
(1955) 08 BOM CK 0014

In the Bombay High Court

Case No : Special Civil Application No. 368 of 1955

The Majoor Sahakari Bank Ltd.

APPELLANT

Vs

N.N. Majmudar and Another

RESPONDENT

Date of Decision : 23-08-1955

Acts Referred:

Bombay Industrial Disputes Act, 1938 — Section 2(3)
Bombay Industrial Relations Act, 1946 — Section 2(3)
Companies Act, 1956 — Section 23(2), 4, 54, 68, 70
Constitution of India, 1950 — Article 227

Citation : AIR 1957 Bom 36 : (1956) 58 BOMLR 1097 : (1956) ILR (Bom) 73 : (1955) 2 LLJ 755

Hon'ble Judges : Chagla, C.J.;Desai, J

Bench : Division Bench

Advocate : M.R. Parpia and Madhavji and Co, for the Appellant; M.A. Rane, for V.M. Tarkunde, for the Respondent

Judgement

Chagla, C.J.—An interesting and important question under the Co-Operative Societies Act arises on this petition, which has been fully argued both by counsel for the petitioners & counsel for the second respondent. The petitioners are a Co-operative Society cluing banking business and are registered under the Co-Operative Societies Act. The second respondent was an employee of petitioners and he came to be dismissed, under circumstances which are not relevant, by the petitioners on 11th November 1953. The second respondent applied to the first Respondent, who is the Judge of the Labour Court at Ahmedabad for reinstatement by the petitioners and compensation. The Petitioners contended that the first respondent had no jurisdiction to entertain that petition. The learned Judge held against the petitioners. The petitioners went in appeal to the Industrial Court. The Industrial Court held that no appeal lay from that decision and the petitioners have now come before us under Article 227.

2. The question that we have to consider is whether the activity carried on by the petitioners is an activity, which is an industry, to which the Bombay Industrial

Relations Act, (Act XI of 1947) applies. Section 2(3) of that Act provides that in the areas in which the Bombay Industrial Disputes Act 1938, was in force immediately before the commencement of Act XI of 1947, the latter Act shall apply to the industries to which the said Act of 1938 applied. In section 2(3) of the earlier Act of 1938 there was a provision that the State Government may, by notification direct that all or any of the provisions of that Act shall apply to all or any other industries, whether generally or in any local area, as may be specified in the notification. Pursuant to the power conferred in that sub-section a notification was issued by the State Government on 26th February 1947, bearing No. 396/ 46/1 and the notification was in the following terms:

""In exercise of the powers conferred by Sub-section (3) of section 2 of the Bombay Industrial Disputes Act (Bombay Act XXV of 1938) and in supersession of Government Notification in the Political and Services Department No. 396/46/1 dated 26th February 1916, the Government of Bombay is pleased to direct that all the provisions of the said Act shall apply to the business of banking companies registered under any of the enactments relating to companies for the time being in force in any part of His Majesty's Dominions or elsewhere or incorporated by an Act of Parliament or by an Indian law or by Royal Charters or by Letters Patent".

The very narrow question that we have, to consider is whether the petitioners carry on the business of a banking company which is registered under any of the enactments relating to companies for the time being in force or is incorporated by Indian law. Now the definition of ""Industry" in the Act is very wide and it means any business, trade, manufacture or under-taking or calling of employers. But ideas of social justice take time before they are universally accepted and, therefore, the intention was not to apply this Act to all industries but to selected industries in the first instance, giving power to the State Government to extend the application of the Act to other industries in time, but for the notification the Act would not have applied to the business of banking companies at all because the business of banking companies was not an industry to which the Act had been made applicable. Now what is contended by the Petitioners is that inasmuch as the petitioners are a society incorporated under the Co-Operative Societies Act they are not a banking company registered as contemplated by the notification and that any dispute between its employee and itself can only be litigated in the manner provided by the Co-Operative Societies Act. It is pointed out that the only societies which fall within the ambit of the Co-Operative Societies Act are the societies which have as their object the promotion of economic interests of their members in accordance with co-operative principles or established with the object of facilitating the operations of such societies. It is further pointed out that u/s 68 the provisions of the Indian Companies Act are not to apply to societies registered under this Act, and section 54 provides for compulsory arbitration when there is a dispute between a society and its employee, and u/s 70 jurisdiction of Civil Courts is ousted. Now Mr. Rane has very rightly pointed out that the disputes contemplated by section 54 are disputes of a civil nature which

could have been decided by Civil Courts but for the provisions with regard to compulsory arbitration provided in Section 54. Mr. Rane has also rightly pointed out that the present dispute between the second respondent and the petitioners could not have been the subject matter of a reference to arbitration u/s 54. The second respondent is not claiming to assert any civil rights against the petitioners. What he is claiming is certain rights which are now conferred upon workmen and employees as a result of principles of social justice which are now almost universally acknowledged all the world over. There is no right of reinstatement under civil law which can be enforced by an employee against his employer. No contract of personal service can be specifically enforced by a civil Court nor does a civil Court determine whether the wages paid to an employee are proper wages or not. Civil Courts are bound down by the law of contract and it is under the law of contract that the Civil Courts decide disputes between a master and his servant. Industrial Courts decide the disputes between a master and his servant on principles of social justice and whereas the Civil Courts consider what are the actual terms of the contract regulating the rights of master and servant the industrial Courts consider not the terms of contract but what is just and fair and what is proper for the master to pay to his servant. Therefore, if we were to accept Mr. Parpia's contention the result would be that although the petitioners are doing banking business and although other banks in the country and in the State are governed by the Act and the employees of those banks have the rights given to them under the industrial law as far as the employees of the petitioners are concerned they have none of the rights which the industrial law confers upon employees of other banks. We should be most reluctant to come to such a conclusion. If the language of the notification is plain it is our duty to give effect to it because we are not concerned with questions of policy; but if it is possible to construe the notification in favour of the second respondent it is also equally our duty to put that construction upon the notification. Fortunately, in our opinion the notification is capable of the construction which Mr. Rane asks us to give to it.

3. Now, we are in agreement with Mr. Parpia that this is not a banking company which is incorporated by Indian Law. Mr. Rane did suggest that although it was not incorporated under the Indian Companies Act it was incorporated under the Co-operative Societies Act. But what in our opinion the notification contemplates is not incorporation under an Indian Law but by an Indian law; which means that a special law should incorporate the particular company or association. For instance we have a Reserve Bank of India; we had an Imperial Bank of India; we have now the State Bank. The Act itself incorporates that bank, association or society. And the language used is clear, It is not "incorporated under an Indian Law"; it is "incorporated by an Indian law". But what appears to us to be fairly clear is the first part of the notification and when we look at that it applies to the business of banking companies registered under any of the enactments relating to companies for the time being in force. Now the object obviously was to apply this notification not to associations of less than ten persons who were doing

business of banking and who could not be incorporated but to confine the operation of this notification to ten persons or more who could be and would have to be registered, either under the Indian Companies Act or some other Act relating to companies. Now let us see whether the petitioners satisfy this definition. The petitioners admittedly do the business of banking. But Mr. Parpia says that the petitioners are not a company but a society as defined in the Co-Operative Societies Act. Now, "Company" is defined in Halsbury's Laws of England, Volume 6, 3rd edition, at page 11, as an association of a number of individuals formed with some common purpose. Therefore, any society, any association, any group which comes together having a common purpose is, in the eye of law, a company. But every company is not a juristic persona, it has no legal entity and it is incorporation which gives it a persona and legal entity; and the result of incorporation is, as pointed out by Halsbury, that it becomes a body corporate with perpetual succession and a common seal. Therefore, in the wide and proper legal sense the petitioners are a company although they may choose to call themselves a society or even if Co-Operative Societies Act requires that they should call themselves a society and in the eye of the law they are a company. The next question, is whether they are an unincorporated company or an incorporated company. The answer to that question is very simple, because u/s 23 of the Bombay Co-Operative Societies Act, 1925, registration of a Society renders it a body corporate by the name under which it is registered with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose of its constitution. The petitioners are a society registered under that Act. Indeed they have to be registered in order that the Act should apply to them and on the petitioners being registered the result of registration is set out in Section 23. Now the result of registration u/s 23 of the Co-operative Societies Act is identical with the result of registration under, the Indian Companies " Act and the effect of registration under that Act is set-out in Section 23 (2) of that Act. Therefore, there is no special charm or magic in a company being registered under the Companies Act or under the Cooperative Societies Act, as far as the result of registration is concerned. The effect of registration is identical. The company becomes a body corporate, it gets a common seal and it has a perpetual succession. These are the three important indicia of incorporation and they apply to an association registered under the Co-operative Societies Act as much as to an association registered under the Indian Companies Act. Section 4 of the Companies Act may be looked at as that section prohibits a partnership or association exceeding a certain number doing banking business and it provides that no company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of an Act of Parliament or some other Indian Law or of Royal Charter or Letters Patent. Therefore the prohibition against more than ten persons doing banking business is removed only if an association of more than ten persons is incorporated. But the incorporation need not necessarily be under

the Indian Companies Act; it may be under any other Indian law. Therefore, what is essential and what removes the prohibition against more than ten persons doing banking business is the fact that that association becomes a body corporate.

4. Now turning to the language of the notification what is urged by Mr. Parpia is that the notification only contemplates the Indian Companies Act and Acts similar to that Act. In our opinion, there is no reason why such a limited interpretation should be put upon the general words used in the notification. If the intention of the State Government was, that the notification should only apply to the companies registered under the Indian Companies Act or Acts corresponding to Indian Companies Act nothing was easier than for the Government to have stated so. If the intention was to exclude the banking companies registered under the Co-operative Societies Act that also could have been set out in the notification itself. Neither counsel has been able to draw our attention to any Indian Legislation under which an association doing banking business can be registered other than the Indian Companies Act and the Co-operative Societies Act. Therefore, nothing was simpler or easier than for the State Government to have stated "doing business of Banking Companies registered under enactments other than the Cooperative Societies Act". When a Court is called upon to interpret a notification which, is capable of more than one meaning it is not amiss to consider the reason and principle underlying the notification. There is no reason or principle why a co-operative society doing banking business should be put on a different footing with regard to industrial law from other companies doing identical business. There is no reason why a co-operative banking society should treat its employees otherwise than as laid down under the industrial law. If we were satisfied that there was some reason or principle which would lead us to put upon this notification the interpretation which Mr. Parpia suggests we might have put such an interpretation on the notification, but all the considerations are in favour of the interpretation suggested by Mr. Rane. There is nothing in the notification which prevents us from giving the interpretation which we have ultimately decided to give to this notification. Therefore, we are of the opinion that the petitioners are doing business of Banking and are registered under an enactment relating to companies, which is the Co-operative Societies Act. The learned Judge was right in taking the view that he had jurisdiction to deal with the matter. The petition fails and is dismissed with costs.

5. Petition dismissed.