

(2004) 07 CAL CK 0057

Calcutta High Court

Case No: F.M.A. No. 274 of 2002

State of West Bengal and Others

APPELLANT

Vs

Hooghly District Central
Co-operative Bank Ltd. and
Another

RESPONDENT

Date of Decision: July 28, 2004

Citation: (2005) 4 CHN 483

Hon'ble Judges: Rajendra Nath Sinha, J; D.K. Seth, J

Bench: Division Bench

Advocate: Milan Bhattacharya and Daisy Basu, for the Appellant; Asit Kumar Chakraborty, for Tamluk Ghatal Central Co-op Bank Ltd. and Burdwan Central Co-op Bank Ltd., Anupam Chatterjee and Sudip Das, for the Respondent

Judgement

D.K. Seth, J.

The learned Single Judge was pleased to hold that a nominal member is exempted from payment of stamp-duty by virtue of the circular issued by the State Government, which is at page 91 of the Paper Book.

2. Mr. Bhattacharya, the learned Counsel appearing for the appellants, contends that by reason of Section 60 Sub-section (2), exemption is permissible only in respect of the members of the co-operative society on instruments executed by such member in favour of the co-operative society and a nominal member is not a member within the definition of Section 2(28) of the West Bengal Co-operative Societies Act, 1983 and he cannot enjoy any right or privilege by reason of Section 69(3), particularly, in view of the by-laws of the society which denies the privilege to a nominal member. Mr. Bhattacharya also relied on the Memo No. 4755 dated 29th of December, 1999, Memo No. 1485 dated 28th of February, 2000 and Memo No. 3893 dated 13th of October, 2000 wherefrom he points out that a nominal member is not exempted from payment of stamp-duty on the document executed by him in favour of the co-operative societies.

3. Mr. Chatterjee, the learned Counsel for the respondents, on the other hand, points out that a nominal member is as good a member subject to Section 69(3) as defined u/s 2(28) of the Act and that Section 60 Sub-section (2) of the Act does not exclude nominal members since Sub-section (2) of Section 60 uses the expression "member" without any qualification which has to be read according to the definition thereof. Any circular or correspondence, issued by the executives, contrary to the provisions contained in the statute cannot supersede the statutory provisions. When the power is conferred upon the State, unless specifically excluded, the nominal members cannot be denied of their rights if they come within the definition of "Member" and they are not otherwise exempted by reason of Section 69(3) of the Act. Therefore, according to Mr. Chatterjee, the learned Single Judge was right in holding that the nominal member was also exempted under the Circular dated 15th of November, 1995.

4. We have heard the respective Counsel at length. We have gone through the materials placed before us and considered the relevant provisions which we propose to quote hereunder in the order to appreciate the question raised:

"Section 2(28)--"member" means a person joining in an application for registration of a co-operative society or a person admitted to the membership of a co-operative society after registration in accordance with the provisions of this Act and the rules and the by-laws made thereunder, and includes a joint member and, subject to the provisions of Sub-section (3) of Section 69 a nominal member.

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Section 60(2)--The State Government may, by notification, remit--

(a) the stamp-duty (other than the stamp-duty falling within the entry 91 or entry 96 of List 1 of the Seventh Schedule to the Constitution of India) in respect of any instrument executed by, or on behalf of, or in favour of any co-operative society or a class of co-operative societies or an officer or member thereof and relating to the business of such cooperative society or such class of co-operative societies in cases where but for such remission such co-operative society or class of co-operative societies or the officer or member thereof would have been liable to pay the stamp-duty chargeable under any law for the time being in force in respect of such instrument;

(b) any fee payable by a co-operative society or a class of co-operative societies (or a member of a co-operative society) under any law for the time being in force for the registration of any document.

Section 69(3)--Notwithstanding anything to the contrary contained elsewhere in this Act, a co-operative society may, in its interest, admit any person as a nominal member who shall not be entitled to any share in any form in the assets or profits of the co-operative society and shall not be eligible to be elected as a Director of the

Board and shall have no right to attend the general meeting of the co-operative society but shall have such rights and privileges and shall be subject to such liabilities of a member as may be specified in the by-laws."

5. A combined reading of these three provisions makes it clear that the definition of "member" u/s 2(28) of the Act includes a "nominal member" but subject to the provisions of Sub-section (3) of Section 69 in Clause (b). Section 69(3) provides that a nominal member shall not be entitled to any share in any form in the assets or profits of the co-operative society and shall not be eligible to be elected as Director of the Board and shall have no right to attend the general meeting of the co-operative society but shall have such rights and privileges and shall be subject to such liabilities of a member, as may be specified in the by-laws. Thus, it is clear that nominal member's privilege with regard to share in the assets or profits of the co-operative society, being eligible to be elected as Director of the Board or attending general meeting are denied; but he is conferred with all other rights and privileges including liabilities of the members as specified in the by-laws.

6. Now it is sought to be contended relying on the by-laws of this particular society, being Clause 8(B), that a nominal member shall not have any other privilege enjoyed by the member of the Bank. But this expression follows the expression "The nominal member shall have no right to hold any share of the Bank or participation in the General Meeting of the Bank or any other privilege enjoyed by the members of the Bank". Therefore, this phrase has to be read in consonance with the preceding phrase. The other privileges meant therein relates to the privilege of attending general meeting and to be eligible for being elected as Director of the Board. This phrase cannot have any other meaning since it would then be contrary to the concept of the nominal member as contained in Section 69(3) of the Act which restricts the rights and liabilities of a nominal member only to the extent that he shall not be entitled to any share in the assets or profits, he shall not be eligible to be elected as a Director and shall have no right to attend the general meeting. Therefore, we cannot interpret the by-laws as interpreted by Mr. Bhattacharya, contrary to the provisions contained in the Act itself. If there is a conflict between by-laws and the Act, in that event, the Act will prevail.

7. Section 60(2) of the Act empowers the Government to remit payment of stamp-duty on any instrument executed by or on behalf of or in favour of the co-operative society or its member. In the present case, it is an instrument executed in favour of the member of the co-operative society, therefore, the exemption allowed is applicable to a member. Unless we hold that a nominal member cannot be included within the expression "member" used in Section 60(2) of the Act then only we can agree with the proposition advanced by Mr. Bhattacharya. The word "member" used in Sub-section (2) of Section 60 has not been qualified. Therefore, we cannot exclude a nominal member from the expression "member" used in Clause (a) or (b) of Section 60(2) of the Act, as the case may be. Since by reason of

Section 69(3), a nominal member is also entitled to enjoy all other privileges except those mentioned in Sub-section (3) of Section 69, namely, holding share, to be elected as Director and participation in general meeting. If a nominal member is entitled to all other privileges except these three privileges, in that event, we cannot hold that a nominal member cannot be included as member as provided in Clause (b) of Sub-section (2) of Section 60 of the Act. Thus, we are in full agreement with the decision of the learned Single Judge. We do not find any reason to interfere with the same.

8. The appeal, thus, fails. The order of the learned Single Judge is affirmed.

9. There will be no order as to costs.

10. By consent of the parties, F.M.A. No. 2976 of 2002 is treated as on day's list and the same is also disposed of in terms of the aforesaid order.

11. Urgent xerox certified copy, if applied for, be supplied to the parties on priority basis.

R.N. Sinha, J.

12. I agree.