CASE NO.:
Appeal (civil) 3040 of 1998

PETITIONER:
Mehsana Dist. C.Co-op. Bank Ltd., & Ors.

RESPONDENT:
State of Gujarat & Ors.

DATE OF JUDGMENT: 28/01/2004

BENCH:
S.N. VARIAVA & H.K. SEMA.

JUDGMENT:
JUDGMENT

WITH

CIVIL APPEAL NO. 3041 OF 1998

Mehsana District Central Cooperative
Bank Ltd. & Ors. \005 Appellants
Versus

Arvindbhai B. Patel & Ors. .. Respondents

SEMA,J

CIVIL APPEAL NO. 3040 OF 1998

This appeal is against the judgment and order dated 16.4.1998 passed by the Division Bench of the High Court. The facts of this case may be briefly recited:-

The appellant-society was registered under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as the Act). It was carrying on the banking activities. Section 71(1)(a) to (f) of the Act enumerates various institutions in which a co-operative bank is to make investments. Clause (g) of Section 71(1) empowers the State Government to permit any society to invest the funds in any institution other than those mentioned in clauses (a) to (f) of the Section. Section 71 of the Act is relevant for the purpose of disposal of the present appeal. We shall be dealing with this Section in detail at an appropriate time. The appellant-bank sought permission of the State government to invest funds in an institution outside those falling under clauses (a) to (f) of Section 71(1) of the Act. However, the Government declined the request. Inspite of the refusal, the appellant-bank invested the funds in Mutual Fund, which was outside the purview of clauses (a) to (f) of Section 71 of the Act. It is stated that for non-compliance of Section 71 of the Act, notices were issued to the appellants calling for an explanation as to why action should not be initiated against them as contemplated under the Act. It is also stated that the appellants have not filed their replies to those notices and the matter is still pending with which we are not concerned in this appeal.

The appellant-bank undisputedly is a Cooperative Bank and is also a Central Co-operative Bank. The Banking Regulation Act, 1949 was amended by the Central Act No.23 of 1965, which came into force with effect from 1st March, 1966. By the aforesaid amending Act, Part V was inserted in the Banking Regulation Act, 1949, providing for application of the Act to cooperative banks.

Mr. K.G. Vakharia, learned Senior counsel for the appellants, contended that Section 5(b) of the Banking Regulation Act, 1949 defines "banking" and provides that "banking" means the accepting, for the purpose of lending or investment of deposits of money from the public. He further argued that sub-section (1)(a) of Section 6 of the Banking Regulation Act,

1949 provides for business of banking companies which will include cooperative banks. He, therefore, urged that the appellant-bank is entitled to be engaged in banking business in terms of the norms contemplated under Sections 5 and 6 of the Banking Regulation Act and not according to the norms of investment enumerated under Section 71 of the Gujarat Co-operative Societies Act.

The whole contention of the learned Senior counsel for the appellants is based on repugnancy and inconsistency between the Central Act and the State Act. In other words, the conflict is between Section 71 of the Gujarat Co-operative Societies Act and Sections 5(b) and 6(1)(a) of the Banking Regulation Act. To answer the aforesaid question it will be relevant to make a quick survey of the relevant provisions of the Gujarat Co-operative Societies Act and the Banking Regulation Act.

To appreciate the controversy in proper perspective Sections 5(b) and 6(1)(a) of the Banking Regulation Act and Section 71 of the Gujarat Societies Act are extracted: -

"5. Interpretation. - In this Act, unless there is anything repugnant in the subject or context, -
(a)\005\005\005.
(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 withdrawal by cheque, draft, order or otherwise;
\005\005\005"

"6. Forms of business in which banking companies may engage. -(1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely: -

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveler's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock , funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips of valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;"

"71. Investment of funds. -(1) A society may invest or deposit its fund, -
(a) in a Central Bank, or the State Co-operative Bank,
(b) in the State Bank of India,
(c) in the Postal Savings Bank,
(d) in any of the securities specified in section 20 of the Indian Trust Act, 1882 (II of 1992),
(e) in shares, or security bonds, or debentures, issued by any other society with limited liability, or
(f) in any co-operative bank or in any banking company approved for this purpose by the Registrar, an on such conditions as the Registrar may from time to time impose,
(g) in any other mode permitted by the rules, or by general or special order of the State Government.
(Emphasis supplied)

(2) Notwithstanding anything contained in sub-section (1), the Registrar may, with the approval of the State Co-operative Council, order a society or a class of societies to invest any funds in a particular manner, or may impose conditions regarding the mode of investment of such funds."

We may also extract clause (7) and clause (19) of Section 2 of the Gujarat Co-operative Societies Act:
(7) "co-operative bank" means a society registered under this Act and doing the business of banking, as defined in clause (b) of sub-section (1) of section 5 of the Banking Companies Act, 1949 (X of 1949);

(19) "society" means a co-operative society registered, or deemed to be registered, under this Act;"

Section 2 of the Banking Regulation Act, 1949 reads as under:-
"Application of other laws not barred. - The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Companies Act, 1956 (1 of 1956), and any other law for the time being in force."

We may also notice that while introducing the Gujarat Co-operative Societies Act, 1961 (Gujarat Act No. X of 1962), the aims and objects of the Act were to consolidate and amend the Law relating to co-operative societies in the State of Gujarat. The synopsis read as follows: -
(1) Act complete code falling in Entry 32 of List II of Schedule VII not repugnant under Article 254.

(2) Object of Co-operative Movement.
(3) Resolution pertaining to internal management cannot be held illegal.

The Gujarat Co-operative Societies Act was assented to by the President on the 1st March, 1962.

The Constitution Bench of this Court in M. Karunanidhi Vs. Union of India and another, (1979) 3 SCC 431 had considered the question of repugnancy and inconsistency between the Central Act and the State Act and held that before any repugnancy can arise the conditions which must be satisfied are:
"(1) that there is a clear and direct inconsistency between the Central Act and the State Act;

(2) that such an inconsistency is absolutely irreconcilable; and

(3) that the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."

A fascicule reading of Sections 2,5 and 6 of the Banking Regulation Act and Section 71 of the Gujarat Co-operative Societies Act would clearly posit that Section 71 of the Act is not in derogation of any other law such as the Banking Regulation Act but in addition to it. In the instant case, the State Act being dominant legislation under Article 254(2) the intendment of legislature that there is no repugnancy between the State Act and the Central Act is clearly expressed due to the assent by the President in view of the provisions of Section 71 of the State Act providing restrictive mode of investment by the co-operative bank. Section 71 was brought to the Statute book with a view to strengthen the already existing law namely the Banking Regulation Act and to safeguard the interests of the members of co-operative banking business by discouraging the members from investing in the institutions other than those specified in clauses (a) to (f) of Section 71, without prior sanction of the State Government. Therefore, it would not be opt to say that either the legislature or the President intended to create any

repugnancy between these two Acts. The fact that the assent of the President was sought for, could only be in addition to and not in derogation of any other Law such as the Central Act. It is also clear from the language employed in Section 2 of the Banking Regulation Act that the provisions of the Act were in addition to and not in derogation of any other Law for the time being in force.

Conjoint reading of Sections 2, 5 and 6 of the Banking Regulation Act and Section 71 of the Gujarat Co-operative Societies Act, in our view, there is no repugnancy or inconsistency between the State Act and the Central Act which satisfies the test set out by this Court in M. Karunanidhi's case (supra). The contention of the learned counsel for the appellants is not well founded. The appeal is devoid of merits and is accordingly dismissed.

CIVIL APPEAL NO. 3041 OF 1998

This appeal is directed against the judgment and order dated 17.4.1998 passed by the Division Bench of the High Court in SCA No.5473 of 1997 (PIL).

Briefly stated the facts are:-

A complaint was filed by the respondents herein to the effect that the Central Cooperative Bank is governed by the provisions contained in the Gujarat Cooperative Societies Act, 1961 and the Rules framed thereunder. It is further alleged that the Mehsana District Central Cooperative Bank had violated the provisions contained in Section 71 of the Gujarat Cooperative Societies Act by investing large sums in undertakings other than those enumerated in Section 71(a) to (f). Consequently, the Mehsana District Central Cooperative Bank had lost substantial amount. Though the matter had been brought to the notice of the State Government, Registrar of Cooperative Societies and the District Registrar, no action had been initiated against the Mehsana District Central Cooperative Bank and the Members of the Board of Directors. A prayer was also made for issuance of a writ of mandamus directing the authorities under the Gujarat Cooperative Societies Act to initiate necessary proceedings against the respondents/appellants herein for having committed breach of the provisions contained in Section 71 of the Act. It was further alleged that the Mehsana District Central Cooperative Bank had invested a sum of Rs. 95 crores in four different establishments which do not fall within the ambit of institutions enumerated in Section 71(a) to (f) of the Act without the approval of the State Government or the appropriate authority.

Mr. Mahendra Anand, learned Senior counsel contended that the High Court ought not to have entertained the petition in the form of PIL as the petition had been preferred by a person no other than the business rivalry of the appellants due to clash of interest. We see no substance in the contention.

In the facts and circumstances stated above, the High Court by the impugned order issued a writ of mandamus, directing respondent Nos. 4 and 5 to take appropriate action against the appellants in accordance with the provisions contained in the Gujarat Cooperative Societies Act and the rules framed thereunder. We do not see any infirmity in the impugned order. The Acts and Rules are made to be followed and not to be violated. When the Statute prescribes the norms to be followed, it has to be in that fashion. Converse would be contrary to law. If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if the concerned authorities do not perform their statutory obligation, as in the present case, any aggrieved citizen can always bring to the notice of the High Court about the inaction of the statutory authorities and in such event it would always be open to the High Court to pass an appropriate order as deemed fit and proper in the facts and circumstances of the case. In the present case, the facts as alluded above, would clearly reveal that the High Court was clearly justified in issuing a writ of mandamus, which cannot be faulted.

These two appeals are dismissed being devoid of merits. Parties are

asked to bear their own costs.