SUPREME COURT OF INDIA

Apex Co-op Bank

Vs.

M. S. Co-operative Bank Ltd.

C.A.No.439 of 1997

(S. N. Variava and H. K. Sema, JJ.)

29.10.2003

JUDGEMENT

S. N. VARIAVA, J.:-

1. Leave granted.

2. Both these Appeals are being disposed of by this common judgment as they arise out of the Judgment of the Bombay High Court dated 19th December, 1996. In this judgment the parties are being referred to in their capacity in Civil Appeal No. 439 of 1997.

3. Briefly stated the facts are as follows :

On 28th of August, 1993, the Appellants appear to have made an application to the Reserve Bank of India (hereinafter referred to as RBI) for a license to start an Apex Bank for Maharashtra and Goa. The RBI by its letter dated 25th April, 1994 inter alia stated as follows :

"2. As you are aware, the proposed bank requires to be got registered under the Multi State Co-operative Societies Act, 1984 since its area of operation extends beyond the boundaries of a State and as such it would not be a co-operative Bank as defined in the Banking Regulation Act, 1949 (as applicable to Co-operative Societies), at present. Hence an amendment to the Banking Regulation Act, 1949 is considered necessary. The Government of India has already been apprised of the amendments needed in the context of establishment of National Co-operative Bank of India (NCBI) registered under the Multi-State Co-operative Societies Act, 1984 and other similar banks.

3. In view of the foregoing, you may please approach the Reserve Bank only after the needed legislative amendments are carried out by Government of India to bring the NCBI as also other Banks similar to those proposed by you within the definition of Co-operative Banks under the Banking Regulation Act, 1949 (as applicable to Co-operative Societies)."

4. The appellants then got themselves registered as a Multi State Co-operative Society under the Multi State Co-operative Societies Act 1984 (hereinafter referred to as the Multi State Act) on 10th October 1994. After the appellants got themselves registered they accepted some entrance fees and some shares subscription from members. This was the only activity carried on by the appellants. By a Notification dated 30th December, 1995, issued by the State of Maharashtra the Appellants were declared as a State Co-operative Bank within the meaning of Section 2 (u) of the National Bank for Agriculture and Rural Development Act, 1981 (hereinafter referred to as the NABARD Act). Thereafter, two directions/orders dated 25th January , 1996 and 14th May, 1996 were issued by the Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State advising/directing deploying of funds by all Urban Co-operative Banks to the Appellants. These directions were issued under Section 70 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the MCS Act). On 22nd March, 1996 the RBI gave a banking license to the Appellants under Section 22 (1) read with 56 (o) of the Banking Regulation Act, 1949. This was for the States of Maharashtra and Goa.

5. The 1st respondent filed a writ petition challenging the Notification dated 30th December, 1995; two directions/orders dated 25th January , 1996 and 14th May, 1996 and the grant of License by the RBI on 22nd March, 1996. By the impugned Judgment the writ petition has been partly allowed inasmuch as the Notification dated 30th December, 1995, as well as Orders/directions dated 25th January, 1996 and 14th May, 1996, are quashed and set aside. The RBI was directed to review its decision of granting License to the Appellants in the light of the fact that the Notification dated 30th December, 1995 had been quashed. In the impugned Judgment it is clarified that till RBI takes a fresh decision the license granted on 22nd March 1996 was to remain operative.

6. Civil Appeal No. 439 of 1997 has been filed by the Appellants challenging the impugned judgment. Civil Appeal No.................... of 2003 arising out of SLP (C) No. 4877 of 1997 has been filed by the 1st respondent against that portion whereby the license granted by the RBI has not been

quashed.

7. On 27th January, 1997 this Court passed the following Order :

"There will be ad-interim stay of the operation of impugned judgment.

We may record that the directions of the High Court in relation to the Notifications dated 25th January, 1996 and 14th May, 1996 are not questioned before us by the learned counsel for the petitioners."

Thus, in these appeals there is now no challenge to quashing of the directions/orders dated 25th January, 1996 and 14th May, 1996.

8. The questions which arise for considerations are : (a) whether a co-operative society registered under the Multi State Act can be granted a license by the RBI to commence and carry on banking business, (b) whether a co-operative society registered under the Multi State Act can be recognized and notified by the State Government as a State Co-operative Bank and (c) whether a co-operative society registered under the Multi State Act, which has been recognized and notified by one State Government as a State Co-operative Bank for that State, can be granted a License by the RBI to commence and carry on banking activities in other States in which it has not been recognized as a State Co-operative Bank.

Question (a) : whether a Co-operative Society registered under the Multi State Act can be granted a License by the RBI to commence and carry on banking business.

9. As set out hereinabove the RBI in its letters dated 25th April, 1994 had taken the stand that a co-operative society registered under the Multi State Act would not be a co-operative bank as defined in the Banking Regulation Act. The same stand had been reiterated by the RBI in its affidavit before the High Court. However, surprisingly in its submission before this Court a contrary stand has been taken by RBI.

10. For a consideration of this question the relevant provisions of the Banking Regulation Act need to be looked at. Section 5(b) and Section 22 of the Banking Regulation Act, 1949 read as follows :

"5. Interpretation : In this Act, unless there is anything repugnant in the subject or context,-

(a) xxxxxx

(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;

(c) xxxx

(cci) "co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank;

(ccvii) "central co-operative bank", "co-operative society", 'primary rural credit society' and "state co-operative bank" shall have the meanings respectively assigned to them in the National Bank for Agriculture and Rural Development Act, 1981;"

"22. Licensing of co-operative banks :-

(1) Save as hereinafter provided, no co-operative society shall carry on banking business in India unless-

(a) it is a primary credit society, or

(b) it is co-operative bank and holds a license issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose :

Provided that nothing in this sub-section shall apply to a co-operative society, not being a primary credit society or a co-operative bank carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965, for a period of one year from such commencement.

(2) Every co-operative society carrying on business as co-operative bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965, shall before the expiry of three months from such commencement, every co-operative bank which comes into existence as a result of the division of any other co-operative society carrying on business as a co-operative bank or the amalgamation of two or more co-operative societies carrying on banking business shall, before the expiry of three months from its so coming into existence, every primary credit society which becomes a primary co-operative bank after such commencement shall before the expiry of three months from the date on which it so becomes a primary co-operative bank and every co-operative society other than a primary credit society shall before commencing banking business in India, apply in writing to the Reserve Bank for a License under this section :

Provided that nothing in clause (b) of sub-section (1) shall be deemed to prohibit-

(i) a co-operative society carrying on business as a co-operative bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965; or

(ii a co-operative bank which has come into existence as a result of the division of any other co-operative society carrying on business as a co-operative bank, or the amalgamation of two or more co-operative societies carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965, or at any time thereafter; or

(iii) a primary credit society which becomes a primary co-operative bank after such commencement, from carrying on banking business until it is granted a License in pursuance of this section or is, by a notice in writing notified by the Reserve Bank that the license cannot be granted to it.

xxx xxx xxx

xxx xxx xxx"

11. Under Section 22, as it stood prior to the amendment brought about by the Amendment Act of 68 wherein Section 56 was inserted, the RBI had right to issue license to companies to carry out banking business and no company could carry on a banking business unless it held a license issued by the RBI. After the amendment certain types of co-operative societies, as were brought within the purview of the Banking Regulation Act, could be issued a license by the RBI. Section 22 as

amended prohibits co-operative societies from carrying on banking business. The term "co-operative society", as used in Section 22, would include all types of co-operative societies. In other words no co-operative society can carry on banking business unless it falls within the permitted categories set out in Section 22. The term "co-operative bank" has been defined under Section 5(cci) as a State co-operative bank, a central co-operative bank and a primary co-operative bank. Thus the term "co-operative bank" does not include all co-operative societies. It only includes the above mentioned three types of societies. By virtue of Section 5(ccvii) the term "State co-operative bank" is to be understood as a State co-operative bank as defined in the NABARD Act. Thus unless a co-operative society is a State co-operative bank or a central co-operative bank or a primary co-operative bank (as defined under the NABARD Act), no license can be issued by the RBI. In view of these clear provisions it will have to be held that the stand taken by the RBI in its letter dated 25th April, 1994 was and is the correct stand.

12. It must be mentioned that the appellants accept this to be the correct provision. They only contest, 1st respondent's claim that the appellants could not be declared a State co-operative bank under Section 2 (u) of NABARD Act. In this behalf the relevant portions of the written submissions given by the learned Attorney General read as follows :

"10. It is submitted that a perusal of the BR Act and the NABARD Act would reveal the following scheme ;

(i) for the appellant to carry on banking business, Reserve Bank of India (hereinafter referred to as RBI) has to grant a license;

(ii) In order to get an RBI license, according to BR Act, the appellant has to be a co-operative bank i.e. in this case a State Co-operative Bank;

(iii) For the appellant to be a State Co-operative Bank, it has to be notified as such under Section 2(u) of the NABARD Act;"

13. Written submissions on behalf of the appellants given by Mr. Andhyarujina also need to be noted. The relevant portion reads as follows :

"According to the scheme of the BR Act, for the grant of a license to the appellant, it has to first come within the meaning of a "co-operative bank", i.e. either a State co-operative bank, central co-operative bank or a primary co-operative bank. It is only after a notification under Section 2(u) of

NABARD Act is issued the co-operative society becomes a co-operative bank within the meaning of Section 5(cci) of the BR Act as amended by Section 56(c) of the BR Act and thus became eligible to for license from the RBI under Section 22 of the Act read with Section 56(o) of the BR Act. Thus a notification under Section 2(u) in these circumstances necessarily precedes the grant of a license by the RBI."

We hold that this is the correct position.

14. On behalf of the RBI it is however submitted that RBI is competent to license a co-operative bank under the Multi State Act. It is submitted that Section 2 of the Banking Regulation Act, 1949 lays down that, "the provisions of this Act shall be in addition to and not, a save as hereinafter expressly provided, in derogation of, any other law for the time being in force". It is submitted that the phrase "any other law for the time being in force," would cover subsequent legislation. In support of this reliance is placed on the case of Sir Dinshaw Manekji Petit v. G. B. Badkas reported in AIR 1969 Bombay 151 (paragraph 8). It is submitted that Section 2(b) of the Multi State Act lays down that the Act shall apply to all multi State co-operative societies and Section 3(e) defines co-operative bank to mean a multi State co-operative society which undertakes banking business. It is submitted that Section 3(g) defines co-operative society, and Section 3(k) defines multi-State co-operative society to mean a society registered or deemed to be registered under that Act. It is submitted that the word "undertakes" means making an attempt. In support of this reliance is placed on : (a) Words and Phrases, Permanent Edition, Volume 43 pages 198 and 206; (b) the Law Lexicon by P. Ramanatha Aiyar, page 1931; and (c) Black's Law Dictionary, page 1526. It is pointed out that Section 110 of the Multi-State Act repeals the Multi Unit Co-operative Societies Act, 1942. On this basis it is submitted that multi-State co-operative society which is a co-operative bank under the Multi-State Act is subject to the licencing power of the RBI.

15. It is further submitted that this position becomes clear when one notes that Section 15 of the Multi-State Act provides that the RBI can require the central registrar to order moratorium, amalgamation and reorganization of a co-operative bank under the Multi-State Act and Section 78 of the Multi-State Act empowers the RBI to require the Central Registrar to wind up a co-operative bank if circumstances mentioned in Section 13D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 exist. Reference is also made to Section 13D of the Deposit Insurance Act which provides for circumstances in which winding up can be ordered. It is submitted that a conjoint reading of Section 13D read with 2(gg) of the Deposit Insurance Act indicates that RBI can exercise power in respect of matters mentioned therein. It is pointed out that Section 48(7) of the Multi-State Act, empowers, RBI to supersede a co-operative bank. It is submitted that all the above mentioned provisions show that RBI has got the power, to regulate the functioning of a co-operative bank, supersede, order moratorium, amalgamation or winding up, as the case may be. We are unable to accept this submission. The power to regulate, supersede, order moratorium, amalgamation or winding are exercisable only be in respect of a co-operative bank. Such power cannot be exercised in respect of any co-operative society which is not a co-operative bank. Far from supporting the case now sought to be made out, this shows that it is only a co-operative bank which can be licensed and then controlled by RBI.

16. It is next submitted that Section 22(1)(b) of the Banking Regulation Act, lays down that "save as hereinafter provided, no co-operative society shall carry on banking business in India unless it is a co-operative bank and holds a license issued in that behalf by the Reserve Bank subject to such conditions, if any, as the Reserve Bank may deem fit to impose. It is submitted that sub-section (2) of Section 22 lays down the requirement of obtaining of license by various co-operative societies. It is submitted that the last category was relevant. Reliance was placed on the portion which reads as follows :

"........ any every co-operative society other than primary credit society shall before commencing banking business in India apply in writing to the RBI for a license under this Section."

It is submitted that this makes it clear that whereas under sub-section (1) of Section 22 every co-operative society which is a co-operative bank cannot carry on banking business without a license; under sub-section (2) of Section 22 every co-operative society other than a primary credit society has to obtain a license before commencing banking business in India. It is submitted that a wider meaning should be given to the word 'co-operative bank' to include other co-operative banks (including one which is registered under the Multi-State Act) so that no co-operative society (including a co-operative society under the Multi-State Act) can commence banking business without a license. It is submitted that this would be in consonance with the principle of purposive interpretation and harmonious construction of statutes. It is submitted that although Section 5(cci) defines a co-operative bank to mean a State co-operative bank, a central co-operative bank and a primary co-operative bank in view of the scheme of the Multi-State Act read with Section 22(1) and (2) of the BR Act, the phrase "co-operative bank" has to be construed in a broad sense especially in view of the fact that Section 5 starts with the following words "in this Act, unless there is anything repugnant in this subject or context". It is submitted that in the object and context of contemporaneous legislation viz. Multi-State Act, 1984, the term "co-operative bank" must be held to include a bank registered under the Multi-State Act. It is submitted that if the RBI did not have such power, the consequence would be, that a Co-operative Bank under the Multi-State Act would not require a license for conducting banking business. It is submitted that such an interpretation should be eschewed. It is submitted that a purposive interpretation of Banking Regulation Act and Multi-State Act must be given. It is submitted that a contrary interpretation would render, the Multi-State Act, so far as it relates to co-operative banks redundant.

17. We are unable to accept these submissions also. The portion extracted above does not detract from what is provided in Section 22(1). Under Section 22(1) a primary credit society can carry on banking business. However, if a co-operative society is not a primary credit society then to carry on banking business it must be a co-operative bank and hold a license issued by the RBI. The above extracted portion of Section 22(2) merely emphasise that a co-operative society, other than a primary credit society, has to apply to the RBI for license before it can commence banking business. However, this does not mean that RBI can give to any or all co-operative societies, a banking license. RBI can only give a license as provided in Section 22(1) i.e. to a co-operative bank. The

term "co-operative bank" has been defined in the Banking Regulation Act and only includes a State co-operative bank or a central co-operative bank or a primary co-operative bank. Reference to the term "co-operative bank" in the Multi-State Act is of no assistance. When a term is specifically defined in a statute then for purposes of that statute that term cannot bear a meaning assigned to it in another statute. One cannot ignore the specific definition given in the Banking Regulation Act and apply some other definition set out in some other statute. Thus, so far as the Banking Regulation Act is concerned the term "co-operative bank" must have the meaning assigned to it in Section 5(cci). RBI cannot go by any other meaning given to the term "co-operative bank" for purposes of licensing under the Banking Regulation Act. The RBI has to go by the meaning given to this term in the Banking Regulation Act.

18. In view of the above, we hold that the RBI by virtue of its power under Section 22 cannot grant a license to any co-operative bank unless it is a State co-operative bank or a central co-operative bank or a primary co-operative bank. It would be necessary that a declaration under the NABARD Act be first obtained.

Question (b) - Whether a co-operative society registered under the Multi-State Act can be recognized and notified by the State Government as a State Co-operative Bank

19. To answer this question, apart from the provisions of the NABARD Act, one would also need to look at the various laws relating to co-operative societies.

20. The earliest Act pertaining to co-operative appears to be the Co-operative Credit Societies Act, 1904. However, that appears to be not relevant for our purposes and it has not been shown to us by any party.

21. In order to give societies a corporate existence, without resort to the Companies Act, the Co-operative Societies Act, 1912 was enacted. This Act did not define a co-operative society. It however provided that State Governments would appoint, for the State, a Registrar of Co-operative Societies. Sections 4 and 6 provide as follows :

"4. Societies which may be registered.- Subject to the provisions contained, a society which has its object the promotion of the economic interests of its members in accordance with the co-operative principles, or a society established with the object of facilitating the operation of such a society, may be registered under this Act or without limited liability :

Provided that unless the (State Government) by general or special order otherwise directs-

(1) the liability of a society of which a member is a registered society shall be limited;

(2) the liability of a society of which the object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited."

"6. Conditions of registration.- (1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consist of at least ten persons above the age of eighteen years and where the object of the society is the creation of funds to be lent to its members, unless such persons-

(a) reside in the same town or village or in the same group of villages; or

(b) save where the Registrar otherwise directs, are members of the same tribe, caste or occupation.

(3) The word "limited" shall be the last word in the name of every society with limited liability registered under this Act."

Thus the Act was essentially dealing with Societies whose members were residing in the same town or village or group of villages or whose members were from the same tribe, class, caste or occupation. The object of the Society had to be promotion of interests of its members. This shows that the Co-operative Societies Act, 1912 was enacted for local societies.

22. Apart from the Co-operative Societies Act, 1912 different provinces had enacted their own laws governing co-operative societies in that province. It was however found that some societies operated in more than one State, even though they were registered in only one State. Thus the Multi-Unit Co-operative Societies Act, 1942 was enacted. This Act applied to "all co-operative societies with objects not confined to one province incorporated, before the commencement of the Act, under the Co-operative Societies Act, or under any law relating to Co-operative Societies Act, in force in any province." To be noted that on this date, apart from the Co-operative Societies Act, 1912 there was no other law relating to co-operative societies which was in force in the whole of India. All other enactments were local laws relating to co-operative societies in the provinces.

23. Section 2 of the Multi-Unit Act provided as follows :

"2(1) A co-operative society to which this Act applies which has been registered in any province under the law relating to co-operative societies in force in that province shall be deemed in any other province to which its objects extent to be duly registered in that other province under the law there in force relating to co-operative societies but shall, save as provided in sub-sections (2) and (3), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the province in which it is actually registered.

(2) Where any such co-operative society has established before the commencement of this Act or establishes after the commencement of this Act a branch or place of business in a province other than that in which it is actually registered, it shall, within six months from the commencement of this Act or the date of establishment of the branch or place of business, as the case may be, furnish to the Registrar of Co-operative Societies of the province in which such branch or place of business is situated a copy of its registered bye-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply any information which the said Registrar might require to be submitted or supplied to him by a co-operative society actually registered in that province.

(3) The Registrar of Co-operative Societies of the province in which a branch or place of business such as is referred to in sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in the province."

24. Thus now co-operative societies whose objects were not confined to one province were deemed to be registered also in the other province. However, for purposes of registration, control and dissolution, they continued to be subject to the "law relating to co-operative societies in force for the time being in the province in which it was actually registered. Thus the term "under any Act relating to co-operative societies in force in any province" clearly applied to the local laws relating to co-operative societies in force in a province i.e. local law prevailing in that province.

25. Another aspect which must be noticed is that in the Constitution of India, the subject pertaining to co-operative societies is in the State list i.e. Entry 32 of List II of Schedule VII. The Union list has Entry 44 of List I of Schedule VII which deals with Corporations. In this case we are not concerned with the validity of a Central Legislation and thus do not deal with that aspect. For purpose of the judgment we will take it that a co-operative society with objects not confined to one State would fall within the term Corporation, and thus a Central Legislation may be saved. However, from the Constitutional provisions it is clear that matters pertaining to co-operative societies are in the State list. Thus many States have enacted laws relating to co-operative societies. We have not seen other Act. However, as this case concerns a society in Maharashtra, the Maharashtra Co-operative Societies Act was shown to us. Significantly this law does not define a

co-operative society. It did not need to, as a Society registered under it would be automatically covered. The need to define a co-operative society arises only in a Central Legislation which does not cover all co-operative societies and thus needs to indicate to which Society it applies.

26. Now let us look at the provisions of NABARD Act. The relevant portions of the NABARD Act namely Sections 2(f) and 2(u) read as follows :

"2(f)- "co-operative society" means a society registered, or deemed to be registered, under the Co-operative Societies Act, 1912 (2 of 1912), or any other law relating to co-operative societies for the time being in force in any State;

2(u)- "State co-operative bank" means the principal co-operative society in a State, the primary object of which is the financing of other co-operative societies in the State.

Provided that in addition to such principal society in a State, or where there is no such principal society in a State, the State Government may declare any one or more co-operative societies carrying on business in that State to be also or to be a State co-operative bank or State co-operative banks within the meaning of this definition;"

27. It is to be noted that the NABARD Act is of 1981 whereas the Multi-State Act is of 1984. Therefore, at the time the NABARD Act was enacted obviously the legislature could never have intended a society proposed to be registered under some future Act to be covered.

28. Under the NABARD Act, a co-operative society is a society which is registered or deemed to be registered under the Co-operative Societies Act, 1912 or under any other law relating to co-operative societies for the time being in force in any State. It must be remembered that the Multi-Unit Act applied to co-operative societies registered under any Act relating to co-operative societies in force in any province. As seen above the Multi-Unit Act was clearly referring to Acts in force in the province. Now instead of the word "province" the word "State" has been used. Admittedly, the appellants are not registered under the Co-operative Societies Act, 1912. The question thus is whether they could be said to be a society registered under any other law relating to co-operative societies for the time being in force in any State. At first blush it would appear that the term "any other law relating to co-operative societies for the time being in force in any State" would include all laws relating to co-operative societies which are in force in any State. However, in that case, there would be no need to provide separately in respect of a society registered under the Co-operative Societies Act, 1912. The Co-operative Societies Act, 1912 is also a law relating to co-operative societies and it is in force in all States. Also why use the words "in any State". Mere use of the term "any other law relating to co-operative societies for the time being in force" would have

been sufficient. It appears to us that the Legislature has provided separately in respect of the Co-operative Societies Act, 1912 and used the words "in any State" in order to indicate its intention that the term "any other law relating to co-operative societies for the time being in force in any State" did not include all laws relating to co-operative societies. If the intention was to rope in all societies registered under all laws relating to co-operative societies in force, then there was no necessity to use the additional words "in any State" or to separately provide for Co-operative Societies Act, 1912. As stated above, mere use of the words "any other law relating to co-operative societies for the time being in force" would have been sufficient. The legislature was clearly emphasizing that it is only co-operative societies registered under local or State laws relating to co-operative societies which would be covered. This interpretation is supported by the fact that the provision pertaining to a State co-operative bank provides for a declaration only by the State Government. If a declaration is by the State Government it must be in respect of a society which is registered in that State and which can be regulated by the Registrar of that State. A society which is registered under an Act, like the Multi-State Act, would not be under the regulation of the Registrar of the State. It was submitted that if the Legislature intended to restrict the application of NABARD Act to co-operative societies registered under local laws it would have used the words "of any State". It was submitted that the fact that the Legislature has not used the words "of any State" indicates that the co-operative society could be registered under any law in force in any State. We are unable to accept this submission. The Legislature could not have used the words "of any State". That would have meant that a co-operative society registered under a law in force in State 'A' could be considered as a co-operative society in States 'B', 'C' or 'D' also. That was not what the Legislature intended. The words "in any State" indicate that the co-operative society must be registered under the law in force in any State in which it wants to operate.

29. It must be mentioned that it was submitted by Mr. Andhyarujina that a co-operative society registered under the Co-operative Societies Act, 1912 can operate in more than one State. It was submitted that this showed that laws dealing with co-operative societies, which operate in more than one State, were meant to be covered. We are unable to accept this submission. As seen above under the provisions of the Co-opera above under the provisions of the Co-operative Societies Act, 1912 the registration could only be in one State. The Co-operative Societies Act, 1912 deals with local societies. As it was found, that even though the registration could only be in one State, the societies also operated in other States, the Legislature enacted the Multi-Unit Co-operative Societies Act, 1942 (hereinafter referred to as the Multi-Unit Act). Under the Multi-Unit Act if a society had objects not confined to one State then such a society was deemed to be registered even in other States, but for purposes of registration, control and dissolution it was the State law where it was first registered which continued to operate. Thus, after the enactment of the Multi-Unit Act it became clear that even though a society may be deemed registered under the Multi-Unit Act, but for purposes of registration, control and dissolution it continued to be bound by the law relating to co-operative societies for the time being in force in the State in which it was first registered. More importantly after the enactment of the Multi-Unit Act, the Co-operative Societies Act, 1912 only dealt with co-operative societies confined to one province. Societies with objects not confined to one province were deemed registered under the Multi-Unit Act. Thus the use of the words "Co-operative Societies Act, 1912" in the NABARD Act, also indicates that the definition is restricted to Societies registered under the law relating to co-operative societies in the State in which they want to operate. This is clear because significantly the Legislature has not provided that Societies registered under the Multi-Unit Act would be included.

30. The submission that a purposive interpretation should be given so that the definition takes into consideration even new laws cannot be accepted. Normally that is how one must interpret. However where the intention of the Legislature is clearly to restrict the provisions of the NABARD Act to co-operative societies which were registered either under the Co-operative Societies Act, 1912 or to societies which were registered under the State laws relating to co-operative societies one cannot by process of interpretation expand the scope.

31. The fact that the term "any other law relating to co-operative societies for the time being in force in any State" necessarily means only a State law is further reinforced by the use of this term in the Multi-State Act. Under the Multi-State Co-operative Societies Act, 1984, the relevant provisions i.e. Section 2, 3(e), 3(g) and 3(k) read as follows :

"2. This Act shall apply to-

(a) all co-operative societies, with objects not confined to one State, which were incorporated before the commencement of this Act,

(i) under the Co-operative Societies Act, 1912 (2 of 1912), or

(ii) under any other law relating to co-operative societies in force in any State or in pursuance of the Multi-Unit Co-operative Societies Act, 1942 (6 of 1942), and the registration of which has not been cancelled before such commencement; and

(b) all multi-State co-operative societies.

3(e) "co-operative bank" means a multi-State co-operative society which undertakes banking business;

3(g) "co-operative society" means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

3(k) "Multi-State co-operative society" means a society registered or deemed to be registered under this Act and includes a national co-operative society,"

32. A reading of the provisions of the Multi-State Act makes it clear that the words "under any other law relating to co-operative societies in force in any State" as used in the Multi-State Act, applies to societies registered under the State laws relating to co-operative societies. Mr. Andhyarujina fairly admitted this position. Of course, the definition as used in 1984 Act cannot be used for the purposes of interpreting the 1981 Act. The definition in the 1981 Act is being interpreted on its own provisions but the use of the same term in the 1984 Act with the same meaning reinforces the interpretation given to the 1981 Act.

33. Further under the NABARD Act a State co-operative bank has to be the principal co-operative society in the State, the primary object of which must be financing other co-operative societies in that State. The proviso to Section 2(u) cannot and does not derogate from the main definition. The proviso merely enables the State to declare, in addition to an existing principal society in the State or where there is no principal society in the State, any one or more co-operative bank as the State co-operative banks. However, this does not mean that the State Government, can at their whim and fancy, declare any co-operative society to be a "State co-operative bank". Before such a declaration can be made the State Government must necessarily be satisfied (a) that it is a principal co-operative society in the State; (b) that it is carrying on business in the State; and (c) the business must be of financing other co-operative societies in that State.

34. In At this stage, it must be mentioned that in the impugned judgment, the High Court has inter alia held that the term "carrying on business; necessarily means banking business. On behalf of the appellants this finding was assailed and it was submitted that in order to be declared a "State co-operative bank", within the meaning of Section 2(u) of NABARD Act, a co-operative society does not need to be carrying on business of "banking" in that State. It was submitted that "banking business" is a specific type of business as defined in Section 5(b) of the Banking Regulation Act, 1949. It was submitted that this business was different from "other forms of business" in which Banking Companies (or co-operative banks as per amendment in Section 56) may engage in and which are specifically stated in Section 6 of the Banking Regulation Act, 1949. It was submitted that the banking business, as defined in Section 5(b) of the Banking Regulation Act cannot be carried on unless the banking company or the co-operative bank secures a banking license under Section 22 of the Banking Regulation Act. It was submitted that the well known distinction between banking business and non-banking business carried out by banking companies had been noticed by the Supreme Court in R. C. Cooper v. Union of India reported in (1970) SCC 248 at pages 279-280. In this behalf reliance was also placed on the case of Sajjan Bank v. Reserve Bank of India reported in AIR 1961 Madras page 14. It was submitted that the High Court was wrong in holding that the business referred to in Section 2(u) of the NABARD Act is the business of banking. It was further submitted that wherever references are made to banking business in statutes, it has been expressly so stated. In support of this Section 3(e) of the Multi-State Act which defines "Co-operative Bank" as a Multi-State Co-operative Society which undertakes "banking business", and Section 80P(2)(a)(i) of the Income-tax Act, 1961 which refers to a co-operative society engaged in carrying on the business

of banking were pointed out. It was submitted that a co-operative society which is engaged in carrying on business of financing other co-operative societies could finance itself without "banking business". It was submitted that it could finance itself from its own resources e.g. from shareholders equity and/or by borrowings. It was also submitted that the activity of accepting entrance fee and subscription share from its members show that the appellants were carrying on business and that this was sufficient for the purposes of enabling the State Government to declare the appellants as a State co-operative bank. AIR 1970 SC 564 at pp. 589-90

AIR 1961 Madras 8

35. On behalf of the respondents, it was submitted that looking to the nature and purpose of the Act and the fact that the ultimate purpose was to accept deposits from other co-operative societies, it was necessary that the business which is carried on should be banking business. It was also submitted that in any event the business must be of financing other co-operative societies in the State. It was submitted that the society must be carrying on business in praesenti. It was submitted that looking to the nature and purpose of the Act a new society which intended to carry on, in future, the business of financing other co-operative societies or which had merely accepted entrance fee and share subscription from its members could not be declared as a State co-operative bank. It was submitted that appellants had not carried on any business and in any event had not carried on banking business or business of financing other co-operative societies.

36. In our view the High Court does not appear to be right in concluding that the words "carrying on business" must mean carrying on banking business. If the Legislature had so intended they would have so specifically provided as they have done in Section 3(e) of the Multi-State Act and Section 80P (2)(a)(i) of the Income-tax Act, 1961. However, a reading of the provisions make it clear that what is necessary is that co-operative society must be carrying on the business of financing other co-operative societies. The proviso has to be read in the light of the main provision. If read in the light of the main provision it is clear that even though banking business, as understood in the strict sense, may not be carried on, yet the business of financing other co-operative societies in the State must be carried on.

37. It was submitted that the activities of accepting entrance fees and share subscriptions was sufficient to show that the appellants was carrying on business. In our view this was not sufficient. What was required was carrying on business of financing other co-operative societies.

38. Faced with this situation it was submitted that the words "carrying on business" did not mean that business must be actively carried on. It was submitted that an intention to carry on business would be sufficient and can be taken into consideration for purposes of a declaration under Section 2(u) of NABARD Act. In support of this reliance was placed on the case In Re Sarflax Ltd. reported in ((1979) 1 Ch D 592 (at pages 598-599)) and the case of Vanguard Fire and General Insurance Co. Ltd., Madras v. M/s. Frazer and Ross and another. We are unable to accept the submission that mere intention to carry on such a business in the future would be sufficient. A plain reading indicates that

the carrying on of the business must be prior to the State Government declaring a society as a State co-operative bank otherwise there would be no criteria on the basis of which the State Government could judge whether the society proposed to be so declared will or will not perform its task truly and efficiently. The test for the Government has to be past performance. It is not as if the State Government can at its whims and fancy declare any society as a State co-operative bank. The State Government has to look into and be satisfied that that society has faithfully and efficiently been carrying on the business of financing other co-operative societies in that State and that there have been no complaints against that society. To allow the State Government to declare any society, even a society which has done no business of financing other co-operative societies, as a State co-operative bank would be to permit arbitrariness. The authorities relied upon are of no assistance as words to the effect "carrying on business" have necessarily to be construed keeping in mind the purpose with which they are used and to further the object of the Act. In Surflax's case the concerned party had earlier carried on business, but had then closed their business. The question was whether they were still covered by Section 332 of the Companies Act, 1948, which reads as follows :- AIR 1960 SC 971

"If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on the business in manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct."

It is in this context it was held that the expression "carrying on any business" in the Section was not synonymous with actively carrying on trade. Such an interpretation was given to further the intention of the statute and to cover a party who was trying to wriggle out the provisions of law.
AIR 1960 SC 971 Similarly in Vanguard Fire Insurance Company's case the question was whether the word "Insurer" in Section 33 of the Insurance Act, 1938 included a company which had closed insurance business. This Court held that the word "Insurer" referred not only to a person who was actually carrying on business but also to one who has subsequently closed. Thus here also the party had actually carried on business. These are completely different situations from one where no business, of the type envisaged, has been carried on. If no business has been carried on, then mere intention to carry on in future would not bring it within the meaning of the term "carrying on business". Also as stated above to give such an interpretation would be to permit arbitrariness.

39. In this case prior to the notification dated 13th December, 1995, the appellants had not carried on any business of financing any co-operative society. All that they had done was accepting entrance fees and share subscription from members. As stated above this is not business as contemplated by Section 2(u) of the NABARD Act. On this ground also it will have to be held that the notification dated 13th December, 1995 cannot be sustained.

40. Faced with this situation Mr. Andhyarujina submitted that, in the High Court, the respondent did not challenge the fact that the appellant was carrying on business of financing other co-operative societies, but only focused on its not carrying on "banking business". He submitted that banking business has a specific meaning as defined in Section 5(b) of the Banking Regulation Act, 1949. He submitted that in the writ petition it was ambiguously stated in paragraph 4 as follows :

"The petitioners further say that, in any event, under clause (u) of Section 2 of the NABARD Act, the State Government could not have identified or designated respondent No. 5 as a State Co-operative Bank, firstly because respondent No. 5 is not registered under the State Act, secondly, because respondent No. 5 is registered under the Central Act, thirdly, because the area of operation of respondent No. 5 also extends to the State of Goa and, fourthly, because respondent No. 5 is not carrying on any business or banking business. Respondent No. 5 has been constituted to carry on banking business. Respondent No. 5 cannot carry on banking business unless License is issued by the Reserve Bank of India under the BR Act, 1949. Therefore, the State Government could not have designated respondent No. 5 as a State co-operative bank under clause (u) of Section 2 of the NABARD Act. Therefore, the order of the State Government dated 30-12-1995 is null and void and is liable to be quashed and set aside."

(Emphasis supplied)

41. He submitted that there was no specific averment that the appellant was not carrying on business of financing other co-operative societies. He submitted that no arguments were made by the respondent before the High Court that the appellant was not carrying on business of financing other co-operative societies. He submitted that the only argument was it was not carrying on banking business. He pointed out that the argument as noted by the High Court in the impugned judgment was as follows :

"Mr. Singhvi submitted that as per the definition of "State Co-operative bank" given in the said Section 2(u), such a bank could only be the principal co-operative society in a Sate, the primary object of which would be the financing of other co-operative societies in the State, and that by the proviso it is in effect provided that the State Government may declare a co-operative society in addition to such principal society but such additional society must be carrying on banking business and that too in the State i.e. State of Maharashtra. According to him, admittedly the 5th respondent for want of necessary license, was not carrying on any banking business as on the date of the impugned declaration, and that the 5th respondent being a multi-State co-operative society could not be said to be a society carrying on such banking business in the State."

He pointed out that the High Court held as follows :

"The words "carrying on business" means that such additional or such principal co-operative society must be carrying on business, the business being naturally that of banking. It is true that nowhere, neither in the first part nor in the proviso, the word "banking" is even mentioned. In our opinion the

underlying or basic requirement is that the principal co-operative society must be carrying on the business of banking and its primary object must be to finance other co-operative societies in the State. Otherwise how can a society be recognized as the State co-operative bank when it is not even functioning as such on the date of such recognition as a bank nor has the primary object to finance other co-operative societies in the State?"

42. He submitted that there is not a single word and a single finding by the High Court that the appellant was not carrying on business except in the sense of banking business. He submitted that the reason for this is obvious i.e. there was no argument and no challenge that the appellant was carrying on business other than banking business. He submitted that it is not open to the respondent to argue something that was not argued before the High Court and which is not investigated and found as fact by the High Court.

43. We are unable to accept this submission. In the writ petition it has been stated that the appellant was not carrying on any business or banking business. This shows that in the petition itself this ground has been taken. Just because it is also mentioned that banking business was not being carried does not detract from fact that it is averred that no business was carried on. Once it is mentioned that no business was carried on it was not necessary to state that business of financing other co-operative societies was not carried on. In the impugned judgment, apart from the submissions highlighted by Mr. Andhyarujina, the following submissions have also been noted :

"Mr. Singhvi first attacked the notification dated 30th December, 1995 issued by the State Government purportedly under Section 2(u) of NABARD Act. It was his submission that the same was illegal and invalid inasmuch as that at the time of the said declaration respondent No. 5 was admittedly not carrying on any banking business i.e. the business of financing to other co-operative societies in the State, and that it was only registered as a Multi-State Co-operative Society under the Multi-State Act and was endeavouring to obtain the License from RBI under the provisions of Banking Regulation Act for carrying on banking business."

(Emphasis supplied)

This shows that the use of the term "banking business" was intended to be the business of financing other co-operative societies in the State. In the impugned judgment the High Court has inter alia held as follows :

"...... In our opinion, the Co-operative Bank which is recognized as the State Co-operative Bank is required to have as its primary object the object of financing of the Co-operative Societies in the State."

Of course the High Court has then gone on to hold that "banking business" was required to be carried on. As set out above the High Court was wrong in equating business of financing other co-operative societies to banking business. But it is clear that it had been the case of the 1st respondent, not only in the writ petition, but also in the submissions before the High Court that the appellants were not carrying on any business and that they were not carrying on the business of financing other co-operative societies. We are, therefore, unable to accept the submission that the 1st respondent cannot now be allowed to take this contention.

44. For all the above reasons it is held that the State Government could not have declared the appellants as a State co-operative bank. As it could not be so declared the Orders dated 25th January, 1996 and 14th May, 1996 could not have been passed. The High Court was, therefore, right in striking down the notification dated 30th December, 1995 and two orders/directions dated 25th January, 1996 and 14th May, 1996.

45. As seen above, in answer to Question No. (a) it has been held that RBI could not have granted the license unless the appellants were first declared a State co-operative bank under the NABARD Act. As it is now being held that the appellants could not have been declared as a State co-operative bank under the NABARD Act and it is held that as such declaration was correctly struck down it will have to be held that the RBI cannot issue it a license to carry on banking business. In view of the contrary stand taken by RBI, it cannot now be left to discretion of RBI to cancel the license granted by it. It is held that the High Court granted by it. It is held that the High Court was in error in not striking down the issuance of the license by RBI to the appellants. In view of what we have held we direct the RBI to forthwith revoke the banking license granted to the appellants.

Question (c) : Whether a co-operative society registered under the Multi-State Act, which has been recognized and notified by one State Government as a State Co-operative Bank for that State can be granted a licence by the RBI to commence and carry on banking activities in other States in which it has not been recognized as a State Co-operative Bank..

46. It is to be seen that the RBI can only give a license to a State co-operative bank which has been so declared by a particular State. As the definition of co-operative societies in the NABARD Act is restricted to co-operative societies registered under State Acts and as the provision is for a State to declare a co-operative society as a "State co-operative bank" the license, which can be issued by the RBI, can only be in respect of that State. Merely because one State declares a co-operative society as a "State co-operative bank" would not enable the RBI to issue that society a license to carry on banking business in other States or in the rest of the country. In this case, the RBI was wrong in issuing a license to the appellants for the States of Maharashtra and Goa when, admittedly, the appellants had not been declared a State co-operative bank in the State of Goa. Thus, it is held that the banking license could not have been issued for the State of Goa.

47. In view of the above, Civil Appeal No. 439 of 1997 stands dismissed, whereas Civil Appeal No. 8478 of 2003 (arising out of S.L.P. (C) No.4877 of 1997) stands allowed.

48. It was submitted by Mr. Andhyarujina that the appellants have in the meantime collected large deposits and carried on extensive business in the State of Maharashtra. It was submitted that the appellant was willing to restrict its business to the State of Maharashtra. It was submitted that at this stage this Court should not strike down the notification or the grant of license. We are unable to accept this submission. The 1st respondent had challenged the notification and the grant of license immediately. The appellants have all along been aware that their status was under challenge in a Court of law. Thereafter, the High Court struck down the notification. Now the appellants knew full well that that was the law. Merely because on obtaining a stay from this Court they continued to operate would not be a circumstance which can be taken into consideration by this Court. The appellants cannot be allowed to continue to operate as a State co-operative bank when in law they are not entitled to be one. We, therefore, do not accept this submission.

49. The appeals stands disposed of accordingly. There will be no order as to costs.

Order accordingly.