

A

THE STATE OF GUJARAT AND ORS.

v

DILIPBHAI NATHJIBHAI PATEL

MARCH 3, 1998

B

[M.K. MUKHERJEE AND K.T. THOMAS, JJ.]

*Cooperative Societies :*

C *Gujarat Cooperative Societies Act, 1961—Sections 71, 147(c) & (d) and 149(3)—Hearing before giving sanction for prosecution as provided under Section 149(3)—Held, applicable only in case of proposed under Section 147(3)(c) and not otherwise—High Court erred in holding the said provision applicable to the grant of sanction for prosecution under Section 147(3)(d).*

D

*Interpretation of Statute—Interpretation of defective phrasing of an Act—Held, Court cannot aid the legislature's defective phrasing of an Act nor can it add, or amend and by construction make up deficiencies which are left there.*

E

Appellant No. 2 had lodged a prosecution against the respondents under Section 147(1)(d) of the Gujarat Cooperative Societies Act for committing breach of Section 71 of the Act after obtaining sanction of the District Registrar as required under Section 149(3) of the Act. The respondents challenged the prosecution by way of filing a petition before the High Court under Section 482 Cr PC. The High Court allowed the petition by observing that a sanction under Section 149(3) for prosecution under Section 147(1)(d) could not be given without giving the party concerned a prior hearing. Hence the Appeal.

F

Allowing the appeal, this Court

G

HELD : 1.1. For lodging prosecution for an offence under the Gujarat Cooperative Societies Act, previous sanction is essential. In respect of offences under Section 147(1)(c) the sanctioning authority is the State Government; for all other offences it is the Registrar. When the words "such sanction shall not be given" appearing at the beginning of the second part are in juxtaposition with the words "by an officer authorised in this behalf by the State Government by a general or special order" at the end, it is manifest

H

that hearing is to be given only if a sanction for prosecution under Section 147(1)(c) is contemplated and not otherwise. When there is no reference to the Registrar at all in the latter part of the section such sanction appearing therein must refer to a sanction which is required to be given by the State Government. [58-F-G; 59-C] A

1.2. The matter may be viewed from the other angle also. If the words "such sanction" are to refer also to the offences for which the Registrar is the sanctioning authority it will lead to an absurd situation in that a duly authorised officer of the State Government will hear the parties on the question of grant of sanction on its behalf, but the decision to grant sanction will rest on the Registrar. [60-B] B

2. In interpreting a statute the Court cannot aid the legislature's defective phrasing of an Act nor can it add or amend and by construction make up deficiencies which are left there. [59-D] C

*Union of India v. Deoki Nandan Aggarwal*, [1991] 3 SCR 873, relied on. D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No, 258 of 1998.

From the Judgment and Order dated of the 9.7.97 Gujarat High Court in CrI. M.A. No. 3269 of 1997. E

Yashank P. Ahdyaru, Mr. Anu Sawhney and Ms. H. Wahi for the Appellants.

Aseem Mehrotra and A.P. Medh for the Respondents. F

The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. Leave granted.

The appellant no. 2 a District Co-operative Officer of Vadodara has lodged a prosecution against the two respondents under Section 147(1) (d) of the Gujarat Cooperative Societies Act, 1961 ('Act' for short) for committing breach of Section 71 of the Act after obtaining sanction of the district Registrar as required under Section 149 (3) thereof. The prosecution is also for certain offences under the Indian Penal Code. Aggrieved thereby the respondents moved the High Court by filing a petition under Section 482 Cr. H



appellants before us), the High Court observed that the words “such sanction shall not be given” are to be interpreted in the context of the provisions made for the sanction in connection with two different categories of offences and when so interpreted it would necessarily mean that sanction required to be given either by the Registrar or by the State must be preceded by a notice to and hearing of the parties concerned. The High Court, however, did not spell out, either in interpreting the section or issuing the impugned direction who was to give the notice and hear the parties in respect of the offences for which the Registrar is the sanctioning authority. If the legislature intended that in respect of the offences for which the sanctioning authority is the Registrar a prior hearing is also required to be given by him then, after the words “by an officer authorised in this behalf by the State Government by a general or special order”, the words “or by the Registrar, as the case may be” (or similar such words) would have been added. When there is no reference to the Registrar at all in the latter part of the section such sanction appearing therein must refer to a sanction which is required to be given by the State Government. In interpreting a Statute the Court cannot aid the legislature’s defective phrasing of an Act nor can add or amend and, by construction make up deficiencies which are left there. In *Union of India v. Deoki Nandan Aggarwal*, [1991] 3 SCR 873, this Court observed:-

“It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Court. The Court cannot add words to a statute or read words into it which are not there. *Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Court shall decide what the law is and not what it should be.* The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.”

(emphasis supplied)

In view of the law so laid down the above section cannot be interpreted to mean that in respect of the offences for which the Registrar is the sanctioning

A authority a prior hearing is required to be given.

The matter can be viewed from the other angle also. If the words "such sanction" is to refer also to offences for which the Registrar is the sanctioning authority it will lead to an absurd situation, in that a duly authorised officer of the State Government will hear the parties on the question of grant of sanction on its behalf, but the decision to grant sanction will rest on the former. In any view of the matter, therefore, the interpretation given by the High Court and for that matter, the direction issued cannot be sustained.

We accordingly allow this appeal and quash the impugned direction.

C R.K.S.

Appeal allowed.