

evidence of a documentary nature seeing that there is no contradiction by those persons who alone could have contradicted them. In making this observation, we have in mind the Chief Minister as well as Mrs. Kairon, against whom allegations have been made but who have not chosen to state on oath the true facts according to them."

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Punjab
and another

Dua, J.

In the case in hand also, the return is sworn by Shri Amarjit Singh, Under-Secretary to Government, Punjab, and the observations of the Supreme Court would perhaps be applicable.

As at present advised, therefore, this Court would not be unjustified in drawing an inference in favour of the petitioners' allegations. State, it may be remembered, is not an individual, it functions through human agency. If an allegation is made against a person purporting to act in the discharge of his official duties and the State is properly made a party, then such person is expected to make an affidavit controverting those allegations of which he has personal knowledge. His failure to do so cannot be brushed aside on the plea of his not being a party to the proceedings. If administration of justice is to be effective, then this rule deserves to be observed.

For the foregoing reasons, this petition succeeds and allowing the same with costs, we quash the impugned order.

D. K. MAHAJAN, J.—I agree.
B.R.T.

D.K. Mahajan, J.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

VIDYA DHAR SHARMA,— *Appellant*

versus

THE PRESIDENT'S PRESS, CO-OPERATIVE, THRIFT AND
CREDIT SOCIETY LTD.,—*Respondent*

F.A.O. 90-D of 1963

Bombay Co-operative Societies Act (VII of 1925)—S. 54—Treasurer of Society embezzling amount entrusted to him and Society demanding it from him —Dispute between the Society and Treasurer—Whether can be referred to arbitration.

1965

January, 6th.

Held, that where certain moneys are entrusted by a co-operative society to its treasurer which the latter misappropriates and are claimed by the society from him, the claim of the society clearly falls

within the word "demand" under second clause of section 54 of the Bombay Co-operative Societies Act, 1925. The word "demand" has to be given its ordinary dictionary meaning which includes any claim, irrespective of the fact whether it is backed by a statute or not. A claim backed by a statute would also be covered but the word 'demand' cannot be limited to purely statutory demands. It is also a matter touching the business of the Society and can be referred to arbitration under section 54 of the said Act.

First Appeal under Section 39(vi), Indian Arbitration Act, from the order of Shri D. R. Khanna, Sub-Judge, 1st Class, Delhi, dated 9th May, 1963, dismissing the application and leaving the parties to bear their own costs.

P. C. KHANNA, ADVOCATE, for the Appellant.

S. D. SEHGAL, ADVOCATE, for the Respondent.

JUDGMENT

Mahajan, J.

MAHAJAN, J.—This is an appeal under section 39 of the Indian Arbitration Act and is directed against the order of the Sub-Judge, 1st Class, Delhi, dated 9th May, 1963, dismissing the petitioner's application under section 33 of the Act for setting aside the award.

The award in this case was made by Mr. N. N. Dewan, a nominee of the Registrar. He awarded a sum of Rs. 8,872.34 nP. to the respondent Society against the petitioner. The only contention raised before the Court below was that the matter in dispute could not form the subject-matter of a reference under section 54. The dispute between the parties was whether a sum of Rs. 7,000 had been embezzled by the honorary Treasurer, namely, the petitioner and whether he was liable to make it good to the society. The Court below rejected the contention that such a dispute could not be referred to arbitration under section 54. The relevant section of the Bombay Co-operative Societies Act, as applicable to Delhi, reads as under:—

"If any dispute touching the constitution or business of a society arises between members it shall be referred to the Registrar for decision by himself or his nominee

A dispute shall include claims by a society for debts or demands due to it from a member

whether such debts or demands be admitted or not."

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The remaining part of the section is not relevant for our purposes. The argument of the learned counsel for the petitioner is that the words "any dispute touching the constitution or business of a society" do not include the present dispute. He, further fortifies his argument by reference to the second clause of this section, namely, that a dispute must relate to a debt or demand due to the Society. The contention is that the present claim is neither a debt nor a demand. According to the learned counsel, the debt means a contractual obligation and a demand means a statutory demand and not a claim or demand dehors the statute.

After hearing the learned counsel at length, I am of the view that none of these considerations apply to the facts of the present case. The present claim certainly falls within the word "demand" under second clause of the section. Surely, it is also a matter relating to the business of the Society. Certain moneys were entrusted by the Society to the Treasurer and the Treasurer misappropriated those moneys. Surely, the matter could be referred to arbitration because it is a matter touching the business of the Society. I am fortified in this view by a decision of the Lahore High Court in *Co-operative Society, Dhingranwali v. Muhammad Din and another* (1), where Mr. Justice Bhide held as follows:—

"Where a Co-operative Society has considered its treasurer to be responsible for embezzlement of money deposited with it by a person and the treasurer has throughout contended that he was not concerned with the alleged embezzlement there is clearly a dispute between the treasurer and the Society regarding question of embezzlement of money and hence the dispute can be referred to arbitration."

Whether the present dispute touches the constitution or business of the Society came for consideration in a case of

(1) A.I.R. 1939 Lahore 301.

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the Bombay High Court in *G.I.P. Railway Employees Co-operative Bank Ltd. v. Bhikhaiji Merwanji Karanjia Employees (2)*. Mr. Justice Chagla, as he then was, while dealing with this phrase, observed as follows:—

“It is not right to give a restricted meaning to the words “touching the business of a society” used by the Legislature in S. 54 of the Act. The word “business” is a very wide term and certainly it is not synonymous with the objects of a society. The expression “touching the business of a society”, would mean affecting the business of a society or relating to the business of a society. Although, it is not one of the objects of the company to employ or dismiss servants, it is something which it does in the ordinary course of its business. And whatever is done in the ordinary course of business certainly relates to or affects the business.”

I am in respectful agreement with the aforesaid observation. The learned counsel for the petitioner places his reliance for his contention, that the present dispute would not be covered by the phrase “touching the business of the Society” on the decision of the Madras High Court in *The Tanjore Co-operative Marketing Federation Ltd., Vijaypuram, by its Secretary v. R. K. Krithivasan (3)*. This decision, has not the remotest bearing on the present controversy. The other decision relied upon by him is of the Calcutta High Court in *M/s. Co-operative Milk Societies Union Ltd. v. State of West Bengal and others (4)*.

This decision is subsequent to the Bombay High Court decision and curiously enough does not notice the Bombay decision. Moreover, it was found as a fact that dispute before the Calcutta High Court was not one, which related to the actual business of a Co-operative Society. In any case, the point that requires examination in the present controversy was never determined by the Calcutta High Court. This decision is also of no assistance to the learned counsel for the petitioner.

In regard to the argument that the word “demand” must be construed as a ‘statutory demand’, the short answer is that the word ‘demand’ should be given its ordinary

(2) A.I.R. 1943 Bom. 341.

(3) A.I.R. 1951 Mad. 352.

(4) A.I.R. 1956 Cal. 373.

dictionary meaning. The ordinary dictionary meaning would include 'any claim' irrespective of the fact whether it is backed by a statute or not. Of course, a claim backed by a statute would also be covered. That being so, there is no warrant for the assertion that the word 'demand' should be limited to purely statutory demands.

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Thrift and
Credit Society,
Ltd.

For the reasons given above, I see no force in this petition. The same fails and is dismissed with costs.

Mahajan, J.

B.R.T.

LETTERS PATENT APPEAL

Before S. B. Kapoor and I. D. Dua, JJ.

RAMA NAND,— *Appellant*

versus

KUNDAN LAL AND OTHERS,—*Respondents*

Letters Patent Appeal No. 438 of 1964

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Ss. 13 and 40—Punjab Agricultural Produce Markets (General) Rules (1962)—Rule 21(3)—Licence granted or renewed by Committee—Whether can be challenged in writ petition—Interpretation of Statutes—Mandatory or directory nature of a statutory provision—How to be determined.

1965

January, 18th.

Held that, the High Court has not been constituted as an appellate Tribunal against orders granting or renewing licences under the Punjab Agricultural Produce Markets Act, 1961. Indeed, appeal has expressly been provided by section 40 of the Act from orders passed *inter alia* by a Committee under section 13. It is quite true that under Rule 21(3), a certain period has been fixed within which an application for renewal of a licence should be made, but keeping in view the basic object and purpose of this rule, the provision fixing the period seems to be clearly directory in nature in the sense that if the Committee grants a licence on an application, which may be somewhat belated, then this breach would not completely invalidate or nullify the final order renewing the licence so as to deprive the licence-holder of the right to carry on his trade, business or profession. Mere entertainment of a belated application for renewal of a licence could not have been intended by the rule-making authority to be fatal to the subsequent proceedings and necessarily to result in invalidation