

BANKING REGULATION ACT, 1949

CASES

Compiled by DR GAGAN K

Rustom Cavasjee Cooper and Ors. vs. Union of India (UOI)

(10.02.1970 - SC): MANU/SC/0011/1970

Subject Matter : Business allowance for a banking company.

Relevant Section : Section 6: Transacting and carrying on every kind of guarantee & indemnity business or executing and undertaking of trusts or a form of business that is defined by the Central Government in its issued notification

Key Issue : Whether the Banking Companies (Acquisitions and Transfer of Undertakings) Act was constitutionally valid or not?

Summary Judgment :

Facts: Mr. R.C. Cooper was the director of the Central Bank of India. Additionally, he also held shares in the Central Bank of India, Bank of Baroda as well as the Union Bank of India. All these banks were nationalized by the Government of India. However, before the petitions could be heard by the Supreme Court, a bill was passed titled the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The language used in the bill was the same as that of the ordinance passed by vice-president, although the ordinance was later repealed by the provisions of this Act. The effect of the Act was the same as that of the Ordinance. The constitutional validity of the act was challenged by the petitioner on several grounds before the Supreme Court, stating that the act was violative of the rights enshrined under Part III of the Constitution.

Held: The Court held that the provisions of the Act related to the award of compensation to the banks upon being nationalized had not been followed, and thus, the Act was liable to be struck down. The Court also noted that the Act did not allow the nationalized banks to have the opportunity to pursue any business other than the business of banking. This impaired their right to equality as well.

Central Bureau of Investigation, Bank Securities and Fraud Cell and Ors. vs. Ramesh Gelli and Ors. (23.02.2016 - SC): [MANU/SC/0246/2016](#)

Subject Matter : Chairman and director to be public servants.

Relevant Section : Section 46A: Chairman and director to be public servants for the purposes every chairman who is appointed on a whole-time basis, managing, director, auditor, liquidator, manager and any other employee of a banking company shall be deemed to be a public servant.

Key Issue : Whether Chairman, Directors and Officers of private Bank can be said to be public servants?

Citation Details : Central Bureau of Investigation, Bank Securities and Fraud Cell and Ors. vs. Ramesh Gelli and Ors. (23.02.2016 - SC): [MANU/SC/0246/2016](#)

Summary Judgment :

Facts: The Global Trust Bank (GTB) a incorporated banking company was issued a licence under the Banking Regulation Act 1949 by the Reserve Bank of India (RBI). The two accused individuals conspired and obtained loans from various individuals and companies. Thus FIR was registered by the CBI and another complaint was lodged by OBC's against two GTB employees and two private persons, wherein it was alleged that loans were granted and disbursed without following any banking norms. However, the special judge declined to consider the offences punishable under the Prevention of Corruption Act on the grounds that Gelli and Subasri were employees of private banks on the dates that the alleged transactions took place and thus not public servants for the purposes of the Prevention of Corruption Act.

Held: The failure to incorporate the relevant provisions of the Prevention of Corruption Act into **Section 46A** of the Bank Regulation Act may be construed as a wholly unintended legislative omission, which the courts can correct through their interpretation. Thus cases launched against the two accused were found to be maintainable and it was held that the term 'public servant' under Section 2(c) of the Prevention of Corruption Act would also subsume managing directors, executive directors and other employees.

The State Bank of India and Ors. vs. P. Soupramaniane (26.04.2019 - SC): [MANU/SC/0609/2019](#)

Subject Matter : Prohibition of employment of managing agents and restrictions on certain forms of employment.

Relevant Section : Section 10: No banking company's employ shall be managed by a managing agent or continue the employment of any person who has been suspended payment or has been convicted by a criminal court of an offence involving moral turpitude.

Key Issue : Whether conviction of Respondent could be said to be for an offence involving moral turpitude?

Citation Details : The State Bank of India and Ors. vs. P. Soupramaniane (26.04.2019 - SC): [MANU/SC/0609/2019](#)

Summary Judgment :

Facts: The Respondent who was working as a Messenger in the State Bank of India at Puducherry was discharged from service by an order. The appeal filed by the Respondent against the order of discharge was dismissed. Later, the Staff Union took up the cause of the Respondent and made a representation on his behalf which was also rejected. Challenging the aforementioned orders, the Respondent filed a Writ Petition in the High Court which was dismissed by a learned Single Judge. Aggrieved thereby, the Respondent filed a Writ Appeal which was allowed by the Division Bench of High Court. The order of discharge of the Respondent from service was set aside and the Appellants were directed to reinstate the Respondent. The Appellants were directed to pay 1/4th of the salary from the date of discharge till the date of reinstatement as back wages and held discharge of the Respondent from service is on the basis of conviction for an offence involving moral turpitude.

Held: There was no motive for the Respondent to cause the death of the victims. The criminal courts below found that the injuries caused to the victims were simple in nature. On an overall consideration of the facts of this case, the crime committed by the Respondent does not involve moral turpitude and he is not liable to be discharged from service.

Deposit Insurance and Credit Guarantee Corporation vs. Ragupathi Ragavan and Ors.
(01.07.2015 - SC): [MANU/SC/0691/2015](#)

Subject Matter : Power of Reserve Bank to control advances by banking companies.

Relevant Section : Section 21: To control loans and advances extended by banking companies, RBI may issue directions in respect of the items to banking companies and every banking company has to necessarily comply with its directions which includes the maximum amount of guarantee that can be made by banking on behalf of particular company, firm, association of persons or individual having regard to the paid-up capital, reserves and deposits of a banking company.

Section 22: A banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it.

Key Issue : Whether the unpaid amount should be repaid to the Appellant?

Citation Details : Deposit Insurance and Credit Guarantee Corporation vs. Ragupathi Ragavan and Ors. (01.07.2015 - SC): [MANU/SC/0691/2015](#)

Summary Judgment :

Facts: An Official Liquidator was appointed to carry out liquidation proceedings for a Bank failing to meet its obligations. The Liquidator prepared a list of the Bank's depositors and forwarded the same to the Appellant, insurer of the Bank. The amount paid by the Appellant was to be disbursed to the depositors through the Official Liquidator. The amount which was insured in respect of each depositor of the said bank and therefore, every depositor was paid the amount of deposit. The High Court, allowing the depositor's petition ordered the Liquidator to pay to the depositors the unpaid amount received from the Appellant. On appeal, the High Court concluded that the Appellant had no preferential right and the amount which was with the Official Liquidator should have been distributed among the depositors.

Held: The Corporation has a right under **Section 21** of the Act to get money from the Official Liquidator for the payment to the depositors as per the insurance scheme under the Act. Moreover, as per the provision the Official Liquidator, after making necessary provision for the expenses in relation to the liquidation proceedings and for declaration of dividend has to make payment to the Corporation. Therefore the High Court or any other authority has no power to direct payment in excess of Rs.1 lakh by ignoring statutory provisions of the Act.

Dharani Sugars and Chemicals Ltd. vs. Union of India (UOI) and Ors. (02.04.2019 - SC): [MANU/SC/0454/2019](#)

Subject Matter : Power of Central Government to authorize Reserve Bank for issuing directions to banking companies to initiate insolvency resolution process and Power of Reserve Bank to issue directions in respect of stressed assets.

Relevant Section : Section 35AA: The Central Government may, by order can authorise the Reserve Bank to issue directions to any banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.

Section 35AB: Without prejudice to the provisions of section 35A, the Reserve Bank may, from time to time, issue directions to any banking company or banking companies for resolution of stressed assets.

Key Issue : Whether impugned circular was ultra vires Section 35AA of Banking Regulation Act?

Citation Details : Dharani Sugars and Chemicals Ltd. vs. Union of India (UOI) and Ors. (02.04.2019 - SC): [MANU/SC/0454/2019](#)

Summary Judgment :

Facts: In order to revise the existing framework for resolution of stressed assets, the RBI issued a circular. Owing to this circular, the Indian power sector was majorly affected as due to restriction of supply of coal, failure of the Government to fulfill its commitments, delay in regulatory response and non-payment of dues by state electricity distribution companies etc., the entire power sector was in stress and the NPA account was huge. Thus, aggrieved by the impugned circular, the petitioners in the instant case challenged the constitutional validity of the same along with Sections 35AA and 35AB of the Banking Regulation Act, 1949.

Held: The petitioners contended that Sections 35AA and 35AB of the Banking Regulation Act, 1949 are unconstitutional as firstly, they are manifestly arbitrary, and secondly, they suffer from want of guidelines for the RBI to function. While the Supreme Court sought to explain the purpose of introducing Sections 35AA and 35AB and the distinction between them. Clarifying the relation between Section 35A, **35AA** and **35AB**, Thus, the Supreme Court observed that if the circular is to be held intra vires the powers conferred to the RBI, it has to comply with Section 35AA as only the said provision can be the source of power for issuing directions pertaining to the IBC, it necessarily prohibits the usage of all other methods. Thus, contrary to what was originally believed, the insertion of Section 35AA actually restricted the powers of RBI by specifically laying down the manner in which the same was to be exercised. Such a method was not prescribed under Section 35A which provided vast powers to issue necessary directions to banking companies in public interest or in the interest of banking policy etc. and thus Section 35AA and 35AB of the Banking

Regulation Act are constitutionally valid. On the other hand, the impugned circular was struck down as it was outside the scope of the powers of the RBI.

Pandurang Ganpati Chaugule vs. Vishwasrao Patil Murgud Sahakari Bank Limited
(05.05.2020 - SC): [MANU/SC/0429/2020](#)

Subject Matter : Inclusion of multiState cooperative banks.

Relevant Section : Section 56: The Act essentially apply to actually co-operative societies subject to modifications basically for all intents and purposes says that Multi-State co-operative bank signifies a multi-State co-operative society which is a primary co-operative bank.

Key Issue : Whether cooperative societies banks are governed by Entry 45 of List I or by Entry 32 of List II of the Seventh Schedule of the Constitution of India?

Citation Details : Pandurang Ganpati Chaugule vs. Vishwasrao Patil Murgud Sahakari Bank Limited (05.05.2020 - SC): [MANU/SC/0429/2020](#)

Summary Judgment :

Facts: A notification was issued by the Ministry of Finance and Company Affairs specifying cooperative banks as for the purpose of the SARFAESI Act, further amendments have been made by incorporating a ‘multiState cooperative bank,’. Other provisions of the SARFAESI Act were also amended. A similar amendment was made to the RDB Act, 1993 by inserting ‘a multiState cooperative bank. the matters have been referred in view of conflicting decisions related to the scope of the legislative field covered by Entry 45 of List I viz. ‘Banking’ and Entry 32 of List II of the Seventh Schedule of the Constitution of India, consequentially power of the Parliament to legislate. The moot question is the applicability of the SARFAESI Act to the cooperative banks.

Held: The cooperative banks under the State legislation and multiState cooperative banks are ‘banks’ under section 2(1)(c) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The recovery is an essential part of banking; as such, the recovery procedure prescribed under section 13 of the SARFAESI Act, a legislation relatable to Entry 45 List I of the Seventh Schedule to the Constitution of India, is applicable.

Federal Bank Ltd. vs. Sagar Thomas and Ors. (26.09.2003 - SC): [MANU/SC/0769/2003](#)

Subject Matter : The banking business carried on by a private company.

Relevant Section : Section 36A: Certain provisions of the Act not apply to certain banking companies when it has been refused a licence under section 22, or prohibited from accepting fresh deposits by a compromise or scheme sanctioned by a court or prohibited from accepting deposits by virtue of any alteration made in its memorandum.

Key Issue : Whether the banking business carried on by a private company can be termed as a company carrying on any statutory or public duty?

Citation Details : Federal Bank Ltd. vs. Sagar Thomas and Ors. (26.09.2003 - SC): [MANU/SC/0769/2003](#)

Summary Judgment :

Facts: The respondent no.1 Sagar Thomas was working as a Branch Manager in Karunagappally branch of the appellant Bank, namely, the Federal Bank, having its registered office at Alwaye, Kerala. He was suspended. Thereafter since a disciplinary enquiry was ordered into some charges against him for having exceeded his authority in grant of loans and advances to different parties. The inquiry officer found him guilty of the charges and ultimately punishment of dismissal was awarded to the respondent.

Held: A private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty, thus in this case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank.