

(1964) 12 PAT CK 0007

In the Patna High Court

Case No : Original Criminal Miscellaneous No. 6 of 1964

The Sitamarhi Central Co-operative Bank Ltd.

APPELLANT

Vs

Thakur Jugal Kishore Sinha

RESPONDENT

Date of Decision : 14-12-1964

Acts Referred:

Constitution of India, 1950 — Article 227
Contempt of Courts Act, 1971 — Section 3, 4

Citation : AIR 1965 Patna 227 : (1965) CriLJ 748

Hon'ble Judges : R.K. Choudhary, J; R.J. Bahadur, J

Bench : Division Bench

Advocate : K.P. Varma, Lal Narayan Sinha and M.M. Gajadhar, for the Appellant; Raghunath Jha, Pradyumna Narain Singh, Radha Raman and Ram Krishna Prasad, for the Respondent

Judgement

Bahadur, J.—The opposite party in this proceeding is one Shri Thakur Jugal Kishore Sinha, who was a share-holder of the Central Co-operative Bank, Sitamarhi (formerly known as Sitamarhi Central Co-operative Union), who has been asked to show cause as to why he should not be proceeded with contempt of Court. The present proceeding was started on an application being filed by the Sitamarhi Central Co-operative Bank Ltd. (hereinafter called "the Bank").

2. The said Sitamarhi Central Co-operative Union (hereinafter called "the Union") was engaged in carrying on business, amongst others, in salt, sugar and kerosene oil, which was conducted by a Board of Directors. The opposite party was selected as the Chairman and it is said that the entire affairs of the said Union were controlled by him. It is further said that the opposite party entrusted one Suraj Banshi Chaudhary with the work of supplying of coal for which purpose he was given an advance of Rs. 7,004/5/-, that of this amount a sum of Rs. 5,014/5/0 could not be realised from Suraj Banshi Choudhary in whom, it was alleged, the opposite party was interested.

3. Thereafter a surcharge proceeding u/s 40 of the Bihar and Orissa Co-operative

Societies Act, 1935 (Act No. VI of 1035)--hereinafter called "the Act"--was taken up before the Registrar of the Co-operative Societies on the 22nd December 1953, and a suit) of Rs. 14,288/13/9 was held to be realisable from the opposite party and another person. The opposite party went in appeal to the State Government and by an order, dated the 28th March, 1957, the amount was reduced to Rs. 5,014/5/9. It appears that the Union was not made a party in the appeal before the State Government, It further appears that thereafter the Bank raised a dispute u/s 48 of the Act that the opposite party was liable for the whole of the original amount, namely, Rs. 14,288/13/9 on the ground that the State Government's order was ex parte and the Bank had no notice and was not made a party in the appeal and was, therefore, not bound by the said order.

This dispute went to the Assistant Registrar of the Co-operative Societies exercising the powers of the Registrar u/s 48 of the Act. The Assistant Registrar decided the matter on the 15th May, 1964, upholding the contention of the Bank and making the opposite party liable for the original amount of Rs. 14,288/13/9. It appears that in the meantime the opposite party challenged his liability for the remaining amount of Rs. 5,014/5/9, as determined in appeal by the State Government by a writ application in this Court, which was dismissed. He then filed a title suit before the Subordinate Judge, Muzaffarpur, who decreed it in his favour and the appeal by the Bank is said to be pending before the District Judge of Muzaffarpur.

4. The opposite party preferred an appeal to the Joint Registrar, Co-operative Societies, against the aforesaid order of the Assistant Registrar, dated the 15th May, 1964, which was numbered as Appeal No. 34 of 1964. In this appeal the Assistant Registrar was made respondent No. 2. In the petition of appeal, which is marked as Annexure "B" in the petition of the present proceeding, a ground was taken, which is No. 4(k). The said ground with the prayer is reproduced below:

"For that the order of the respondent No. 2 is mala fide inasmuch as after receiving the order of transfer he singled out this case out of so many for disposal before making over charge and used double standard in judging the charges against the defendants Nos. 1 and 2.

It is prayed that it should be declared that order of A. R. is without jurisdiction, illegal and mala fide and heavy cost should be awarded making respondent No. 2 responsible mainly for such cost."

5. The petitioner Bank filed an application in this Court on the 14th August, 1964, for starting a contempt of Court proceeding against the opposite party. According to the petitioner, the expression used in ground No. 4(k) amounts to gross contempt of Court, as it scandalises the Court and brings into disrepute the administration of justice and it is calculated to intimidate and overawe the said Court, namely, the Assistant Registrar, and makes a scurrilous attack on the Court's integrity and is conched in such disrespectful language as to lower the

prestige of the Court. A rule was consequently issued against the opposite party, Shri Thakur Jugal Kishore Sinha, on the 18th August, 1964.

6. The opposite party has filed a show cause petition in this Court in which his stand is that he had not committed any contempt of Court and further the Assistant Registrar of the Co-operative Societies is not a "Court" within the meaning of the term as used in the Contempt of Courts Act, 1952. Two of the grounds of the said show cause petition may be usefully reproduced below:

"29. That the opposite party was within his legitimate right to call the decision of the Assistant Registrar mala fide for the following. ..."

"30. That the opposite party was within his legitimate right to criticise the discriminatory order of the Assistant Registrar as he laid down two standards in judging the alleged liability of Sri Jagannath Jha and that of the opposite party by exonerating one (Jaganuath Jha) from the liability of the entire amount of Rs. 14,288/13/9 and holding the opposite party liable for the said entire amount without examining the up to date position of payment of the amounts for which a claim had been preferred by the petitioner against the opposite party."

He further filed a supplementary affidavit on the 28th October, 1964, in which, among other grounds he made a reference to paragraph 4 of the said show cause. Paragraph 4 of this affidavit reads thus:

"That with reference to para. 29 of the show cause it is stated in support of the contention of the order being mala fide that at the time of the transfer of the Assistant Registrar more than 50 old award cases were pending before him but he picked out 2 or 3 cases including that of the opposite party for disposal. It is also further stated that the injunction order was also mala fide inasmuch as it was made operative till the hearing of this reference but no date was fixed for hearing on 6-3-1964 which will appear from Annexure "B" which is a part of this petition."

7. Three points arise for determination in this caste; namely,

(1) Whether the Assistant Registrar of the Cooperative Societies, who decided the case against the opposite party u/s 48 of the Act, constitutes a "Court" ?

(2) Whether that Court is or is not subordinate to the High Court within the meaning of Section 3 of the Contempt of Courts Act, 1952 ? and,

(3) Whether the averment amounts to contempt ?

8. Mr. Jal Narayan Sinha, appearing for the petitioner, has taken us through the Bihar and Orissa Co-operative Societies Act, 1935, and contended that on a true construction of the provisions of the Act, the Assistant Registrar deciding a dispute acts as a "Court" in law. Mr. Sinha's contention appears to be well founded and must be accepted as correct. The relevant provisions may be reproduced below:

Section 2.....

"(g) "Officer" includes a chairman, secretary, treasurer, member of a managing committee or any other person empowered by or under this Act, or the rules or the by-laws of a registered society to give directions In regard to the business of the society."

"(i) "Registrar" means a person appointed to perform the duties of a Registrar of co-operative societies under this Act; and

(j) "rules" means rules made under this Act." Section 48:

"If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises--

(a) amongst members, past members, persons claiming through members, past members or deceased members and sureties of members, past members or deceased members, whether such sureties are members or non-members; or

(b) between a member, past member, persons claiming through a member, past member or deceased member, or sureties of members, past members or deceased members, whether such sureties are members or non-members, and the society, its managing committee or any officer, agent or servant of the society; or

(c) between the society or its managing committee and any past or present officer, agent or servant of the society;

* * * *

such dispute shall be referred to the Registrar: Provided that no claim against a past member or the estate of a deceased member shall be treated as a dispute if the liability of the past member or of the estate of the deceased member has been extinguished by virtue of Section 32 or Section 63."

Explanation (1) of Section 48 reads as follows:

"A claim by a registered society for any debt or demand due to it from a member, non-member, past member or the nominee, heir or legal representative of a deceased member or non-member or from sureties of members, or deceased members, whether such sureties are members or non-members, shall be a dispute touching the business of the society within the meaning of this sub-section even In case such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment."

Sub-section (2) of Section 48 of the Act provides thus:

"The Registrar may on receipt of such reference-

(a) decide the dispute himself, or

(b) transfer it for disposal to any person exercising the powers of a Registrar in this behalf, or

* . * * * ""

Sub-section (6) of Section 48 is to the following effect:

"Any person aggrieved by any decision given in a dispute transferred or referred under Clause (b) or (c) of Sub-section (2) may, within three months from the date of such decision, appeal to the Registrar."

Sub-section (7) is as follows:

"The Registrar, in the case of disputes under this section, shall have the power of review vested In a Civil Court u/s 114 and under Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 and shall also have the inherent jurisdiction specified in Section 151 of the said Code."

Sub-section (8) lays down:

"The Registrar may, where it appears to him advisable either on application or of his own motion, state a case and refer it to the District Judge for decision, and the decision of the District Judge shall be final."

Sub-section (9) provides thus:

"Save as expressly provided in this section, a decision of the Registrar under this section and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or referred under Clause (b) or (o) of Sub-section (2), shall be final."

Section 49 of the Act provides that:

"Subject to any rules, the Registrar, any person authorised to hold an inquiry u/s 35 or an inspection u/s 36, any liquidator, and person exercising the powers of a Registrar, or any arbitrator or arbitrators appointed u/s 48, shall, in so far as such powers are necessary for carrying out any of the purposes of this Act, have power to summon and enforce the attendance of witnesses and parties concerned and to examine them upon oath and to compel the production of any books, accounts, documents or property by the same means and so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908)."

Section 50 is to the following effect:

"(1) Where the Registrar is satisfied on the application of the liquidator or of a society that any person with intent to defeat or delay the execution of any order that may be passed against him u/s 44 or 48--

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits

of the Jurisdiction of the Registrar,

the Registrar may, unless adequate security is furnished to his satisfaction, direct the attachment of the said property or such part thereof, as he thinks necessary, and such attachment shall have the same effect as if it had been made by a competent Court.

(2) An order of attachment passed under Sub-section (1) shall, on the application of the Registrar, be executed by the Collector in whose jurisdiction the property lies, in the same manner as an order of a Revenue Court."

Section 51 (a) provides thus:

"Orders passed under Sections 44, 48 and 50 shall, in addition to any other method of enforcement provided under this Act, on application be enforced as follows:

(a) When passed by the Registrar, a liquidator or by an arbitrator or arbitrators, by any Civil Court having local jurisdiction in the same manner as a decree of such Court."

Section 52 (e) is in the following terms:

"Any sum payable by any person or by any registered society--

* * * * (e) in accordance with an order, decision or award passed or made u/s 48, shall be recoverable, as a public demand in any area, in which the Bihar and Orissa Public Demands Recovery Act, 1914 (B and C Act 4 of 1914) is in force or as an arrear of land-revenue throughout the whole of the State and the Registrar or other person authorised by him in this behalf, shall be deemed to be the person to whom such public demand is due or to whom such arrear of land-revenue is payable."

Section 57 reads thus:

"(1) Save in so far as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of any matter concerned with the winding up or dissolution of a registered society under this Act, or of any dispute required by Section 46 to be referred to the Registrar or of any proceedings, under Chapter VII-A.

(2) While a society is in liquidation, no suit or other legal proceeding shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof on any matter touching the affairs of the society, except by leave of the Registrar and subject to such terms as he may impose.

(3) No order of the State Government, District Judge, Registrar, a person appointed to assist the Registrar, liquidator, or an arbitrator or arbitrators purporting to be one, which under any provision of this Act is declared to be final, shall be liable to be challenged, set aside, modified, revised or declared

void in any Court upon merits or upon any ground whatsoever except want of jurisdiction"

Section 66 (I) lays down that:

"The State Government may for the whole or any part of the State and for any registered society or a class of registered societies, make rules to carry out all or any of the purposes of this Act."

Section 66 (2) provides as follows:

"In particular and without prejudice to the generality of the foregoing power, such rules may--

* * * * (xxvi) Prescribe the procedure to be followed in the appointment of an arbitrator or arbitrators and in proceedings before the Registrar, any person exercising the powers of a Registrar and an arbitrator or arbitrators including the transfer, reference and withdrawal of cases."

Sub-section (4) of Section 86 reads thus:

"All rules made under this section shall be published in the Official Gazette and on such publication shall have effect as if enacted in this Act."

Sub-rule (1) of Rule 68 of the Bihar and Orissa Cooperative Societies Rules, 1959, provides as follows:

"A dispute u/s 48 shall be referred to the Registrar in writing and the reference may be made...."

Sub-rule (8) of the said rule reads thus:

"On receipt of such reference the Registrar shall cause a notice to be served on the opposite party requiring him to show cause within such time as may be specified therein as to why the dispute shall not be decided in favour of the applicant. On the expiry of the time so specified whether or not the opposite party has filed a written statement showing cause, the Registrar may decide the dispute himself or transfer it for disposal to any person exercising the powers of a Registrar in this behalf or refer it for decision to an arbitrator or arbitrators appointed by him. The Registrar shall, in case there are more than one arbitrator, nominate one of them to be the Chairman who shall preside at their meetings and act in the name of the arbitrators and carry on necessary correspondence in connection with the disposal of the case."

Sub-rule (18) (c) (iii) and (v) of Rule 68 provides for the forms of preliminary mortgage decree to be in Form XVIII and of final mortgage decree to be in Form No. XX, which, on all material points, are exactly the same as forms provided for those decrees under the Code of Civil Procedure.

Sub-rule (6) of Rule 68 runs as follows

"If during the pendency of a dispute u/s 48 of the Act, any person who is a party to the dispute, dies, the Registrar or the arbitrator may on an application made in this behalf substitute the name of the nominee, heirs or legal representative of the deceased person as a party and may order the issue of fresh summons to such substituted person. Where the nominee, heir or legal representative is a minor, the Registrar or the arbitrator on being satisfied of the fact of his minority, shall appoint person to be his next friend or guardian for the case in the manner provided under the Code of Civil Procedure, 1908. Where a question arises as to whether any person is or is not the legal representative of the deceased person, such question shall be determined by the Registrar or the arbitrator, as the case may be."

Sub-rule (7) of R, 68 is to the following effect:

"The Registrar or the arbitrator shall after consideration of any evidence adduced by the parties give a decision in writing and the decision shall contain in the number of reference, the names and the description of the parties, particulars of the dispute, summary of evidence, if any, and the ground of decision or award, and shall specify clearly the relief granted, the amount decreed, future interest, if any, allowed, the costs awarded, the party from whom the costs shall be realised and the party in whose favour the costs are awarded."

Rule 69 says:

"(1) Any party to a dispute u/s 48 desiring that the case may be stated and referred to the District Judge for decision under Sub-section (8) of the said section shall, within thirty days from the date of occurrence of the notice of reference under the section, make a petition in writing to the Registrar to that effect.

(2) Any person exercising the power of a Registrar or any arbitrator appointed u/s 48 may, at any stage of the reference or hearing of the dispute, if he considers it advisable, move the Registrar for action under Sub-section (8) of the said section and for this purpose forward the record of the case to him with a statement of the reasons for making a reference to the District Judge, on receipt of which the Registrar shall give a decision thereon"

Rule 70 of the said Rules deals with service of summons or notice and is to the following effect:

"(1) Every notice or summons issued under the Act or these rules shall be in writing and in such form as prescribed in Sub-rule (13) of Rule 68 and shall be authenticated by the signature and seal of the authority by whom it is issued. It may be served by registered post or through the nearest Civil or Revenue Court having jurisdiction in the area in which the society operates or by such other means as the Registrar may think fit.

(2) A summons shall require the person summoned to appear before the said authority at a stated date, time and place and shall specify whether his

attendance is required to furnish any information or for the purpose of giving evidence or to produce a document, cash or other property or for all these purposes; and the document, cash or other property required to be produced shall be described in the notice or summons. Any person summoned merely to produce a document, cash or other property may be deemed to have complied with the summons if he causes the same to be produced instead of attending personally to produce the same."

9. The word Court is not defined in the Contempt of Courts Act. Mr. Lal Narayan Sinha, however, has contended that the basic requirements for consideration, if the Assistant Registrar, exercising the powers of the Registrar u/s 48 of the Act, were a "Court" or not may be briefly summarised as follows:

- (i) The dispute must be in the nature of a Civil suit;
- (ii) The procedure for determination of such a dispute must be a judicial procedure; and
- (iii) The decision must be a binding one.

He has submitted that all the three requirements must be present before a tribunal deciding such a dispute could be culled a "Court", and the tests for determining what is a "Court" as used in the Contempt of Courts Act will have to be construed in the setting in which it occurs. He has cited various authorities in support of his contention and we have to examine them keeping in view the various provisions of the Act and the Rules set forth above.

10. In a Full Bench decision of this Court in Mt. Dirji Vs. Smt. Goalin, their Lordships were considering the provisions of the Workmen's Compensation Act, 1923. Section 19, Clause (1) of that Act laid down as follows:

"If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner."

Their Lordships after examining a number of decisions observed as follows:

"It is evident that a Court cannot function properly unless it is armed with certain powers such as the power to receive evidence bearing on the matters which it is called upon to decide, the power to enforce the attendance of witnesses and the production of documents and material objects before it and "the power to pronounce judgment and carry it into effect between the person and parties who bring a case before it for decision"; see Bonvier's Law Dictionary, Thus, a Court must not only be charged with judicial functions but must also be invested with judicial powers. Another important feature of a Court is that it exercises jurisdiction over persons by reason of the sanction of the law and not merely by reason of voluntary submission to such jurisdiction..."

After examining the provisions of that Act in the light of the above observations their Lordships held that the Commissioner under that Act was a "Court". In my opinion, the provisions of that Act clearly show that the matters, which were set out in Section 19, referred to above, had to be decided by the Commissioner judicially and while deciding them he was performing a judicial function. The Commissioner, moreover derived his authority from the statute passed by a competent authority and in exercising his jurisdiction he had the sanction of the law behind him. An appeal had also been provided to the High Court from certain orders of the Commissioner. Hence, the Commissioner appointed under the Act was held to be a "Court".

11. Mr. Lal Narayan Sinha further submitted that the facts of the present case are parallel to the facts of Mt. Dirji's case decided by the Full Bench in Mt. Dirji Vs. Smt. Goalin, .

12. The next case, which he placed, before us, was a Bench decision of this Court in Jamuna Prasad and Others Vs. Jogendra Prasad and Others, . In that case their Lordships had to construe the Bihar District Board Electoral Rules, 1937, and the point to be determined was whether the High Court could interfere in revision u/s 115 of the CPC with the order of an Election Commissioner, appointed under the said Rules. In that connection, their Lordships, after examining various decisions, including the above Full Bench decision, held that the Election Commissioner, referred to in the Bihar District Board Electoral Rules, 1937, was a "Court".

13. Another case relied upon by Mr. Sinha is Sheosaran Singh and Others Vs. Gaya Amla Co-operative Society and Others, . In that case their Lordships were dealing with the Bihar and Orissa Co-operative Credit Societies Act (6 of 1935). That was a case where a suit was filed challenging a sale of property in execution of an award made by an Assistant Registrar, One of the contentions of the plaintiffs-appellants in the High Court was that the debt was time barred and as such there was no dispute to be referred to the Registrar and the Registrar, therefore, had no jurisdiction to pass the award. In that connection their Lordships observed:

"....Now, it has been held that the Registrar, Co-operative Societies is acting as a Court and he had jurisdiction to decide whether a dispute before him was time-barred or not. Once he has decided that rightly or wrongly, it cannot be said that he acted without jurisdiction."

14. The next case relied upon by learned counsel for the petitioner is of Brajnandan Sinha Vs. Jyoti Narain, . The question to be decided before the Court was whether a Commissioner appointed under the Public Servants (Inquiries) Act (37 of 1850) constituted a "Court", within the meaning of the term as used in the Contempt of Courts Act. Under that Act the Commissioner was only an advisory tribunal and he had no authority to pass any final order. Their Lordships after an elaborate discussion with reference to a number of decisions held that

the Commissioner under that Act was not a "Court". The pronouncement of a definitive judgment was considered essential "sine qua non" of a Court and unless and until a binding and authoritative judgment could be pronounced by a person or body of persons it could not be predicated that he or they constituted a Court.

15. Their Lordships further held that the Privy Council in the case of *Shell Co. of Australia v. Federal Commr. of Taxation*: 1981 AC 278 thus defined "Judicial Power" at p. 295:

"..... the words "judicial power" as used in Section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take notion."

Their Lordships came to the following conclusion in paragraph 18:

"It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

16. The same principle has been reiterated in the case of *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, , where it was held:

"There has been considerable discussion in the Courts in England and Australia as to what are the essential characteristics of a Court as distinguished from a tribunal exercising quasi-judicial functions. Vide *R. v. London County Council* 1931 2 KB 215 *Cooper v. Wilson* 1937 2 KB 309, *Huddart Parkar and Co. v. Moorehead* (1909) 8 LR 330 and *Rola Co. v. The Commonwealth* (1944) 69 CLR 185. In this Court, the question was considered in some fulness in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, .

""It is unnecessary to traverse the same ground once again. It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment, To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it."

""And it also imports an obligation on the part of the, authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question, therefore, arises as to whether an authority created by an Act in a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the

attributes of a Court."

17. On the authorities, referred to above, the contention raised by Mr. Sinha appears to be well founded and must prevail.

18. Mr. Raghunath Jha, appearing for the opposite party, on the other hand, has urged that the dispute in question was decided by the Assistant Registrar, who had some powers of the Registrar, but did not possess all his powers. It is manifest that this submission cannot be accepted as correct. Section 6 of the Act lays down:

"(1) The State Government may appoint a person to be Registrar of Co-operative Societies for the State or any portion of it, and may appoint persons to assist such Registrar.

(2) The State Government may, by general or special order published in the Official Gazette, confer,--

(a) on any person appointed under Sub-section (1), to assist the Registrar, all or any of the powers of the Registrar under this Act except the powers u/s 26, and

(b) on any Co-operative Federation or financing bank, all or any of the powers of the Registrar u/s 20, Sub-section (3) of Section 28 and Section 33."

We have been shown a copy of the notification, dated the 18th January, 1960, issued under the orders of the Governor of Bihar from the Department of Co-operation and Sugarcane (Co-operative Branch), which is as follows:

"No. A/EG-031/59-781-C-Part. In exercise of the powers conferred by Section 6 of the Bihar and Orissa Co-operative Societies Act, 1935 (Act VI of 1935), the Governor of Bihar is pleased to confer on:

1. Shri Shamsul Hoda, Sub-Deputy Magistrate, and Sub-Deputy Collector.
2. Shri Bankey Bihari Sinha "
3. Shri Raj Kuinar Pd. Sinha "
4. Shri Mil. Mohsin Raza "
5. Shri Narayan Pd. Sinha "
6. Shri Bhagirath Jha "
7. Shri Md. Shafy Hasimi "

who have been appointed to act as Assistant Registrar, C. S. the powers of the Registrar under Sections 8 (1) (b), 9, 10, 11, 12, 14, 20, 25, 35, 36 and 39 of the Bihar and Orissa Co-operative Societies Act in regard to societies other than a society of which a member is a registered society and under Sections 34, 48 (excepting Sub-sections 6 and 8), 50 and 54 of the said Act in regard to societies with limited and unlimited liabilities.

By order of the Governor of Bihar Sd. H. P. Sinha. Deputy Secretary to Government."

This notification shows that at the relevant time Mr. Shamsul Hoda, who was the Assistant Registrar in this case, had most of the powers of the Registrar under the Act. Mr. Jha sought to distinguish the decision of Sheosaran Singh and Others Vs. Gaya Amla Co-operative Society and Others, , and submitted that it dealt only with the powers of a Registrar and it could be no authority for the proposition that the Assistant Registrar meant a Registrar. This submission also is without force and must be rejected because the Assistant Registrar assumes jurisdiction to decide dispute u/s 48 of the Act and as such he would be functioning as the Registrar for that purpose. Mr. Jha further submitted that the decision in Sheosaran Singh and Others Vs. Gaya Amla Co-operative Society and Others, , was of a doubtful authority, because it gave no reasons and no case had been placed before us, which would show that an Assistant Registrar was a Court. This submission, in my opinion, is clearly misconceived because when the Assistant Registrar is performing the duties of the Registrar, as contemplated u/s 48 of the Act, he is the Registrar.

19. Mr. Jha also submitted that in Mt. Dirji Vs. Smt. Goalin, , a right of appeal had been given. In his submission that case was, therefore, clearly distinguishable. Mr. Jha's points may be summarised as follows:

20. That the Co-operative Society was a domestic tribunal which did not deal with outsiders, because it only dealt with its members and to constitute a tribunal as a Court, a right of appeal must be provided under the Act against his decision, but, under the Act if the Assistant Registrar performs the function of a Registrar, there can be no appeal to himself, in other words, the Registrar who was Appointed under Sub-section (6) of Section 48 of the Act. In his submission, therefore, there is no authority for appeal against the decision of the Assistant Registrar exercising the powers of a Registrar.

21. Mr. Jha further submitted that the Bench decision in Jamuna Prasad and Others Vs. Jogendra Prasad and Others, , was also distinguishable for the same reasons. Mr. Jha when pressed, conceded that if the order in question had been passed by the Registrar himself u/s 48 of the Act, it would have been executable under Sections 51 and 52 of the Act. Since, however, the impugned order was by the Assistant Registrar, exercising the powers of the Registrar, he could not have the advantage of Section 51 but the order, in his submission, could only be executed under Clause (e) of Section 52 of the Act. Mr. Jha, however, went further and urged that even the Registrar u/s 48 could not be said to be a "Court". He submitted that Section 51 of the Act dealt with the enforcement of the orders while Section 52 dealt with the recovery of sums due and according to his submission, the present liability could not be enforced, u/s 51 of the Act, because the matter could not be decided u/s 48 of the Act at all. This submission is also clearly based on misconception of the provisions of Sections 51 and 52 of the Act, both of which are mutually exclusive. The opening words of Section 51

of the Act read thus:

"Orders passed under Sections 44, 48 and 50 shall, in addition to any other method of enforcement provided under this Act, on application be enforced as follows;....."

It is, therefore, obvious that an order passed u/s 48 can be enforced either u/s 51 or under any other method provided under the Act, which may also be Section 52 of the Act.

22. Mr. Jha further contended that on the authority of Brajnandan Sinha's case AIR 1956 SC R6 the Assistant Registrar in the present case could not be said to be a "Court". He has referred to us paragraph 8 of the said decision, which is as follows:

"The word "Court" was not defined in the Act and the expression "Courts subordinate to the High Courts" would "prima facie" mean the Courts of law subordinate to the High Courts in the hierarchy of Courts established for the purpose of administration of justice throughout the Union."

23. Mr. Jha has then relied on certain observations of the Privy Council in the case of 1931 AC 275 as quoted in the Supreme Court case of Brajnandan Sinha Vs. Jyoti Narain, , which are to the following effect:

"1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision;

2. Nor because it hears witnesses on oath:

3. Nor because two or more contending parties appear before it before whom it has to decide;

4. Nor because it gives decisions which affect the rights of subjects;

5. Nor because there is an appeal to a Court;

6. Nor because it is a body to which a matter is referred by another body.

See Rex v. Electricity Commissioners. 1924 1 KB 171 and observed at page 295:

"An administrative tribunal may act judicially, but still remains an administrative tribunal as distinguished from a Court, strictly so called. More external do not make a direction to an administrative officer by an ad hoc tribunal an exercise by a Court of Judicial power."

But after considering all these observations their Lordships came to the final conclusion that the pronouncement of a definitive judgment was considered essential "sine qua non" of a Court and unless and until a binding and authoritative judgment could be pronounced by a person or body of persons it could not be predicated that he or they constituted a Court, which has already been reproduced in earlier part of this judgment.

24. Mr. Jha then contended that according to this decision the pronouncement of a definitive judgment was essential "sine qua non" of a Court but, in his submission, the decision of the Assistant Registrar was not definitive judgment and was not binding even on the opposite party, because it was null, void and without jurisdiction. In my opinion, it is difficult to accept this contention as we have not been called upon to decide in this case whether the impugned order of the Assistant Registrar exercising the powers of the Registrar u/s 48 of the Act was null and void and was without jurisdiction; for the present proceeding that consideration is not relevant. Besides in view of a Bench decision of this Court in Sheosaran Singh and Others Vs. Gaya Amla Co-operative Society and Others, a decision at the Registrar whether right or wrong, could not be said to be without jurisdiction. The contention of Mr. Jha has, therefore no substance.

25. Mr. Jha has further endeavoured to bring to his aid the decision of the Supreme Court in The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi, . In that case their Lordships had to consider the provisions of the Industrial Disputes Act, 1947. The majority view in the case was that the Industrial Tribunal, set up u/s 7 of that Act had all the necessary attributes of a Court of Justice. The fact that the Government had to decide to make a declaration u/s 15(2) of the Act after the final decision of the tribunal was not in any way inconsistent with the view that the tribunal acted judicially, Their Lordships held that the functions and duties of the Industrial Tribunal were very much like those of a body discharging judicial functions, though it was not a Court in the technical sense of the word. Mr. Jha contended that the Assistant Registrar exercising the jurisdiction of a Registrar was very much performing the functions similar to those of the Industrial Tribunal and urged that he was not a Court. In my opinion, this contention of learned counsel is without merit and must be rejected. It is now well settled that the pronouncement of a definitive judgment was considered essential "sine qua non" of a Court, and unless and until a binding and authoritative judgment or pronouncement by a person or body of persons was given, it could not be predicated that he or they constituted a Court. In the said case of The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi, the Supreme Court held that the determination of the Industrial Tribunal had to be followed by an order of the Government which made the award binding. It is, therefore, clear that applying the tests laid down in the latter case of the Supreme Court in Brajnandan Sinha Vs. Jyoti Narain, , the order of the Industrial Tribunal was not binding and authoritative judgment.

28. Mr. Jha then submitted that the Registrar was merely an executive officer and is by no means to be described as a Court. In support of his contention he placed before us two decisions. The first one is in State Vs. Jagannath, . The question before the Judicial Commissioner was the construction of the provisions of the various sections of the Co-operative Societies Act, 1912. He held that

"where the question involves the liability of the members of the Managing

Committee of a Co operative Bank for embezzlement, there is a dispute concerning the business of the bank between the members and the Committee and hence a reference could be made to the Registrar under Rule 18(a)".

The question that had to be decided in that case was whether the Registrar could be the proper tribunal to decide the said dispute. The Judicial Commissioner held on the facts of that case that the Registrar was in the position of a party who had expressed his opinion in the matter and it was against the well established principle of natural justice that he should constitute as a tribunal. I do not find any support to Mr. Jha's contention from this decision that the Registrar is not a Court. That point was not for decision before the Judicial Commissioner and it is not possible to pick out stray sentences from one decision or the other as establishing the point involved in this case.

27. The last decision is of *Sawatram Ramprasad Mills Co. Ltd. v. Vishnu Pandurang* AIR 1950 Nag 14. In that case it was held that the authority appointed under the Payment of Wages Act, 1936, was not a "Civil Court", but was an administrative tribunal, The question for consideration before their Lordships was whether such tribunal was subject to the revisional jurisdiction of the High Court exercisable u/s 115 of the Civil Procedure Code. Their Lordships after examining various decisions overruled the earlier decision of their own Court in AIR 1945 94 (Nagpur) and held that the authority appointed under the Payment of Wages Act was not a "Civil Court" in the narrow sense as contemplated in the CPC but was administrative tribunal and as such was subject to the revisional jurisdiction of that Court exercisable u/s 115 of the Code. It, is clear, therefore, that their Lordships were considering a situation in a narrow sense within the meaning of Section 115 of the Code.

28. Having heard learned counsel for the parties, it appears to me that in view of the tests as held by the Supreme Court in the case of *Brajnandan Sinha Vs. Jyoti Narain*, the decision of the Assistant Registrar exercising the powers of the Registrar u/s 48 of the Act was a definitive judgment which was binding and authoritative and must, therefore, be held to be a pronouncement of a Court of law. From the examination of the various provisions of the sections and the rules reproduced earlier, it is also clear that the Assistant Registrar exercising the power of a Registrar had not only the necessary trappings of a judicial tribunal but he had the power to give a decision or a definitive judgment which had the finality and authoritativeness subject to an appeal provided under the Act to the Registrar. It made no difference that the Act itself had provided an appeal to the Registrar himself. If the legislature in its wisdom considered that the Registrar should be the proper authority to hear the appeal, the same cannot be questioned. Further, from the method of enforcement of the orders of the Assistant Registrar exercising the powers of a Registrar u/s 48 of the Act, it is clear that it had the force of a decree and is, therefore obvious that the various tests laid down in the decisions referred to on behalf of the petitioner appear to be satisfied in this case.

29. u/s 48 of the Act the Registrar or the Assistant Registrar, exercising the powers of a Registrar, decides the civil liability of persons or body contemplated under that Act and but for that Act the dispute would have been decided by a civil court. Thus the dispute before the Registrar is a civil dispute.

30. The various provisions of the Act clearly show that notice of reference has to be given to the opposite parties, evidence of the parties has to be taken, attendance of witnesses has to be procured, documents have to be called for, guardians for minors have to be made; in case of death of any party substitution of his heirs has to be made; in case of mortgage award preliminary decree and final decree have to be prepared in the terms of such decrees as prepared in a civil court and the decree passed under the Act is executable as a civil court decree. Thus, the proceeding under the Act in deciding a dispute u/s 48 of the Act is a judicial proceeding.

31. The decision by the Registrar is enforceable either as a Civil Court decree or under the provisions of the Public Demands Recovery Act and a decision, right or wrong, is binding on the parties concerned, subject to the result of the appeal before the Registrar if the award has been given by an Assistant Registrar exercising the powers of the Registrar. The decision of the Registrar cannot be questioned in Civil Court except on the ground of want of jurisdiction. Thus the decision of a Registrar is a binding one.

32. All the three basic principles, as urged by Mr. Lal Narayan Sinha to constitute an Assistant Registrar a "Court" within the meaning of the Contempt of Courts Act, are present in this case. I am, therefore, for the reasons stated above, of the opinion that the Assistant Registrar, who was exercising the powers of the Registrar in the present case was a "Court" within the connotation of the term as used in the Contempt of Courts Act.

33. I shall now deal with the second point urged by Mr. Lal Narayan Sinha, appearing on behalf of the petitioner, that the Assistant Registrar having constituted a court was subordinate to the High Court within the meaning of the Contempt of Courts Act. Learned counsel has submitted that the question of subordination is clear by the provisions of Article 227 of the Constitution of India, which has subordinated all courts and tribunals within the limits of the State. Further, in his submission, when the Contempt of Courts Act speaks of "Courts subordinate to the High Courts", it clearly refers to the judicial subordination. According to Article 227 of the Constitution, every High Court has the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, except a court or tribunal constituted by or under any law relating to the Armed forces. Learned counsel has further contended that Article 227 puts an end to that controversy and in his submission it is not necessary to examine this question at any great length. In support of his submission he has referred to us certain decision of different High Courts.

34. In *In Re: Annamalai Mudaliar*, the learned Judge had to consider whether a

decision of the Deputy Registrar of Co-operative Societies, which was final, could be entertained by the High Court in revision. His Lordship after reviewing a large number of decisions came to the conclusion that Article 227 of the Constitution conferred upon High Court a power of supervision over all judicial matters decided by any court or tribunal within the State. It was further held that the extraordinary powers conferred on the High Court under Article 227 enabled the High Court to ensure that the tribunals were kept within the bounds of their authority and that they did what their duty required and that they did it in a legal manner. It was, therefore, held that the High Court could look into the decision of the Deputy Registrar in revision.

35. The next case relied upon by learned counsel is of Budhi Nath Jha Vs. Manilal Jadav, In this case their Lordships had to consider the jurisdiction of the High Court under Article 227 and it was held that the nature of jurisdiction conferred upon the High Court under Article 227 was not original jurisdiction and an order passed by the High Court under this Article was an order made in exercise of the revisional jurisdiction of the High Court. The power of revision conferred upon the High Court under Article 227 was similar in nature to the appellate power of the High Court, though the power under Article 227 was circumscribed by various limitations. Those limitations, however, did not affect the intrinsic quality of the power granted under Article 227, which was the same as appellate power.

36. The next case relied upon was of Abdul Razak Vs. Kuldip Narain, . This case had come up before Manohar Lall, J. on a difference of opinion between Chatterji and Meredith, JJ. There it was held that the Election Commissioner appointed under the Bihar District Board Election Petitions Rules was a Court subordinate to the High Court within the meaning of Section 113 Civil Procedure Code.

37. The last case relied upon by learned counsel is of Lakhama Pasha Vs. Venkatrao Swamirao Nazare, . Their Lordships were considering the jurisdiction of the High Court under Article 227 of the Constitution in respect of the Chief Judge of the Court of Small Causes acting as persona designate under the City of Bombay Municipal Act and the point for determination was whether the Chief Judge was a court subordinate to the High Court as contemplated by Section 3 of the Contempt of Courts Act.

Their Lordships held that the High Court was competent to exercise judicial supervision against the Chief Judge and could judicially interfere with his decision in proper case. They observed in course of their judgment that it was unnecessary to restrict the meaning of the expression "Court subordinate to the High Court" in Section 3 of the Contempt of Courts Act. All that section required was that there must be an authority exercising judicial powers and further that that authority must be judicially subordinate to the High Court. In their Lordships' opinion, both the conditions were satisfied in case of the Chief Judge of the Court of Small Causes. He was undoubtedly an authority exercising judicial functions and he was also judicially subordinate to the High Court. Thereafter, if a contempt was committed of the Chief Judge as a persona designate under the

Municipal Act, it was open to the High Court to take cognizance of it and to take action against the person who committed that contempt as if the contempt has been committed of the High Court itself.

38. Mr. Raghunath Jha, on behalf of the opposite party, has submitted that the question of subordination to the High Court does not arise in the present case as, in his submission, the Assistant Registrar did not constitute a court. The further question, therefore, whether he was subordinate to the High Court or not was not open to determination. Learned counsel has relied on the decision of (S) MR 1956 SC 66; and has practically repeated his submissions, which have already been dealt with earlier. According to Mr. Jha, the case in *In Re: Annamalai Mudaliar*, also does not decide the point of subordination, as in his submission, the point to be decided in that case was a narrow one, namely, whether the award of the Deputy Registrar of the Co-operative Societies could be interfered with on the revisional jurisdiction of the High Court.

Mr. Jha has, however, relied on a decision of the Allahabad High Court in *State of Uttar Pradesh Vs. Ratan Shukla*, . In that case their Lordships were considering a case under the Contempt of Courts Act in respect of a decision passed under the U. P. Municipalities Act (2 of 1916) and observed that the Contempt of Courts Act was enacted after the Constitution came into force. Therefore, the word "Court" in the Act must be interpreted in the same manner in which it was used in the Constitution. Since the Constitution made a distinction between Courts and tribunals, the word "Court" in the Act could not be interpreted so as to include all tribunals. Mr. Jha committed himself to the decision of this case as a clear authority in his support.

When pressed a little bit about it, I think, he resiled from it, because of the observations of the learned Judge made at page 266 of the Report, where the learned Judge observed that he had expressed a doubt in *Bhagirathi and Others Vs. The State*, on the correctness of the view that superintendence included judicial superintendence. His Lordship observed that in view of the provisions of Article 226 there was much to be said for restricting superintendence to administrative superintendence and that it was doubtful if a court over which the High Court had only administrative superintendence could be said to be subordinate to it. The view expressed by the learned Judge was only obiter dictum and this was not the majority view in the case.

39. In my opinion, on a consideration of all the decisions referred to above, the Assistant Registrar was a "court", and within the meaning of Article 227 of the Constitution was subject to the judicial superintendence of the High Court. It is clear, therefore, that the Assistant Registrar was as such a court subordinate to the High Court within the meaning of Section 3 of the Contempt of Courts Act.

40. The last question to be determined is whether the language used in the grounds of appeal preferred by the opposite party amounted to a contempt of court. Mr. Lal Narayan Sinha's submission is that the question of mind of an

authority, namely, the Assistant Registrar, was attacked in this case, and, it was, therefore, clearly a contempt and there was no escape from this position. Mr. Jha, on the other hand, has urged that the opposite party being a layman, the language used by him should not be strictly construed. In his submission the word "mala fide" includes two kinds of attitude of mind of a person; if an order is attacked on the ground of being mala fide, it may mean (i) that the Judge has not acted within the jurisdiction and has, therefore, acted illegally and (ii) attributing malice to the Judge and his having acted dishonestly. According to the learned counsel only the second illustration would constitute contempt.

41. In support of his submission our attention has been drawn to the decision of Andre Paul Terence Ambard v. The Attorney General of Trinidad AIR 1936 PC 141. Their Lordships after an elaborate discussion on the law of the contempt of court laid down that if reasonable argument or expostulation was offered against any judicial act as contrary to law or the public good it was not contempt of court. In this case the matter under review was whether a person who had written an article on the inequality of sentence under the text "The Human Element" had committed contempt of Court. It was held by the Privy Council that the writer was perfectly justified in pointing out what was obvious, that sentences did vary in apparently similar circumstances with the habit of mind of the particular Judge. It was quite inevitable. Some very conscientious Judges had thought it their duty to visit particular crimes with exemplary sentences; other equally conscientious had thought it their duty to view the same crimes with leniency. Hence, to say that the human element entered into the awarding of punishment was not contempt of court.

In my opinion, this case is quite clearly distinguishable on the facts of the present case. From the passages quoted earlier from the grounds of appeal and from the show cause petition filed on behalf of the opposite party, it is clear that he has justified his conduct and has taken the same stand throughout the hearing of this case. In spite of the opportunities he had never thought of tendering any apology and has persisted in the stand taken by him that he was

"within his legitimate right to call the decision of the Assistant Registrar mala fide....."

Learned counsel has urged that the opposite party has tendered apology as contained in his show cause petition. In paragraph 84 of the said petition he has stated thus:

"That, if in the opinion of your Lordships, the opposite party is deemed to have committed any contempt of court, he is ready to withdraw his remarks unconditionally as he never intended to bring any court into disrepute."

This in my opinion, may possibly mean regret but it is certainly not an apology and it is obvious that the opposite party is not at all respondent for his action.

42. Mr. Jha has further submitted that if it be held in this case that what the

opposite party did amount to contempt of court, it was merely a technical contempt and it should be overlooked and the opposite party let off with a warning. He has relied on a decision of the Supreme Court in *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, where it was held that when attacks or comments were made on a Judge or Judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what was a libel on the judge and what amounted really to contempt of court. The fact that a statement was defamatory so far as the judge was concerned did not necessarily make it a contempt.

Applying the tests laid down in the said decision it is clear that the opposite party persisted in his attack on the Assistant Registrar as contained in paragraph 30 of the show cause petition reproduced earlier, in which he was criticising the Assistant Registrar's order as having been not only discriminatory order but as also having laid down two standards in judging the liability of the opposite party and the other person, namely, Jagannath Jha, it will obviously come within the ambit of the rule laid down by the Supreme Court in *Brahma Prakash's* case that it would be an injury to the Public, because it would tend to create an apprehension in the mind of the people regarding the integrity, ability or fairness of the Assistant Registrar. It would deter actual and prospective persons from placing complete reliance upon the Assistant Registrar's administration of justice and was likely to cause embarrassment in the mind of the Assistant Registrar himself in the discharge of his judicial duties.

43. Mr. Jha then relied on a decision in *M.Y. Shareef and Another Vs. The Hon'ble Judges of The High Court of Nagpur and Others*, and submitted that the unqualified apology tendered by the opposite party should, on the facts and circumstances of this case, be accepted by this Court in view of his being a person not conversant with either law or the language in which the documents have to be written before a Court of law. In my opinion, it is difficult to accept this submission, in view of the attitude adopted by the opposite party. In *Shareef's* case the Supreme Court decided that there could not be both justification and an apology. The two things were incompatible. An apology was not a weapon of defence to purge the guilty of their offence; nor was it intended to operate as a universal panacea but it was intended to be evidence of real contriteness.

The matter had come up before the Supreme Court by way of special appeal arising out of the contempt proceedings taken against two very senior members of the Nagpur Bar and one of their clients. It seems that counsel had signed applications or pleadings containing matters scandalising the Court without reasonably satisfying themselves about the prima facie existence of the adequate grounds therefor. It was held by the High Court that they were themselves guilty of contempt of Court, because such applications or pleadings were filed with a view to prevent or delay the course of justice and it was no duty of a counsel to his client to take any interest in such applications, on the other hand, his duty

was to advise his client for refraining from making allegations of this nature in such applications.

When the matter reached the Supreme Court, their Lordships were of the view that the High Court having found counsel guilty of contempt, they would have been well advised to tender unqualified apology to that Court forthwith. But perhaps they were still under the delusion that they were right and the Court was in error, and that by going to the Supreme Court they might be able to have the question of principle settled as they contended. But as soon as the Supreme Court indicated to counsel that they were in error, they immediately tendered an unqualified apology and it was held that the unqualified apology was sufficient to purge the contempt committed by counsel. It was further held that the condemnation for contempt by a High Court of Senior members of the Bar was itself a heavy punishment to them as it affected them in their professional career and was a great blot on them.

44. The present case is entirely different on facts and M.Y. Shareef and Another Vs. The Hon"ble Judges of The High Court of Nagpur and Others, can be of no assistance to the opposite party. He has not at any stage tendered any apology, much less an unqualified apology, as he still appears to think that he has committed no contempt of Court.

45. Considering all the facts and circumstances, I am of opinion that the opposite party is guilty of contempt of Court.

46. There remains the question of sentence. I have already held that the opposite party committed contempt of Court by attributing mala fides to the Assistant Registrar in his memorandum of appeal so much so that the Assistant Registrar was made a respondent in the appeal and cost was sought to be recovered personally against him. In this court he claimed to justify and insisted on justifying his use of mala fide against the Assistant Registrar in his memorandum of appeal. Thus the contempt is a calculated one and serious notice must be taken of such a calculated contempt. For these reasons, I sentence him to undergo simple imprisonment until the rising of the Court and to pay a fine of Rs. 200/-, to be paid within three weeks from today (sic) or. in default, to undergo further simple imprisonment for two weeks.

Choudhary, J.

47. I agree.