

(1971) 04 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 897 of 1970

Nagpur District Central Co-operative Bank Ltd. and Another APPELLANT
Vs

Divisional Joint Registrar, Co-operative Societies, Nagpur and RESPONDENT
Another

Date of Decision : 30-04-1971

Acts Referred:

Banking Companies Act, 1949 — Section 5(1)
Constitution of India, 1950 — Article 246

Citation : AIR 1971 Bom 365

Hon'ble Judges : Padhye, J;Khan, J

Bench : Division Bench

Advocate : M.N. Phadke and K.H. Deshpande, for the Appellant; C.S. Dharmadhikari, Addl. Govt. Pleader and A.G., for the Respondent

Judgement

Padhye, J.—The petitioner is a Co-operative Society registered under the Maharashtra Co-operative Societies Act 1960 having its registered office at Nagpur. It does banking business and is known as a Central Co-operative Bank within the meaning of that expression used in the Reserve Bank of India Act, 1934. The primary object of this Society is to finance the other Co-operative Societies in the district and is now covered by the Banking Regulation Act, 1949 as amended by the Banking Laws (Application to Co-operative Societies) Act, 1965 and has been granted a licence under the Reserve Bank of India Act, 1934. The sole business of the petitioner-Society is that of banking that is to accept deposits from the public and lend the money to the Co-operative Societies in the district and to invest the deposits in other spheres.

2. The petitioner Society has framed its bye-laws according to which the Board of Directors of the Society consists of not more than 23 members and is entrusted with the management of the business and affairs of the bank. The Board is elected by the share-holders of the bank and holds office for a period of 3 years. The present Board of Directors of the petitioner was elected in September 1968 and in ordinary course will hold office till July 1971 or till the new Board of

Directors assumes office. The original petitioner was Ramkrishna Paikaji Samarth who was the elected Honorary Secretary of the Board of Directors. The original petitioner Ramkrishna died during the pendency of this petition and application was made by the Society through its chairman and the Chairman for being substituted as petitioners and to continue the petition. The questions raised to the petition were of such importance and the State did not object to the substitution being made and accordingly though the matter did not fall strictly under Order 22 of the Code of Civil Procedure, the substitution was ordered as the State wanted the main contention involved in the case decided once and for all.

3. The Divisional Joint Registrar of the Co-operative Societies who is the respondent No. 1 to this petition issued a notice to the petitioner-Society through its Chairman on 7-7-1970 detailing the several acts of omission and commission by the Society and showing the several defects and irregularities on the part of the management and required the Board of Directors of the petitioner-Society as to why the Chairman and the Directors of the Board of Directors of the said bank should not be removed and one or more administrators be appointed in its place. This notice is purported to be issued under his powers u/s 78(i) of the Maharashtra Co-operative Societies Act, 1960. Subsequently on the 9th of July 1970 a corrigendum was issued to the earlier notice dated the 7th of July 1970 suggesting some minor corrections in the earlier notices. This notice dated 7-7-1970 with the corrigendum dated 9-7-1970 is challenged by the petitioners as being without jurisdiction and the petitioners pray that Section 78 of the Maharashtra Co-operative Societies Act, 1960 be declared as not applicable to the Central Cooperative Banks and that the Divisional Joint Registrar, Co-operative Societies, has no jurisdiction to initiate any action u/s 78 against the petitioners and other members of the Board of Directors of the petitioners-Bank. The petitioners also pray for a writ of mandamus or any other appropriate writ, direction or order to quash the notice dated 7-7-1970 with its corrigendum which was issued by the Divisional Joint Registrar, Nagpur, u/s 78 of the Maharashtra Co-operative Societies Act.

4. The challenge which was originally made was three-fold. First it was urged that it was not within the power of the Registrar to interfere u/s 78 of the Societies Act with a banking institution which is governed by the Banking Regulation Act, 1949 and not by the Maharashtra Co-operative Societies Act, 1960. It is urged that even though it is a Society registered under the Maharashtra Co-operative Societies Act yet as it is engaged in doing the business of banking, it is outside the pale of the State Act and there is a total lack of jurisdiction in the State Act to deal with the banking concern such as the petitioner No. 1 is. In other words, it is contended that the State Legislature has no competence to make a law with respect to any bank including a co-operative society doing the business of banking or to legislate in respect of any matter which relates directly or indirectly to the banking as the subject is exclusively within competence of the Central Legislature. Secondly, even if the Registrar gets

the jurisdiction u/s 78 of the Co-operative Societies to deal with the society doing banking business, still his jurisdiction is confined to the organisation of the society and not to its functioning, that is, the jurisdiction does not extend in respect of the banking business as such and since the notice is in respect of the alleged defaults in the conduct of the business of banking and not with the constitution of the society as such, the Registrar had no jurisdiction to issue such a notice. Thirdly, the notice dated 7-7-1970 with its corrigendum is on the face of it mala fide and is liable to be struck down.

5. So far as the third challenge is concerned, Mr. M.N. Phadke, the learned counsel for the petitioners, later did not press the ground of mala fide with a request that liberty be reserved to the petitioners to urge this ground if and when a final order is passed against the petitioner on the enquiry if held. We permitted the petitioners to withdraw this challenge with the liberty as asked for. Only two challenges, therefore, survive in the present case.

6. The Maharashtra Co-operative Societies Act, 1960, hereinafter called the Societies Act was enacted by the State Legislature under the powers conferred on it by Entry No. 32 of the List II, that is, the State List of the Seventh Schedule of the Constitution of India. The preamble to this Act shows that it is made with a view to providing for the orderly development of the Co-operative movement in the State of Maharashtra in accordance with the relevant directive principles of State policy enunciated in the Constitution of India. It defines "Central Bank" u/s 2(6) which means a co-operative Bank, the object of which includes the creation of funds to be loaned to other Societies. u/s 2(7) "Committee" means the Committee of management or other directing body, to which the management of the affairs of a society is entrusted, u/s 2(10) "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 (now it is amended as Banking Regulation Act, 1949) and includes any society, which is functioning or is to function as a Land Development Bank under Chapter XI. There are different kinds of societies for different purposes, such as Federal Society, Agricultural Marketing Society, Consumers Society, Co-operative Bank, Farming Society, Housing Society, Processing Society, Producers Society, Resource Society and a General Society. The petitioner-Society falls under the head "Co-operative Bank".

7. Chapter IV of the Societies Act deals with Incorporation, Duties and Privileges of Societies. Section 43 puts restrictions on the borrowings by the society and provides that a society shall receive deposits and loans from members and other persons only to such extent and under such conditions, as may be prescribed or specified by the bye-laws of the Society. Sub-section (2) of Section 43 empowers the Registrar to impose by general or special order additional conditions on any society or class of societies subject to which and the extent upto which such society or class of societies may receive deposits, issue debentures or raise loans from any creditors other than a Central Bank. Section 44 provides for regulation

of loan making policy and Section 45 puts restrictions on other transactions with non-members. The State Government has also framed rules known as the Maharashtra Co-operative Societies Rules, 1961 in exercise of the powers conferred by Sub-sections (1) and (2) of Section 165 of the Societies Act. Rule 10 gives the classification and sub-classification of the societies and a Co-operative bank is one such class which is sub-classified into (a) Central Bank and (b) other Banks. Rules 38 to 47 deal with raising of funds by the Societies by accepting loans or deposits, regulation of loans to be granted by the societies, the conditions to be complied with by the members applying for loans, manner of recalling of loan and restrictions on borrowing from more than one credit society.

8. The Central Legislature has enacted an Act called the Banking Companies Act, 1949, which is a pre-Constitution Act and was enacted under the Legislative powers given to it under the Government of India Act, 1935. This Act has further been amended and it is now known as the Banking Regulation Act, 1949. The Act, as it was originally enacted, was for the purpose of consolidating and amending the law relating to banking companies. It deals with the business of the banking and controls the banking business in the country. Large powers are given to the Reserve Bank of India to issue directions to the Banking Corporations which may be in the public interest or to prevent the affairs of non-banking Corporation being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interest of the banking Corporation or to secure the proper management of the banking Corporations generally. An Act known as the Reserve Bank of India Act, 1934 was also passed by the Central Legislature. The Banking Regulation Act was further amended in the year 1965 by Act No. 23 of 1965, called the Banking Laws (Application to Co-operative Societies) Act, 1965 by which amendments were made to the Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949 for the purposes of regulating the Banking business of certain co-operative societies and for matters connected therewith. By this Act several provisions of the original Act were deleted and some provisions were added for the purposes of the Co-operative Societies. This amendment and the further amendment by Banking Laws (Amendment) Act, 1968 (Act No. 58 of 1968) was enacted to provide for the extension of social control over banks and for matters connected therewith or incidental thereto. The provisions of this Act were to have effect notwithstanding anything to the contrary contained in the bye-laws of a Co-operative Society, or in any agreement executed by it, or in any resolution passed by it in general meeting, or by its Board of Directors or other body entrusted with the management of its affairs, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 and any provisions contained in the bye-laws, agreement or resolution aforesaid shall to the extent to which it is repugnant to the provision of this part become or be void as the case may be. The Banking Regulation Act, as amended, in general provided for the minimum paid up capital and reserves, cash reserve, for obtaining the licences, for

permission to open new places of business or change the location of an existing place of business, in respect of maintaining the accounts and preparing balance-sheets and such other matters.

9. It is the Contention on behalf of the petitioners that with respect to the Co-operative Banks which are exclusively doing the business of banking, though they are co-operative societies, laws could only be made by the Central Legislature and there is no Legislative competence in the State Legislature to enact any law with respect to any matter concerning the Co-operative Banks. It is contended that it is exclusively the subject of the Central Legislature under Entries Nos. 43, 44 and 45 of the Union List, that is, List I of the Seventh Schedule of the Constitution and the State Legislature is denuded of its powers to make any law with respect to such co-operative banks though they may be co-operative societies. The relevant entries under the two Lists are as under:

LIST I.

Entry No. 43:-- Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial Corporations but not including co-operative societies.

Entry 44:-- Incorporation, regulation and winding up of Corporations, whether trading or not, with objects not confined to one State, but not including universities.

Entry 45:-- Banking.

LIST II.

Entry No. 32:-- Incorporation, regulation and winding up of Corporations, other than those specified in List I, and universities, unincorporated trading, literary, scientific, religious and other societies and associations, co-operative societies.

It is contended that the matters regarding incorporation, regulation and winding up of banking societies registered under the Co-operative Societies Act would fall under Entry No. 43 and in any case under Entry 45 which has a very wide import and would cover a very large field with respect to the business of banking and all matters ancillary to or incidental to the same. It is further urged that Entry No. 32 in List II empowers the State Legislature to make laws with respect to the cooperative societies excluding the societies doing the business of banking. It is urged on the basis of Article 246 of the Constitution that if a particular topic or matter falls under List I in the Seventh Schedule then the Parliament has the exclusive power to make laws with respect to that matter and the State is deprived of the power to make any law with respect to any matter enumerated in the List I under Clause (3) of Article 246 of the Constitution, the power of the State Legislature is subject to Clauses (1) and (2) and if the power to legislate on a particular topic is to be found in the List I, evidently the State Legislature would not be empowered to legislate on the very same topic and the law made by the Parliament will have to prevail. Of course, this presupposes that the

subject is covered by the entries in List I. The learned counsel cited Attorney-General of Alberta v. Attorney-General of Canada AIR 1939 PC 53, Attorney General of Alberta v. Attorney General of Canada AIR 1943 PC 76 and State of Orissa Vs. M.A. Tulloch and Co., . The first case dealt with British North America Act, 1867 and Sections 91 and 92 (1) thereof, it was held that if a given subject-matter fall within any class of subjects enumerated in Section 91, it could not be treated as covered by any of those within Section 92.

10. In the second case also from Canada, it was held that the legislation coming in pith and substance within one of the classes specially enumerated in the Central List is beyond the legislative competence of the Provincial Legislatures. It was further held that in such a case it is immaterial whether the Central Legislature has or has not dealt with the subject by legislation, or to use other well-known words, whether that legislative field has or has not been occupied by the legislation of the Central Assembly. It was also held that where the Central Legislature has been given exclusive legislative authority as to "all matters coming within the classes of subjects" enumerated it cannot be said that, unless and until the Central Assembly legislates on any such matter the Provinces are competent to legislate. The Supreme Court has also taken the same view in the Orissa case cited above. It was dealing with the Orissa Mining Areas Development Fund Act enacted by the State of Orissa while the Central Act No. 53 of 1948 namely. Mines and Minerals (Regulation and Development) Act, 1957 was in existence. The following observations from paragraph 5 would be useful.

"It does not need much argument to realise that to the extent to which the Union Government had taken under "its control" "the regulation and development of minerals" so much was withdrawn from the ambit of the power of the State Legislature under Entry No. 23 and Legislation of the State which had rested on the existence of power under that entry would to the extent of that "control" be superseded or be rendered ineffective, for here we have a case not of mere repugnancy between the provisions of the two enactments but of a denudation or deprivation of State Legislative power by the declaration which Parliament is empowered to make and has made."

After dealing with their earlier decision, their Lordships further observed in paragraph 15 as follows:

"But even if the matter was *res integra*, the argument cannot be accepted. Repugnancy arises when two enactments both within the competence of the two "Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two Legislations containing contradictory provision is not however the only criterion of repugnancy, for, if a competent Legislature with a superior efficacy expressly or impliedly evinces by its Legislation an intention to cover the whole field the

enactments of the other Legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of Legislation."

We are, therefore, in agreement with the learned counsel for the petitioners on the authority of this decision that if this subject with which we are dealing is covered by the entries in the List I and is thus within the exclusive powers of the Central Legislature then whether the Central Legislature has occupied that field or not, the State Legislature would be denuded of the powers with respect to that subject and would not be competent to legislate on that topic. It is not necessary that the Central Legislature must have legislated on that subject so as to deprive the State Legislature of its powers to legislate on that topic provided that topic falls within List I.

11. We agree with the learned counsel for the petitioners that the entries in the list should be construed broadly and not in a narrow pedantic sense. It cannot be disputed that the entries in the various Lists of the Seventh Schedule must be given widest possible interpretation. It also cannot be disputed that while making law under any entry in the Schedule it is competent to the Legislature to make all such incidental and ancillary provisions as may be necessary to effectuate the law. The Supreme Court has clearly laid down these propositions in *Waverly Jute Mills Co. Ltd. Vs. Raymon and Co. (India) Private Ltd.*, . The Commissioner of Commercial Taxes and Others etc. Vs. *R.S. Jhaver and Others etc.*, and *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, . It has also been laid down in this last decision that if some of the entries in the different lists or in some list overlap or may appear to be in direct conflict with each other, it is the duty of the Court to reconcile the entries and bring about a harmonious construction. An endeavour must be made to solve the conflict by having recourse to the context and scheme of the Act and a reconciliation attempted between two apparently conflicting jurisdictions by raising the two entries together and by interpreting and where necessary, modifying the language of the one by that of the other. A general power ought not to be so strict as to make a nullity of a particular power conferred by the same Act and operating in the same field when by reading the former in a more restricted sense effect can be given to the law in its natural and ordinary meaning. Similar observations are to be found in *Waverly Jute Mills Co. Ltd. Vs. Raymon and Co. (India) Private Ltd.*, where it is observed that where there are two entries, one general in its character and the other specific, the former must be construed as excluding the latter. It would thus be seen that if there is a general power in one list and a particular power in the other list which specific power could also be included in the general power in the first list then the general entry in the first list must be so read as to exclude the specific power from it so that that general power may cover or occupy all the field excepting the field under the specific power under the second list and the specific power must be preserved to the Legislature which it empowers under that list. It is in the

light of these guiding principles the impugned provision is to be looked at.

12. It is urged on behalf of the petitioners that Entry No. 43 in List I covers the whole field with respect to incorporation, regulation and winding up of trading Corporations as also banking, insurance and financial Corporations and excludes only the cooperative societies. It is urged that entry No. 43 therefore would empower the Central Legislature to legislate in respect of banking Corporations which would also cover banking cooperative societies and what is excluded is only the non-banking cooperative societies, that is, societies which do not deal in the business of banking. Now we do not think that entry No. 43 can be read in that sense, in our opinion, entry No. 43 excludes all cooperative societies including the trading banking insurance and financial cooperative societies and those are put in entry No. 32 of List II. There is no warrant to say that entry No. 43 excludes only non-banking cooperative societies, but includes within its sweep banking cooperative societies. If that were so, then there was no need for entry No. 45. Then it is urged that entry No. 45 which is "banking" is so wide in its import that it has taken within its sweep everything relating to the banking business including the bodies doing that business and everything that is necessary for its implementation. No doubt the entry No. 45 is of a general import and ordinarily takes within its sweep everything, relating to banking. Banking, however would not mean the banking corporations, but would mean only the conduct of banking business by corporations.

13. If the entry "banking" were to be given such a wide import as is suggested on behalf of the petitioners, then nothing would be left for the Cooperative Department to deal with the cooperative societies dealing exclusively in the banking business even though the said societies are registered under the Co-operative Societies Act. If a society is registered under the Co-operative Societies Act, then it is the Cooperative Department which is to have the control over the working of the said society and it is for the Department to see that the administration of such society is carried on smoothly and if there are serious irregularities in the administration, to carry on the administration by appointing administrators. There is no reason why an exception should be made with respect to the banking societies alone as regards their control by the Cooperative Department. So far as the banking business as such is concerned, the Reserve Bank will have control over its working and it has also got the power to cancel the licence of the society if such a step is found to be necessary. That, however does not conflict with the control of the society by the Cooperative Department as the functions of the two bodies, namely, the Reserve Bank and the Cooperative Department or the Registrar are different. The Reserve Bank lays down certain conditions in accordance with which the business is to be carried on by a banking concern and any lapse on the part of the concern can be visited with action by the Reserve Bank. This power of the Reserve Bank is quite separate from the power which is to be exercised by the Registrar. It may be that some of the lapses on the part of the management of the Cooperative Society under the obligation imposed upon the banking society by the Reserve Bank may

also be taken to be the grounds for taking action against the management by the Registrar and to some extent there may be overlapping but the purpose of taking action by the Reserve Bank and the Registrar is distinct and for different purposes. In taking action u/s 78 of the Societies Act, there is not an encroachment on the powers of the Reserve Bank or any of the powers under the Reserve Bank Act or the Banking Regulation Act. Assuming that there is some encroachment, such encroachment would be negligible and would not denude the State Legislature from making a law which predominantly falls under the said list. It is possible to reconcile the entries in the Union and the State List, namely, entries 43 and 45 in the List No. I with the entry No. 32 in the List No. II by giving to the State Legislature the power to make laws with respect to the cooperative societies including the societies doing business exclusively in banking and to give supervisory power to the department over such banks and to the Central Legislature the power to make the laws as has been done with respect to the conduct of the business of banking apart from the Corporation of the society itself.

14. Entry No. 32 in List II relates to Cooperative Societies and embraces all the cooperative societies including those exclusively doing the banking business. Under this entry the State Legislature is entitled to make a law with respect to the Cooperative Societies as regards its incorporation, regulation and winding up and it was competent to enact the Cooperative Societies Act including Section 78 thereof. Section 78 is in general terms and covers all Cooperative Societies. It cannot be disputed that Section 78 could have been enacted under Entry No. 32 with respect to the Cooperative Societies. It is not disputed in this petition that with respect to the societies which are not banking societies Section 78 is a valid piece of legislation. Does it then become invalid because it also seeks to embrace banking societies while determining the validity of a particular piece of Legislation on the ground of legislative competence, it has first to be seen whether that piece of legislation falls under a particular entry? It would, therefore, first be necessary to find out if the provisions of Section 78 can fall under entry No. 32 of List II. If it does then the enquiry whether it falls in any other entry is irrelevant and while considering the validity of the legislation, it is necessary to first find out as to what is the true nature and character of the legislation and if predominantly that legislation falls under a particular entry, then the fact that it encroaches to some extent on similar entry of the other List would not be a ground for striking out that legislation as invalid. The doctrine of pith and substance has to be adopted in such cases. In the Government of India Act, 1935, the subject of promissory notes was a Central subject under entry No. 38 "banking" in List I of Seventh Schedule, whereas the subject of "money-lending" was a State subject under Entry No. 27 of List II. Bengal Legislature enacted the Bengal Moneylenders Act and the question was whether the Bengal Moneylenders Act also governed the moneylending transactions under the promissory note. The validity of the Bengal Moneylenders Act came for consideration before the Federal Court in AIR 1944 18 (Federal Court) and

subsequently in AIR 1945 7 (Federal Court) The question there was whether the Bengal Moneylenders Act interferes with the conduct of banking business in entry 38. List I of Seventh Schedule of the Government of India Act. The validity of Sections 30 and 36 of the Bengal Moneylenders Act was challenged as it would constitute a serious interference with the conduct of banking business. Section 36 provided for the reopening of decrees on pronotes. It was urged there that the promissory notes were excluded from the sphere of the Provincial Legislation. It was urged that by applying the provisions of the Moneylenders Act to the promissory notes also it would affect the banks as application of Section 30 and Section 36 will greatly reduce the amount which a bank can recover in execution of decrees obtained by it, and therefore, those provisions must be held, to constitute a serious interference with the conduct of banking business. This contention was repelled by the Federal Court observing:

"A law of limitation or a law relating to the compulsory acquisition of land may affect the rights of a bank just as they may affect the rights of other suitors or property-owners. It would be too much to say that every law which in its operation might affect the property or interest of a bank just as it affects the property or interest of other persons, would constitute an encroachment on entry 38 of List 1. On a reasonable construction, the entry must be limited to laws which affect the conduct of the business of banks qua banks."

15. This matter was taken to the Privy Council in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd. Khulna 1947 FCR 28 : AIR 1947 PC 60. Their Lordships of the Privy Council while considering the powers under List I, List II and List III of the Seventh Schedule to the Government of India Act, 1935 observed as under:--

"To take such a view is to simplify unduly the task of distinguishing between the powers of divided jurisdictions. It is not possible to make so clean a cut between the powers of the various legislatures; they are bound to overlap from time to time. Moreover, the British Parliament when enacting the Indian Constitution Act had a long experience of the working of the British North America Act and the Australian Commonwealth Act and must have known that it is not in practice possible to ensure that the powers entrusted to the several legislatures will never overlap."

The Judicial Committee approved the passage from the judgment of Sir Maurice Gwyer C. J. in AIR 1941 47 (Federal Court) which is to the following effect:

"It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind observance to a "strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislation enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to

ascertain its "pith and substance", or its "true nature and character", for the purpose of determining whether it is legislation with respect to matters in this list or in that."

It was held that though the subject of negotiable instruments which includes promissory notes fell under Entry 28 in List I and the subject "banking" fell in Entry 38 in List I of the Government of India Act, still a legislation made under Entry 27 in List II of the Government of India Act which is "moneylending" relating to the promissory notes, such a legislation would not be void so that legislation falls in pith and substance in Entry No. 27 of the second List. The Judicial Committee then considered the question regarding the extent of invasion of the Provinces in the subjects enumerated in the Federal List. In dealing with this aspect, it observed:

"Its provisions may advance so far into Federal territory as to show that its true nature is not concerned with provincial matters, but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not money lending but promissory notes or banking? Once that question is determined the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true content. This view places the precedence accorded to the three lists in its proper perspective."

They further observed:

"No doubt where they come in conflict List I has priority over Lists III and II and List III has priority over List II but the question still remains, priority in what respect? Does the priority of the Federal Legislature prevent the provincial Legislature from dealing with any matter which may incidentally affect any item in its list, or in each case has one to consider what the substance of an Act is and, whatever its ancillary effect, attribute it to the appropriate list according to its true character? In their Lordships' opinion the latter is the true view. If this be correct it is unnecessary to determine whether the jurisdiction as to promissory notes given to the Federal legislature is or is not confined to negotiability. The Bengal Moneylenders Act is valid because it deals in pith and substance with money lending, not because legislation in respect of promissory notes by the Federal Legislature is confined to legislation affecting their negotiability a matter as to which their Lordships express no opinion."

16. The doctrine of "pith and substance" was again invoked by the Supreme Court in *The State of Rajasthan Vs. G. Chawla and Dr. Pohumal*, . The following passage from paragraph 8 of the decision could be usefully cited:

"These entries, it has been ruled on many an occasion, though meant to be mutually exclusive are sometimes not really so. They occasionally overlap, and are to be regarded as enumeration simplex of broad categories. Where in an organic instrument such enumerated powers of legislation exist and there is a conflict between rival lists, it is necessary to examine the impugned legislation in

its pith and substance, and only if that pith and substance falls substantially within an entry or Entries conferring Legislative power, is the legislation valid, a slight transgression upon a rival list notwithstanding".

The passage from the decision in AIR 1941 47 (Federal Court) was cited with approval.

17. This doctrine was also applied by the Supreme Court in a case from Patna in Thakur Manmohan Deo and Another Vs. The State of Bihar and Others, . It was contended there that the Bihar Land Reforms Act encroached upon the Union List because the Act was sought to apply to Government Ghatwal tenures which are of quasi military nature and, therefore, deal with the topic on the Defence of India or Armed forces of the Union falling in items 1 and 2 of the Union List. It was observed that the Act has no connection whatsoever with the defence of India or the armed forces of the Union and in pith and substance the legislation was covered by Entry 36 of List II and it has no relation to items 1 and 2 of List I. The Supreme Court has again occasion to deal with this doctrine in Shri Ramtanu Co-operative Housing Society Ltd. and Another Vs. State of Maharashtra and Others, . The conflict there was between Entry 24 in List II and entries 7 and 52 in List I. The question raised was whether the State of Maharashtra was competent to enact the Maharashtra Industrial Development Act, 1961. Their Lordships of the Supreme Court laid down the following test in determining the validity of the legislation. In paragraph 15 of the judgment, they said:

"It is in the background of the purposes of the Act and powers and functions of the Corporation that the real and true character of the legislation will be determined. That is the doctrine of finding out the pith and substance of an Act. In deciding the pith and substance of the legislation, the true test is not to find out whether the Act has encroached upon or invaded any forbidden field but what the pith and substance of the Act is. It is that true intent of the Act which will determine the validity of the Act. Industries come within Entry 24 of the State List subject to the provision of Entry 7 and Entry 52 of the Union List of the Constitution. Entry 7 of the Union List relates to industries declared by Parliament by "law to be necessary for the purpose of defence or for the prosecution of war. Entry 52 of the Union List relates to industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest. The establishment, growth and development of industries in the State of Maharashtra does not fall within Entry 7 and Entry 52 of the Union List. Establishment, growth and development of industries in the State is within the State List of industries. Furthermore, to effectuate the purposes of the development of industries in the State it is necessary to make land available. Such land can be made available by acquisition or requisition. The Act in the present case deals with acquisition of land by the State and on such acquisition, the State may transfer the land to the Corporation which again may develop it itself and establish industrial estates or may develop industrial areas. Acquisition

or requisition of land falls under Entry 42 of the Concurrent List. In order to achieve growth of industries it is necessary not only to acquire land but also to implement the purposes of the Act. The Corporation is therefore established for carving out the purposes of the Act. The pith and substance of the Act is establishment, growth and organisation of industries, acquisition of land in that behalf and carrying out the purposes of the Act by setting up the Corporation as one of the limbs or agencies of the Government. The powers and functions of the "Corporation show in no uncertain terms that these are all in aid of the principal and predominant purpose of establishment, growth and establishment of industries. The corporation is established for that purpose. When the Government is satisfied that the Corporation has substantially achieved the purpose for which the Corporation is established, the Corporation will be dissolved because the *raison d'être* is gone. We therefore, hold that the Act is a valid piece of legislation."

18. Applying these tests, therefore, the purpose of enacting Section 78 with which we are dealing is making a law relating to the Cooperative Societies and their functioning. The Cooperative Societies are of different kinds dealing in different matters. The purpose of enacting this provision is to have the control on the Cooperative societies registered under the Societies Act. Since the societies doing banking business are also registered under the Cooperative Societies Act, it is but natural that the Act must provide for a control over the management of the said bank also. This control may also be in respect of the matters connected with the banking business. Merely on account of that it cannot be said that the State Legislature has encroached upon the Central field and on that account the legislation is bad.

19. The question similar to the one with which we are dealing came before the Punjab and Haryana High Court in *Sant Sadhu Singh and Others Vs. The State of Punjab and Another*, The question there raised was that the Punjab Legislature is not competent to make law pertaining to banking Corporations. The Cooperative societies doing banking business are banking Corporations and, therefore, the Amending Ordinance and the Amending Act which have replaced it, are *ultra vires* the Constitution so far as the Banking Co-operative Societies are concerned. The Punjab High Court repelled the contention. They considered the effect Of the entries 43, 44 and 45 of List I and entry 32 of List II and held as follows:

"It is evident that entry No. 43 and entry No. 45 relate to different heads of legislation. Whereas entry No. 45 gives the power to the Central Legislature to legislate qua banking business, entry No. 43, on the other hand, gives power to the Central Legislature to legislate regarding Corporations. It is immaterial whether those Corporations were doing the banking business or not. In other words, Central Legislature is competent to legislate with regard to Corporation engaged in the business of banking in view of entry No. 43 List I. But so far as the Cooperative Societies are concerned, they were taken out of the ambit of

entry No. 43 and put in entry No. 32 List II. The word "regulation" in entry No. 43 is of a wide import and would include how a Cooperative Society is to work. In other words it will include the constitution of a Cooperative Society and any matter relating to its "constitution would naturally be the subject-matter of legislation by the State Legislature."

They further observed:

"In a broad sense, the controlling of the working of a Society doing banking business will in some measure concern the business of banking and thus may bring it within the ambit of entry No. 45 List I. Thus there would be some overlapping. But in order to give a harmonious construction to both the entries Nos. 43 and 45, it must be held that only business of banking as such falls within the ambit of entry No. 45; whereas the incorporation of the Corporations and other matters relating to them fall within the ambit of Entry No. 43. Therefore, the constitution of the Societies and their working would have fallen within the ambit of entry No. 43 but for the fact that Co-operative Societies are excluded from its purview. The very fact that in Entry No. 43, Corporations engaged in the business of banking are specifically mentioned, it clearly follows that cooperative Societies doing that business were taken out of entry No. 43 List I and deliberately put in entry No. 32 List II".

The learned Judges then concluded:

"The State Legislature has jurisdiction to regulate the functioning of the Co-operative Societies engaged in the business of banking."

20. With respect, we agree with these observations of the learned Judges of the Punjab and Haryana High Court. Taking, therefore, the view expressed by these decisions into consideration, it would be clear that the legislation concerning the Co-operative Societies which would also include banking societies would fall in Entry No. 32 of List II and Section 78 of the Societies Act with which we are dealing, does fall in pith and substance under the topic in Entry 32 of List II. The aforesaid legislation is in its true nature and character for the purposes of governing or controlling the affairs of the Co-operative Societies and not "banking". The provisions of Section 78, in our view, are a valid piece of legislation and the Registrar has the power to act under the said provision.

21. In our view, therefore, the Registrar has the power u/s 78 of the Societies Act to issue a show cause notice to any committee of the society or any member of such committee including the Directors in respect of any default or negligence in the performance of the duties imposed on it or him by the Act or the rules or the bye-laws. Section 78 also gives the power to the Registrar to remove the Committee or the members thereof if any such action is called for. In our view, therefore, the notice dated 7-7-1970 with its corrigendum dated 9-7-1970 is not liable to be quashed. It cannot be said at this stage that the Registrar in dealing with the matter will exceed his jurisdiction conferred upon him u/s 78. If he does so, that will be a matter for consideration as and when such question arises.

Whether the act of the Registrar amounts to interfering with the conduct of the banking business or not will also be a matter for consideration as and when it arises. It is too premature at this stage to say anything about it. It will be open to the petitioners to raise objections before the Enquiry Officer with respect to the matters which the petitioners may consider to be beyond the jurisdiction of the Registrar or the Enquiry Officer. We, therefore, decline to interfere at this stage with the show cause notice issued on 7-7-1970 and its corrigendum dated 9-7-1970.

22. Accordingly, we dismiss the petition with costs.

23. Petition dismissed.