**(1981) 02 BOM CK 0027**

**In the Bombay High Court**

**Case No :** Writ Petition No. 525 of 1974

Mukund Mahadeo Kanitkar APPELLANT

Vs

Maharashtra State Co-op. Land Development Bank Ltd. and others RESPONDENT

**Date of Decision :** 06-02-1981

**Acts Referred:**

Banking Regulation Act, 1949 — Section 3, 3(b), 5, 5(c), 56
Bombay Industrial Relations Act, 1946 — Section 79
Bombay Shops And Establishments Act, 1948 — Section 13, 2(4), 3, 4
Companies Act, 1956 — Section 3, 3(1)(i), 5(9)
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10(1)(c), 2A
Maharashtra Co-operative Societies Act, 1960 — Section 112, 2(10)

**Citation :** (1982) MhLj 845

**Hon'ble Judges :** M.S. Jamdar, J

**Bench :** Single Bench

**Advocate :** Y.B. Phadnis, for the Appellant; R.E. Moharir for Respondent No. 2 and B.T. Patil, for the Respondent

**Final Decision :** Dismissed

## Judgement

M.S. Jamdar, J.—The only question that arises for consideration in this petition is whether the provisions of the Bombay Industrial Relations Act, 1946 are applicable to the Cooperative Land Development Bank.

2. The petitioner, who was working as a Branch Manager with the Buldhana District Primary Land Development Bank Ltd., Buldhana (hereinafter referred to as the Bank), was dismissed from service by an order dated 10-2-1971 (copy of Annexure-1) by the Head Manager on the basis of resolution No. 8 (e) passed by the Board of Directors of the Bank in the meeting held on 29-1-1971. No enquiry, as contemplated by rule XXIV of service Rule and Rules 40 of the Model Rules, was held against the petitioner in respect of the charges leveled against him and a copy of the charge-sheet was supplied to the petitioner alongwith the order

 

dated 10-2-1971. It appears that the action was taken under Rule X(ii) of the service Rules read with 16 (7) of the Model Rules. Being aggrieved by the order of dismissal, the petitioner filed an application u/s 78-D read with Section 79 of the Bombay Industrial Relations Act, 1946 for reinstatement with other incidental reliefs in the Labour Court at Akola. Another employee, who was similarly dismissed, also filed a similar application. In both these matters, respondent No. 2 bank raised a preliminary objection to the maintainability of the application on the ground that the Bank was not governed by the Bombay Industrial Relations Act, 1946, being exempted from the operation of the said enactment, by Govt. Notification dated 23-5-1968. The Labour court rejected this contention. But in the appeal preferred by the Bank against the said common order, the Industrial Court upheld the contention and dismissed the applications filed by the petitioner and the other employee. It is this order, which the petitioner seeks to quash in this petition.

3. The petitioner was initially appointed as an Accountant since 1-10-1962 in the Co-operative Land Mortgage Bank, Mehkar. This Bank was later on amalgamated with respondent No. 2 Buldana District Co-operative Primary Land Development Bank Ltd., on 1-6-1963. It is an admitted position that respondent No. 2 bank has branches only in the Buldhana District of Maharashtra State. It is not now disputed that the said bank transacts business of ''Banking'' as contemplated by clause (b) of section 5 of the '' Banking'' Regulation Act, 1949. It is also an admitted position that respondent No. 2, Bank is registered under the Maharashtra Co-operative Societies Act, 1960 and is functioning as a Land Development Bank under chapter XI of the said Act and is thus included in the definition of ''Co-operative Bank'' given in section 2(10) of the said Act. The said definition reads as follows:--

''Co-operative Bank'' means a society which is doing the business of Banking as defined in clause (b) of sub-section (1) of section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function as a Land Development Bank under chapter XI.

3(A). In will also be seen from the bye-laws of the Bank that the main object of the bank is to promote the economic interests of its members and more particularly to advance long term loans to its members on the security of mortgage of immovable or movable property for various purposes and the bank is authorised to raise funds by various methods such as issuing shares, raising loans, recovering fees and receiving donations etc. The Bank is therefore, ''Commercial Establishment'' within the meaning of section 2(4) of the Bombay Shops and Establishments Act, 1948. The said provision defines ''Commercial Establishments'' as meaning an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes an establishment of any legal practitioner, medical practitioner, architect, engineer accountant, tax-consultant or any other technical or professional consultant and also includes a society registered under the Societies Registration Act, 1960, and a charitable or other trust, whether registered or not, which carries on (whether for purposes of gain or not); any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment. The bank is, therefore, governed by the provisions of the Bombay Shops and Establishments Act, 1948, which became applicable to the Buldana district on the commencement of the Bombay Shops and Establishments Extension and Amendment Act of 1950 as provided in proviso to section 3 of the Bombay Shops and Establishments Act, 1948. It will be seen from Schedule II to the said Act that by virtue of notification dated 11th April 1950 issued u/s 4 only such employees of the Co-operative Banks as are engaged in propaganda, supervision and training in business method of agriculturists and rural artisans are exempted from the provisions of Section 13.

4. The bank claims exemption from the operation of the Bombay Industrial Relations Act, 1946 by virtue of notification No. BIR-3967-120183-Lab/I, dated 23rd May, 1968 by which certain industries in the Vidarbha area were exempted from the operation of the Bombay Industrial Relations Act, 1946 with effect from 1st June, 1968. One such industry, which is exempted by this notification, is an industry carried on in any establishment to which the provisions of the Bombay Shops and Establishments Act, 1948 (Bom. LXXIX of 1948) apply except banking companies as defined in section 5 of the Banking Companies Act, 1949 not having any branches or other establishments outside the State of Maharashtra. The clause, which is in italics, shows that ''banking companies'' as defined in section 5 of the Banking Companies Act were not exempted from the operation of Bombay Industrial Relations Act, 1946 and continued to be governed by the said enactment.

5. The above mentioned notification was amended by another notification No. BIR-3969/56989-Lab-I dated 26th November, 1971 by which following entry was substituted for the above quoted original entry No. 2 which is quoted above.

Industry carried on in any establishment as defined in the Bombay Shops and Establishments Act, 1948 (Bom. LXXIX of 1948) except the banking companies as defined in section 5 of the Banking Regulations Act, 1949, not having branches or other establishments outside the State of Maharashtra and Co-operative Banks to which the Banking Regulations Act, 1949 applies.

By this amendment even the Co-operative Banks to which the Banking Regulation Act, 1949, applied were taken out of the purview of the exemption granted by the earlier notification dated 23rd May 1968 and continued to be governed by the Bombay Industrial Relations Act, 1946 alongwith banking companies defined in section 5 of the Banking Regulations Act, 1949. It is pertinent to note that all Co-operative Banks as defined in section 2 (10) of the Co-operative Societies Act, 1960 are not taken out of the purview of the exemption. Only those co-operative Banks which are governed by the Banking

 

Regulations Act, 1949 have ceased to be exempted from the operation of the Bombay Industrial Relations, Act, 1946 and after the notification dated 26th November, 1971 they are again governed by the said enactment.

6. The question, therefore, that arises for consideration is whether respondent No. 2 bank is a ''banking company'' as defined in section 5 of the Banking Companies Act, 1949 or is a co-operative bank to which the Banking Regulation Act, 1949 applies. It may be mentioned here that the word ''Companies'' in the Banking Companies Act, 1949 was omitted by the Act No. 23 of 1965 and is substituted by the word ''Regulation'' and since then the act, as amended, is known as the Banking Regulation Act, 1949. Hence the clause in the relevant notification dated 23rd May, 1968 ''Banking Companies as defined in section 5 of the Banking Companies Act, 1949'' will have to be read as ''banking companies'' as defined in section 5 of the Banking Regulation Act, 1949. Clause (c) of section 5 of the Banking Regulation Act, 1949 defines ''banking company'' to mean any company which transacts the business of banking in India. The word ''company'' is defined by clause (d) of section 5 as meaning any company as defined in section 3 of the Companies Act, 1956 and includes a foreign company within the meaning of section 5 (9) of the Companies Act, 1956. ''Company'' is defined in section 3 (1)(i) of the Companies Act as a company formed and registered under this act or an existing company as defined in clause (ii). Admittedly the bank is neither formed and registered under the Companies Act nor is an existing company within the meaning of clause (ii) of section 3 (1)(i) of the Companies Act. It is registered under the Maharashtra Co-operative Societies Act, 1960 as a ''Co-operative society'' and as mentioned above, it is a ''co-operative bank'' within the meaning of section 2(10) of the said enactment.

7. Shri Phadnis, the learned advocate for the petitioner, placed reliance on section 56 of the Banking Regulation Act, 1949 in support of his contention that a co-operative Bank is a ''Banking company'' within the meaning of section 5 (c) of the Banking Regulation Act, 1949. Section 56 lays down that the provisions of the Banking Regulation Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to the modifications stated in clauses (a) to (zk). Clause (c) of section 56 provides that in section 5 after clause (cc) clause (ccc) should be inserted. Clause (ccc) contemplates that the words ''central co-operative bank'', ''co-operative Bank'', ''co-operative society'' and ''State Co-operative bank'' etc; shall have the meaning respectively assigned to them in the Reserve Bank of India Act 1924. According to Shri Phadnis in view of these provisions as the respondent bank is a co-operative society, it is a ''banking company'' as contemplated by section 5(c). It is difficult to accept this submission because section 56 is applicable only to those co-operative banks which come within the purview of residuary clause (c) of section 3 of the Banking Regulation Act, 1949. Section 3 of the said Act lays down that nothing in this Act shall apply to:--

(a) a primary agricultural credit society;

 

(b) a co-operative land mortgage bank; and

(c) any other co-operative society, except in the manner and to the extent specified in part V.

The italicised clause governs only sub-section (c) and not sub-sections (a) and (b). Part (V) is not applicable to societies and banks belonging to the categories mentioned in sub-sections (a) and (b). It is, therefore, clear that no provision of the Banking Regulation Act including section 56 is applicable to a primary agricultural credit society or a co-operative land mortgage bank. The Act will be applicable only to other co-operative banks in the manner and to the extent specified in part V of the Banking Regulation Act, 1949.

8. Section 112 of the Maharashtra Co-operative Societies Act, 1960 specifically lays down that ''a'' reference to land mortgage bank in any law, or instrument, for the time being in force in the State, shall, with effect from the commencement of this Act, be constructed as a reference to a Land Development Bank within the meaning of this Chapter. Hence reading section 3 (b) of the Banking Regulation Act, 1949 alongwith Sec. 112(2) of the Maharashtra Co-operative Societies Act, 1960, it is clear that in the State of Maharashtra, the Banking Regulation Act, 1949 is not applicable to a Co-operative Land Development Bank. Respondent No. 2, therefore, is neither a ''banking company'' within the meaning of section 5 of the Banking Companies Act nor is a co-operative Bank to which the Banking Regulations Act, 1949 applies. The learned member of the Industrial Court, therefore, rightly held that the Labour Court constituted under the Bombay Industrial Relations Act, 1946 had no jurisdiction to entertain the application filed by the petitioner.

9. The course open to the petitioner, therefore, is to apply to the appropriate Government u/s 2A read with section 10 (1)(c) of the Industrial Disputes Act, 1947 to refer the dispute for adjudication to the Labour Court constituted under the Industrial Disputes Act, 1947 for the area in which the establishment falls.

10. Shri Phadnis, for the petitioner, urged that as the dismissal order is illegal on the face of it this Court can and should grant relief to the petitioner in exercise of the jurisdiction, under Article 226 of the Constitution. There is no doubt that as the order of dismissal was passed without holding any enquiry into the misconducts enumerated in the charge-sheet, it is prima facie illegal. But as rightly contended by Shri Moharir, it would be open to the respondent Bank to prove the alleged misconduct by leading necessary evidence in the Labour Court. There is, however, reasonable basis for the apprehension expressed by Shri Phadnis that the Government may not make the reference in view of the delay in approaching the Government for that purpose. Considering the fact that the petitioner''s application failed only on technical ground and also in view of the fact that the dismissal order is prima facie illegal, it is directed that the prayer of the petitioner for making a reference to the Labour Court u/s 10 of the Industrial Disputes Act, 1947 shall not be refused merely on the ground of delay.

With these observations, the petition stands dismissed. No order as to costs.