

# The High Court Of Madhya Pradesh

WP-16168-2021

(MAHANAGAR NAGRIK SAHAKARI BANK MARYADIT Vs UNION OF INDIA AND OTHERS)

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**Jabalpur, Dated : 03-09-2021**

**Heard through Video Conferencing.**

Shri Ajay Gupta, learned counsel with Shri Ravikant Patidar & Shri Milind Sharma, counsel for the petitioner.

Shri J.K. Jain, learned Assistant Solicitor General for respondent Nos.1 to 4/Union of India on advance notice.

Shri Pushendra Yadav, learned Additional Advocate General for respondent Nos.5 & 6/State on advance notice.

The contention of learned counsel for the petitioner is that the service conditions of the Managing Director and/or the Chief Executive Officer of the Cooperative Banks are governed by the bye-laws framed under the M.P. State Cooperative Societies Act, 1960. The petitioner, which is one of the Urban Cooperative Bank, has been registered under the aforesaid Act. Service conditions and recruitment of its employees are governed by the bye-laws placed on record at Annexure P/6 which are duly approved by the Registrar of the Cooperative Societies of Madhya Pradesh vide order dated 14.09.1993. The Cooperative as a subject falls under Entry 32 in List-II - State list in the Seventh Schedule appended to the Constitution of India whereas the Banking falls under Entry 45 in List-I - Union list of the Seventh Schedule. It is therefore argued that the power to legislate in the field of Cooperative Societies falls exclusively with the State and does not lie within the domain of the Union, much less the Reserved Bank of India. The learned counsel argued that the Banking Regulation Act, 1949 was amended by the Amendment Act of 1965 w.e.f 01.03.1966, whereby in view of this conflict, Sections 10, 10A, 10B, 10BB, 10C, 10D and 35B were purposely omitted. However, the Parliament by Constitution (97th Amendment) 2011 while inserting Article 243ZL(1) provided that in case of cooperative society

carrying on the business of banking, the provisions of the Banking Regulation Act 1949 shall also apply. This provision was struck down by the Gujarat High Court vide judgment dated 22.04.2013, passed in W.P.No.166/2012, whereby Part IXB introduced by way of aforesaid amendment was declared *ultra vires* the constitution for want of rectification by the State Legislation under proviso (2) to Article 368 (2). The aforesaid judgment has been upheld by the Supreme Court recently in Civil Appeal No.9108-9109 of 2014 vide judgment dated 20.07.2021. The petitioner has therefore challenged the constitutional validity of amended Section 4 of the Banking Regulation Amendment Act, 1965. The argument therefore is that the impugned order dated 25.06.2021 issued by the Reserve Bank of India is absolutely incompetent and lacks in authority.

Issue notice to the respondents on payment of PF within seven days, returnable within eight weeks.

In the meanwhile, operation and effect of the impugned order order dated 25.06.2021 (Annexure P/5) qua the petitioner shall remain stayed.

**List after eight weeks.**

**(MOHAMMAD RAFIQ)  
CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)  
JUDGE**