
(1977) 07 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 1105 of 1971

Lakhani Sahakari Shetki Kharedi Vikri Sanstha Ltd.

APPELLANT

Vs

Moreswar Bapu

RESPONDENT

Date of Decision : 22-07-1977

Acts Referred:

Contract Act, 1872 — Section 182

Citation : AIR 1978 Bom 273 : (1979) 81 BOMLR 129 : (1978) MhLj 59

Hon'ble Judges : Kambli, J; Dharmadhikari, J

Bench : Division Bench

Advocate : N.S. Munshi, for the Appellant; L.K. Khamborkar, for the Respondent

Judgement

Dharmadhikari, J.—The petitioner, Lakhani Sahakari Shetki Kharedi Vikri Sanstha, Limited at Lakhani, which is a registered Co-operative Society, has challenged in this writ petition the order passed by the Divisional Joint Registrar, Co-operative Societies at Nagpur, dated 25-1-1971 holding that the agreement between the petitioner Society and the respondent is a contract in between two independent principals and the dispute arising out of this contract is not a dispute within the meaning of Section 91 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred as the Act) and that the remedy of the petitioner is to file a civil suit and not to raise a dispute u/s 91 of the Act.

2. It appears from the record that the present Society was the approved authorised sub-agent of the Maharashtra State Marketing Federation Limited at Bombay, under the Monopoly Procurement Scheme for paddy (Dhan) for purchasing, stocking, milling and distributing paddy after procuring the same from growers for the year 1967-68. The petitioner Society had its several centres within the District of Bhandara for purchasing paddy and one such centre was at Pohra. Tahsil Sakoli, District Bhan- dara. It is also admitted position that the respondent Moreswar had his rice mill at Pohra and that there was an agreement between the parties to mill paddy of the petitioner-Society in the rice mill belonging to the respondent Moreswar. According to the petitioner, the

respondent was appointed as a "milling agent" for and on behalf of the petitioner-society to mill the paddy. purchased under the Monopoly Scheme by the petitioner society. Such an agreement was entered into on 21-11-1987. By this agreement, according to the petitioner, the respondent was specifically appointed as a "milling agent".

3. As the respondent failed to return the husked paddy in the ratio agreed to between them, the petitioner preferred a claim against the respondent on the basis of this shortage. The petitioner claimed an Award of Rs. 50,831.84 Paise on account of the aforesaid shortage and this also included the claim for interest at the rate of Re. 1/- per month. This application was forwarded by the District Deputy Registrar, Bhandara, to the Officer on Special Duty at Bhandara for disposal with a direction to decide whether the claim made by the petitioner society is a dispute within the meaning of Section 91 of the Maharashtra Co-operative Societies Act, 1960.

4. Shri V.S. Petkar, Advocate, who was then acting as an Officer on Special Duty vide his order dated 14-4-1970 held that the dispute raised by the Society is a dispute u/s 91 of the Act. Being aggrieved by this order, the opponent Moreshwar filed a revision petition u/s 154 of the Act before the Divisional Joint Registrar. The Divisional Joint Registrar vide his order dated 25-1-1971 allowed the revision petition and ultimately held that the claim made by the respondent is not a dispute u/s 91 of the Maharashtra Co-operative Societies Act, 1960. As already observed, it is this order which is challenged in this petition.

5. Shri Munshi, the learned Counsel for the petitioner contended before us that the order passed by the Divisional Joint Registrar, Co-operative Societies, Nagpur in revision u/s 154 of the Act is wholly without jurisdiction. According to Shri Munshi, the learned Counsel for the petitioner, the Divisional Joint Registrar had no authority, power or jurisdiction to entertain such a revision petition. If at all the respondent wanted to challenge the said order passed by the Officer on Special Duty, he could have approached the Cooperativa Tribunal which is the competent authority to entertain and decide the revision petition against the order passed by the Officer on Special Duty u/s 91(2) of the Act. Therefore, according to Shri Munshi as the order passed by the Divisional Joint Registrar is without jurisdiction, the same is liable to be set aside.

6. Shri Munshi also contends that so far as the merits of the controversy are concerned, the Divisional Joint Registrar committed an error in setting aside the finding recorded by the Officer on Special Duty. According to Shri Munshi, the Divisional Joint Registrar further committed an error apparent on the face of the record in coming to the conclusion that the respondent Moreshwar is not an agent of the petitioner society and, therefore, the claim made by the Society is not a dispute within the meaning of Section 91 of the Act. Shri Munshi further contended that having regard to the material placed on the record including the terms and conditions of the agreement between the parties, it is quite clear that the respondent was merely acting as an agent for and on behalf of the petitioner

society in the matter of milling the paddy and, therefore, the learned Divisional Joint Registrar committed an error in coming to the conclusion that he was an independent contractor and not an agent.

7. On the other hand, it is contended by Shri Khamborkar the learned counsel for the respondent, that the Co-operative Tribunal had no authority, power or jurisdiction to entertain the revision petition against the order passed by the Officer on Special Duty u/s 91 of the Act. The Officer on Special Duty being a subordinate officer in the hierarchy of the officers to the Divisional Joint Registrar, it was the District Joint Registrar who had an authority, power or jurisdiction to entertain a revision petition against the order of the Officer on Special Duty and, therefore, the order passed by the Divisional Joint Registrar is perfectly legal and valid. In support of his contention, he has relied upon a decision of this Court in *Krishnarao Bakaramji Hadge v. State of Maharashtra* 1966 MLJ 1145 and another decision in *Bapusaheb Balasaheb Patil and Others Vs. The State of Maharashtra and Others*, .

8. So far as the merits of the dispute are concerned, it is contended by Shri Khamborkar that the relationship between the parties was not that of a principal and an agent but the respondent was acting as an independent contractor. The respondent Moreshwar has his business of milling the rice and that he was an owner of the rice mill. He was carrying out an independent business in that behalf. By virtue of an agreement between the parties dated 21-11-1967, he has only undertaken the work of milling of a paddy and that too as an independent contractor. There was no fiduciary relationship between the parties and, therefore, the Divisional Joint Registrar was right in coming to the conclusion that the respondent Moreshwar was not an agent for the petitioner Society.

9. For properly appreciating the controversy raised in this writ petition, it will be useful if a reference is made to the relevant provisions of Section 91 of the Act, Section 91 of the Act deals with the dispute touching the constitution etc. as well as the management or business of the Society. Section 91(1)(a) of the Act reads as under:--

"91 (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of "the office bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, to the Registrar, if both the parties thereto, are one or other of the following-

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society."

Then by Sub-section. (3), it is made clear that "Save as otherwise provided under Sub-section. (3) of Section 93, no Court shall have jurisdiction to entertain

any suit or other proceedings in respect of any dispute referred to in Sub-section. (1)." Then by Explanation 2, the ambit of dispute is explained. Sub-clause (iii) of the said Explanation reads as under:--

"A claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not;" The provisions made in this behalf are obviously special in nature. Such a provision was made in the Act to shorten litigation lessening its cost and to provide a summary procedure for the determination of the dispute covered by Section 91 of the Act, The word "agent" used in Section 91(1)(a) of the Act is not defined in the Act itself. It is well settled that a word which is not defined in the Act but which is a word of every day use must be construed in its popular sense. It should not be construed in a technical sense but it should be construed in a sense as it is understood in the common parlance. As to how the meaning of the word should be ascertained is laid down by the Supreme Court in *Sheikh Gulfan and Others Vs. Sanat Kumar Ganguli*, . While dealing with such a question, the Supreme Court observed as under (at p. 1845) :--

"Normally, the words used in a statute have to be construed in their ordinary meaning; but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends of a fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provision in which the words occur. Often enough. In interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute assume relevance and become material. As Halsbury has observed, the words should be construed in the light of their context rather than what may be either their strict etymological sense or their popular meaning apart from that context."

As already observed the special provision incorporated in S, 91 of the Act is made by the Legislature to shorten litigation, lessening its cost and to provide a summary procedure for the determination of the dispute relating to the internal management of the society as well as the dispute touching its business. Any of the parties to the dispute can refer the dispute under this provision, If it is covered by Section 91(1) of the Act. The parties contemplated by Sub-section, (a) of S. 91(1) of the Act include society, committee and past committee, past or present officer, past or present agent, past or present servant or nominee as well as their legal representatives. Practically, an effort is made by the Legislature to bring in the import of this section all the parties which stand in fiduciary relationship qua the Cooperative Society, An officer, agent, servant or nominee of

the society have obviously a fiduciary relationship with the society. To cover all possible disputes between such parties, the Legislature has used! different words to make It all comprehensive. These words are used in a generic sense and, therefore, the meaning of the word "agent" will have to be understood In the context of the object of the provision as well as Its scope. As observed by the Privy Council in Laurence Arthur Adamson v. Melbourne and Metropolitan Board of Works AIR 1929 PC 181 it is always unsatisfactory and generally unsafe to seek the meaning of words used in an Act in the definition clauses of another statute dealing with matters more or less cognate even when enacted by the same legislature and much more so when resort is had to the enactments of other "legislatures". The word "agent" is used m the present section in a comprehensive sense. Agency in itself is a comprehensive word which is used to describe the relationship that arises where one man is appointed to act as the representative of another. In our opinion, the word "agent" is used in Section 91(1)(a) in this comprehensive sense This Court had an occasion to consider the scheme of Section 91 in C.P. Khanna Vs. V.K. Kalghatgi and Others, , While dealing with a challenge based on the constitutional validity of the provisions of the Act in paras 5, 6 and 7 of the said judgment this Court observed as under -

"5. That in a welfare State Cooperative Institutions play an important part cannot be denied. Different authors define "Co-operation differently, Facy"s definition based on socio-economic as- pect is: Co-operative Society is an association for the purpose of joint trading originating among the weak and conducted always in unselfish spirit on such terms that all who are prepared to assume the duties of membership may share in its rewards In proportion to the degree in which they make use of their association (Facy, Co-operation at Home and Abroad). In Co-operation in Finland, the writer says, "A co-operative Society is a union of persons established according to the principles of equality, number of whose members is unlimited and the purpose of which is, by the joint performance of economic acts, to improve the financial position of its members on the conditions under which they carry on their profession, by means of either self-help or self-help with Government support, provided that all profits made by the joint action shall be distributed in proportion to which each member has taken part in the business and not in a proportion to the capital invested." This describes the fundamentals of a co-operative society and no wonder that in every country in the world great emphasis is laid on co-operative ventures. The provisions of the Act are oriented to achieve these objectives.

6. Under the circumstances, there is no reason, therefore, why co-operative societies should not be treated as a class by themselves. Though the ideal is unselfishness, this cannot be achieved in practice, In order that such co-operative ventures must succeed. It is also necessary that such ventures be given reasonable protection in every possible manner, Thus provisions are made to see that its funds are not frittered away by providing careful supervision of its transactions and providing a procedure for early settlements of disputes. In order to ensure early settlement of disputes provisions are made for compulsory

arbitration in matters connected with the business of the societies between the society and its members or its officers etc., or society and a stranger in very limited circumstances. As we have said earlier the purpose to be achieved is to protect the co-operative movement and to see that Its resources are not frittered away by wasteful litigation.

7. u/s 91 disputes have to be referred to arbitration only in limited number of cases viz. those between a Society, and (1) its office-bearers, past or present, its agent or servant or nominee or their successors, (2) a member, past member or person claiming through them and (3) a person who has been granted loan by the Society or with whom the Society has or had transactions u/s 45 and any person claiming through such a person. Section 45 of the Act covers (1) such persons and such transactions in respect of which restrictions have been placed by the rules enacted under the Act, (2) surety of a member, past member or, a person other than a member who has been granted a loan, by the society, and (3) other societies or the liquidator appointed under the Act. Inclusion of the first and second set of persons and their transactions cannot possibly be objected to for the obvious reasons that if these were not protected, interested office bearers of a Society might successfully evade the provisions of the Act. So far as the third set is concerned, having regard to the scheme of the Act their inclusion also cannot be objected to."

Even according to the dictionary meaning, the term "agent" will include in its import person who is entrusted with the business of another or a person who acts for another as his representative. This obviously contemplates delegation of authority. Even in cases of contracts or contractual obligation some sort of fiduciary relationship is created. In a wider sense even a servant is an agent of the employer, the question as to whether a person is a servant or an independent contractor will have to be decided having regard to the facts "and circumstances of each case. Same will be the position in case of an agent also. In this context a reference usefully could be made to a decision of the Supreme Court in Ram Pershad Vs. The Commissioner of Income Tax, New Delhi, . After making a reference to its earlier decision in paras 6 and 7 of the said judgment, the Supreme Court observed as under :--

"6. There is no doubt that for ascertaining whether a person is a servant or an agent, a rough and ready test is, whether, under the terms of his employment, the employer exercises a supervisory control in respect of the work entrusted to him. A servant acts under the direct control and supervision of his master. An agent, on the other hand, in the exercise of his work is not subject to the direct control or supervision of the principal, though he is bound to exercise his authority in accordance with all lawful orders and instructions which may be given to "him from time to time by his principal. But this test is not universal in its application and does not determine in every case, having regard to the nature of employment, that he is a servant. A doctor may be employed as a medical officer and though no control is exercised over him in respect of the manner he

should do the work nor in respect of the day to day work he is required to do, he may nonetheless be a servant if his employment creates a relationship of master and servant. Similar is the case of a chauffeur who is employed to drive the car for his employer. If he is to take the employer or any other person at his request from place "A" to place "B" the employer does not supervise the manner in which he drives between those places. Such examples can be multiplied. A person who is engaged to manage a business may be a servant or an agent according to the nature of his service and the authority of his employment. Generally it may be possible to say that the greater the amount of direct control over the Person employed, the stronger the conclusion in favour of his being a servant. Similarly the greater the degree of independence the greater the possibility of the services rendered being in the nature of principal and agent. It is not possible to lay down any precise rule of law to distinguish one kind of employment from the other. The nature of the particular business and the nature of the duties of the employee will require to be considered in each case in order to arrive at a conclusion as to whether the person employed is a servant or an agent. In each case the principle for ascertainment remains the same.

7. Though an agent as such is not a servant, a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant. It is again true that a director of a company is not a servant but an agent inasmuch as the company cannot act in its own person but has only to act through directors who qua the company have the relationship of an agent to its principal. A Managing Director may have a dual capacity. He may both be a Director as well as employee. It is therefore evident that in the capacity of a managing director he may be regarded as having not only the capacity as persona of a director but also has the persona of an employee, or an agent depending upon the nature of his work and the terms of his employment. Where he is so employed, the relationship between him as the Managing Director and the Company may be similar to a person who is employed as a servant or an agent for the term "employed" is facile enough to cover any of these relationships. The nature of his employment may be determined by the articles of association of a company and/or the agreement if any, under which a contractual relationship between the Director and the company has been brought about, where under the Director is constituted an employee of the company; if such be the case, his remuneration will be assessable as salary u/s 7. In other words, whether or not a Managing Director is a servant of the company apart from his being a Director can only be determined by the articles of association and the terms of his employment. A similar view has been expressed by the Scottish Court of Session in *Anderson v. James Sutherland (Peterhead) Ltd.*, 1941 SC 203, where Lord Normand at p. 218 said:-

"....the managing director has two functions and two capacities. Qua managing director he is a party to a contract with the company, and this contract is a contract of employment; more specifically I am of opinion that it is a contract of service and not a contract for service."

A number of cases have been referred before us but the conclusion in each of the decisions turned on the particular nature of employment and the facts disclosed therein. In each of these decisions the "context played a vital part in the conclusions arrived at." In Commissioner of Income Tax, Uttar Pradesh Vs. Manmohan Das (Deceased), this Court had occasion to consider the case of employment by a bank of a treasurer for its branches, sub-agencies and pay offices where he had to perform the duties, liabilities and responsibilities which by custom or contract usually devolved upon a treasurer as well as those specified in the agreement. The treasurer had to provide the staff for the cash section of the bank; he had power to suspend, transfer or dismiss any member of the staff and to appoint any other person in his place. He was responsible for all the acts of the staff so appointed which resulted in loss or damage to the bank and was responsible for the protection of the property of the bank and for the receipt of any bad money, or base money etc., was requested to transmit from one place to another, under guard provided by the bank, moneys, documents and properties of the bank. It was held that though the office of the treasurer was created by the agreement and that he held office under it, that was not decisive of the question, whether the remuneration earned by him was as a servant of the bank. Receipt of remuneration for holding an office did not necessarily give rise to the relationship of master and servant between the holder of the office and the person who paid the remuneration. It was held that the treasurer was not a servant of the bank and the remuneration received by him was not salary. Referring to the observations of Bhagwati J. in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, , Shah J. observed 707 of 59 ITR that the correct method of approach would be to consider whether having regard to the nature of the work, there was due control and supervision by the employer. In Piyare Lal Adishwar Lal Vs. The Commissioner of Income Tax, Delhi, , Kapur J. said (at p. 24) that:

"It is difficult to lay down any one test to distinguish the relationship of master and servant from that of an employer and independent contractor. In many cases the test laid down is that in the case of master and servant, the master can order or require what is to be done and how it is to be done but in the case of an independent contractor an employer can only say what is to be done but not how it shall be done. But this test also does not apply to all cases, e.g. in the case of Ship's master, a chauffeur or a reporter of a newspaper.In certain cases it has been laid down that the indicia of a contract of service are (a) the master's power of selection of the servant (b) the payment of wages or other remunerations (c) the master's right to control the method of doing the work and (d) the master's right to suspension or dismissal."

From these observations of the Supreme Court, it is quite clear that it is not possible to lay down any precise rule of law to distinguish one kind of employment from the other. The nature of the business and the nature of the duties will have to be considered in each case in order to arrive at a conclusion as to whether a person is an agent or not. Prima facie, the question whether a

dispute is covered by Section 91 of the Act or not will have to be determined by reference to the averments in the plaint and not by reference to what the defendant says in his defence. It is well settled that the defendant cannot oust the jurisdiction of any forum by mere denial, and it is equally well settled that a jurisdiction cannot be conferred upon a Court or a forum either by concession or by oblique methods. In this case, fortunately for us there is a written contract which is the genesis and basis of relationship between the parties. It is well settled that when there is a written contract between the parties it will be necessary for the Court to find out there from the intention of the parties. That intention has to be primarily gathered from the terms and conditions which are agreed upon by the parties. (See State of Gujarat (Commissioner of Sales Tax, Ahmedabad) Vs. Variety Body Builders, In that case also, the Supreme Court had made a reference to the preamble of the agreement which indicated the nature of the contract as well as the intention of the parties. In, the case before us from the preamble of the agreement, it is quite clear that the respondent Moreshwar was appointed as a milling agent. From the agreement produced before us, it is quite clear that Lakhani Sahakari Shetki Kharedi Vikri Sanstha, the petitioner society was appointed as a sub-agent, namely, the authorised sub-agent of the Maharashtra State Co-operative Society, Bombay, for the purposes of purchasing the paddy in the year 1967-68 from the cultivators at Pohra Centre and for storing and protecting it also for the purposes of manufacturing rice from the paddy and its storage etc. Then in the agreement, a reference is made to the Government Resolution dated 13-10-1975 prohibiting everybody excluding the Government of Maharashtra or its agent from purchasing or selling the paddy rice and also Kanik, Konda, Bhusi, privately. By the said order, everybody was prohibited from running a rice mill privately as its owner or on hire or from carrying out of business in rice, Kanik Konda or Bhusi This is further clear from the provisions of Clause 9 and 9-A of the Maharashtra Scheduled Food-grains (Stocks Declaration and Procurement and Disposal, Acquisition, Transport and Price Control) Order, 1966. Clause 9 and 9-A of the said order read as under:--

"9. No person to acquire foodgrains for sale or milling without authorisation. No person shall, except under and in accordance with an authorisation granted by the Collector or by an Officer authorised by the Collector, either by himself, or through an agent, purchase or acquire foodgrains from any person for the purpose of sale, or storage for sale.

9-A. Restrictions on milling paddy or rice. No person shall, except under and in accordance with an authorisation granted by the Collector or by an officer authorised by the Collector, either by himself or through an agent, accept, purchase or acquire paddy or rice from any person for the purpose of milling such foodgrains for household consumption. The holder of such authorisation shall maintain such registers and submit such returns as the Collector or the authorised officer may require and shall not at any time mill such foodgrains in quantities exceeding those as may be prescribed by the State Government or the Collector in respect of any person or class of persons and shall not recover

charges for milling at rates higher than those fixed by the State Government or the Collector for that purpose."

Under these clauses, no person except under and in accordance with an authorisation granted in that behalf by the Collector or the Agent can do the business. It is quite obvious from the record that the petitioner society was appointed as a sub-agent by the Government and was authorised to do this work. According to the petitioner, by this very agreement the respondent No. 1 was appointed as a milling agent of the petitioner/society which was acting as a sub-agent of the Government. According to Shri Khamborkar a phraseology used in the agreement, namely the "milling agent" is not relevant for deciding the nature of relationship. According to him, the respondent No. 1 was carrying on his business of a rice mill and during the course of his business was also doing the milling work of the petitioner society. Therefore, even though the phraseology used in the agreement is "milling agent" in substance, he was an Independent contractor and not an agent, It is not possible for us to accept this contention of Shri Khamborkar.

10. It is no doubt true that the phraseology which is used in the contract or agreement is not decisive of the matter, but in our opinion, it is obviously indicative. The provisions of the agreement will have to be read with attending circumstances including the provisions of the procurement order. In view of the provisions of the Maharashtra Scheduled Foodgrains (Stocks Declaration and Procurement and Disposal, Acquisition, Transport and Price Control) Order, 1966, it appears that it was not open for the respondent No. 1 to carry on the business in his own name independently, He could have acted on the basis of the authorisation alone. This authorisation is given to him by the petitioner society and he obviously acts as the representative of the society under the authority derived from it. If this is BO, then the terms and conditions incorporated in the contract will have to be read with this provision of the said Control Order.

11. This is not a case where the petitioner-society has not kept any control over the milling of paddy by the respondent No. 1. As a matter of fact, it was agreed between the parties that the milling agent, namely, the respondent No. 1 will carry out the milling operation as per the scheme framed by the Government. The paddy for the milling was to be purchased by the petitioner-society though in presence of the milling agent. By Clause 3 of the agreement, the respondent No. 1, milling agent had accepted the responsibility of manufacturing the rice according to the method prescribed by the petitioner society from time to time. It was the duty of the sub-agent Sanstha to supply the stock of different quality of paddy to the milling agent. The milling agent was obliged to keep separate stock of rice, Kanik or Konda and also maintain a stock of husk and Tus and thereafter furnish the account separately to the petitioner, namely, society. Clause 5 of the said agreement then provides for the deduction if the rice, Kanik, Konda, Husk, Tus etc. is not according to the specification. The gunny bags etc. for the purposes were to be supplied by the sub-agent i. e. the petitioner society.

As to how the gunny bags are to be filled in is also laid down by the contract. As to how material is to be stored is also provided for. By Clause 13 a provision is made for entry and inspection by the petitioner-society. It also provides for the maintenance and inspection of the various stock registers. Therefore, in substance, the control as well as the supervision is reserved by the petitioner-society to the extent it is necessary and possible having regard to the nature of the business. If these terms and conditions of the contract are read together with the surrounding circumstances as well as the provisions of the control order which totally prohibit the milling of rice without a necessary authorisation in that behalf, in our opinion, it will have to be held that the description as given in the agreement regarding the relationship between the parties correctly depicts the nature of the relationship. This in itself is described as milling agency contract and if that is so, then, in our opinion, the Officer on Special Duty was right in coming to the conclusion that it was a dispute between a past agent and the Co-operative Society which is covered by Section 91(1) of the Act. It is not disputed before us, nor it could be disputed, that the dispute raised was touching the business of the petitioner society. If this is so, then obviously the contrary view taken by the Divisional Joint Registrar cannot be sustained. The Divisional Joint Registrar has based his reasoning only on the provisions of Section 182 of the Indian Contract Act. Even if the provisions of Section 182 of the Indian Contract Act are read in aid of construction of the word "agent" as found in Section 91(1) of the Act, the present relationship between the parties will safely fall in the first part of that section. As already observed, it was not open for the respondent proprietor of a rice mill to carry out an independent business of milling the paddy which is controlled by the Control Order. This business could have been done only on behalf of an agent or sub-agent appointed by the Government in that behalf. The services of the respondent No. 1 were utilised by the petitioner to carry out its obligation under the agreement between itself and the Principal agent and the Government. The respondent No. 1 Moreshwar was obviously, therefore, acting on behalf of the society so far as the paddy secured under the Control Order is concerned. If he could not have done the said business on his own account, then obviously the said business was done by him on behalf of the society as a milling agent. Therefore, if the totality of the circumstances placed on the record are considered together, in our opinion, it will have to be held that the respondent No. 1 was a past agent of the petitioner society within the meaning of the said term and therefore the dispute raised by the society u/s 91(1) of the Act was maintainable. In the view which we have taken, it is not necessary to consider or decide the other contentions raised" by Shri Munshi.

12. In the result, therefore, the petition is allowed. The order passed by the Divisional Joint Registrar, Nagpur, dated 25-1-1971 is set aside and the matter is remitted back to the Officer on Special Duty or any other competent authority, as the case may be, for deciding it on merits in accordance with law. However, in the circumstances of the case, there will be no order as to costs.

13. Petition allowed.