
**Brijlal Modani Vs The State of Maharashtra, The Superintendent of Police,
Deputy Superintendent of Anti Corruption Bureau and The Police Station
Officer**

Criminal Writ Petition No. 729 Of 2006

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Feb. 5, 2008

Acts Referred:

Banking Regulation Act, 1949 " Section 35A, 36, 4, 46A, 56#Companies Act, 1956 " "
Section 617#Constitution of India, 1950 " Article 14, 226, 254(2)#Maharashtra Co-operative
Societies Act, 1960 " Section 103, 149, 161, 166(2), 2#Maharashtra Municipalities Act, 1965
" Section 21#Multi-State Cooperative Societies Act, 2002 " Section 114, 122, 123, 6,
7#Penal Code, 1860 (IPC) " Section 302#Prevention of Corruption Act, 1988 " Section
2#Reserve Bank of India Act, 1934 " Section 17, 18, 18(1)

Hon'ble Judges: P.R. Borkar, J; Naresh H. Patil, J

Bench: Division Bench

Advocate: Shashikumar S. Choudhari and A.N. Irpatgire, for the Appellant; V.B. Ghatge,
Additional Public Prosecutor for Respondents Nos. 1 to 4, for the Respondent

Final Decision: Allowed

Judgement

Naresh H. Patil, J.

The petitioner questions legality and maintainability of communication dated 10th November 2006 (Exhibit P-3) and

communication dated 21st November 2006 (Exhibit P-5) made by the Deputy Superintendent of Anti Corruption Bureau,
Osmanabad.

2. Briefly stated, the facts are:

3. According to the petitioner, he served in different capacities with the Osmanabad Janta Sahakari Bank Limited Osmanabad (for
short, "the

Bank") since 1972. As he completed 58 years of age he retired from the services of the Bank on or about 2nd June 2004. The
Managing

Committee of the Bank extended the services of the petitioner by two years. The petitioner would have retired on or about 2nd
June 2006 after

getting extension. But he was suffering from severe diabetes he requested the Managing Committee of the Bank to retire him after completion of

one year of his extended period. Consequently, he retired from the serves of the Bank on or about 10th June 2005 and since then the petitioner is

not in service of the Bank.

4. Initially, the petitioner was appointed as Accountant in the Bank in the year 1972. He was promoted to the post of the Manager of the Bank on

or about 18th June 1981 and was later on designated as General Manager of the Bank. He worked in that capacity till his retirement. According to

the petitioner, he worked in the capacity of the General Manager under the control and supervision of the Managing Director of the Bank. The

General Manager was not entitled to attend the meetings of the Managing Committee of the Bank. The General Manager of the Bank had no

authority, power or jurisdiction to sanction loans.

5. The petitioner contends that the Bank was registered in accordance with the provisions contained in the Cooperative Act 1912 on or about 3rd

September 1933. In accordance with the provisions of Section 166(2) of the Maharashtra Cooperative Societies Act, 1960 (for short, ""the Act of

1960"" the Bank was deemed to have been registered in accordance with the provisions of the Act of 1960. The area of operation of the Bank

consisted of Osmanabad District, Beed District, Latur District and Solapur District. The Bank is a Banking Cooperative Society within the meaning

of Sub-section (10) of Section 2 of the Act, 1960. The Managing Committee of the Bank had taken a decision to extend the area of operation

beyond these Districts to Bidar District in Karnataka State in or about the year 1999. The Bank had submitted appropriate application before the

Central Registrar for its registration in accordance with the provisions of Sections 6 and 7 of the Multi State Cooperative Societies Act, 2002 (for

short, ""the Act of 2002""). Accordingly the Bank was registered by the Central Registrar on 12th July 2000. The registration certificate is bearing

No. MHCS/CR/106/12.7.2000. According to the petitioner, since 12th July 2000 the Bank is governed by the provisions of the Act of 2002.

6. The petitioner contends that the Bank had framed certain rules laying down service conditions in respect of its employees. The supervision and

control over the employees of the bank is of the Managing Committee. The petitioner in the capacity of the General Manager was directly under

the supervision and control of the Managing Committee of the Bank. He was appointed by the Managing Committee. The petitioner specifically

contended that he could not have been appointed, removed or dismissed either by the State Government or the Central Government or any other

authority constituted or appointed by the State or Central Government. The salary of the petitioner was being paid from the corpus of the bank.

There is no direct or indirect supervision or control of the Central or State Government on the functioning of the Bank or its employees.

7. The petitioner contends that the petitioner received a notice signed by the Deputy Superintendent of Police, Anti Corruption Bureau Osmanabad

on 11th January 2001. The petitioner was asked to give details in respect of acquisition of property by him. The petitioner submitted his reply on

or about 15th February 2001 to the Deputy Superintendent of Anti Corruption Bureau, Osmanabad. The petitioner took a stand that the

provisions of the Prevention of Corruption Act 1988 could not be made applicable to the petitioner as the petitioner is not a public servant.

According to the petitioner, the word ""Public Servant"" has been defined in Sub-section (c) of Section 2 of the Prevention of Corruption Act 1988.

The petitioner relied on Sub-section (ix) of Section 2(c) of the Prevention of Corruption Act. According to the petitioner he cannot be treated as a

Public Servant even within the meaning of Section 21 of the Indian Penal Code. After petitioner submitted his reply to the Deputy Superintendent of

Police, Anti Corruption Bureau Osmanabad no further steps were taken by the authorities concerned nor the petitioner was called for the purpose

of enquiry. The petitioner therefore presumed that the proceedings were dropped.

8. The petitioner thereafter received two communications dated 10th November 2006 and 19th November 2006 from the Deputy Superintendent

of Police, Anti Corruption Bureau Osmanabad asking the petitioner to attend to the enquiry in which his statement was to be recorded in respect

of the properties and expenditure of the petitioner. The petitioner was directed to attend the enquiry proceedings on 20th November 2006 at 10

a.m. The petitioner submitted his reply on 21st November 2006. The petitioner received another notice dated 21st November 2006 wherein it

was informed that inquiry in respect of the property acquired by him was being made and he should remain present on 27th November 2006. The

petitioner has annexed copies of these communications with the petition.

9. The petitioner submitted his reply on 27th November 2006. The petitioner thereafter decided to challenge these two communications under

Articles 14 and 226 of the Constitution of India.

10. In response to the notice issued, the Anti Corruption Bureau filed affidavit-in-reply on 20-12-2006 and further additional affidavit-in-reply on

15-2-2007. Affidavit-in-Rejoinder was filed by the petitioner on 5th March 2007.

11. The respondent - Anti Corruption Bureau contended that the petitioner comes under the purview of Public Servant as per Section 2(c)(iii) and

(ix) of the Prevention of Corruption Act 1988. Reliance is also placed by the respondent on some reported judgments of the Apex Court. A

further objection was raised by the respondent that the petition is premature and challenge to the notice is not maintainable by way of a writ

petition.

12. Respondent No. 3 in his additional affidavit-in-reply contended that the Bank is governed by the provisions of the Act of 2002. The Bank was

initially registered in the year 1933 and later on by the provision of the Act of 1960. Thereafter the Bank got registration as a Multi State

Cooperative Bank on 12th July 2000. It is contended that the Multi State Cooperative Bank Act 1984 came to be repealed by the Act of 2002.

The respondent has also referred to the provisions of Section 56 of the Banking Regulation Act 1949 and submitted that in view of the amendment

to Section 56 of the said Act the provisions of the said Act were also made applicable to the cooperative banks. In the contention of respondent

No. 3 as per the provisions of the Banking Regulation Act 1949 the Reserve Bank of India has direct control and supervision over the functioning

of the cooperative banks. The provisions of Section 35A and 36 of the Banking Regulation Act 1949 were relied upon by respondent No. 3 to

highlight the nature of direct control of the Reserve Bank of India over the functioning of cooperative banks. In the contention of the respondent

No. 3 the term ""Public Servant"" is defined u/s 21 of the Indian Penal code. The scope of the said term has been further expanded by Section 2(c)

of the Prevention of Corruption Act 1988 and Section 46A of the Banking Regulation Act. It is further contended that the Bank is having 30

branches in the States of Maharashtra and Karnataka. According to respondent No. 3, as per Sections 122 and 123 of the Multi State

cooperative Societies Act 2002 the Central Government has powers to give directions to the Multi State Cooperative Bank in public interest.

13. We have considered the submissions of the learned Counsel appearing for the parties. Before addressing to the issues raised in the petition we

would refer to some of the necessary provisions of different enactments for proper appreciation of the issues raised in the petition.

14. Section 161 of the Maharashtra Cooperative Societies Act, 1960 reads as under:

161. Registrar and other officers to be public servants. The Registrar, a person exercising the powers of the Registrar, an officer as defined in

Clause (20) of Section 2, or a person appointed as an Official Assignee under Sub-section (2) of Section 21A, or as an administrator u/s 77A or

78, or a person authorised to seize books, records of funds of a society under Sub-section (3) of Section 80, or to audit the accounts of a society

u/s 81 or to hold an inquiry u/s 83, or to make an inspection u/s 84, or 89A or to make an order u/s 88 or a person appointed as a member

constituting a Cooperative Court u/s 91A or the Cooperative Appellate Court u/s 149 or a Liquidator u/s 103, shall be deemed to be public

servants within the meaning of Section 21 of the Indian Penal Code.

Section 114 of the Multi-State Cooperative Societies Act, 2002 reads as under:

114. Liquidator to be public servant. Any person appointed as liquidator under the provisions of this Act shall be deemed to be a public servant

within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

The provisions of Section 2 (c)(iii) and (ix) of the Prevention of Corruption Act 1988 are as under:

2. Definitions.--In this Act, unless the context otherwise requires,-

(a) ...

(b) ...

(c) "public servant", means,-

(i) ...

(ii) ...

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned

or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956).

(iv) ...

(v) ...

(vi) ...

(vii) ...

(viii) ...

(ix) any person who is the president, secretary or other office-bearer of a registered cooperative society engaged in agriculture, industry, trade or

banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by

or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company

as defined in Section 617 of the Companies Act, 1956 (1 of 1956). The provisions of Section 35A and Section 36 of the Banking Regulation Act,

1949 are as under:

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.

36. Further powers and functions of Reserve Banks.--(1) The Reserve Bank may -

(a) caution or prohibit banking companies generally or any banking company in particular against entering into any particular transaction or class of

transactions, and generally give advice to any banking company;

(b) on a request by the companies concerned and subject to the provisions of Section 44A, assist, as intermediary or otherwise, in proposals for

the amalgamation of such banking companies;

(c) give assistance to any banking company by means of the grant of a loan or advance to it under Clause (3) of Sub-section (1) of Section 18 of

the Reserve Bank of India Act, 1934 (2 of 1934);

(d) at any time, if it is satisfied that in the public interest or in the interest of banking policy or for preventing the affairs of the banking company

being conducted in a manner detrimental to the interests of the banking company or its depositors it is necessary so to do, by order in writing and

on such terms and conditions as may be specified therein-

(i) require the banking company to call a meeting of its directors for the purpose of considering any matter relating to or arising out of the affairs of

the banking company; or require an officer of the banking company to discuss any such matter with an officer of the Reserve Bank;

(ii) depute one more of its officers to which the proceedings at any meeting of the Board of directors of the banking company or of any committee

or of any other body constituted by it; require the banking company to give an opportunity to the officers so deputed to be heard at such meetings

and also require such officers to send a report of such proceedings to the Reserve Bank;

(iii) require the Board of directors of the banking company or any committee or any other body constituted by it; to give in writing to any officer

specified by the Reserve Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board,

committee or other body constituted by it;

(iv) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its offices or branches are being

conducted and make a report thereon;

(v) require the banking company to make, within such time as may be specified in the order, such changes in the management as the Reserve Bank

may consider necessary.

(2) The Reserve Bank shall make an annual report to the Central Government on the trend and progress of banking in the country, with particular

reference to its activities under Clause (2) of Section 17 of the Reserve Bank of India Act, 1934 (2 of 1934), including in such report its

suggestions, if any, for the strengthening of banking business throughout the country.

(3) The Reserve Bank may appoint such staff at such places as it considers necessary for the scrutiny of the returns, statements and information

furnished by banking companies under this Act, and generally to ensure the efficient performance of its functions under this Act.

15. Learned Counsel appearing for the petitioner, Shri. Shashikumar Choudhari submitted that there is absolutely no control of the State

Government or the Central Government or any other authority over the functioning of the Bank much less the control over the service conditions of

its employees. Considering the petitioner's designation and the nature of duties attached to the post of General Manager he cannot be termed as a

public servant for applying the provisions of the Prevention of Corruption Act 1988. Respondent No. 3 misdirected himself in issuing notice who

had no jurisdiction and power to do so. In these circumstances it was not necessary for the petitioner to wait till the outcome of the hearing of the

inquiry. The petitioner was entitled to challenge the notice, the foundation of the same being without jurisdiction. The learned Counsel placed

reliance on number of authorities to support his contentions that in absence of any control, substantive, pervasive or of any nature, by the State or

Central Government or any other authorities of the State Government or the Central Government governing the service conditions and the

management of the bank, the impugned notice could not be issued. The Bank was not constituted under any statute nor it is creature of a statute,

according to the learned Counsel.

16. We have considered the provisions of the different enactments for ascertaining whether the State Government or Central Government or its

authority control the functioning or the management of the Bank and even govern the service conditions of its employees. Section 2(c) of the

Prevention of Corruption Act 1988 defines "public servant". We are concerned with Clauses (iii) and (ix) of the said section. While considering the

provisions contained in Clause (iii) of Section 2(c) we find that the Bank was not established by or under a Central or State Act or by an authority

or a body owned or controlled or aided by the State or Central Government. It is even not a Government company as defined in Section 617 of

the Companies Act, 1956. While considering the provisions of Section 2(c) (ix) we find that the Bank does not receive any financial aid from the

Central or State Government. We had even enquired with the learned Additional Public Prosecutor, who was instructed by the officers, to place

before this Court any evidence, in case it is there, to the effect that the Bank was provided with financial aid by the Government or its authority or

Corporation established by the Government. The learned A.P.P. stated that there is no such evidence brought to his notice that the Bank was

getting financial aid.

17. The provisions of Section 35A and 36 of the Banking Regulation Act 1949 were referred to by respondent No. 3 to support contentions that

the Reserve Bank of India has powers to issue directions which would amount to having control over the functioning of the Bank. Reference was

also made to the provisions of Section 56 of the Act of 1949 which speak that the provisions of the Act of 1949 would apply to any cooperative

society as they apply to banking companies subject to the modifications enumerated thereunder.

18. We have perused the bye-laws of the Bank registered as a Multi-State Cooperative Society. Bye law No. 21 says that the final authority of

the society shall vest in the General Body. The Board of the Bank would convene annual general meeting for the purposes of taking decisions on

various issues. Bye-Law No. 55 refers to the service rules. The Bank shall have service rules for regulating the service conditions of its employees

as formulated and amended by the Board from time to time. The Bank shall maintain a Contributory Provident Fund for the benefit of its

employees in accordance with the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952.

19. In the light of the provisions as afore mentioned we have considered the provisions of the Banking Regulation Act 1949. It is true that u/s 56 of

the Banking Regulation Act 1949 it is specified that the provisions of the Act would apply to the cooperative societies subject to modifications.

Clauses (ccii-a) and (cciii-a) of Section 56 read as under:

56.(ccii-a) ""co-operative society"" means a society registered or deemed to have been registered under any Central Act for the time being in force

relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force.

(cciii-a) ""multi-State co-operative bank"" means a multi-State co-operative society which is a primary co-operative bank.

20. In accordance with the provisions of Sub-section (2) of Section 38 of the Act of 2002 subject to the provisions of the said Act, the rules and

the bye-laws, the ultimate authority of a multi-State co-operative society shall vest in the general body of its members. The subjects to be

considered in the annual general meeting of generally body are enumerated in Section 39 of the Act. The procedure for electing Board of directors

is mentioned in Section 41. Members of the General Body would be removed by the general body in accordance with the provisions contained in

Section 47 of the Act. The powers and functions of the Board are mentioned and described in Section 49 of the Act which reads as under:

49. Powers and functions of board.--(1) The board may exercise all such powers as may be necessary or expedient for the purpose of carrying

out its functions under this Act. (2) Without prejudice to the generality of the foregoing powers, such powers shall include the power -

(a) to admit members;

(b) to interpret the organisational objectives and set-up specific goals to be achieved towards these objectives;

(c) to make periodic appraisal of operations;

(d) to appoint and remove a Chief Executive and such other employees of the society as are not required to be appointed by the Chief Executive;

(e) to make provisions for regulating the appointment of employees of the multi-State co-operative society and the scales of pay, allowances and

other conditions of service of, including disciplinary action against such employees;

(f) to place the annual report, annual financial statements, annual plan and budget for the approval of the general body;

(g) to consider audit and compliance report and place the same before the general body;

(h) to acquire or dispose of immovable property;

(i) to review membership in other co-operatives;

(j) to approve annual and supplementary budget;

(k) to raise funds;

(l) to sanction loans to the members; and

(m) to take such other measures or to do such other acts as may be prescribed or required under this Act or the bye-laws or as may be delegated

by the general body.

21. The question, therefore, would be as to whether the provisions of the Banking Regulation Act which were introduced by the Banking

Regulation (Amendment) and Miscellaneous Provisions Act, 2004 (24 of 2004) amending some of the provisions bringing into its sweep regulating

control over societies which transact banking business, are attracted in the case in hand. Perusal of the Banking Regulation Act 1949 indicates that

the Reserve Bank of India exercises regulatory control and power of supersession of Board of directors of multi-State co-operative bank, grant

of licence to start multi-State cooperative bank, to lay down policy of grant of loan, recovery of loan amounts, implementation of Deposit

Insurance and Credit Guarantee scheme under the Deposit Insurance and Credit Guarantee Corporation Act 1961, winding up of the bank etc. It

needs to be considered as to whether these powers enumerated under the Banking Regulation Act 1949 to be exercised by the Reserve Bank of

India operate as deep and pervasive control of the Bank so as to treat the persons working in the capacity of president, secretary or other office

bearers like General Manager, Manager to be public servants for the purpose of application of the Prevention of Corruption Act 1988.

22. The learned Counsel appearing for the petitioner Shri. Choudhari has placed reliance on the following reported judgments.

In S.S. Rana Vs. Registrar, Co-operative Societies and Another, . In the facts of the case the Apex Court observed in paragraphs 10,11 and 12

thus:

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive

control. The State furthermore is not the majority shareholder. The State has the power only to nominate one director. It cannot, thus, be said that

the State exercises any functional control over the affairs of the Society in the sense that the majority directors are nominated by the State. For

arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be

considered, namely: (1) How the society was created?;

(2) Whether it enjoys any monopoly character;

(3) Do the functions of the Society partake to statutory functions or public functions?; and (4) Can it be characterized as public Authority?

11. The respondent No. 1 - Society does not answer any of the afore-mentioned tests. In the case of a non-statutory society, the control there

over would mean that the same satisfies the tests laid down by this Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, .

(See *Zoroastrian Co-operative Housing Society Limited and Another Vs. District Registrar Co-operative Societies (Urban) and Others*, .]

12. It is well settled that general regulations under an Act, like Companies Act or the Co-operative Societies Act, would not render the activities of

a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning

of the Society and the State or statutory authorities would have nothing to do with its day-to-day functions.

In *State of Maharashtra Vs. Laljit Rajshi Shah and Others*, the Apex Court in para 6 observed thus:

6. In view of the rival submissions at the Bar, the sole question that arises for consideration is, as to what is the effect of Maharashtra Co-operative

Societies Act in interpreting the provisions of Sects 21 of the Indian Penal Code. It is undoubtedly true that the Co-operative Societies Act has

been enacted by the State Legislature and their powers to make such legislation is derived from Entry 32 of List II of the Seventh Schedule to the

Constitution. The legislature no doubt in Section 161 has referred to the provisions of Section 21 of the Indian Penal Code but such reference

would not make the officers concerned "public servants" within the ambit of Section 21. The State Legislature had the powers to amend Section

21 of the Indian Penal Code, the same being referable to a legislation under Entry 1 of List III of the Seventh Schedule, subject to Article 254(2)

of the Constitution as, otherwise, inclusion of the persons who are "public servants" u/s 161 of the Co-operative Societies Act would be repugnant

to the definition of "public servant" u/s 21 of the Indian Penal Code. That not having been done, it is difficult to accept the contention of the learned

Counsel, appearing for the State that by virtue of deeming definition in Section 161 of the Co-operative Societies Act by reference to Section 21

of the Indian Penal Code, the persons concerned could be prosecuted for the offences under the Indian Penal Code. The Indian Penal Code and

the Maharashtra Co-operative Societies Act are not Statutes in pari materia. The Co-operative Societies Act is a completely self-contained

Statute with its own provisions and has created specific offences quite different from the offences in the Indian Penal Code. Both Statutes have

different objects and created offences with separate ingredients. They cannot thus be taken to be Statutes in pari materia, so as to form one

system. This being the position, even though the Legislatures had incorporated the provisions of Section 21 of the Indian Penal Code into Co-

operative Societies Act, in order to define a "public servant" but those "public servants" cannot be prosecuted for having committed the offence

under the Indian Penal Code. It is a well known principle of construction that in interpreting a provision creating a legal fiction, the Court is to

ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are

incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for

which it is created, or beyond the language of the Section by which it is created. A legal fiction in terms enacted for the purposes of one Act is

normally restricted to that Act and cannot be extended to cover another Act. When the State Legislatures make the Registrar, a person exercising

the power of the Registrar, a person authorised to audit the accounts of a society u/s 81 or a person to hold an inquiry u/s 83 or to make an

inspection u/s 84 and a person appointed as an Administrator u/s 78 or as a Liquidator u/s 103 shall be deemed to be "public servants" within the

meaning of Section 21 of the Indian Penal Code. Obviously, they would not otherwise come within the ambit of Section 21, the legislative intent is

clear that a specific category of officers while exercising powers under specific sections have by legal fiction become "public servant" and it is only

for the purposes of the Co-operative Societies Act. That by itself does not make those persons "public servants" under the Indian Penal Code, so

as to be prosecuted for having committed the offence under the Penal Code. When a person is ""deemed to be"" something, the only meaning

possible is that whereas he is not in reality that something, the act of legislature requires him to be treated as if obviously for the purposes of the

said Act and not otherwise. In a somewhat similar situation in Ramesh Balkrishna Kulkarni Vs. State of Maharashtra, , the question for

consideration was whether a Municipal Councillor can be prosecuted for having committed an offence under the Indian Penal Code, since u/s 302

of the Municipalities Act, a Councillor shall be deemed to be a "public servant" within the meaning of Section 21 of the Indian Penal Code. Section

302 of the Maharashtra Municipalities Act, 1965 is quoted hereinbelow in extenso:

302. Every councillor and every officer or servant of a Council, every contractor or agent appointed by it for the collection of any tax and every

person employed by such contractor or agent for the collection of such tax, shall be deemed to be a public servant within the meaning of Section

21 of the Indian Penal Code.

In Federal Bank Ltd. Vs. Sagar Thomas and Others, in paragraphs 28 and 31 the Apex Court observed thus:

28. There are a number of such companies carrying on the profession of banking. There is nothing which can be said to be close to the

governmental functions. It is an old profession in one form or the other carried on by individuals or by a group of them. Losses incurred in the

business are theirs as well as the profits. Any business or commercial activity, may be banking, manufacturing units or related to any other kind of

business generating resources, employment, production and resulting in circulation of money are no doubt, are such which do have impact on the

economy of the country in general. But such activities cannot be classified one falling in the category of discharging duties, functions of public

nature. Thus the case does not fall in the fifth category of cases enumerated in the case of *Ajay Hasia* (supra). Again we find that the activity which

is carried on by the appellant is not one which may have been earlier carried on by the Government and transferred to the appellant company. For

the sake of argument even if it may be assumed that one or the other test as provided in the case of *Ajay Hasia* (supra) may be attracted that by

itself would not be sufficient to hold that it is an agency of the State or a company carrying on the functions of public nature. In this connection,

observations made in the case of *Pradeep Kumar Biswas* (supra) quoted earlier would also be relevant.

31. Merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or

sound economic growth having due regard to the interests of the depositors etc. as provided u/s 5(c)(a) of the Banking Regulation Act does not

mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These

are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these

provisions failing which certain consequences follow as indicated in the Act itself. Provision regarding acquisition of a banking company by the

Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now judicially accepted

norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party

whose property is acquired is performing or discharging any function or duty of public character though it would be so for acquiring authority.

23. So far as the Bank is concerned, the Central Government has not purchased any share of the Bank. It is argued by the learned A.P.P. that the

power conferred on the Reserve Bank of India and the Central Registrar under the provisions of the Banking Regulation Act are sufficient proof to

arrive at conclusion that the functioning of the Bank is regulated and controlled by the Reserve Bank of India. We do not accept the proposition

advanced by the learned A.P.P. It is settled position that general regulations under an Act, like the Companies Act or Cooperative Societies Act,

would not render the activities of a company or a society as subject to control of the State. Whatever control exercised by the Government or its

authorities under the provisions of the Act are meant to ensure proper functioning of the society. The Government or in this case the Reserve Bank

of India or any other statutory authorities have no role to play in day-to-day functioning of the societies / banks much less exercise control over the

recruitment of the staff, its service conditions etc. Considering the provisions of the different enactments more particularly the provisions of the

Banking Regulation Act 1949, we are of the view that the Reserve Bank of India or the Government or its authorises do not exercise any direct,

deep and pervasive control over the functioning of the Bank.

24. 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 Apex Court in para 15 observed that:

The power to regulate, supersede, order moratorium, amalgamation or winding are extricable only be in respect of a cooperative bank. Such

power cannot be exercised in respect of any co-operative society which is not a co-operative bank. Far from supporting the case now sought to

be made but, this shows that it is only a cooperative bank which can be licensed and then controlled by RBI.

25. The learned Additional Public Prosecutor appearing for the State has placed reliance on the case of Govt. of Andhra Pradesh v. P. Venku

Reddy AIR2002 SCW 3895. In the facts of the said case, there was no dispute that the respondent accused was in service of a Co-operative

Central Bank which is an "authority or body" controlled and aided by the government. In the light of the said facts, it was observed in paragraphs

12 and 13 thus:

12. In construing definition of "public servant" in Clause (c) of Section 2 of the 1988 Act, the Court is required to adopt a purposive approach as

would give effect to the intention of legislature. In that view Statement of Objects and Reasons contained in the Bill leading to the passing of the

Act can be taken of assistance of. It gives the background in which the legislation was enacted. The present Act, with much wider definition of

"public servant", was brought in force to purify public administration. When the legislature has used such comprehensive definition of "public

servant" to achieve the purpose of punishing and curbing growing corruption in government and semi-government departments, it would be

appropriate not to limit the contents of definition Clause by construction which would be against the spirit of the statute. The definition of "public

servant", therefore, deserves a wide construction. (See State of Madhya Pradesh v. Shri Ram Singh AIR 2000 SC 575.

13. As a matter of fact, we find that the point arising before us on the definition of "public servant" that it does include employee of a banking co-

operative society which is "controlled or aided by the government" is clearly covered against the respondent/accused by the judgment in the case

of State of Maharashtra and Anr. v. Prabhakar Rao and Anr. JT 2002 (1) Supp (SC) 5.

The ratio of the judgment in the case of P. Venku Reddy (cited supra) does not apply to the facts of the case as the present Bank does not receive

aid from the State or Central Government nor it is controlled by the Government or a Government company.

26. The learned APP further submitted that the petitioner could raise all these issues before the authority in response to the notice issued. The

petition is premature and the petitioner is not entitled to challenge the notice in exercise of writ jurisdiction of this Court.

27. We find that in the present case the petitioner has questioned the jurisdiction of respondent No. 3 to issue notice for enquiring about the

property of the petitioner in exercise of powers conferred under the provisions of the Prevention of Corruption Act. There is no dispute on this

point. This is not a case where the police machinery while exercising powers under the Code of Criminal Procedure in connection with a penal

offence has initiated some proceedings against the petitioner. We are of the opinion that the petition would be maintainable in the facts of the case

and the issues raised therein. Respondent No. 3 has put forth his stand by way of affidavits-in-reply. Therefore it would not be reasonable and

proper now to relegate the petitioner to alternative forum by asking him to appear before respondent No. 3 and agitate the same issues.

28. We are, therefore, of the opinion that the petitioner who discharged his duties as General Manager could not be termed as a "public servant" as

defined in the Prevention of Corruption Act, 1988. Under the provisions of the Banking Regulation Act 1949 the Central Government or any

authority of the Government, the Reserve Bank of India exercise regulatory control over the Bank which is registered under the multi-State

Cooperative Societies Act. The said control exercised by these authorities would not be termed as deep and pervasive one. The day to day

activities, the internal management are not at all governed and controlled by the Government or its authorities. The Bank is not aided one or funded

in any manner by the Government or its authorities. The service conditions of its employees are not regulated by the State or the Central

Government or its authorities. Respondent No. 3 is, therefore, not competent to initiate action under the provisions of the Prevention Corruption

Act against the petitioner. The impugned, notices issued to the petitioner by the respondent No. 3 are without jurisdiction and null and void. The

notices are required to be quashed and set aside.

29. For the reasons stated above, the petition is allowed. The communication dated 10th November 2006 (Exhibit P3) and the communication

dated 21st November 2006 (Exhibit P5) issued by the Deputy Superintendent of Police, Anti Corruption Bureau Osmanabad to the petitioner are

quashed and set aside. Rule is made absolute in the above terms. No costs.