PETITIONER:
THAKUR JUGAL KISHORE SINHA

Vs.

RESPONDENT:
SITAMARHI CENTRAL CO-OPERATIVE BANK LTD. & ANR.

DATE OF JUDGMENT:
13/03/1967

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
SHELAT, J.M.

CITATION:
1967 AIR 1494 1967 SCR (3) 163
CITATOR INFO :
RF 1969 SC 724 (23,24)
RF 1969 SC1320 (33)
R 1974 SC 710 (40)

ACT:
Bihar and Orissa Co-operative Societies Act, 1935-Assistant Registrar Co-operative Societies acting under s. 48-Whether a court-Whether subordinate to the High Court for the purpose of contempt of Courts Act, 1952, s. 3.

HEADNOTE:
The appellant in an appeal to the Joint Registrar of Co-operative Societies Bihar alleged that the Assistant Registrar in deciding a matter against him under s. 48 of the Bihar and Orissa Co-operative Societies Act 1935 had discriminated against the appellant and had used double standards. In proceedings under the Contempt of Courts Act the High Court of Patna held the appellant guilty. Appeal with certificate was filed in this Court. The questions that fell for consideration were : (i) whether the Assistant Registrar of Co-operative Societies was a court within the meaning of the Contempt of Courts Act 1952; (ii) If a court, whether it was a court subordinate to the Patna High Court; (iii) whether the words used by the appellant in his, appeal amounted to contempt.
HELD : The appellant had been rightly convicted.
(i) The Assistant Registrar was functioning as a court in deciding the dispute in question. His adjudication was not based upon a private reference nor was his decision arrived at in a summary manner, but with all the paraphernalia of a court and the powers of an ordinary civil court of the land. [173 E]
(Decision confined to cases under the Bihar Act only).[180 G]
Brajnandan Sinha v. Joyti Narain, [1955] 2 S.C.R. 955 and Shri Virindar Kumar Satyawadi v. The State of Punjab, [1955] 2 S.C.R. 1013, relied on.
Shell Co. of Australia v. Federal Commissioner of Taxation, [1931] A.C. 275, Bharat Bank Limited v. Employees of Bharat Bank Ltd. [1950] S.C.R. 459, Maqbool Hussain v. State of Bombay, [1963] S.C.R. 730, Cooper v. Wilson, [1937] 2 K.B. 309, Huddari, Parker & Co. v. Moorehead, (1909) 8 C.L.R.

330, Malabar Hill Co-operative Housing Society v. K. L. Gauba, A.I.R. 1964 Bom. 147, Raja Himanshu Dhar Singh v. Kunwar B. P. Sinha, 1962 All. L.J. 57, Sukhdeo v. Brij Bhushan, A.I.R. 1951 All. 667, In re Annamalai, A.I.R. 1953 Madras 362, Kapur Singh v. Jagat Narain, A.I.R. 1951 Punj. 49, Lakhama Pesha v. Venkatrao, Swamirao, A.I.R. 1955 Bom. 103, Budhi Nath Jha v. Manital Jadav, A.I.R. 1960 Patna 361 and State of Uttar Pradesh v. Ratan Shukla, A.I.R. 1956 All. 258, referred to.

(ii) The Assistant Registrar was a court subordinate to the High Court for the purpose of s. 3 of the Contempt of Courts Act. Under Art. 227 of the Constitution the High Court exercises judicial control over all courts and tribunals functioning within the limits of its territorial jurisdiction. Subordination for the purposes of s. 3 means judicial subordination and not subordination under the hierarchy of courts under the Civil- Procedure

164

Code or the Criminal Procedure Code Article 228 of the Constitution does not indicate that unless a High Court can withdraw a case to itself from another court for disposing of a substantial question of law as to the interpretation of the Constitution the. latter court is not subordinate to the High Court. [176 D; 179 C, F]

(iii)The words used by the appellant clearly amounted to contempt. [166 E]

It is in the interest of justice and administration of law that litigants should show the same respect to a court no matter whether it is the highest in the land or whether it is one of inferior jurisdiction only. [180 E-F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.18 of 1965.

Appeal from the judgment and order dated December 14, 1964 of the Patna High Court in Original Criminal Misc. No. 6 of 1964.

B. P. Singh, for the appellant.

D. Goburdhun, for respondent No. 1.

U. P. Singh, for respondent No. 2.

The Judgment of the Court was delivered by

Mitter, J. This appeal by certificate granted by the High Court at Patna under Art. 134(1)(c) of the Constitution is directed against the judgment and order of that court dated December 14, 1964 in Criminal Miscellaneous Appeal No. 6 of 1964 whereby the appellant was found guilty of contempt of ,court, i.e., of the Assistant Registrar, Co-operative Societies, Sitamarhi Circle, exercising the powers of the Registrar, Cooperative Societies, Bihar under S. 48 of the Bihar and Orissa Cooperative Societies Act, 1935.

The three questions which were argued before us in this appeal were :- (1) Whether the Assistant Registrar of Co-,operative Societies was a court within the meaning of the Con-’ tempt of Courts Act, 1952; (2) Even if it was a court, whether it was a court subordinate to the Patna High Court and (3) whether the words used by the appellant in one of his grounds of appeal to the Joint Registrar of Co-operative Societies, which formed the basis of the complaint, did amount to contempt of any court.

The facts necessary for the disposal of the appeal are as follows. The Sitamarhi Central Co-operative Bank Ltd. (formerly named as Sitamarhi Central Cooperative Union) was a society registered under the Bihar and Orissa Co-operative

Societies Act, 1935, hereinafter referred to as the Act. The appellant was the elected Chairman of the Society, and was in control of its entire
165
affairs. The bank was engaged in carrying on a business inter alia in salt, sugar and kerosene oil. It was alleged that the appellant entrusted to one Suraj Banshi Choudhary the work of supplying, coal for which purpose he was given an advance of Rs. 7,004-5-0 and that out of this amount a sum of Rs.. 5,014-5-9 could not be realised from Suraj Banshi Choudhary. Thereafter, a surcharge proceeding under s. 40 of the Act was taken up before the Registrar of Co-operative Societies on December 22, 1953 when a sum of Rs. 14,288-13-9 was held to be realisable from *,be appellant and another person. The appellant went in appeal to the State Government and by an order dated March 28, 1957 the amount was reduced to Rs. 5,014-5-9. The bank was not made a party to the appeal before the State Government and it raised a dispute under s. 48 of the Act that the appellant was liable for the whole of the original amount of Rs. 14,288-13-9 on the ,round that the State Government's order being ex parte was not binding on it. This dispute went to the Assistant Registrar of Co-operative Societies exercising powers of the Registrar under s. 48 of the Act. On May 15, 1964, the Assistant Registrar decided the matter upholding the contention of the bank and making the appellant liable for the entire amount of Rs. 14,288-13-9. In the meantime, however, the appellant had challenged his liability for the amount of Rs. 5,014-5-9 as determined in appeal by the State Government by a Writ Petition to the High Court of Patna which was dismissed. He then filed a title suit before the Subordinate Judge of Muzaffarpur who decreed it in his favour and at the time when the contempt matter was heard by the Patna High Court, an appeal preferred by the bank from the said decree was pending before the District Judge, Muzaffarpur. The appellant preferred an appeal to the Joint Registrar of Co-operative Societies against the order of the Assistant Registrar who was made respondent No. 2 in the appeal. One of the grounds of appeal ran as follows :-

> "For that the order of 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 the order of the Assistant Registrar is without jurisdiction, illegal and mala fide and heavy costs should be awarded making respondent No. 2 responsible mainly for such costs."

The bank filed an application in the Patna High Court on August 14, 1964 for starting proceedings in contempt against the appellant. The appellant filed a petition showing cause and in grounds 29 and 30 of his petition, he asserted that he was within
166
his legitimate right to call the decision of the Assistant Registrar mala fide for the reasons given and that he had the right to criticise the discriminatory order of the Assistant Registrar as the said officer had laid down two standards in judging the alleged liability of himself and Sri Jagannath Jha by exonerating Jagannath Jha from the liability for the entire amount of Rs. 14,288-13-9 while holding the appellant liable for the entire amount without

examining the up-to-date position of payment of the amounts for which the claim had been preferred. In a supplementary affidavit filed on October 28, 1964, the appellant further stated that the order of the Assistant Registrar was mala fide in that at the time when it was made the Assistant Registrar was due for transfer and he had picked out two or three cases out of about fifty pending before him.

The High Court at Patna turned down all the contentions of the appellant in an elaborate judgment and held that the appellant was guilty of a calculated contempt. He was sentenced to undergo simple imprisonment until the rising of the court and to pay a fine of Rs. 200 in default whereof he was to undergo a further simple imprisonment for two weeks.

The last of the three points urged before this Court was the weakest to be advanced. There can be no doubt that the words used in this case in the grounds of appeal clearly amounted to 'contempt of court provided the Assistant Registrar was a court and the Contempt of Courts Act was applicable to the facts of the case. The Assistant Registrar was charged with having acted mala fide in that he had singled out the case of the appellant out of many for disposal and used a double standard in his adjudication against the appellant and Jagannath Jha clearly meaning thereby that the Assistant Registrar had fallen from the path of rectitude and had gone out of his way in taking up and disposing of the case of the appellant out of many which were pending before him and which he could not possibly have completed because of his imminent transfer.

According to Halsbury's Laws of England (Third Edition-Vol. 8) at p. 7 :

> "Any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court, is a contempt of court. Any episode in the administration of justice may, however be publicly or privately criticised, provided that the criticism is fair and temperate and made in good faith. The absence of any intention to refer to a court is a material point in favour of a person alleged to be in contempt."

167

We can, find nothing exculpatory in the reply to the show cause notice filed by the appellant before the Patna High Court. There he sought to justify his complaint made in his grounds of appeal. The criticism of the Assistant Registrar was neither fair nor temperate nor made in good faith. The obvious aim of the appellant in formulating his ground of appeal in the way it was done was to show that the Assistant Registrar had acted in a manner which was contrary to judicial probity and that he should therefore be penalised in costs.

The third ground therefore is devoid of any substance and cannot be accepted.

In order to appreciate whether the Assistant Registrar was functioning as a court, it is necessary to examine certain provisions Of the Act. The Act which is both a consolidating and an amending one was enacted to facilitate the formation, working and consolidation of co-operative societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common needs. S. 2(1) defines 'Registrar' as a person appointed to perform the duties of a Registrar of cooperative societies under the Act. Under s. 6(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. Under s. 6 sub-s. (2) (a) the State Government may, by general or special order published in the official gazette, confer on any person appointed under sub-s. (1) to assist the Registrar, all or any of the powers of the Registrar under the Act except the powers under s. 26. Under s. 13, the registration of a society makes it a body corporate by the name under which it is registered, with perpetual succession and a common seal and with power to acquire and hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the Purposes for which it is constituted. Chapter V deals with audit and inspection of societies. Under s. 33 the Registrar must audit or cause to be audited by some person authorised by him, the accounts of every registered society once at least in every year. Under sub-s. (4) of s. 33 the auditor has to submit a report including therein inter alia every transaction which appears to him to be contrary to law, the amount of any deficiency or loss which appears to have been incurred by the culpable negligence and misconduct of any Person, the amount of any sum which ought to have been but has not been brought into account by any person and any money or property belonging to the society which has been misappropriated or fraudulently retained by any person taking part in the organisation or management of the society or by any past or present officer of the society or by any other person.S.35 provides for certain inquiries by the Registrar. S. 40 pro-

168

vides inter alia that where as a result of an audit under s. 33 or an inquiry under s. 35 it appears to the Registrar that any person who has taken part in the Organisation or management of the society or any past or present officer of the society has made any payment which is contrary to law or by reason of his culpable negligence or misconduct involved the society in any loss or deficiency, or failed to bring into account any sum which ought to have been brought into account, or misappropriated or fraudulently retained any property of the society, he may inquire into the conduct of such person and after giving such person an opportunity of being heard, make an order requiring him to contribute such sum to the assets of the society. Sub-s. (3) of s. 40 provides for an appeal from the order of the Registrar to the State Government on application made by the person or officer against whom the order was passed. S. 48 enumerates various kinds of disputes touching the business of the registered society which must be referred to the Registrar. Such disputes may be amongst members, past members, persons claiming through members, past members or deceased member and sureties of members, past members or deceased members, or between the society and any past or present officer, agent or servant of the society. Under sub-s. (2) 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

(c) subject to any rules, refer it for disposal to an arbitrator or arbitrators.

Under sub-s. (3) the Registrar may withdraw any reference transferred under cl. (b) of sub-s. (2) or referred under cf. (c) of the said sub-section and deal with it in the manner provided in the said sub-section. Under sub-s. (6) any person aggrieved by any decision given in a dispute

transferred or referred under cl. (b) or (c) of sub-s. (2) may appeal to the Registrar. Sub-s. (7) gives the Registrar, in the case of dispute under this section, the power of review vested in a civil court under s. 114 and under 0. XLVII, r. 1 of the Code of Civil Procedure, 1908 as also the inherent jurisdiction specified in s. 151 C.P.C. Sub-s. (8) gives the Registrar the power to state a case and refer it to the District Judge for decision whereupon the decision of the District Judge is to be final. Under sub-s. (9) 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 cl. (b) or (c) of sub-s. (2) is to be final. S. 49 gives the Registrar power to summon and enforce the attendance of witnesses and parties concerned and to examine them upon
169
oath and to compel the production of any books of account, 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. S. 50 authorises the Registrar in certain cases to direct attachment of property of any person who with intent to defeat or delay the execution of any order that may be passed against him under s. 48 is about to dispose of the whole or any part of his property or to remove any part of his property from the local limits of the jurisdiction of the Registrar. S.57(1) provides that

> "(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 48 to be referred to the Registrar or of any proceedings, under Chapter VII-A."

Chapter VII-A of the Act headed 'distraint' provides for recovery or a debt or outstanding by distraining while in the possession of the defaulter any crops or other products of the earth standing or ungathered on the holding of the defaulter. The Chapter contains sections making elaborate provision for the sale of property distrained. S . 66 gives the State Government power to frame rules for any registered society or a class of registered societies. The latest rules are those framed in the year 1959. Rule 68 lays down the procedure for adjudication of disputes under s. 48. It provides for a reference to the Registrar in writing, on receipt where of the Registrar has to cause notice of it to be served on, the opposite party requiring him to show cause within a specified time. After a written statement is filed, the Registrar may decide the dispute himself or transfer it to any person exercising the powers of a Registrar in this behalf or to an arbitrator. There is also a provision for substitution of the heirs or legal representatives of a party to the dispute who dies pending the adjudication. The Registrar or the arbitrator is obliged to give a decision in writing after considering the evidence adduced by the parties. Before the Registrar or arbitrator, a party has a right to be represented by a legal practitioner.

In this case, the Assistant Registrar concerned, along with several other persons, was given the power of the Registrar under various sections of the Act including s. 48 [excepting sub-ss. (6) and (8)] by the State Government. He was not a nominee of the Registrar.

It will be noted from the above that the jurisdiction of the

ordinary civil and revenue courts of the land is ousted under s. 57
L4 Sup. Cl/67-12
170
of the Act in case of disputes which fell under S. 48. A Registrar exercising powers under S. 48 must therefore be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue courts of the land. The Registrar has not merely the trappings of a court but in many respects he is given the same powers as are given to ordinary civil courts of the land by the Code of Civil Procedure including the power to summon and ;examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own ,order and even exercise the inherent jurisdiction of courts mentioned in s. 151 of the Code of Civil Procedure. In such -a case, there is no difficulty in holding that in adjudicating upon a dispute referred under s. 48 of the Act, the Registrar is to all intents and purposes a court discharging the same functions and ,duties in the same manner as a court of law is expected to do.
According to Halsbury's Laws of England (Third Edition Vol. 9) at p. 342 :

> "Originally the term "court" meant, among other meanings, the Sovereign's palace; it has acquired the meaning of the place where justice is administered and, further, has come to mean the persons who exercise judicial functions under authority derived either immediately or mediately from the Sovereign. All tribunals, however, are not courts, in the sense in which the term is here employed, namely to denote such tribunals as exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to their jurisdiction."
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> Again,
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> "The question is whether the tribunal is a court, not whether it is a court of justice, for there are courts which are not courts of justice. In determining whether a tribunal is a judicial body the facts that it has been appointed by a non-judicial authority, that it had no power to administer an oath, that the chairman has a casting vote, and that third parties have power to intervene are immaterial, especially if the statute setting it up prescribes a penalty for making false statements; elements to be considered are (1) the requirement for a public hearing, subject to a power to exclude the public in a proper case, and (2) a provision that a member of the tribunal shall not take part in any decision in which he is personally interested, or unless he has been present throughout the proceedings."

It is not necessary to examine the question at any great length, because of certain authoritative pronouncements of this Court.
171
In Brainandan Sinha v. Jyoti Narain(1) the question was, whether a commissioner appointed under the Public Servants (Inquiries) Act, 1850 was a court within the meaning of the Contempt of Courts Act, 1952. There, after referring to

authorities like Coke on Littleton and Stroud and Stephen, the Privy Council decision in Shell Co. of Australia v. Federal Commissioner of Taxation(2) and the earlier decisions in Bharat Batik Limited v. Employees of Bharat Bank Ltd.(4), Maqbool Hussain v. The State of Bombay(5) and Cooper v. Wilson(5) it was observed :

> "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."

Reference was there made to the dictum of Griffith, C.J. in Huddart, Parker & Co. v. Moorehead(6) where he said:

> "I am of opinion that the words 'judicial power' as used in section 71 of the Constitution mean the powers 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 action."

Reference may also be made to the decision of this Court in Shri Virindar Kumar Satyawadi v. The State of Punjab(7). There the question was, whether a returning officer acting under ss. 33 and 36 of the Representation of the People Act, 1951 and deciding on the validity or otherwise of a nomination paper was not a court within the meaning of ss. 195 (1) (b), 476 and 476-B of the Code of Criminal Procedure. Here, too, the authorities which were cited in the case of Brainandan Sinha's case(1) were reviewed and it was said :

> "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 declares the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties

(1) [1955] 2 S.C.R. 955.
(3) [1950] 1 S.C.R. 459.
(5) [1937] 2 K.B. 309, 340.
(2) [1931] A.C. 275.
(4) [1963] S.C.R. 730.
(6) [1909] 8 C.L.R. 330, 357.
(7) [1955] 2 S.C.R. 1013 at 1018.

172

> 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 is 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."

This Court then went on to consider whether the functions and powers entrusted to the returning officer under the Act made, him a court. It was noted that under S. 36(2) of the Act, the returning officer has to examine the nomination paper and decide all objections which may be made thereto. It was noted that the power was undoubtedly judicial in character but the parties had no right to insist on producing evidence which they might desire to adduce in support of their case and there was no machinery provided for the summoning of witnesses, or of compelling production of documents and the returning officer was entitled to act suo motu in the matter. The Court further remarked that in a proceeding under S. 36 there was no lis in which persons with opposing claims were entitled to have their rights adjudicated in a judicial manner but the enquiry was such as was usually conducted by an ad hoc tribunal entrusted with a quasi-judicial power. Consequently it was held that the returning officer deciding on the validity of a nomination paper was not a court for the purpose of s. 1 95 (1) (b) Cr.P.C. with the result that even as regards the charge under s. 193, the order of the Magistrate was not appealable as the offence was not committed in or in relation to any proceedings in a court.

It will not be out of place to recapitulate what was said in Cooper v. Wilson (1) and referred to in Brainandan Sinha's case (2). The passage runs thus :

> "A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites :- (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal arguments by

(1) [1937] 2 K.B. 309.
(2) [1955] 2 S.C.R. 955.
173

> the parties; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law."

In our opinion, all the above requisites are to be found in this case. The question before the Assistant Registrar was whether the appellant and Jagannath Jha had caused loss to the bank and whether they were liable to compensate the bank for it. This arose out of audit proceedings. There was a written reference to the Registrar. There was a dispute between the bank on the one hand and the appellant and Jagannath Jha on the other to be decided with the assistance of arguments and on the evidence adduced. The dispute was a question of law dependent on the facts of the case and the decision disposed of the whole matter by finding the appellant liable for the entire amount. As we have already remarked, the Assistant Registrar had almost all the powers which an ordinary civil court of the land would have, of summoning witnesses, compelling production of documents, examining witnesses on oath and coming to a conclusion on the evidence adduced and the arguments submitted. Under

sub-r. (10) of r. 68 the parties could be represented by legal practitioners. The result is the same as if a decree was pronounced by a court of law. The adjudication of the Assistant Registrar was not based upon a private reference nor was his decision arrived at in a summary manner, but with all the paraphernalia of a court and the powers of an ordinary civil court of the land.

We were however referred to decisions of certain High Courts in support of the contention that the Assistant Registrar was not a court for the purposes of the Contempt of Courts Act. the latest of these decisions is that of the Bombay High Court in Malabar Hill Co-operative Housing Society v. K. L. Gauba(1). There an application was made by the society against one K. L. Gauba for the alleged contempt committed by him on the Third opponent, a nominee of the Registrar, appointed under s. 54 of the Bombay Co-operative Societies Act, 1925. The facts of the case were as follows. Gauba and his wife were members of the society and at the material time were residing in two flats in one of the society's premises. The terms and conditions on which a flat was allotted to the wife were that an initial payment of Rs. 6.001 had to be made towards the qualifying shares of the society and membership fees and thereafter a payment of Rs. 580 per Mrs. Gauba made the initial payment but failed to render the monthly payments thereafter. The society made an application tinder s. 54 of the Act to the Registrar of Co-operative

(1) A.I.R.1964 Bom. 147 at 152.

174

Societies relating to the dispute arising out of Mrs. Gauba's failure to make the monetary payments. The dispute was referred to his nominee by the Registrar and the nominee made an award directing Mrs. Gauba to pay a sum of Rs. 49,492-15 to the society. Being unable to recover the money, the Society made another application to the Registrar under S. 54 of the Act praying for a direction for eviction of Mrs. Gauba from the flat in her occupation. The Registrar, in exercise of his powers under S. 54 referred this dispute to his nominee Mr. C. P. Patel (the third opponent to the petition before the High Court). This case was numbered as Arbitration Case of 1961. In this arbitration case, Gauba appeared on behalf of his wife as her agent. It appears that Mrs. Gauba could not be served for some time and the case had to be adjourned on certain occasions. After a number of adjournments, when the matter was taken up on February 15, 1962, Gauba is alleged to have abused Mr. Patel calling him "dishonest" and "a cheat". Mr. Gauba contended before the High Court that on the date on which he was said to have uttered the abuses Mr. Patel, in law, had ceased to function as a nominee of the Registrar, that the proceedings before Mr. Patel were in the nature of arbitration proceedings, that Mr. Patel was not a court within the meaning of the Contempt of Courts Act and lastly, even if he was a court, he was not a court subordinate to the Bombay High Court under sub-s. (2) of S. 3 of the Contempt of Courts Act, the alleged contempt being an ex facie contempt amounting to an offence under S. 228 I.P.C. On the question as to whether Mr. Patel was functioning as a court, the Bombay High Court came to the conclusion that the tests laid down by this Court in Brajnandan Sinha's case(1) had not been satisfied. According to the learned Judges, the Registrar's nominee although possessing certain trappings of a court, had no independent seisin over the case and the power exercised by him was that of an arbitrator enabling him to make an award. Such an award

would not be equated with a judgement or a decision given by a Court. The learned Judges relied strongly on the fact that the Registrar had power to withdraw the dispute from his nominee and that the latter was in duty bound to decide the dispute within two months. All this, in the opinion of the learned Judges, went to establish that the, proceedings were those in arbitration and not before a court. After referring to Brainandan Sinha's case(1) and to Shell Co. of Australia v. Federal Commissioner of Taxation (2) the learned Judges concluded their judgment on this point observing :

> "Thus apart from the fact that the statute refers to the decision of a nominee as an award in express terms,
> (1) [1955]2 S.C.R. 955.
> (2) [1931] A.C. 275.
> 175
> and a reference to him is a reference for his arbitration, the provision of the Act relating to the appointment of a nominee itself indicates that the power, which a nominee derives for deciding the dispute, is not a power derived by him from the State."

The next decision referred to us was that of a single Judge of the Allahabad High Court in Raja Himanshu Dhar Singh v. Kunwar B. P. Sinha(1). In this case a dispute arising out of certain resolutions passed by the Hind Provincial Flying Club were referred to the Registrar of Co-operative Societies under the provisions of the Co-operative Societies Act of Uttar Pradesh and the Registrar delegated his powers to the Assistant Registrar to arbitrate in the matter. The Assistant Registrar issued an injunction that no further meeting should be called and this direction was flouted and disobeyed. The learned Judge came to the conclusion that "only those arbitrators can be deemed to be courts who are appointed through a court and not those arbitrators who function without the intervention of a court."

In our opinion, neither of these decisions lays down any reasoning which would compel us to hold that the Assistant Registrar of Co-operative Societies in this case was not a court. In the Bombay case, the matter was referred to the Assistant Registrar as a nominee who had to act as an arbitrator and make an award. So also in the Allahabad case, the Assistant Registrar merely acted as an arbitrator. In the case before us, the Assistant Registrar was discharging the functions of the Registrar under s. 6(2) of the Act under the authority of the State Government delegating the powers of the Registrar to him.

It was sought to be argued that a reference of a dispute had to be filed before the Registrar and under sub-s. 2(b) of s. 48 the Registrar transferred it for disposal to the Assistant Registrar and therefore his position was the same as that of a nominee under the Bombay Co-operative Societies Act. We do not think that contention is sound merely because sub-s. (2) (c) of s. 48 authorises the Registrar to refer a dispute for disposal of an arbitrator or arbitrators. This procedure was however not adopted in this case and we need not pause to consider what would have been the effect if the matter had been so transferred. The Assistant Registrar had all the powers of a Registrar in this case as noted in the delegation and he was competent to dispose of it in the same manner as the Registrar would have done. It is interesting to note that under r. 68 sub-r. (10) of the Bihar and Orissa Cooperative Societies Rules, 1959 :

"In proceedings before the Registrar or arbitrator a party may be represented by a legal practitioner."

(1) [1962] All. L. J. 57.

176

In conclusion, therefore, we must hold that the Assistant Registrar was functioning as a court in deciding the dispute between the bank and the appellant and Jagannath Jha.

Then comes the question as to whether the Assistant Registrar was a court subordinate to the High Court. The foundation ,of the contention of the learned counsel for the appellant is provided by the difference in the wording of Arts . 227 and 228 of ,the Constitution. Under sub-s. (1) of S. 3 of the Contempt of Courts Act, 1952 every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts ,of itself. Sub-s. (2) lays down that the High Court shall not take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code. Under Art. 227 every High Court shall have superintendence over all courts land tribunals throughout the territories in relation to which it exercises jurisdiction. Under Art. 228 if the High Court is satisfied that a cause pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution the determination of which is necessary for the disposal -of the case, it shall withdraw the case and may either dispose of the case itself or determine the said question of law and return the case to the court from which the case has been so withdrawn. -On the basis of the difference in language between these two Articles it was contended that the legislature in passing the Contempt of Courts Act in 1952 must be taken to have contemplated the cognizance of contempts of such courts only as would be covered by Art. 228 and not Art. 227. This has given rise to considerable judicial conflict as we shall presently note. In Sukhdeo v. Brij Bhushan(1) the question was whether the Panchayati Adalats constituted under the U.P. Panchayat Raj Act, 1947 were courts within the meaning of the Contempt of Courts Act. After an exhaustive analysis of the power of superintendence of the High Courts under successive Government of India Acts 1915, 1935 and the Constitution, a Division Bench of the Allahabad High Court held that court, after the Constitution, ]lad the same power of superintendence which it had after the passing of the Government of India Act, 1935 and that "in exercise of it can check the assumption or excess of jurisdiction by Panchayat Adalats or compel them to exercise their jurisdiction and do their duty and they were therefore, judicially subordinate to the Allahabad High Court." In re Annamalai(2) the .,question was whether a civil revision petition against an order ill

(1) A.I.R. 1951 All. 667.

(2) A.I.R. 1953 Mad. 362.

177

the nature of an award passed by the Deputy Registrar of Co-operative Societies was entertainable by the High Court acting under Art. 227 of the Constitution and there after examining a number of authorities, a single Judge of the Madras High Court concluded that the High Court had revisional jurisdiction under Art. 227 by way of superintendence over the judicial work of a duly constituted

tribunal like the Deputy Registrar under the Co-operative Societies Act. Of course, the question the court was immediately concerned with there was the scope of the power of superintendence, and it was observed that :

> "Superintendence includes power to guide, and encourage Judges of the subordinate Courts, to direct subordinate courts and tribunals to carry out its orders; and to direct enquiry with a view to take disciplinary action for flagrant maladministration of justice."

It was not necessary for the purpose of that case to take note of the difference, if any, between the words 'superintendence' and ,subordination'. In Kapur Singh v. Jagat Narain(1) a Division Bench of the Punjab High Court took the view that "superintendence' would include the power to deal with a content of court of a kind not punishable by the Court of the Commissioner itself appointed to hold an inquiry under Public Servants Inquiries Act, 1850) and that for the purpose of the Contempt of Courts Act the word "subordinate" would include all courts and tribunals over which the High Court is given the power of superintendence under Art. 227 of the Constitution." In Lakhana Pesha v. Venkatrao Swamirao(1) the question was, whether the Chief Judge of the Court of Small Causes acting as persona designate under the Bombay Municipal Act was a court subordinate to the High Court for the purpose of ss. 2 and 3 of the Contempt of Courts Act. Chagla, C.J. took the view that

> "the power of superintendence conferred upon the High Court under Art. 227 is clearly not only administrative but also judicial and the restriction imposed upon the High Court by s. 224(2), Government of India Act is thereby removed. Now, the power of judicial superintendence which has been conferred upon the High Court is in respect not only of courts but also of Tribunals throughout the territories in relation to which the High Court exercises jurisdiction, and the question that arises is whether in view of this constitutional position it could not be said of a 'persona designata' that it is a court subordinate to the High Court.

(1) A.I.R. 1951 Punjab 49.
(2) A.I.R. 1955 Bombay 163.
178

> Now, the subordination contemplated by S. 3 is a judicial subordination and there can be no doubt that the Chief Judge, although he is a persona designata', is a tribunal which would fall within the purview and ambit of Art. 227."

Further, according to the learned Chief Justice there was no reason or principle on which any distinction could be drawn between a civil court which was subordinate to the High Court and a tribunal which was subordinate to the High Court under Art. 227 of the Constitution.

The nature of jurisdiction exercised by the High Court under Art. 227 of the Constitution was gone into at length by a Full Bench of the Patna High Court in Budhi Nath Jha v. Manilal Jadav (1). There it was observed that

> "It is also apparent that the power of revision conferred upon the High Court under Art. 227 of the Constitution is similar in

> nature to the appellate power of the High Court, though the power under Art. 227 is circumscribed by various limitations. These limitations, however do not affect the intrinsic quality of the power granted under Art. 227 of the Constitution, which is the same as appellate power."

The learned Chief Justice of the Patna High Court relied to a very great extent on a passage from Story reading :

> "The essential criterion of appellate jurisdiction is, that it revises and corrects the proceedings in a cause already instituted and does not create that cause. In reference to judicial tribunals an appellate jurisdiction, therefore, necessarily implies that the subject matter has been already instituted and acted upon by some other court, whose judgment or proceedings are to be revised."

For the purpose of this case, it is not necessary to decide whether revisional jurisdiction is the same as the appellate jurisdiction but it is enough to hold that under Art. 227 of the Constitution, the High Court exercises judicial control over all courts and tribunals functioning within the limits of its territorial jurisdiction.

Our attention was drawn to a judgment of the Allahabad High Court in State of Uttar Pradesh v. Ratan Shukla(2). There proceedings were instituted against the respondent, a vakil practising in the District Judgeship of Kanpur, on a report made by the District Judge, Kanpur on being moved by the Additional District Magistrate of Kanpur in whose court the alleged contempt

(1) A.1,R. 1960 Patna 361.
(2) A.I.R. 1956 All. 258.
179

was committed by the Opposite party. There both the Judges were of opinion that the act of the opposite party did not amount to contempt of court, and Beg. J. did not g0 into the question as to whether the authority where the contempt of court was said to have been committed was acting as a court or not. Desai, J. however relying to a large extent, on the language of Arts. 227 and 228 of the Constitution held that the Magistrate even if he was acting as a court was by no means, in the circumstances, a court subordinate to the Allahabad High Court.

In our opinion, Art. 228 of the Constitution does not indicate that unless a High Court can withdraw a case to itself from another court for disposing of a substantial question of law as to the interpretation of the Constitution, the latter court is not subordinate to the High Court. This Article is only intended to confer jurisdiction and power on the High Court to withdraw a case for the purpose mentioned above from the ordinary courts of law whose decision may, in the normal course of things, be taken up to the High Court by way of an appeal. Art. 227 is of wider ambit; it does not limit the jurisdiction of the High Court to the hierarchy of courts functioning directly under it under the Civil Procedure Code and Criminal Procedure Code but it gives the High Court power to correct errors of various kinds of au courts and tribunals in appropriate cases. Needless to add that errors as to the interpretation of the Constitution is not out of the purview of Art. 227 although the High Court could not, under the powers conferred by this Article, withdraw a case to itself from a tribunal and dispose of the same, or determine merely

the question of law as to the interpretation of the Constitution arising before the tribunal. In our view, the subordination for the purpose of s. 3 of the Contempt of Courts Act means judicial subordination and not subordination under the hierarchy of courts under the Civil Procedure Code or the Criminal Procedure Code.

It may not be out of place to note that "subordinate courts" have been dealt with in Chapter VI of the Constitution and Art. 235 of the Constitution gives the High Court "the control over District Courts and courts subordinating thereto" by providing for powers like the posting and promotion, and the grant of leave to persons belonging to the judicial service of a State. Such control is not judicial control and a court may be subordinate to a High Court for purposes other than judicial control. Even before ,"tie framing of the Constitution s. 2 of the Contempt of Courts Alit, 1926 made express provision giving the High Courts in India the same jurisdiction, power and authority in accordance with the same practice and procedure in respect of contempt of courts subordinate to them as they had in respect of contempts of themselves. The preamble to the Act shows that it was

180

enacted for the purpose of resolving doubts as to the powers of High Courts to punish contempts of courts and to define and limit the powers exercisable by the High Courts and Chief Courts in punishing contempts of court. The Contempt of Courts Act, 1952 repealed the Act of 1926 and reenacted the provisions thereof in substantially the same language. In England "the Queen's Bench Division has a general superintendence over all crimes whatsoever and watches over the proceedings of inferior courts, not only to prevent them from exceeding their jurisdiction or otherwise acting contrary to law, but also to prevent persons from interfering with the course of justice in such courts" : (See Halsbury's Laws of England-Third Edition), Vol. 8, page 19.

Generally speaking "any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere with or prejudice party litigants or their witnesses during their litigation" amounts to contempt of court : see Oswald on Contempts page 6. In order that courts should be able to dispense justice without fear or favour, affection or ill-will, it is essential that litigants who resort to courts should so conduct themselves as not to bring the authority and the administration of law into disrespect or disregard. Neither should they exceed the limits of fair criticism or use language casting aspersions on the probity of the courts or questioning the bona fides of their judgments. This applies equally to all Judges and all litigants irrespective of the status of the Judge, i.e., whether he occupies one of the highest judicial offices in the land or is the presiding officer of a court of very limited jurisdiction. It is in the interests of justice and administration of law that litigants should show the same respect to a court, no matter whether it is highest in the land or whether it is one of inferior jurisdiction only. The Contempt of Courts Act, 1952 does not define 'contempt' or ' courts' and in the interest of justice any conduct of the kind mentioned above towards any person who can be called a 'court' should be amenable to the jurisdiction under the Contempt of Courts Act, 1952. It must be borne in mind that we do not propose to lay down that all Registrars of all Co-operative Societies 'in the different States are "courts" for the purpose of the

Contempt of Courts Act, 1952. Our decision is expressly limited to the Registrar and the Assistant Registrar like the one before us governed by "he Bihar and Orissa Co-operative Societies Act.

The second point also fails and the appeal is dismissed.

G.C. Appeal dismissed.

181