Bharat Co-Operative Bank (Mumbai) Ltd vs Co-Operative Bank Employees Union on 22 March, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2320, 2007 (4) SCC 685, 2007 AIR SCW 4020, 2007 LAB. I. C. 2823, 2007 (4) AIR BOM R 649, (2007) 2 UPLBEC 1804, (2007) 114 FACLR 155, (2007) 2 LAB LN 160, (2007) 2 CURLR 160, (2007) 4 MAH LJ 506, (2007) 2 SCT 505, (2007) 4 ALLMR 749 (SC), (2007) 5 SCALE 57, (2007) 3 BANKCLR 69, (2007) 3 BOM CR 673

Author: D.K. Jain

Bench: K.G. Balakrishnan, Lokeshwar Singh Panta, D.K. Jain

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           CASE NO.:
Appeal (civil)  1542 of 2007

PETITIONER:
BHARAT CO-OPERATIVE BANK (MUMBAI) LTD.

RESPONDENT:
CO-OPERATIVE BANK EMPLOYEES UNION

DATE OF JUDGMENT: 22/03/2007

BENCH:
CJI K.G. BALAKRISHNAN, LOKESHWAR SINGH PANTA & D.K. JAIN

JUDGMENT:
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J U D G M E N T [Arising out of S.L.P. (Civil) No.8377 of 2005) D.K. JAIN, J.:

Leave granted.

2. In relation to a Multi-State Co-operative Bank carrying on business in more than one State, which government Central or State, is the "appropriate government" for the purposes of the Industrial Disputes Act, 1946 (for short "the ID Act"), is the short question for consideration in this appeal?

3. The Appellant-Bank (hereinafter referred to as "the Bank") was originally registered under the Maharashtra State Co-operative Societies Act, 1960. As the Bank had a number of branches outside Maharashtra, subsequently, it got registered under the Multi-State Co-operative Societies Act, 1984. It is in the banking business and is governed by the provisions of the Banking Regulation Act, 1949 (for short "the BR Act"). The respondent is a trade union and represents workmen employed in the Bank.

4. Mainly aggrieved by transfer of eleven employees from one place to another, alleging it as an act of victimisation, the respondent filed a complaint against the Bank under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU & PULP Act"), along with an application for interim relief, before the Industrial Court at Mumbai. While resisting the complaint, the Bank raised certain preliminary issues of jurisdiction and maintainability of the complaint under the MRTU & PULP Act. The plea of the Bank was that as it was engaged in the business of banking and is a Banking Company as defined in Clause (c) of Section 5 of the BR Act, the appropriate government would be the Central Government and therefore, the provisions of the MRTU & PULP Act, a State Act, were not applicable. The Industrial Court upheld the objection and ordered that the complaint may be returned to the respondent for seeking relief before an appropriate forum.

5. The respondent questioned the validity of the said order by preferring a writ petition in the High Court. Allowing the writ petition, the learned single Judge came to the conclusion that for the "appropriate Government" to be the Central Government it was necessary that the Bank must be a Company incorporated under the Companies Act, 1956, which requirement was missing in the present case. He observed, that even though the respondent may be carrying on banking business, yet it is not a Company as defined under Section 5(d) of the BR Act. Inter-alia, holding that the definition of Banking Company would not include a Co-operative Bank, which would be regulated under the provisions of the Maharashtra State Co-operative Societies Act, the learned Judge set aside the order of the Industrial Court and remanded the matter back to that Court for decision on merits.

6. Being aggrieved, the Bank filed a Letters Patent Appeal before the Division Bench. Inter-alia, observing that Section 2(bb) of the ID Act is an instance of legislation by incorporation and not legislation by reference and, therefore, the amendments made in the BR Act after 1949 cannot be read into the ID Act, Division Bench came to the conclusion that the appropriate Government in the present case would be the State Government. In other words, the Division Bench held that for the purpose of deciding which is the "appropriate government" the expression "Banking Company" will have to be read, as it existed in BR Act of 1949 and that the subsequent amendments made vide Banking Regulation Act, 1965 had to be ignored. Being aggrieved, the Bank is before us by special leave.

7. We have heard Mr. Jamshed Cama, learned senior counsel appearing on behalf of the Bank and Mr. Chander Uday Singh, learned senior counsel on behalf of the respondent.

8. On behalf of the appellant it was contended that Section 2(bb) of the ID Act creates its own corporate entity, i.e., multi-State Banking Company and reference to the BR Act is for the limited purpose of identifying one kind of banking institution it brings in. Thus, there is no question of such multi-State Banking Company referred to in the BR Act of being bodily lifted in the ID Act by legislative incorporation of the BR Act, 1949 and, therefore, when the expression "Banking Company" was expanded in 1965 to include co-operative banks, such co-operative banks also became banking companies under the BR Act and if any of these newly included banking companies operate in more than one State, then they also become multi-State Banking Companies for the

purpose of Section 2(bb) of the ID Act. It is asserted that introduction of definition "Banking Company" in the first part of Section 2(bb) of ID Act is a case of referential legislation and not legislation by incorporation. Laying emphasis on the Industrial Disputes (Banking and Insurance Companies) Act, 1949 (for short "the IDBIC Act") it was submitted by the learned counsel that the IDBIC Act mandates that in respect of multi-State Banking and Insurance Companies the appropriate Government for all industrial disputes would only be the Central Government and, therefore, the expression "Banking Company" in Section 2(bb) of the ID Act must be read in conjunction with the object and purpose of IDBIC Act so as to bring ID Act into syne with the IDBIC Act. The submission is that being aware of the malice in the industrial field relating to multi-State Banks and Insurance Companies, IDBIC Act was enacted to bring all multi-State Banking and Insurance Companies under the control of the Central Government as appropriate Government, to obviate the difficulties being faced by the banks and insurance companies, having branches outside one State, inter-alia in the form of lack of uniformity of service conditions and industrial peace.

9. Per contra, learned counsel for the respondent submitted that the doctrine of statutory incorporation squarely applies in the present case, as the definition of "Banking Company" in the ID Act had been bodily lifted from the BR Act. Moreover, the definitions in Sections 2(a), 2(bb) and 2(kk) of the ID Act are exhaustive. Subsequent amendments from time to time in Section 2(bb) to include certain specified institutions clearly show the legislative intent not to give an expansive interpretation to the original words. It is contended that the fact that the Parliament expressly amended Section 2(bb) to include State Bank of India, notwithstanding amendments to the BR Act on 22nd October, 1956 to apply that Act to the State Bank of India and corresponding new banks is a strong indicator of the legislative intent that amendments to the BR Act were not intended to apply automatically to Section 2(bb) of the ID Act.

10. In order to appreciate the contentions raised, it would be necessary to refer to some salient statutory provisions, which form the background of the issue involved.

11. The I.D. Act came into force with effect from 1st April, 1947. The term "appropriate Government" was defined in Section 2(a). However, sub-clause (i) of clause (a) came to be amended in the year 1949 by the amendment Act 54 of 1949, whereby in relation to any industrial dispute concerning a "Banking Company" or Insurance Company, the Central Government was declared to be the "appropriate Government". Simultaneously, Section 2(bb) was inserted by the same Act, defining the "Banking Company". Needless to add that it is only those banking companies which fall within the ambit of the definition in the said provision that the Central Government would be the appropriate government. With respect to other banking companies, the State Government, in which the bank is situated, would be the appropriate government in terms of sub-clause (ii) of clause (a) of Section 2 of the ID Act. Section 2(bb) which is at the centre of controversy reads as under:

> "2(bb). "Banking Company" means a banking company as defined in Section 5 of the Banking Companies Act, 1949 (10 of 1949) having branches or other establishments in more than one State and includes (the Export-Import Bank of India) (the Industrial Reconstruction Bank of India), (the Industrial Development Bank of India), (the Small Industries Development Bank of India established under section 3

> of the Small Industries Development Bank of India Act, 1989), the Reserve Bank of India, the State Bank of India (a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings Act, 1970 (5 of 1970) (a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), and any subsidiary bank), as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959)."

From a bare reading of the Section it is clear that in order to fall within the meaning of this definition, a "Banking Company" has to satisfy two requirements, viz: (i) it should be a "Banking Company" as defined in Section 5 of the Banking Companies Act, 1949 and (ii) it should have branches or other establishments in more than one State. It may also be noted that some banks, by name, have specifically been included in the definition. Section 5 of the BR Act gives interpretation to various expressions used in the said Act. As per clause (c) of Section 5 the expression "Banking Company" means any "Company" which transacts the business of banking in India. According to Section 5(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise. The expression "Company" has been interpreted in clause (d) of Section 5 to mean any Company as defined under Section 3 of the Companies Act, 1956 and includes foreign company within the meaning of Section 591 of that Act. Indubitably, the appellant-Bank is not a Company within the meaning of the said clause. However, by the Act 23 of 1965 several amendments were carried out in the BR Act with effect from 1st March, 1966, widening the scope of the said Act. By that amendment Part-V, containing only one Section 56, providing for application of BR Act to Co-operative Banks, like the appellant-Bank, was inserted. Section 3 was substituted to declare that the provisions of the BR Act shall apply to a Co-operative Society only in the manner and to the extent specified in Part-V thereof.

12. The main question raised for determination is whether the afore-noted amendments to the BR Act, particularly insertion of Section 56 in the new format w.e.f. 1st March, 1966, after the insertion of the definition of "Banking Company" in the ID Act by Act 54 of 1949 will apply mutatis mutandis to the matters governed by the ID Act?

13. As there is no indication in the ID Act as to the applicability or otherwise of the subsequent amendments in the BR Act, the question posed has to be answered in the light of the two concepts of statutory interpretation, namely, incorporation by reference and mere reference or citation of one statute into another. Thus, answer to a rather intricate question hinges on the test whether at the time of insertion of the definition of the term "Banking Company" in the form of sub-section (bb) of Section 2 of the ID Act by the 1949 Act it was a mere reference to the Banking Companies Act, 1949 (later re-christened as the Banking Regulation Act) or the intendment of the legislature was to incorporate the said definition as it is in the ID Act?

14. Before adverting to the said core issue, we may briefly notice the distinction between the two afore-mentioned concepts of statutory interpretation, viz., a mere reference or citation of one statute in another and incorporation by reference. Legislation by incorporation is a common legislative

device where the legislature, for the sake of convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of verbatim reproducing the provisions, which it desires to adopt in another stature. Once incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute. On the contrary, in the case of a mere reference or citation, a modification, repeal or re-enactment of the statute, that is referred will also have effect on the stature in which it is referred. The effect of "incorporation by reference" was aptly stated by Lord Esher, M.R. In re: Wood's Estate, Ex parte Her Majesty's Commissioners of Works and Buildings in the following words at page 615:

> "If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all."

15. The Privy Council in Secretary of State for India in Council vs. Hindustan Co-operative Insurance Society Ltd. , while amplifying the doctrine of incorporation, observed as follows:

> "Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of draft doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country."

16. The doctrine of legislation by incorporation and its effect has been dealt with by this Court in a catena of decisions. In Ram Sarup vs. Munshi & Ors. a Constitution Bench held that repeal of Punjab Alienation of Land Act, 1900 had no effect on the continued operation of the Punjab Pre-emption Act, 1913 and that the expression "agricultural land" in the later Act had to be read as if the definition of the Alienation of Land Act had been bodily transposed into it. After referring to what Brett, L.J. said on the effect of incorporation in Clarke vs. Bradlaugh , namely, "where a statute is incorporated, by reference, into a second statute the repeal of the first statute by a third does not affect the second", it was observed as follows:-

> "Where the provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated. * * * In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre- emption Act and the expression 'agricultural land' in the later Act has to be read as if the definition in the Alienation of Land Act had been

bodily transposed into it."

17. The same principle was applied in Bolani Ores Ltd. vs. State of Orissa . In that case this Court was considering the question regarding the interpretation of Section 2(c) of the Bihar and Orissa Motor Vehicles Taxation Act, 1930 (for short "the Taxation Act"). This Section when enacted adopted the definition of "motor vehicle" contained in Section 2(18) of the Motor Vehicles Act, 1939. Subsequently, Section 2(18) was amended by Act 100 of 1956 but no corresponding amendment was made in the definition contained in Section 2(c) of the Taxation Act. The argument advanced was that the definition in Section 2(c) of the Taxation Act was not a definition by incorporation but only a definition by reference and the meaning of "motor vehicle" in Section 2(c) must, therefore, be taken to be the same as defined from time to time in Section 2(18) of the Motor Vehicles Act, 1939. The argument was rejected by this Court and it was held that this was a case of incorporation and not reference and the definition in Section 2(18) of the Motor Vehicles Act, 1939, as then existing, was incorporated in Section 2(c) of the Taxation Act and neither repeal of the Motor Vehicles Act, 1939 nor any amendment in it would affect the definition of "motor vehicle" in Section 2(c) of the Taxation Act.

18. The decision of this Court in Mahindra & Mahindra Ltd. Vs. Union of India & Anr. also proceeded on the same principle. There the question was in regard to the effect of subsequent amendment in Section 100 of the Code of Civil Procedure, 1908 on Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 (for short "The MRTP Act"). Section 55 of the MRTP Act provides for an appeal to this Court against the orders of the Monopolies and Restrictive Trade Practices Commission on "one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908". Section 100 of the Code of Civil Procedure was substituted by a new Section in 1976, which narrowed the grounds of appeal under that Section. In construing Section 55 of the MRTP Act this Court held that Section 100 of the Code as it existed in 1969 was incorporated in Section 55 and the substitution of new Section in the code, abridging the grounds of appeal, had no affect on the appeal under Section 55 of the MRTP Act.

19. The principle laid down in these decisions was reiterated in U.P. Avas Evam Vikas Parishad vs. Jainul Islam & Anr. and lately in P.C. Agarwala vs. Payment of Wages Inspector, M.P. & Ors. It is, therefore, clear from the afore-noted decisions that if there is a mere reference to a provision of one statute in another without incorporation, then, unless a different intention clearly appears, the reference would be construed as a reference to the provision as may be in force from time to time in the former statute. But if a provision of one statute is incorporated in another, any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in the latter statute.

20. However, the distinction between incorporation by reference and adoption of provisions by mere reference or citation is not too easy to highlight. The distinction is one of difference in degree and is often blurred. The fact that no clear-cut guidelines or distinguishing features have been spelt out to ascertain whether it belongs to one or the other category makes the task of identification difficult. The semantics associated with interpretation play their role to a limited extent. Ultimately, it is a matter of probe into legislative intention and/or taking an insight into the working of the

enactment if one or the other view is adopted. Therefore, the kind of language used in the provision, the scheme and purpose of the Act assume significance in finding answer to the question. (See: Collector of Customs vs. Sampathu Chetty & Anr.). The doctrinaire approach to ascertain whether the legislation is by incorporation or reference is, on ultimate analysis, directed towards that end. (See: Maharashtra State Road Transport Corporation vs. State of Maharashtra & Ors.) Thus, the question for determination is to which category the present case belongs.

21. The plain language of Section 2(bb) of the ID Act makes the intention of the legislature very clear and we have no hesitation in holding that reference to Section 5 of the Banking Companies Act, 1949 in the said provision is an instance of legislation by incorporation and not legislation by reference.

22. Section 2(bb) of the ID Act as initially introduced by Act 54 of 1949 used the word "means .. and includes" and was confined to a "Banking Company" as defined in Section 5 of the Banking Companies Act, 1949, having branches or other establishments in more than one province and includes Imperial Bank of India. Similarly, Section 2(kk), which was also introduced by Act 54 of 1949, defines Insurance Company as "an Insurance Company defined in Section 2 of the Insurance Act, 1938 (IV of 1938), having branches or other establishments in more than one province". It is trite to say that when in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the phrase "means" is used in the definition, to borrow the words of Lord Esher M.R. in Gough vs. Gough , it is a "hard and fast" definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see:

> P. Kasilingam and Ors. vs. P.S.G. College of Technology and others). On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition; makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other.
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> 23. Moreover, Section 2(bb) has subsequently been amended from time to time by various amendments to include certain specified banks and institutions, which would otherwise not fall within the exhaustive definition of the "Banking Company" in Section 2(bb) read with Section 5(c), 5(b) and 5(d) of the BR Act. It is plain that if the Parliament had intended an expansive interpretation of the original words, then there would have been no reason whatsoever to keep amending the definition from time to time. In our view, therefore, the language of Section 2(bb) clearly demonstrates the legislative intent not to bring within its ambit all the banks transacting the business of banking in India.
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> 24. We are, therefore, of the opinion that introduction of the Banking Companies Act, 1949 in clause (bb) of Section 2 of the ID Act is a case of incorporation by reference; it

has become its integral part and therefore, subsequent amendments in the BR Act would not have any effect on the expression "Banking Company" as defined in the said Section.

25. At this juncture, we may also consider an alternative submission made on behalf of the Bank that even if it is assumed that the provisions of Section 5 of the BR Act were introduced into Section 2(bb) of the ID Act by way of legislative incorporation, two of the exceptions, namely, exceptions (c) and (d), carved out by this Court in State of Madhya Pradesh vs. M.V. Narasimhan and reiterated in P.C. Agarwala's case (supra), would apply in the instant case. The exceptions so enumerated are:

(a) Where the subsequent Act and the previous Act are supplemental to each other;

(b) Where the two Acts are in pari materia;

(c) Where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and

(d) Where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act.

26. In our view, there is no substance in the contention. The ID Act is a complete and self contained Code in itself and its working is not dependant on the BR Act. It could not also be said that the amendments in the BR Act either expressly or by necessary intendment applied to the ID Act. We, therefore, reject the contention advanced by learned counsel for the appellant on this aspect as well.

27. Further, as noticed above, the definition of the "Banking Company" in clause (bb) of Section 2 of the ID Act being exhaustive, it is only with respect to the "Banking Company" falling within the ambit of the said definition in the ID Act, that the Central Government would be the appropriate government, which admittedly is not the case here.

28. In the light of the analysis we have made of the provision contained in Section 2(bb) of the ID Act, we deem it unnecessary to dilate on the impact of the IDBIC Act on the ID Act.

29. For all these reasons, we have no hesitation in upholding the view taken by the High Court that for the purpose of deciding as to which is the "appropriate government", within the meaning of Section 2(a) of the ID Act, the definition of the "Banking Company" will have to be read as it existed on the date of insertion of Section 2(bb) and so read, the "appropriate government" in relation to a multi-state co-operative bank, carrying on business in more than one state, would be the State Government.

30. In the result, the appeal fails and is dismissed accordingly. The appellant shall pay the costs of the respondent throughout.