Bharat Co-operative Bank (Mumbai) Ltd. and Another Vs Co-operative Bank Employees'' Union

Court: Bombay High Court

Date of Decision: Feb. 17, 2005

Acts Referred: Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 â€" Section 2(3), 3
Banking Companies Act, 1949 â€" Section 5
Banking Regulation (Amendment) Act, 1965 â€" Section 56
Banking Regulation Act, 1949 â€" Section 3, 5
Bombay General Clauses Act, 1904 â€" Section 7
Central Excise Rules, 1944 â€" Rule 3
Civil Procedure Code Amendment Act, 1976 â€" Section 100
Civil Procedure Code, 1908 (CPC) â€" Section 100
Companies Act, 1956 â€" Section 3, 591
Industrial Disputes Act, 1947 â€" Section 2(a), 2(a)(i)
Jute Manufactures Cess Rules, 1976 â€" Rule 3
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 â€" Section 28
Monopolies and Restrictive Trade Practices Act, 1969 â€" Section 55
Motor Vehicles (Amendment) Act, 1956 â€" Section 2(18)
Motor Vehicles Act, 1939 â€" Section 2(18)
Small Industries Development Bank of India Act, 1989 â€" Section 3

Citation: (2005) 3 BomCR 713 : (2006) 106 FLR 85 : (2005) 2 LLJ 1010 : (2005) 2 MhLj 906

Hon'ble Judges: S.J. Vazifdar, J; A.P. Shah, J

Bench: Division Bench

Advocate: E.P. Bharucha and P.M. Patel, instructed by P.G. Pavaskar, for the Appellant; C.U. Singh, instructed by M.D. Nagle, for the Respondent

Final Decision: Dismissed

Judgement

A.P. Shah, J.
Appeal admitted. Notice made returnable forthwith. Respondents waive service. By consent, appeal is called out and heard.

2. This appeal raises a short but interesting question of law as to which is the ""appropriate Government"" in respect of the Appellant Bank, a multi-

State Co-operative Bank, carrying on business in more than one State. The facts giving rise to the appeal and which are undisputed are briefly

stated as follows:

3. The appellant Bank was originally registered under the Maharashtra Cooperative Societies Act, 1960. Subsequently, the appellant Bank was

registered under the Multi-State Co-operative Societies Act, 1984 due to number of branches being outside Maharashtra. The appellant Bank is in

the banking business and is governed by the provisions of the Banking Regulation Act, 1949 (hereinafter referred to as ""the BR Act""). The

respondent is a trade union and represents the workmen employed in the Appellant Bank. The respondent filed complaint (ULP) No. 769 of 2002

u/s 28 read with item 5 of Schedule II and Items 3, 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of

Unfair Labour Practices Act, 1971 (hereinafter referred to as the ""M.R.T.U. and P.U.L.P. Act""). An application for interim relief was also made

before the Industrial Court at Mumbai. The appellant Bank in its reply, raised certain preliminary issues of jurisdiction and maintainability of the

complaint under the M.R.T.U. and P.U.L.P Act. It was contended that as the appellant is a bank engaged in the business of banking and is a

banking company as defined under Clause (c) of Section 5 of the BR Act, considering the definition of appropriate Government under the

Industrial Disputes Act, 1947 (hereinafter referred to as ""the ID Act"") the appropriate Government would be the Central Government.

Consequently the M.R.T.U. and P.U.L.P Act 1971 was not applicable. The Industrial Court at Mumbai on holding that the appropriate

Government is the Central Government, accordingly ordered that the complaint would not be entertained and returned the same to the respondent

for seeking appropriate relief before the appropriate forum. The respondent filed a writ petition in this Court challenging the order of the Industrial

Court which was heard and disposed of by Rebello, J. The learned Judge held that the appropriate Government is the State Government and not

the Central Government and set aside the order of the Industrial Tribunal. Aggrieved by the order of the learned Judge, the appellant Bank has

preferred this appeal.

4. At the hearing of the appeal, the issue of applicability of the Bombay Industrial Relations Act, 1946 was not pressed before us in view of the

decision of this Court in Co-operative Bank Employees Union v. Saraswat Co-operative Bank Ltd. and Ors. 1983 (47) FLR, 348. The only

issue, therefore, that falls for consideration is whether considering the definition contained in Section 2(a)(i) of the ID Act, the appropriate

Government in respect of a multi-State Co-operative bank is the State Government.

5. At this stage it would be convenient to refer to the provisions of the various Acts relevant for discussion, to find out which is the appropriate

Government for a Multi-State Co-operative Bank carrying on business in more than one State. Section 5 of the BR Act defines the term ""banking

and ""banking company"". u/s 5(c), the expression ""banking company"", means any company which transacts the business of banking in India. 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

or otherwise, and withdrawal by cheque, draft, order or otherwise. ""Company"" u/s 5 means any company as defined u/s 3 of the Companies Act,

1956 and includes a foreign company within the meaning of Section 591 of that Act. The BR Act came to be amended with effect from 1-3-1966

by the Act 23 of 1965. By that amendment, several amendments including Part V were introduced. Section 56 relating to cooperative banks was

inserted in the Act and Section 3 was substituted to declare that the provisions of BR Act, shall apply to the cooperative banks in the manner and

to the extent specified in Part V.

6. The ID 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 relation to an industrial dispute concerning a banking company or an Insurance Company, the Central Government is the

appropriate Government"". Section 2(bb) which was inserted by Act 54 of 1949 defines the ""banking company"" as under :

2(bb). ""banking company"" means a banking company as defined in Section 5 of the Banking Companies Act, 1949, (10 of 1949) having

branches or other establishments in more than one State, and includes [the Export-Import Bank of India] [the Industrial Reconstruction Bank of

India], [the Industrial Development Bank of India], [the Small Industries Development Bank of India established u/s 3 of the Small Industries

Development Bank of India Act, 1989], the Reserve Bank of India, the State Bank of India, [a corresponding new bank constituted u/s 3 of the

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) [a corresponding new bank constituted u/s 3 of the

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), and any subsidiary bank], as defined in the State Bank of

India (Subsidiary Banks) Act, 1959 (38 of 1959);]

7. Coming to the MRTU and PULP Act, Section 2(3) of the said Act reads as under:

2(3). 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;

Provided that, the State Government may, by notification in the Official Gazette, direct that the provisions of this Act shall cease to apply to any

such industry from such date as may be specified in the notification; and from that date, the provisions of this Act shall cease to apply to that

industry and, thereupon, Section 7 of the Bombay General Clauses Act, 1904, Bom. 1 of 1904, shall apply to such cessor as if this Act has been

repealed in relation to such industry by a Maharashtra Act.

8. The question that arises for consideration is whether the subsequent amendments to the BR Act after the incorporation of the definition of

banking company in the ID Act would have to be read in the ID Act. If it is held that the provisions of the BR Act stands, incorporated in the ID

Act the subsequent amendments to the BR Act will have no effect upon the ID Act. The effect of incorporation is as if the provisions were written

in 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. Lord Esher, M. R., while dealing with legislation in incorporation in In Re Wood''s Estate

(1886) 31 Ch D 607, pointed out at page 615 as under :

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.

9. In AIR 1931 149 (Privy Council) it was observed as under :

In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect

the second; see the cases collected in ''Craies on Statute Law'', Edn. 3, pp. 349-50. This doctrine finds expression in a common-form section

which regularly appears in the amending and repealing Acts which are passed from time to time in India. The section runs :

''The repeal by this Act of any enactment shall not affect any Act .... In which such enactment has been applied, incorporated or referred to:

The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating

Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as

it is in this country.

It seems to be no less logical to hold that where certain provisions from an existing Act has been incorporated into a subsequent Act, no addition

to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is

possible for the subsequent Act to function effectually without the addition.

10. The Supreme Court also explained the doctrine by incorporation in similar terms in Shamarao V. Parulekar Vs. The District Magistrate, Thana,

Bombay and Others, when the Court observed :

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 Keshoram Poddar v. Nundo Lal Mallick.

11. The decision of the Supreme Court in Bolani Ores Ltd., also proceeded on the same principle. There, the question arose in regard to the

interpretation of Section 2(c) of the Bihar and Orissa Motor Vehicles Taxation Act, 1930. This section when enacted adopted the definition of

motor vehicle"" contained Section 2(18) of the Motor Vehicles Act, 1939. Subsequently, Section 2(18) was amended by Act 100 of 1956 but no

corresponding amendment was made in the definition contained in Section 2(c) of the Taxation Act. The argument advanced before the Court was

that the definition in Section 2(c) of the Act was not a definition by incorporation but only a definition by reference and the meaning of ""motor

vehicle"" in Section 2(c) must therefore be taken to be the same as defined from time to time in Section 2(18) of the Motor Vehicles Act, 1939.

This argument was negatived by the Court and it was held that this was a case of incorporation and not reference and the definition in Section

2(18) of the Motor Vehicles Act, 1939 as then existing was incorporated in Section 2(18)(c) of the Taxation Act and neither repeal of the Motor

Vehicles Act, 1939 nor any amendment in it would affect the definition of ""motor vehicle"" in Section 2(c) of the Taxation Act. It is thus clear that if

there is mere reference to a provision of one statute in another without incorporation, then, unless a different intention clearly appears the reference

would be construed as a reference to the provision as be in force from time to time in the former statute. But if a provision of the statute is

incorporated in another, any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in

the later statute. Similar is the view expressed in Mahindra and Mahindra Ltd. v. Union of India (1979)1 SCC 529 where the Court held that

Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 incorporates and not merely refers to Section 100 of Civil Procedure

Code. Hence, subsequent substitution of Section 100 by CPC (Amendment) Act, 1976 would not affect the incorporated provision.

12. We have no doubt that Section 2(bb) is an instance of the legislation by incorporation and not legislation by reference. Therefore we are not

prepared to hold that the amendments which were made in BR Act after 1949 can be regarded as incorporated in the ID Act. It was not part of

the BR Act when the ID Act was amended and Section 2(bb) was inserted. Nor in the adopted provisions of the BR Act is there anything to

suggest that the legislature intended to bind itself to any future additions which might be made to that Act. Again, there is nothing in the BR Act to

suggest that the amendments enacted to it are to be treated as in anyway, retrospective or are to be regarded as affecting any other enactment than

the BR Act itself. What the legislature has done is nothing more than incorporating the definition of ""banking company"" in the BR Act and, for

convenience of drafting, it has done so by reference to that Act instead of setting out for itself at length the provisions which it decided to adopt.

13. On behalf of appellant Bank a reference was made to the decision of the Supreme Court in Bhatinda Improvement Trust Vs. Balwant Singh

and others, where the Court while construing Rule 3 of Jute Manufacturers Cess Rules, 1976 held that the words ""Central Excise Act"" and ""Rules

contained in the said rule should be construed as if the words ""for the time being in force"" were there after the words ""the provisions of Central

Excises and Salt Act, 1944 (1 of 1944) and the Rules made thereunder"". We are afraid that the decision does not in any way assist the appellant.

Rule 3 with which the Supreme Court was concerned, made the provisions of the Central Excise Act and the Rules made thereunder applicable in

the matter of levy and collection of cess under the Jute Rules. It was a clear case of legislation by reference. In such a case, naturally the

subsequent amendments and alterations made to the Central Excise Act and the Rules would ipso facto get imported into the Jute Rules. As

against this the language used by the legislature in enacting Section 2(bb) clearly suggests a case of legislation by incorporation. In such a case, it is

well settled that subsequent amendments or alterations made in the former enactment would not affect the incorporation statute.

14. In the circumstances, we are in agreement with the view expressed by learned single Judge that the subsequent amendments to the BR Act will

not be attracted in respect of definition of ""appropriate Government"" in the ID Act. Consequently, the ""appropriate Government"" in respect of the

multi State cooperative banks having branches in more than one State would be the State Government and not the Central Government. Before

parting with this matter, we may mention that on behalf of the respondent union, it was argued that the definition of ""banking company"" as

contained in Section 5(c) of the BR Act has not been amended by the Amendment Act 23 of 1966 or by any other amendment. But by virtue of

Section 56 the provisions of the BR Act are made applicable in the manner indicated by that section. It is not necessary for us to express any view

on this issue as, in our opinion, the definition of the ""banking company"" will have to be read as it existed on the date of incorporation of sections

2(bb) for the purpose of deciding as to which is the ""appropriate Government and so read the appropriate Government in respect of multi-State

co-operative banks would be the State Government.

15. For the aforesaid reasons, we are of the opinion that the order of the learned single Judge need not be interfered with and accordingly the

appeal is dismissed.

16. On the request made by the learned counsel appearing for the appellate, the operation of this order is stayed for a period of six weeks.

Parties to act on an ordinary copy of this order duly authenticated by the Associate/Court Stenographer.