

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1329 OF 2009

State of Maharashtra & Ors. ... Appellants
Versus
Brijlal Sadasukh Modani ... Respondent

J U D G M E N T

Dipak Misra, J.

The respondent served in different capacities in Osmanabad Janata Sehkari Bank Ltd., Osmanabad (for short, “the Bank”) since 1972. On attaining the age of 58 years, he stood superannuated in June 2004. The Managing Committee of the Bank, however, extended service of the respondent for a further period of two years and after completion of one year, he sought leave of the Bank to be allowed to retire as he was in ill-health and accordingly he retired in the month of June, 2005. As the factual matrix would unveil, he was appointed as an Accountant in the Bank in the year 1972 and was promoted

to the post of Manager in 1981 and eventually to the post of General Manager, which post he held till his retirement. Be it stated, while he was in service, he received a notice signed by the Deputy Superintendent of Police, Anti Corruption Bureau, Osmanabad requiring him to give details of the property acquired by him. In response to the said letter, the respondent on 15.2.2001 replied that the provisions of Prevention of Corruption Act, 1988 (for short, "the 1988 Act") was not applicable to him. After his superannuation, he received two letters from the same investigating authority to attend an enquiry so that his statement could be recorded in respect of his properties and expenditure, to which he replied. Thereafter, he preferred Criminal Writ Petition No. 729 of 2006 before the High Court of Judicature of Bombay, Bench at Aurangabad, assailing the notices which were in the realm of investigation.

2. The principal plank of submission in the writ petition was that he was not a public servant as defined under sub-section (c) of Section 2 of 1988 Act and he cannot by any means of interpretation of Section 21 of the Indian Penal Code (IPC) be treated as such. On behalf of the State

and the investigating agency it was contended that the writ petitioner would come under the definition of public servant as per Section 2(c) (iii) and (ix) of the 1988 Act. It was also urged that the Bank is governed by Multi-State Cooperative Societies Act, 2002 (for short, “the 2002 Act”) inasmuch as it has been registered as a multi-state cooperative bank on 12.7.2000. Reliance was also placed on Section 56 of the Banking Regulations Act, 1949 (hereinafter referred to “the 1949 Act”) for the purpose of bolstering the stand in view of the amendment to Section 56, the provisions of the 1949 Act would be applicable to the cooperative bank. It was also highlighted that as per the 1949 Act, the Reserve Bank of India has direct control and supervision over the cooperative banks and the same is evincible from Section 35A and 26 of the 1949 Act. In addition to the aforesaid, emphasis was laid on Section 122 and 123 of the 2002 Act to highlight the power of the Central Government to issue directions to the multi-state cooperative banks is in public interest.

3. The High Court referred to certain provisions of the Maharashtra Cooperative Societies Act, 1960 (for short “the 1960 Act”), 2002 Act, 1988 Act and 1949 Act, took note of

the submissions of the learned counsel for the petitioner which was to the effect that there is no control of the State Government or the Central Government or any other authority on the functioning of the Bank and, therefore, he could not be termed as a public servant, as is defined under the 1988 Act, and perused the bye-laws of the Bank on the bedrock of various provisions of different Acts which have been referred to hereinbefore; and thereafter referring to the decisions rendered in **S.S. Rana v. Registrar, Coop. Societies & Anr.**¹, **Ajay Hasia v. Khalid Mujib Sehravardi**², **Zoroastrain Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban) & Ors.**³, **State of Maharashtra v. Laljit Rajshi Shah**⁴, **Ramesh Balkrishna Kulkarni v. State of Maharashtra**⁵, **Federal Bank Ltd. v. Sagar Thomas**⁶ came to hold that so far as the Bank is concerned, the Central Government has not purchased any share of the Bank.

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(2006) 11 SCC 634

² (1981) 1 SCC 722

³ (2005) 5 SCC 632

⁴ AIR 2000 SC 937

⁵ (1985) 3 SCC 606

⁶ AIR 2003 SC 4325 = (2003) 10 SCC 733

4. Be it stated, the High Court distinguished the decision rendered in **Govt. of A.P. v. P. Venku Reddy**⁷, and proceeded further to state as follows:-

“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 of 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.”

5. On the basis of the aforesaid analysis, the High Court quashed the two notices issued by the Deputy Superintendent of Police, Anti-Corruption Bureau,

⁷ (2002) 7 SCC 631

Osmanabad. Hence, this appeal, by special leave, by the State of Maharashtra and its functionaries.

6. We have heard Mr. Shankar Chillarge, learned counsel for the appellants and Mr. Sudhanshu S. Chaudhari, learned counsel for the respondent.

7. It is submitted by Mr. Shankar Chillarge, learned counsel for the State that regard being had to the broad definitions of public servant under Section 2(c)(iii) of the 1988 Act, the respondent should have been treated as a public servant under the purview of the 1988 Act and the High Court has fallen into grave error by treating him not to be one by misconstruing the provision. It is urged by him that if the statutory scheme of the 1949 Act and the 2002 Act is seen, it will be quite clear that he comes within the dictionary clause of the 1988 Act. Learned counsel for the appellants would further submit that purposive interpretation should be placed on the provision but the excessively narrow construction placed by the High Court is absolutely erroneous and hence, the order impugned deserves to be dislodged. Learned counsel for the State has

relied on ***Almitra H. Patel v. Union of India***⁸ and ***State of M.P. v. Rameshwar***⁹.

8. Mr. Sudhanshu S. Chaudhari, learned counsel for the respondent, per contra, has submitted that when reply was given by the respondent in 2001 and the Deputy Superintendent of Police, Anti-Corruption Bureau, kept quiet for five years till 10.11.2006, it is to be presumed that he was satisfied with the explanation and there was no justification to issue further notice. It is his submission that to bring the respondent within the purview of Section 2(c) (iii) and (ix) of the 1988 Act, it is obligatory on the part of the appellants to establish that the respondent is an employee of a body or a cooperative society owned and controlled or aided by the Government as defined in Section 617 of the Companies Act, 1956. Learned counsel would contend that the admitted position is that the bank in question has not received any financial aid either from the Central Government or the State Government and, therefore, the provisions would not apply to him. It is urged by Mr. Chaudhari that the provisions of Banking Regulation

⁸ (2000) 2 SCC 679

⁹ (2009) 11 SCC 424

(Amendment) and Miscellaneous Provisions Act, 2004 would not be attracted to this case inasmuch as the administration of the multi-state cooperative society vests in the general body and by virtue of the powers enumerated under the 1949 Act to be exercised by the Reserve Bank of India would not tantamount to control over the cooperative bank and hence, he cannot be treated as a public servant. To bolster his submissions, he has placed reliance on ***Samrao Vitthal Cooperative Bank Ltd. & Anr. v. Padubidri Pattabhiram Bhat & Ors.***¹⁰, ***State of U.P. v. Vishwanath Kapoor & Ors.***¹¹, ***Hanmant Janardhan Patil v. State of Maharashtra***¹², ***Executive Committee, Vaish Degree College, Shamli & Ors. v. Lakshmi Narain & Ors.***¹³, ***Federal Bank*** (supra), ***S.S. Dhanoa v. Municipal Corporation, Delhi & Ors.***¹⁴, and ***S.S. Rana*** (supra).

9. Firstly, we shall refer to some of the authorities cited at the Bar. In ***Samrao Vitthal Cooperative Bank Ltd.*** (supra), High Court of Bombay was dealing with the issue

¹⁰ AIR 1993 Bom. 91

¹¹ 1980 CrLJ 494

¹² 1993 Mh.LJ 511

¹³ (1976) 2 SCC 58

¹⁴ (1981) 3 SCC 431

whether the appellant Bank was “State” within the meaning of Article 12 of the Constitution. The Full Bench, after referring to various provisions of the Multi-State Cooperative Societies Act, 1984 and the 1960 Act, came to hold as follows:-

“24. A Multi-State Co-operative Bank cannot be compared, in the manner of its functioning, with the State Bank of India at all. As set out earlier, the Central Government does not have any all pervasive control over a Multi-State Co-operative Bank. Hence, merely because banking function is of public importance, this factor itself is not sufficient to make the appellant bank "State" or "other authority" under Article 12.

25. In the case of Narayan v. Maharashtra State Co-operative Land Development Bank Ltd., reported in 1991 (1) BomCR 469 the Nagpur Bench of our High Court held that the Maharashtra State Co-operative Land Development Bank Limited was "State" or "other authority" under Art. 12. In doing so, the Nagpur Bench relied upon the judgment of the learned single Judge in the present case. The Nagpur Bench relied upon two factors only for the purpose of holding that the Maharashtra State Co-operative Land Development Bank was "State" within the meaning of Art. 12. It said (at page 474) that the Maharashtra State Co-operative Land Development Bank Limited is a creature of the statute and it is discharging public functions which the State could have discharged through its agency. Hence it held that the Bank was a State. In our opinion, the

Division Bench, over emphasised the fact that the Bank was a creature of the statute. As the Supreme Court has repeatedly said, the manner in which an organisation is created is not of any direct relevance. What is required to be seen is whether there is pervasive State control over its management and functioning. Moreover, merely because an organisation performs functions of public importance, one cannot hold that the organisation is "State" under Article 12. The only other factor which the Nagpur Bench looked at was the fact that the Bank was regulated by laws enacted by the State. Such regulatory laws as we have said earlier, are enacted to cover a large number of organisations. The laws which regulate the functioning of such organisations are presumably enacted in public interest. This does not mean that any of these organisations, if they perform public functions, automatically become "State" under Article 12. In our view the above decision does not apply tests to determine when an organisation can be considered as "State" under Art. 12 correctly".

10. In **S.S. Rana** (supra), while dealing with the maintainability of a writ petition by an employee working in a Cooperative Bank under the Himachal Pradesh Cooperative Societies Act, 1968, this Court referred to the earlier decisions, namely, **Ajay Hasia** (supra) and **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology**¹⁵, opined that the society did not satisfy the tests laid down in

¹⁵ (2002) 5 SCC 111

the case of **Pradeep Kumar Biswas** (supra) and hence, the High Court was not in error in arriving at the conclusion that the society was not a State under Article 12 of the Constitution.

11. In this regard, it is profitable to refer to **Gayatri De v. Mousumi Cooperative Housing Society Ltd. and others**¹⁶

wherein the Court held as follows:-

“54. In the case of *S.R. Tewari v. Distt. Board, Agra*¹⁷ this Court held that the powers of statutory authorities are always subject to the statute which has constituted it and must be exercised consistently with the statute, and the courts have, in appropriate cases, the power to declare an action of the body illegal or *ultra vires*, even if the action relates to determination of employment of a servant.

55. We have, in paragraphs supra, considered the judgments for and against on the question of maintainability of writ petition. The judgments cited by the learned Senior Counsel appearing for the respondents are distinguishable on facts and on law. Those cases are not cases covered by the appointment of a Special Officer to manage the administration of the Society and its affairs. In the instant case, the Special Officer was appointed by the High Court to discharge the functions of the Society, therefore, he should be regarded as a public authority and hence, the writ petition is maintainable.”

¹⁶ (2004) 5 SCC 90

¹⁷ AIR 1964 SC 1680

The said decision has been distinguished in **S.S. Rana** case (supra).

12. In **P. Venku Reddy** (supra), the assail was to an order of the Division Bench of the High Court of Andhra Pradesh where it had quashed the criminal proceeding instituted under the 1988 Act in respect of a supervisor working in District Cooperative Central Bank Limited. In that context, the Court observed:-

“12. In construing the 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 the legislature. In that view the *Statement of Objects and Reasons* contained in the Bill leading to the passing of the Act can be taken assistance of. It gives the background in which the legislation was enacted. The present Act, with a much wider definition of “public servant”, was brought in force to purify public administration. When the legislature has used such a 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 the 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 M.P. v. Shri Ram Singh*¹⁸.)

¹⁸ (2000) 5 SCC 88

13. As a matter of fact, we find that the point arising before us on the definition of “public servant” that it does include an employee of a banking cooperative 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 v. Prabhakar Rao*¹⁹.”

13. In ***Rameshwar*** (supra), the issue that arose before this Court was whether the respondent therein was a public servant for the purposes of the 1988 Act, regard being had to the fact that he was a Director of Indore Premier Cooperative Bank Ltd. On behalf of the State, reliance was placed on Section 87 of the M.P. Cooperative Societies Act, 1960 which provides that Registrar and other officers as well as employees of a cooperative bank or a cooperative society would be deemed to be public servants under the 1988 Act and on that basis the Court came to hold that the Chairman and the Executive Officer of the Bank would come within the definition of “public servant” under Section 2(c) (ix) of the 1988 Act. On a perusal of the judgment it appears that the Court has been persuaded by the conferment of status on the officers of the bank as public

¹⁹ (2002) 7 SCC 636

servants and the definition of the “public servant” under the 1988 Act.

14. As far as State of Madhya Pradesh is concerned, there is no difficulty as the M.P. Cooperative Societies Act, 1960 itself declares the authorities as public servant. The issue that arises for consideration in the present case is whether a multi-State society which handles crores of rupees and the persons who handle such huge amounts of money should be allowed to escape the rigour of corruption charges under the 1988 Act on the ground that they do not come under the ambit and sweep of Article 12 of the Constitution or solely because of construction placed under Section 2(c) (ix) of the 1988 Act. That apart, another significant issue also arises for consideration. Section 2(ix) to make an employee of a cooperative society provides certain conditions or conditions precedent to be satisfied and, therefore, the question would be, whether the High Court by only stating that it is the admitted position should have quashed the proceeding. There are various stages and hence, the thrust of the matter is in a corruption case whether exercise of jurisdiction under Section 482 of the Code of Criminal

Procedure, 1973 is warrantable. In this regard, the relevant paragraphs from the Statement of Objects and Reasons are requisite to be reproduced. It is as follows:-

“2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The Act seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.

3. The bill, inter alia, envisages widening the scope of the definition of the expression ‘public servant’, incorporation of offences under Sections 161 to 165-A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.”

15. Section 2(c)(ix) on which immense thrust has been given by the learned counsel for the State on the basis of

certain authorities of this Court, reads as follows:-

“(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);”

16. On a perusal of the decisions of this Court, it is manifest that stress has always been laid on Section 2(c)(ix) of the 1988 Act as a consequence of which the fall out is that the registered cooperative society must have received financial aid from the Central Government or the State Government or any other institution mentioned therein.

17. The High Court has referred to various provisions of the 1949 Act and proceeded on the status of cooperative society and eventually has held that:-

“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 APP. 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 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 authorities do not exercise any direct, deep and pervasive control over the functioning of the Bank.

18. And again:-

“... 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.”

19. In ***Prabhakar Rao*** (supra) the Court was dealing with the issue whether the High Court was justified in holding that the accused was not a public servant. In the said case, the High Court had placed heavy reliance on the authority of ***State of Maharashtra v. Laljit Rajshi Shah***²⁰. In ***P.***

²⁰ (2000) 2 SCC 699

Venku Reddy (supra), the Court has distinguished the said decision and referred to Section 2 of the 1988 Act and in that context observed thus:-

“3. Under clause (iii) of Section 2(c), 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 and under clause (ix) the President, Secretary and other office-bearers of a registered cooperative society engaged in agriculture, industry, have been included in the definition of “public servant”.

4. The question for consideration is whether the accused in the present case comes within the purview of the aforementioned clauses or any other clause of Section 2(c) of the Prevention of Corruption Act, 1988. For determination of the question, enquiry into facts, relating to the management, control and funding of the society, is necessary to be ascertained.”

20. As we notice, the High Court has really been swayed by the concept of Article 12 of the Constitution, the provisions contained in the 1949 Act and in a mercurial manner taking note of the fact that the multi-state society is not controlled or aided by the Government has arrived at the conclusion. In our considered opinion, even any grant or any aid at the time of establishment of the society or in any construction or in any structural concept or any aspect

would be an aid. We are inclined to think so as the term ‘aid’ has not been defined. A sprinkle of aid to the society will also bring an employee within the definition of ‘public servant’. The concept in entirety has to be understood in the backdrop of corruption. In **Shri Ram Singh** (supra), this Court had to say this:-

“Corruption in a civilised society is a disease like cancer, which if not detected in time, is sure to malignise (sic) the polity of the country leading to disastrous consequences. It is termed as a plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable. It has also been termed as royal thievery. The socio-political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti-people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest, it is likely to cause turbulence — shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society.”

21. We share the said perception, and reiterate with agony. The ingemination has to be realized with sanctity. Therefore, we are of the convinced opinion that it was entirely unnecessary on the part of the High Court to enter

into elaborate deliberation to arrive at the conclusion that the respondent was not a public servant. Regard being had to the facts of the case, we think it would be apposite that it is left to be dealt with in the course of trial whether the society concerned has ever been granted any kind of aid or not.

22. In view of the aforesaid premises, we allow the appeal, set aside the judgment and order passed by the High Court and direct that the issue i.e. whether the respondent is a public servant or not, shall be gone into during the trial.

.....J.
[DIPAK MISRA]

.....J.
[ADARSH KUMAR GOEL]

NEW DELHI
DECEMBER 15, 2015.

ITEM NO.1A

COURT NO.4

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1329/2009

STATE OF MAHARASHTRA & ORS.

Appellant(s)

VERSUS

BRIJLAL SADASUKH MODANI

Respondent(s)

Date : 15/12/2015 This appeal was called on for judgment today.

For Appellant(s) Mr. Shankar Chillarge, Adv.
Mr. Nishant Ramakantrao Katneshwarkar, Adv.

For Respondent(s) Mr. Sudhanshu S. Chaudhari, Adv.
Mr. A.M. Irpatgire, Adv.
Mr. Vatsalya Vigya, Adv.
Mr. Naresh Kumar, Adv.

Hon'ble Mr. Justice Dipak Misra pronounced the judgment of the Bench consisting His Lordship and Hon'ble Mr. Justice Adarsh Kumar Goel.

The appeal is allowed in terms of the signed reportable judgment.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed reportable judgment is placed on the file)