Ores Ltd., , in the

case of Mahindra and Mahindra Ltd. Vs. Union of India (UOI) and Another, , and in the case of Onkarlal Nandlal Vs. State of Rajasthan and

Another, , for the purpose of pointing out the effect of referential incorporation in a statute. Learned Counsel has also placed reliance in the case of

State Bank of Travancore Vs. Mohammed Mohammed Khan, and more specifically to Paragraph 13 of the said judgment to contend that the

appropriate Government as defined in Section 2(a) of the Industrial Disputes Act will not apply to a Cooperative Society carrying on business of

Banking.

On the other hand on behalf of the respondent No. 1, their learned Counsel contends that the award does not suffer from any error of law

apparent on the face of the record. It is submitted that a similar issue had arisen for consideration under the provisions of the State Act. A learned

Single Judge of this Court in the case of Co-operative Bank Employees Union v. Sarasswat Co-operative Bank Ltd. and Ors. 1983 (47) FLR

348, held that in view of the provisions of the Banking Regulation Act, the provisions of the State Act would not apply to a co-operative society,

carrying on the business of banking in more than one State. It is further pointed out that the issue of who constitutes a "Banking Company" under

the provisions of the Banking Regulation Act, 1949 has been answered by a Division Bench of this Court in Shamrao Vithal Co-op. Bank Ltd. and

Ors. v. Star Glass Works and Ors. 2003 (2) Mh.LJ 1. The view taken in the said judgment has been approved by a Full Bench of this Court in

Shri Narendra Kantilal Shah v. Joint Registrar, Co-operative Societies and Ors. in Writ petition No. 6075 of 2002 decided on 12th December,

2003. Reliance is also placed on the judgment of the Division Bench of Gujarat High Court in the case of P.K. Shah Vs. Gujarat Industrial Co-op.

Bank Limited, . It is pointed out that once the provisions of the Banking Regulations Act, 1949 have been made applicable to the Banking

Company, then for the purpose of Central Act also the same meaning will have to be assigned and if so assigned, the appropriate Government

would be the Central Government and consequently the order of the Industrial Court cannot be faulted with.

5. Considering the above, we may now consider the arguments, more so considering the reliance placed on behalf of the respondents on the

judgments of this Court by their learned Counsel. We may first address ourselves to the issue as to, what was in issue and what was held in the

case of *Saraswat Co-op. Bank Ltd.* (supra). The issue was whether pursuant to introduction of the proviso to Section 2(3) by Mah. 22 of 1965,

whether the provisions of the B.I.R. Act would apply to a Banking Company as defined in Section 5 of the Banking Companies Act, now the

Banking Regulation Act having branches or other establishments in more than one State.

Under the State Act as amended, if there was banking company as defined in Section 5 of the Banking Companies Act, 1949 having branches or

departments in more than one State, the State Act would not apply. It was this issue which was in issue before the learned Single Judge. The issue

now advanced before this Court that the definition of Banking Company and also of appropriate Government has to be considered on the date of

referential incorporation by the Act 54 of 1949 in the Industrial Disputes Act and not from the subsequent amendment to the Banking Regulation

Act, 1949 by the Act 23 of 1965 was not in issue. It is no doubt line that the learned Single Judge on the consideration of the provisions of Section

5 of the Banking Regulation Act came to the conclusion that the provisions of the Bombay Industrial Relations Act would not apply considering

that the Bank therein had branches in more than one State. The issue of the provisions of the Industrial Disputes Act, namely appropriate

Government and Banking Company were not in issue and also was not in issue referential incorporation of the definition of Banking Company as

defined in the Banking Regulation Act in the definition of Banking Company under the Industrial Disputes Act. From this it will be clear that a co-

ordinate Bench of this Court was considering an entirely different issue considering the proviso to Section 2(3) of the B.I.R. Act. It is also settled

that what has to be considered is the ratio of the judgment. If the ratio of Saraswat Co-operative Bank is considered the issue now raised was not

in issue. Hence, it is open to consider the argument now advanced and answer it.

In the case of Shamrao Vithal Co-operative Bank Ltd. (supra), the issue before the learned Division Bench was whether the provisions of the

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would apply to a Co-operative Bank carrying on the business of Banking.

The issue before the learned Division Bench was whether considering the definition of Banking Company under the Banking Regulations Act, 1949

the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 would also apply to Co-operative Banks. The learned

Division Bench held considering the amendment by Act 23 of 1965 from 1.3.1996 to Part V that it will also apply to Co-operative Banks. This

judgment for the issues that is sought to be advanced here and secondly as it was dealing with a mechanism of recovery under a different Act

Would be of no assistance to us for the following reasons:

Firstly the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is an Act subsequent to Part V being introduced to the Banking

Regulation Act, with effect from 1.3.1966. Secondly this judgment came for consideration before the Full Bench of this Court in Shri Narendra

Kantilal Shah (supra) which also took a view that Co-operative Banks which are doing business of Banking and advancing loan of more than Rs.

10 lacs, would also be governed by the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In an SLP filed

before the Apex Court against the said judgment, the operation of the said judgment and order has been stayed. At any rate, as pointed out earlier

what we are considering are amendments in the Industrial Disputes Act in the definition of appropriate Government made in the year 1949 and

Banking Company by Act 54 of 1949 and 38 of 1959 and the effect of an amendment made in the Banking Regulation Act by 23 of 1965 from

1.3.1966. One aspect of the judgment of the Division Bench however is important. A finding has been recorded by the Learned Division Bench

that the amendment is by referential incorporation. It may also be Mentioned that the learned Judges judgment of the learned single Judge in

Saraswat Co-operate Bank Ltd. (supra).

The next judgment relied upon is of the learned Division Bench of Gujarat High Court in the case of P.K. Shah (supra). There also the issue was in

respect of the Multi State Co-operative Bank having banking business apart from the State of Gujarat in the Union Territory of Dadra and Nagar

Haveli. The learned Division Bench held that the appropriate Government would be the Central Government. However, we may again note that the

issue canvassed before this Court was neither an issue nor answered by the learned Division Bench of Gujarat High Court. It may, therefore, be

said that the judgment in Saraswat (supra) or for that matter in Shamrao Vithal (supra) can be said to conclude the issue or the view taken in Shri

Narendra Kantilal Shah, (supra) shall also be taken by the Court. It is open for consideration. It is in that context that we must now consider the

arguments advanced.

6. What is the effect of referential incorporation has been the subject matter of several judgments before the Apex Court. In Bolani Ores Ltd.

(supra), referring to incorporation of the definition, the learned Court observed as under:

...to incorporate the definition under the Act as it then existed and not as it may exist from time to time.

(sic)

Where two Acts are complimentary or interconnected, legislation by reference may be an easier method because a definition given in the one Act

may be made to do as the definition in the other Act both of which being enacted by the same legislature.

The Apex Court then referred to with approval, the judgment of Lord Esher, M.R. in *re Wood's Estate* regarding incorporation and quoted the

following passage:

If a subsequent Act brings into itself by reference some of the Clauses of a former Act, the legal effect of that, as has often been held, is to write

those Sections into the new Act just as if they had been actually written in it with the pen or printed in it, and, the moment you have those Clauses

in the later Act, you have no occasion to refer to the former Act at all.

The matter once came up for consideration in *Mahindra & Mahindra (supra)* where the Apex Court noted the distinction between a mere

reference to or citation of one statute in another and Incorporation which in effect means bodily lifting the provisions of one enactment and make it

part of another. Reliance was placed in the judgment of *Bolani and Ors. (supra)* which read as under:

But where a provision of one statute is, incorporated in another the repeal or amendment of the former does not affect the latter. The effect of

incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it. Legislation by incorporation is a

common legislative device employed by the legislature where the legislature for convenience of drafting incorporates provisions from an existing

statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is

made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the

statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporation statute.

In *Omkarlal Nandlal (supra)* adverting to *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, , the Apex Court

noted the following passage:

The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the

earlier Act must thereafter be read and construed (except where that would lead to a repugnancy inconsistency or absurdity) as if the altered

words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the

amending Act at all. This is the rule in England. See Craies on Statute Law, 5th Edition, page 207, it is the law in America; See Crawford on

Statutory Construction, Page 110, and it is the law which the Privy Council applied to India in *Keshorant Poddar v. Nund Lal Mallick*.

It will thus be clear that as in the instant case, the definition of banking company as contained in the Banking Regulation Act, 1949 has been

incorporated in the provisions of the Industrial Disputes Act, 1947 by Act 54 of 1949 and substituted by Act 38 of 1959 and appropriate

Government by Act 54 of 1949. Applying the test of incorporation, the definitions as they stood at the time the aforementioned Amendment Act

came into force will be the applicable definitions. That was much prior in point of time to 1.3.1966 when by Act 23 of 1965, the provisions of the

Banking Regulation Act was amended.

For the appropriate Government to be the Central Government, the following requirements must be met. The Banking Company must be a public

company which transacts the business of banking. Banking has been defined to mean accepting for the purpose of lending or investment, of

deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. The Company has to

be a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), In the instant case, even though respondent No. 1 may be

carrying on banking business, yet it is not a company as defined u/s 5(d) of the Banking Regulation Act, 1949. Therefore, the definition of Banking

Company would not include a Co-operative Bank which is regularised under the provisions of the Maharashtra State Co-operative Societies Act

or for that matter a Bank registered under the provisions of the Multi State Co-operative Societies Act.

7. Yet another important aspect of the matter and which may be referred to is that, Section 5 of the Banking Regulation Act has been amended by

the Amendment Act 23 of 1965. The definition of Co-operative Bank has been introduced by Section 5(cci) to mean a State Co-operative Bank

or Central Cooperative Bank and a Primary Co-operative Bank. By virtue of Section 3 of the Banking Regulation Act again introduced by Act 23

of 1965, nothing in the Act will apply amongst others to a Co-operative Society, except in the manner and to the extent specified in Part V of the

Banking Regulations Act. By virtue of Section 6 of the Banking Regulations Act, 1949, the provisions of the Banking Regulation Act as in force for

the time being are made applicable to Co-operative Societies as they apply to "or in relation to banking companies. By virtue of Section 2 of the

Banking Regulation Act, the provisions of the Act are in addition and not in derogation of any other law for the time being in force. The definition of

Banking Company remains the same as it stood earlier. It has not been amended to include a Co-operative Bank. On the other hand, Co-

operative Bank has been independently defined u/s 5(cci) of the Act by introduction in Part V. From a reading of Section 56 it will be clear that the

extended meaning of the Banking Company is only limited to the provisions of Part V of the Banking Regulation Act, 1949 with effect from

1.3.1966, Those amendments cannot be read into the provisions of the Industrial Disputes Act, 1947.

8. In conclusion for the appropriate Government to be the ""Central Government"" therefore (i) the Bank must be a company incorporated under the

provisions of the Indian Companies Act, (ii) it must carry on the business of banking, and (iii) it must have branches or establishments in more than

one State. The first requirement in the instant case is not met.

For the aforesaid reasons, I am clearly of the opinion that the order of the Industrial Court suffers from an error of law apparent on the face of

record.

9. The impugned order therefore, will have to be set aside and the matter remanded back to the Industrial Court for deciding the matter on merits.

Rule made absolute accordingly. No order as to costs.

On behalf of the respondents, their learned Counsel seeks stay of the order. Considering the question of law involved, order not to be given effect

to for a further period of six weeks from today.