
(2019) 12 BOM CK 0078

In the Bombay High Court

Case No : Writ Petition (L) No. 2918, 3030, 3044, 11889, 28121 Of 2019, Public Interest Litigation (L) No. 90 Of 2019

Haresh Tekchand Raisinghani And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Banking Regulation Act, 1949 — Section 2, 3, 12, 29, 30, 30(1), 30(1b), 35, 35A, 45, 56, 56(sa), 61
Multi State Co-operative Societies Act, 2002 — Section 61
Constitution Of India, 1950 — Article 12, 32, 226

Citation : (2019) 12 BOM CK 0078

Hon'ble Judges : S.C. Dharmadhikari, J;R.I.Chagla, J

Bench : Division Bench

Advocate : S.B. Talekar, Madhavi Ayyapan, Gayatri Singh, V.G. Sreeram, Ishwarya Subbiah, Ahmed Abdi, Eknath Dhokale, Sonal Misal, Tamsin Monis, Venkatesh Dhond, Prasad Shenoy, Parag Sharma, Aditi Phatak, Kirti Ojha, Anil Singh, Aditya Thakkar, Anusha Amin, Mihir Mody, Dhaval A. Patil, K. Akshar, P.H. Kantharia, Kranti L.C., P.P. Kakade, B.V. Samant

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J

1. By these petitions under Article 226 of the Constitution of India, the petitioners are challenging the directives issued by the Chief General Manager, Reserve Bank of India (hereinafter referred to as "the RBI"), Mumbai dated 23rd, 24th, 26th September, 2019 and 3rd and 14th October, 2019.

2. The further relief sought is to direct the RBI to withdraw the restrictions imposed in exercise of its power conferred under Section 35A of the Banking Regulation Act, 1949(hereinafter referred to as "the Act of 1949").

3. The restrictions placed on withdrawal of amounts by the depositors is questioned and then it is said that this Court should issue a writ of mandamus or

any other appropriate writ, order or directions in the nature thereof to the RBI and to the Deposit Insurance and Credit Guarantee Corporation to make sufficient funds available for easy and unhindered withdrawal of the deposits of the depositors and, particularly, to be utilised for their day-to-day expenses, health and educational needs and business requirements.

4. A relief in the nature of a direction to the Central and the State Government to exercise its powers under the Multi-State Co-operative Societies Act, 2002 (hereinafter referred to as "the Act of 2002") and particularly, to provide aid to the bank in question is also sought.

5. Since the arguments are common in all matters so also the reliefs, we had heard them together. Each of these matters were listed "for admission" from time to time.

6. On a notice being taken by the RBI, it has filed an affidavit in reply. The contents of which would be adverted by us little later.

7. For convenience sake, we take the facts from Writ Petition (L) No.3030 of 2019.

8. The three petitioners in that petition are the residents of Mumbai and account holders in the sixth respondent bank known as Punjab and Maharashtra Co-Operative Bank Ltd. (hereinafter referred to as "the P&MC Bank").

9. The respondents to this petition are the Union of India, RBI, the Chief General Manager of RBI, Central Office, the Central Registrar-Multi-State Co-operative Societies, Department of Agriculture, Cooperation and Farmers' Welfare, Ministry of Agriculture and Farmers' Welfare, Krishibhawan, New Delhi, the State of Maharashtra and the Deposit Insurance and Credit Guarantee Corporation.

10. The petitioners say that they have their accounts in the P&MC Bank. The details thereof are provided in para 2. In para 3 it is stated that petitioner no.2 is engaged to get married to a boy of business family at Ahmedabad some time in December, 2019. The preparations of this wedding were about to start, but by then the impugned directives of the RBI started pouring in. Petitioner Nos.1 and 2 are unable to arrange enough funds for this marriage. It is quite likely that engagement may break down. Thus the directives of the RBI came as a shock. The third petitioner has a son, who is a graduate in Science and has done his diploma in Civil Aviation. At present, he is working in a Call Centre, but petitioner no.3's son received an offer of employment with a Aviation Company. That requires the petitioner no.3's son to undergo a training. For the training, a heavy amount has to be paid in Indian rupees towards instruction fees, transportation, accommodation cost, visa and other expenses. The third petitioner would, therefore, require an additional amount of Rs.16,50,000/- for completion of his training programme. Today, the result is that if the terms and conditions of the employment letter/ offer are not complied with, then, there would not be a post training employment opportunity fructifying in favour of the son of the third

petitioner.

11. The petition proceeds to set out that the respondents have an obligation and duty to ensure that the depositors with a multi-state scheduled urban co-operative bank, duly registered under the Act of 2002, do not suffer. All the more, when the bank was established on 13th February, 1984. It has about 137 branches and 51,000 members across 7 States. It has deposits of around Rs.11,617.34 crores, cash investments and bank balance of Rs.4243.12 crores and a net profit of Rs.99.69 crores as on 31st March, 2019. It is one of the top five urban co-operative banks. The number of depositors are 16,00,000 and as per the balance-sheet of the bank, it is in a sound financial condition.

12. The bank has received several awards and the gist of the same is set out in para 11. It is said that this bank has been offering interest on fixed deposits or on savings or on current deposits, the rate of which is 1.5% more than the nationalised banks. The rate of interest on deposits offered by respondent no.6-bank was quite attractive and, therefore, the petitioners chose to deposit their hard earned money in this bank.

13. On 24th September, 2019, they came to know, via electronic messages and news reports, that respondent no.3 has issued certain directions restricting the withdrawal by the account holders of respondent no.6-bank.

14. In paragraph 15 of the petition, it is conceded that the initial restriction was that no amount exceeding Rs.1,000/- would be withdrawn. Now the limit of Rs.1,000/- is enhanced or restriction is relaxed and the position today is that a sum of Rs.50,000/- can be withdrawn depending upon the satisfaction of the authority/ Administrator that the depositor requires the same to meet emergent or urgent educational, medical needs etc.

15. The petitioners are aware of Section 35A of the Act of 1949 conferring a power in the RBI to issue directions. Now, the directions say that a depositor can withdraw a maximum amount of Rs.40,000/- with a limit of Rs.50,000/- for the purpose of marriage/ education/ livelihood of senior citizen and Rs.1,00,000/- for medical assistance. The petitioners question this by saying that the hardship limits prescribed are arbitrary, unreasonable and do not cover extraordinary circumstances or exceptional situations. The position, in which the petitioners are placed, is, therefore, not taken into consideration while issuing these directives or placing these restrictions.

16. The petitioners concede that the depositors all over have rushed to every High Court, including the Supreme Court of India, but when the petition from Mumbai was brought before that Court, the Hon'ble Supreme Court granted liberty to the parties before it to withdraw their cases or petitions and approach the High Court. Accordingly, the present petition has been filed.

17. It is stated that the RBI directs every banking company to maintain, on a daily basis, by way of cash reserve, with itself or with the RBI a sum equivalent

to such percentage of the total of its demand on the last Friday of the second preceding fortnight as and when the RBI may specify by Notification in the Official Gazette from time to time. The Cash Reserve Ratio (CRR) has been prescribed and that is referred in para 21. The details of the same are annexed as Exhibit 'R' to the petition.

18. The petitioners seem to be also aware of the fact that one gentleman working as Managing Director of the bank was placed under suspension because the bank sanctioned a loan of Rs.6,400 crores to M/s Housing Development and Infrastructure Ltd. (hereinafter referred to as "the HDIL"). The loan came to be sanctioned at the behest of the Chairman of the sixth respondent-Mr.Waryam Singh. The RBI discovered a fraud in disbursing this loan only recently although the loan was sanctioned long back, whereas, the HDIL had stopped paying the loan amount as also the interest since 2016.

19. From paragraphs 23 to 27, the attempt is to show that the RBI either was aware or ought to be aware of the magnitude of this transaction with above entity. Yet, the required degree of vigilance was not maintained by the RBI. Rather, RBI was negligent in not ensuring a discipline and order in the functioning of the bank. The flagging by the RBI was not timely and this gross irregularity has been perpetuated only because the RBI failed to take prompt action.

20. Thus, if the accounts were not reflecting the correct position, the profit and loss figures were not accurate, then, the RBI should have taken timely measures by setting up effective machinery to protect the public from large deception. While conceding to the RBI's wide and extensive powers, the petitioners seem to suggest that the bank was functioning under the directives of the RBI and if the RBI does not take required steps and measures to either control the situation or to take care of the fraud or its perpetuation, then, placing restrictions on the depositors' withdrawal alone would not be sustainable. This Court, therefore, should intervene and issue the necessary directions.

21. An affidavit in reply is filed by the RBI and it is common to all petitions. It is stated that the RBI is served with the copy of large number of writ petitions making diverse allegations relating to the P&MC Bank, impugning the directions and orders passed by RBI. The RBI, therefore, apart from its preliminary objection that such petitions are not maintainable and there is no question of depositors' invoking a public law remedy, also proceeded to state on merits that the accounts of the bank are audited at various levels, including an audit by an Internal Auditor, an audit by a Concurrent Auditor and an audit by the Statutory Auditors. Since the bank is a Multi-State Co-operative Bank, it is obligated to appoint a Statutory Auditor from the panel of Auditors maintained by the Central Registrar for Co-operative Societies. The procedure for internal audit in Urban Co-operative Bank is referred in para 10 and then it is said in para 11 as under:-

"11. RBI Inspection:

RBI conducts statutory inspection of the UCBs under Section 35 read with Section 56 of the BR Act at regular intervals (typically once in a year or two years depending on the bank's status/financial size and assessment/risk perception) with 31st March as the reference date. Section 35 read with Section 56 of the BR Act also empowers Reserve Bank to undertake scrutiny of an urban co-operative bank. The period of inspection ranges from a few days to a month or two depending on the size of the bank and/or other parameters. Scrutiny, on the other hands, normally involves a relatively shorter time period, since the scrutiny focuses on a specific issue. RBI relies on various reports/financial statements including reports of statutory and concurrent audits source data for inspection, besides undertaking sample check of bank's liabilities (deposit, borrowings etc) and asset portfolio (Loan & Advances Accounts, Investments, Provisions etc) along with transit accounts to assess the bank's financial - capital adequacy, Asset quality, liquidity and earnings etc and risks. While assessing a Bank's loan portfolio, RBI Inspecting officers also inspect top loan accounts of the bank, in both standard (performing) and Non-performing categories of loans besides picking accounts on random basis and examining certain accounts from various loan categories project loan, home loan, vehicle loan, commercial real estate loan, gold loan, etc. Further, RBI officers test check the System & Controls of the banks and the management related aspects to assess their efficacy. The object and scope of inspection/scrutiny conducted by the Reserve Bank is to ensure compliance with the provisions of the BR Act and the directions/guidelines issued thereunder along with assessment of financials and risks in the bank and not detailed examination of the bank's books of accounts. Thus, the scope of an inspection/scrutiny done by RBI is different from that of an audit conducted by an auditor or an enquiry under the provisions of the law governing co-operative societies. RBI then takes various supervisory actions and measures depending upon the findings of the inspection/ scrutiny."

22. In para 12, there is reference to the extensive report of the sixth respondent-bank as on 31st March, 2018. Para 12 and 13 of this affidavit are relevant and they read as under :-

"12. RBI Inspection Report with respect to financial position as on March 31, 2018

a) Since transaction testing is not done in the RBI inspection, and the bank submitted fraudulently manipulated data to RBI for sample checks, the sample of accounts picked for inspection did not contain undisclosed HDIL related accounts. The disclosed HDIL related accounts were seen and majority of them were assessed as NPAs. Further, non-monitoring of end use of funds despite instructions to this effect as contained in paragraphs 4.1-4.3 of Master Circulars on Advances and conflict of interest of Shir Waryam Singh as Chairman of PMC bank and as a former director of HDIL group was also commented upon in the report along with the attempt by the bank to show disclosed accounts of HDIL group as standard by sanction of new loans to close/regularise the old NPA accounts in non-adherence to para 2.2.1 (ii) of RBI Master Circular (MC) dated

July 1, 2015 on IRAC norms. Consequently, the assessed NPAs of the bank were significantly higher than the reported NPAs.

b) The bank had also sanctioned mortgage overdraft limits to a wholly owned group company of HDIL while the present Chairman (then director) of the bank was one of the Directors in the company. This was a violation of para 5.1 of the then RBI Master Circular on Board of Directors-UCBs UBD.CO. BPD (PCB) MC.No.8/12.05.001/2010-11 dated July 1, 2010 and UBD.CO. BPD.MC.No.8/12.05.001/2012-13 dated July 2, 2012. Further, Shri Waryam Singh chaired the Board meeting to ratify the approval of the mortgage overdraft, in which he was directly interested in non-adherence to para 2.3(b)(iii) of RBI Master Circular on Board of Directors-UCBs, requiring non-participation by the Directors concerned Board discussion, if a proposal in which they are directly or indirectly interested, comes up for discussion/to disclose their interest, well in advance, to the Board of the bank.

c) The inspection team had also established the relationship between the Chairman of the bank and HDIL promoters, which might have acted as the primary consideration for sanction of credit facilities and resulted in their utilisation to pay off one-time settlement dues with other lenders.

13. The scale of violation and also the connected lending that could be established based on available records was of much lesser extent due the camouflaging resorted by the bank as detailed in the following paragraphs. What was noted was flagged but was not observed to be impacting the financial health of the bank in any significant manner.

Present financial position at the bank and modus operandi used in respect of the fraudulent transactions as detected during current Inspection (as on March 31, 2019)."

23. Then, it is stated that the modus operandi was detected when some transactions, which were not disclosed in full, came to the notice of RBI's team. That team was deputed to carry out a thorough scrutiny of HDIL Group accounts. On 19th September, 2019, this team carried out this scrutiny and focused its attention on the dealings or exposure of the bank with the HDIL Group apart from other areas required to be checked. The inspection was completed on 2nd November, 2019 and the report is presently under preparation. The preliminary findings, however, are that on account of financial irregularities highlighted in para 16, the bank's net worth has turned negative and it is significant.

24. Para 16 is fairly detailed and reads thus:-

"16. Modus operandi of hiding the information related to HDIL exposure.

The reason why the above parameters were not detected earlier was:-

(i) Tampering with Management information system and NPA identification process:

The bank had migrated to "FINNACLE" Core banking solution (CBS) from April 13, 2015 from "OMNI" as its Core banking solution (CBS) prior to April 2015. On both the systems, the following modus operandi was adopted to camouflage material data on NPAs:

a) The bank had assigned certain specific Access codes to the accounts belonging to HDIL and its group entities which were used for assigning restricted visibility. Less than 25 users (out of the 188 staff) could access these loan accounts.

b) While running the script for system identification of NPA, the bank had deliberately excluded these accounts. As a result all the stressed HDIL Group Accounts were omitted from system generated report of NPA accounts. Overdrawn Accounts list also did not show these HDIL related accounts.

c) The bank's MIS software 'Opine' had a script for generating list of newly sanctioned/ disbursed accounts. The undisclosed loan accounts were also excluded from this list.

d) This irregularity was also not commented upon by the Concurrent Auditors of the bank's Sion Branch, where these undisclosed accounts were parked, though concurrent audit of the branch took place every month.

In other words, these accounts had been excluded from various system generated reports relied upon by RBI Inspectors during the course of Inspection.

(ii) Sanction of loan accounts by MD and not mentioning of loan sanctions in Loan Committee Minutes and BoD Minutes:

The undisclosed loan accounts to HDIL group were sanctioned and renewed with approval of Shri K. Joy Thomas, Managing Director of the bank. The sanction of loans was not recorded in Minutes of Loans Committee, Recovery Committee or of BoD, which constitute vital source of information for inspection.

(iii) Falsification of offsite returns submitted to the RBI:

The bank had submitted false information in the returns on single party/ group exposures filed through offsite surveillance system (OSS) to the RBI, which again, is a document relied upon by RBI inspectors, by not disclosing large advances relating to the HDIL group which constituted its biggest exposure.

(iv) Falsification of information indent submitted to the inspection team:

(a) RBI uses indent for gathering information from banks prior to proceeding on inspection as per usual procedure. In one such format for master data on advances, information of all the outstanding loan accounts of the bank was called for. The outstanding amount of each loan account was added and it was found that the grand total was tallying with outstanding loans and advances as per the audited balance sheet of the bank, which was Rs.7475.49 crore as on March 31, 2018. While excluding the undisclosed HDIL related accounts (and other 20 undisclosed loan accounts also) from the aforementioned master-data, the bank

replaced these accounts, by adding 21,049 fictitious loan accounts in the master data mentioned above so that the summation of outstanding balance of all the entities tallied with the balance sheet figure of bank loan portfolio (Rs.7475.49 crore).

(b) It is pertinent to note here that, the fictitious entries of 21049 loan accounts were added to 'Advances -Master Data', only to tally the summation to Rs.7475.49 crore. These entries did not relate to actual loan accounts and no such loan accounts were in existence in the CBS system of the bank.

(v) Fictitious booking of Profits:

The modus operandi used by the bank to camouflage these large scale financial irregularities also led to fictitious booking of profits as explained below.

(a) The bank's Owned Funds consist of its paid-up share capital plus accumulated free reserves created by appropriation from profit over the years. Any loss first impacts the bank's owned funds and once the owned funds are fully exhausted, the erosion creeps into deposits.

(b) In the present case, the inspection of the books of the bank has now indicated huge loss and significant deposit erosion as per preliminary findings of inspection. This was hidden by the bank by fictitiously showing profits and using the same inter-alia to declare dividend and pay higher salaries. The profit came by treating NPA accounts as standard (non-NPA) accounts by way of "concealing" major portion of these accounts as mentioned in above paragraphs. Under the extant RBI guidelines, income in NPA accounts are treated on cash basis while non-NPA accounts are treated on accrual basis. In other words, for NPAs, no profit can be booked till it is actually received, while in the case of regular (Non-NPA) accounts, profits are accounted for the broken period on accrual basis pending actual receipt. Thus, false/ non-existent profits were booked by the bank."

25. It is in these circumstances that the RBI acted on a complaint from a senior official of P&MC Bank, Mumbai alleging that the bank has sanctioned a large credit facility to HDIL Group in gross violation of prudent banking practices. It has manipulated data/ information submitted to RBI in this respect and also confessions of the Managing Director of the bank to many of the alleged irregularities. Then, the inspection of the bank was taken up on priority basis. The preliminary findings on this inspection revealed serious financial irregularities and the precarious condition of the bank. It is in these circumstances that the RBI says that it issued the impugned directives. The rationale behind the same is to protect the interest of the bank and its depositors. The directions were necessary to avoid further damage to the depositors, prevent alienation of the assets of the bank and to provide an opportunity to rectify the irregularities and improve its financial position and to prevent preferential payments. All this is aimed to sub-serve public interest in addition to the interest of the bank and its depositors. The directives are thus supported on the touchstone of the wording

and language of Section 35A of the Act of 1949. At the same time, the Reserve Bank of India says that it is sympathetic towards the hardship faced by the depositors and from time to time has relaxed the limits placed on withdrawals. The bank would require further time to complete the process.

26. In the petition filed by Guru Nanak Vidyak Society, the petitioner is an educational institution and is seeking the same reliefs. In fact, it is a trust running 28 educational institutions from primary schools to higher education institutions hiring 700 staff and educating 20,000 students. This petitioner has 66 accounts in the P&MC Bank.

27. There is an affidavit filed by the RBI, to which, there is an affidavit in rejoinder. In para 5 of this affidavit in rejoinder, it is stated that the scope of the statutory inspection is different from statutory audit and therefore, the RBI cannot say that it cannot be held liable for its failure to secure the interest of the depositors in timely manner. Moreover, the RBI is equally responsible under section 30 read with section 56 of the Act of 1949. Thus, there are wide ranging powers vesting in the RBI in its capacity as a regulatory body of the banking system in the country. The RBI, therefore, cannot adopt a stand as set out in its affidavit in reply. Therefore, all the allegations and statements in the RBI's affidavit are denied. There is an elaborate reference to the mechanism adopted by the RBI reflected in its notification. On the basis of that, it is argued that the RBI has failed to take preventive action. The affidavit, therefore, faults the RBI for having not taken the timely steps. It is claimed that there is a fiduciary duty to the depositors and this petition is filed to enforce the same. The argument is that the power is held by the public authority to act in public interest. That is how the RBI ought to have taken steps and particularly in accordance with its policies. The Urban Co-operative Banks, therefore, are brought under effective control of the RBI and it cannot shirk its responsibility towards the depositors of such banks. For all these reasons, in this affidavit in rejoinder, it is submitted that the petition be allowed.

28. On the above materials, we have heard Mr. S.B. Talekar and Ms. Gayatri Singh learned senior counsel appearing for the petitioners in these petitions. We have also heard Mr. Abdi, who is representing the petitioners in the PIL. The common arguments canvassed before us are that the petitions under Article 226 of the Constitution of India are maintainable. Mr. Talekar contended that in this case, even the Central Government has been impleaded as a party respondent. The Central Government also has a duty and which is carved out by section 61 of the Act of 2002. This section empowers the Government to aid Multi-State Co-operative Societies. Mr. Talekar would submit that this provision overrides anything contained in any law for the time being in force and though the aid to Multi-State Co-operative Societies can be granted on receipt of request from that society, still, the Government need not wait for such a request. It can act with a view to promote co-operative movement and it has a wide discretion, including to give loans or make advances to these societies and guarantee pre-payment of

interest on loan and advances to Multi-State Co-operative Societies. Therefore, financial assistance, including subsidies can be extended. Therefore, Mr.Talekar would submit that the Central and the State Government must devise schemes to meet the present contingency. There is an obligation to aid the Multi-State Co-operative Societies. Mr.Talekar would submit that there is no affidavit in reply filed by the P&MC Bank nor is there any common affidavit of the Credit Guarantee Corporation. Apart therefrom, this Corporation should aid and assist the bank for the benefit of the investors. Thus, the argument is that the aid or assistance is possible either by recourse to section 61 of the Act of 2002 or by appropriate measures or schemes devised by these Governments. This court can, by way of a writ of mandamus, enforce this obligation in the event the court finds that the Central and the State Government have failed to discharge the same. Mr.Talekar submits that we should issue such a writ all the more because the bank's financial position is not sound. Today, Mr.Talekar complains that the Central and the State Governments are but mute spectators and they cannot be permitted to take such a position.

29. As far as the affidavit of the RBI is concerned, Mr.Talekar would submit that there is absolutely no basis to hold that the interest of the depositors is sought to be protected by the RBI. The RBI's intervention does not in any manner protect the interest of the depositors. There is absolutely no rationale when the RBI contends that the bank's financial condition was previously not known to it. In fact, Mr.Talekar would submit that the RBI allowed the condition of the bank to worsen. If the power under section 35A of the Act of 1949 had been exercised earlier, particularly in 2015, possibly, the present situation could have been avoided. Now, the P&MC Bank is duped and because of the RBI's inaction, the petitioners should not suffer. Therefore, this is not a step in the interest of the investors and depositors. We should, therefore, not sustain the impugned directions. Mr.Talekar has gone as far as suggesting that this is an abuse of the powers conferred in the RBI. The interest of the depositors is not protected by asking the depositors not to withdraw the amounts lying to the credit in their accounts. This is not a prudent banking practice at all. The affected bank is not filing any affidavit and it forwards no proposal to the Central Government, but the RBI cannot visit the petitioners with serious consequences and virtually freeze their accounts. It is in these circumstances and in the event this court is inclined to sustain the acts of the RBI, then, it must issue a direction to the State/ Central Government to grant proper aid to the affected bank.

30. Thereafter, Mr.Talekar focused his attention to the point of prior knowledge of the RBI. Mr.Talekar would submit that the communication of the RBI is responsible for the P&MC Bank suffering financial crisis. It is in these circumstances, we should not sustain the intervention of the RBI by upholding the impugned directions. Mr.Talekar would submit that there are about 16 lakh investors. Today, the assets and properties of the Directors of the Bank are not attached. The further steps are not taken by the RBI nor by the Enforcement Directorate. There are no prompt steps initiated so as to protect the depositors.

These petitions are by the individual depositors. In these circumstances, we should not uphold the directions of the RBI, but allow the writ petitions.

31. Ms.Gayatri Singh appearing for other petitioners adopted the arguments of Mr.Talekar and, in addition, submitted that the education society by the independent petition has pointed out that there is an inspection carried out way back in the year 2015. The report of the inspection carried out would demonstrate and prove that the RBI was aware of the irregularities in the functioning of the bank. It was aware of the acts of omission and commission of the bank. In these circumstances, when there are specific allegations of this nature made in the petition, all the more we should not uphold the impugned directions, but allow the petitions.

32. Mr.Abdi learned counsel appearing for the PIL petitioners drew our attention to the plight of the petitioners and averred that some of them are on the verge of committing suicide and the investors and depositors are not responsible for the state of affairs prevailing in the P&MC Bank. In these circumstances, we should not allow the RBI to thwart the withdrawals from the depositors' accounts. By such an action, the RBI has closed down the banking operations altogether. For these reasons, we must interfere in writ jurisdiction.

33. Our attention has been invited to some judgments of the Hon'ble Supreme Court enabling this court to interfere in writ jurisdiction in such matters. We would advert to them a little later.

34. Mr.Dhond learned senior counsel appearing for the RBI would submit that a writ petition under Article 226 of the Constitution of India, even by the investors or depositors, to question the action of the RBI, would not be maintainable simply because these are policy matters. When the power is vested solely with the RBI and the RBI is the only repository thereof, it must be left to the wisdom and experience of the RBI to tackle such issues and matters. The present action is part and parcel of ensuring fiscal and financial discipline. These are not matters on which a decision can be taken by this court in its writ jurisdiction. This court does not act as a court of further appeal and will not question the wisdom of the RBI in such matters. If the RBI has acted in terms of the powers conferred on it by a parliamentary statute, then, all the more in the absence of clear and proven case of arbitrariness and mala fides, this court should not interfere in writ jurisdiction.

35. Mr.Dhond was at pains to point out that the RBI has intervened only because its intervention was necessary. It has not intervened only because it is conferred with a power to intervene or to issue directions. In fact, this is not an undue interference in the affairs of the Urban Co-operative Bank. The RBI has acted because it was satisfied that a direction has to be issued under section 35A of the Act of 1949. The satisfaction of the RBI can be with regard to the affairs of the banking company being conducted in a manner detrimental to the interest of depositors or in a manner prejudicial to the Banking Company. Mr.Dhond would

submit that the concerned bank has a negative credit rating. It has suffered an enormous loss. About 29% of the deposits have completely eroded. The bank may have lent and advance money and these can be said to be assets of the bank, however, the position, as reflected from the inspection carried out, is that the bank has failed to reveal the true state of affairs. The bank has failed to recover the loans and advances given to a group known as HDIL Group. The Chairman of the bank was on the Board of Directors of this HDIL Group Company. The bank's money has been diverted to this HDIL. Today 46% of the deposits are eroded and the bank's financial position is precarious.

36. Mr. Dhond was at pains to point out that full disclosures were not made and even the RBI was not in a position to deduce the extent of the deals and transactions between the bank and the HDIL. The accounts were prepared in such a manner that only few employees of the bank had knowledge of the dealings. The accounts were drawn up in such a manner that the moneys to HDIL were spread over in small and big accounts. An impression was given to the RBI that this is a regular banking transaction, but all details were not entered in the books or in specific accounts. The RBI, therefore, had no knowledge and the moment it derived it, it stepped in. Mr.Dhond has highlighted the efforts by the RBI by relying on the contents of the impugned communications. Mr.Dhond submits that the RBI's intervention became necessary because there was virtually a run on the bank. Mr.Dhond highlighted the situation by urging that the entire lot of depositors and investors rushes to the branches of the bank and seeks to withdraw the amounts lying deposited with the bank. If such a run on the bank is not controlled, there is every possibility of the Management picking and choosing depositors and confer or extend to them benefit of withdrawal of amount from the deposits.

If such persons manage to withdraw almost everything from their accounts, nothing would be left with the bank to permit other depositors to withdraw their sums. In other words, a few and selected investors would take away the money lying deposited to the detriment of the interest of other depositors. Those close to the management should not derive such benefit and that is why arbitrary distribution of limited funds required the intervention of the RBI. Mr.Dhond would submit that the liquidity crunch and the strain on the limited assets of the bank has prompted the RBI to intervene and issue the directives. The RBI intervened due to indisciplined draining of the funds. There was every possibility of diversion of funds as well. Now, the distribution would be disciplined. The bank can also take such measures as are permissible in law so as to restore the credibility of depositors. For all these reasons, Mr.Dhond would submit that the RBI has issued the directions after the necessary satisfaction was arrived at and recorded by it. Such a satisfaction is based on cogent and reliable materials. It is not a mere ipse dixit of the RBI. The satisfaction is based on relevant and germane materials and therefore, the RBI has not acted arbitrarily, much less mala fide enabling this court to interfere with its decision or directions in writ jurisdiction. In fact, the RBI possesses a more drastic power which it could have invoked by moving the

Central Government.

That is found in section 45 of the Act of 1949. For all these reasons, he would submit that the petitions be dismissed.

37. For appropriate appreciation of the rival contentions, we must first make a reference to the impugned directives. If one peruses the memo of any of these petitions, the copies of the RBI directives are annexed thereto. In the memo of Writ Petition (L) No.3030 of 2019, the copies of these directives are annexed at pages 105 to 108 of the paper book. The RBI has stepped in after it has reached the necessary satisfaction. The communications which are impugned are at Exhibits 'L' to 'O' to this petition. The first exhibit reads as under:-

"September 24, 2019

Directions under Section 35A of the Banking Regulation Act, 1949 (AACs) - Punjab and Maharashtra Cooperative Bank Limited, Mumbai, Maharashtra

The Reserve Bank of India (vide Directive dated September 23, 2019) has placed the Punjab and Maharashtra Cooperative Bank Limited, Mumbai, Maharashtra, under Directions. According to the Directions, depositors will be allowed to withdraw a sum not exceeding Rs.1,000 (Rupees one thousand only) of the total balance in every saving bank account or current account or any other deposit account by whatever name called, subject to conditions stipulated in the RBI Directions. Punjab and Maharashtra Cooperative Bank Limited, Mumbai, Maharashtra without prior approval in writing from the Reserve bank, will also not be able to grant or renew any loans and advances, make any investment, incur any liability including borrowal of funds and acceptance of fresh deposits, disburse or agree to disburse any payment whether in discharge of its liabilities and obligations or otherwise, either into any compromise or arrangement and sell, transfer or otherwise dispose of any of its properties or assets except as notified in the RBI directions dated September 23, 2019. The Directions shall remain in force for a period of six months from the close of business of the bank on September 23, 2019.

The issue of the directions by the Reserve bank should not, per se, be construed as a cancellation of banking licence by the Reserve Bank. The bank will continue to undertake banking business with restrictions till further notice/ instructions. The Reserve bank may consider modifications of these directions depending upon circumstances.

The directions are imposed in exercise of powers vested in the Reserve Bank under Sub-section (1) of Section 35A of the Banking Regulation Act, 1949 read with Section 56 of the said Act. A copy of the Directive dated September 23, 2019 is displayed at the bank's premises for perusal by interested members of public.

Yogesh Dayal

Chief General Manager"

38. Now, the substantive directions are issued on 23rd September, 2019. Writ Petition (L) No.3030 of 2019, though seeks to impugn these directives, pertinently, does not annex a copy thereof or make any reference thereto. All that the further annexures or exhibits are to place on record. These documents are but a review of the bank's liquidity position by the RBI and its ability to pay the depositors. After a due consideration of this, the RBI decided to further enhance the limits for withdrawal. Now, these are the communications issued from time to time. The other directions are to be found at pages 109 to 110 of the paper book. They read as under:-

"Directions under Section 35A of Banking Regulation Act, 1949 (AACS) - read with section 56 of the Banking Regulation Act, 1949 - Withdrawal of deposits in excess of stipulated amount As per the Directions issued by the Reserve Bank of India under Section 35A of Banking Regulation Act, 1949, the Bank is permitted to allow cash withdrawal of Rs.25,000/- per customer.

If the customer requires payment in excess of the amount stipulated herein above on the grounds of hardship, we have been advised by RBI to adopt the following procedure:

1. Depositors approaching the Bank to withdraw deposits above the prescribed ceiling amount can apply in the prescribed format.
2. The reason for hardship payment will be for medical, marriage, livelihood of senior citizens and education.

The depositor has to submit the application form in the prescribed form along with documentary proof.

If the Application is -

1. for medical expenses of self, spouse, children or parents, the Depositor should furnish
 - (a) Doctor's Certificate (on Letter head in Original, with Registration No.).
 - (b) Medical bills.
 - (c) The name of the person for whom the withdrawal is asked for.
2. for Marriage of self, children, brother or sister, the Depositor should submit Marriage Invitation Card, Hall Booking Receipt, Receipt for Ornaments, etc.
3. For Education of self or children, estimate of fee receipt duly certified by the School or Institute.
4. For livelihood purpose of Senior Citizen or Widow or person suffering from Disability, the Depositor should submit estimated monthly expenses, proof of Senior Citizenship, Doctor's Certificate of disability in case of Disabled person.

Hardship Amount Ceiling:-

A depositor cannot withdraw more than Rs.1 lakh on medical ground and in other cases the maximum ceiling is Rs.50,000/- from the date the directions are imposed till the bank is either taken under liquidation or the directions are withdrawn.

The customers eligible as per above norms may approach the respective branch for completing the formalities. Please note that the deserving applications shall be submitted for approval.

As guided earlier, the Hardship limits remain unchanged i.e.

Marriage/ Education/ Livelihood for SR.Citizen - 50000/-

Medical Assistance - Rs.1,00,000/- (Maximum)

A customer who has withdrawn Rs.40000/- from his/ her account as per the relaxations sanctioned by RBI can still apply under Hardship. He/ she shall get eligible Hardship amount subject to proper document in case of Marriage/ Education/ Livelihood of SR.Citizen.

But if a Customer has already withdrawn Rs.40000/-and is now applying for hardship under Medical assistance then he/ she is eligible to get upto Rs.60000/- (subject to proper documentation).

Alternatively, customers who have already availed withdrawal under Hardship purpose upto Rs.50000/-are eligible for additional normal withdrawal of Rs.40000/-.

In short, Under any circumstances the withdrawal from all the accounts towards all the withdrawal + Hardship reason A depositor cannot withdraw more than Rs.100000/-.

The customers are requested to approach their respective branches accordingly."

39. A summary of the above would leave us in no manner of doubt that the RBI arrived at a satisfaction that the financial position of the P&MC Bank has been substantially impaired by certain persons. As soon as the matter came to the notice of the RBI, action was taken by appointing an Administrator and ensuring that the bank's available resources are protected and not misused or diverted. Based on a complaint filed by the bank against its officials and borrowers associated with the fraud/ financial irregularities in the bank and manipulation of its books of accounts, the Economic Offences Wing, Maharashtra Police has started its investigations into the matter. The Forensic Auditors have been appointed by the Administrator of the bank to look into the related transactions. The administrator and the three member Advisory Committee appointed by the RBI are working for speedy resolution of the various issues being faced by the bank in conducting its operations. The RBI is closely monitoring the developments and shall continue to take necessary steps in the interest of the

depositors of the bank. If this is the gist and summary of the communications, then, it is futile to urge, particularly in the absence of contra material, that the directions issued by the RBI are arbitrary or suffer from any error of law apparent on the face of the record. The RBI has been conferred with specific powers. The power of the RBI to give directions is based on the satisfaction that such directions have to be given in public interest or in the interest of banking policy or to prevent the affairs of any banking company being conducted in a manner detrimental to the interest of depositors or in a manner prejudicial to the interest of banking company. The directions are issued to banking company generally or to any banking company in particular from time to time and they have to be issued as the RBI deems it fit and the banking company shall be bound to comply with such directions. These directions can be modified or cancelled by the RBI on a representation made to it or on its own motion and in order to modify or cancel any direction, the RBI may impose such conditions as it thinks fit subject to which the modification or cancellation shall have effect. As far as this satisfaction is concerned, the RBI has filed a detailed affidavit. In the affidavit filed on behalf of the RBI and its Chief General Manager, the RBI has referred to its internal audit machinery. It is said in terms there is a statutory audit which has to be carried out by qualified persons once in a year to certify the balance-sheet, profit and loss statements and other relevant parameters of the bank. The P&MC Bank has been subjected to statutory audit on an annual basis on 31st March. Thereafter, there was a concurrent audit. That was carried out by a high level committee under the Chairmanship of Shri. A. Ghosh, the then Deputy Governor of RBI. That was carried out to inquire into the various aspects relating to frauds and malpractices in the banks. The Ghosh Committee had recommended introduction of concurrent audit at large and exceptionally large branches of banks to serve as administrative support to branches, help in adherence to prescribed systems and procedures, aid in and prevention and timely detection of lapses/ irregularities. Initially this requirement of concurrent audit was introduced in all scheduled and other primary (urban) co-operative banks with deposits over Rs.50 crores. This was subsequently extended to all urban co-operative banks based on the recommendations of the Joint Parliamentary Committee. The concurrent audit system is regarded as part of a bank's early-warning system to ensure timely detection of irregularities and lapses, which helps in preventing fraudulent transactions at branches. The scope of concurrent audit contains transaction testing. Thereafter, the RBI inspection mechanism is referred to.

40. Although the counsel appearing for the petitioners before us would refer to the Act of 1949, what their argument overlooks is that this is an Act to consolidate and amend the law relating to banking. The Act of 1949 is in addition to the Companies Act, 1956 or any other law for the time being in force and its provisions shall not be treated to be in derogation of any other laws save and except to the extent of any activity which is prohibited or restricted. Section 2 of this Act says that application of other laws is not barred. The cases which are

covered for applicability of the Act to co-operative societies are set out in section 3. Nothing in this Act shall apply to a primary agricultural credit society, a co-operative land mortgage bank and any other co-operative society, except in the manner and to the extent specified in Part V. A survey of the provisions of the Act of 1949 discloses that by Part II, titled as "Business of Banking Companies", there are provisions enacted so as to prohibit trading, disposal of non-banking assets, prohibition of employment of managing agents and restrictions on certain forms of employment. The Board of Directors ought to include persons with professional or other experience. The banking company is to be managed by whole time chairman. Power of the RBI to appoint Chairman of the Board of Directors on a whole-time basis or a managing director of a banking company. There are other provisions with regard to maintaining minimum paid-up capital and reserves. Regulation of paid-up capital, subscribed capital and authorised capital and voting rights of shareholders is possible by section 12 and the regulatory measures postulated by this law extends to the elections, acquisition of shares or voting rights. The restriction mechanism takes care of commission, brokerage, discount etc. on sale of shares and then there are prohibitory sections as well. The further provisions in this Part make it possible to carry out the banking business in a regulated manner. There are various powers conferred in the RBI, including the power to control advances by banking companies. The banking business can be controlled by exercising a control over Management and that is possible by Part IIA. While section 35 falls in Part II, it is preceded by sections which provide for accounts and balance-sheet to be audited, submission of returns, copies of balance-sheets and accounts to be sent to Registrar, display of audited balance-sheet by companies incorporated outside India, accounting provisions of this Act not to be treated as retrospective and thereafter production of documents of confidential nature etc.

41. The counsel for the petitioners would refer to section 30 without reading that in entirety. Sub-section (1) of section 30 titled as "Audit" says that the balance-sheet and profit and loss account prepared in accordance with section 29 shall be audited by a person duly qualified under any law for the time being in force to be an auditor of companies. Sub-section (1A), inserted by Act 58 of 1968, contains a non-obstante clause and says that notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking company shall, before appointing, re-appointing or removing any auditor or auditors, obtain previous approval of the RBI. Then, sub-section (1B) of section 30 confers a power in the RBI and that is without prejudice to anything contained in the Companies Act, 1956, or any other law for the time being in force, where the RBI is of opinion that it is necessary in the public interest or in the interest of the banking company or its depositors so to do, it may, at any time, by order, direct that a special audit of the banking company's accounts, for any such transaction or class of transactions or for such period or periods, as may be specified in the order, shall be conducted and may by the same or a different order either appoint a person duly qualified under any law for the time being in

force to be an auditor of companies or direct the auditor of the banking company himself to conduct such special audit and the auditor shall comply with such directions and make a report of such audit to the RBI and forward a copy thereof to the company.

42. Now, the petitioners omit to state before us anything by which we can conclude that this power of the RBI could not have been exercised by it. Far from it, the RBI says in its affidavit in reply that it had not obtained the entire position or that was not disclosed to it. The RBI refers to its inspection report with respect to the financial position of the P&MC Bank as on 31st March, 2018. In that, it was revealed that the bank has sanctioned mortgage overdraft limits to a wholly owned group company of HDIL in which the present Chairman of the bank was one of the Directors in the company. The inspection team had also established the relationship between the Chairman of the bank and HDIL Promoters, which might have acted as the primary consideration for sanction of credit facilities and resulted in their utilisation to pay off one time settlement dues with other lenders. Pertinently, the RBI says in this affidavit that the scale of violation and also the connected lending that could be established based on available records was of much lesser extent due to the camouflaging resorted by the bank. What was noted was flagged but was not observed to be impacting the financial health of the bank in any significant manner. However, the present financial position and the modus operandi used in respect of the fraudulent transactions referred in the further inspection carried out by a team deputed by the RBI discloses the tampering with Management Information System and Non Performing Asset Identification Process.

43. We have, in the foregoing paragraphs, referred to the RBI's affidavit in details. The petitioners have not brought any contra material, save and except referring to an audit of 2015 to demonstrate and prove that the RBI had prior knowledge of all the details and transactions in relation to HDIL and others and it could have stepped in terms of sub-section (1B) of section 30 much earlier. The petitioners have made a bald and general assertion, without any specific material. On the other hand, the RBI has candidly stated before us on affidavit that it deputed a team to carry out annual inspection of the bank and their thorough scrutiny. It is only when the RBI was alerted of the dealings and transactions with the HDIL Group that such a scrutiny and inspection by a specific team was carried out. That was with regard to the HDIL accounts. The preliminary findings of this scrutiny are referred in para 16 of the affidavit in reply. Thus, on account of financial irregularities, the P&MC Bank's network was noticed.

44. To our mind, the arguments of the petitioners before us are self defeating and contradictory. While they accuse the RBI of not taking prompt action although having prior knowledge, after the RBI acted and has taken action, the petitioners have challenged it on the ground that the same does not meet the requirement of section 35A of the Act of 1949. Pertinently, the petition filed in

public interest challenges the RBI's action alleging that it is contrary to public interest. We do not think that such an assertion of the petitioners can be accepted in such a situation. We have found repeatedly that litigation, either in public or private interest, is instituted in this court by invoking its writ jurisdiction without knowing the restrictions and limits of the same as also the fundamental and primary requirement of complete and authentic pleadings. There is nothing on record by which one can conclude that the primary burden cast by law on such petitioners has been discharged by them. We do not know whether all investors are totally innocent or unaware of the dealings and transactions of the concerned bank with the HDIL Group. The litigants must realise that this court cannot grant reliefs on specious ground of sympathy. We are bound by law. No writ contrary to law can be issued. We render justice in accordance with law. We cannot, therefore, ignore the materials that have been brought before us by the RBI on oath and prefer some general and vague allegations of the petitioners to the contrary. When there are specific materials placed on record by the RBI to support its action under section 35A, we cannot agree with the petitioners' counsel that the RBI was not required to interfere or step in. In fact, Mr.Dhond, on instructions, has clarified that the RBI intends to bring some order and discipline in the affairs of the P&MC Bank. The bank is not yet placed under liquidation. The RBI is trying to take a stock of all the assets and properties of the P&MC Bank. The RBI is trying to ascertain its financial base as well. The RBI is trying its best to revive its operations and bring some normality in the affairs of the bank. The RBI has not stepped in only because it desired to place restrictions on the bank. We are in agreement with Mr.Dhond that if indiscriminate withdrawals are permitted, possibly, nothing would be left with the bank. Those close to wrongdoers and Management of the affairs at the relevant time would be benefited by rushing to the bank and withdrawing the amounts in their accounts entirely. Thereafter, the bank would have been left with no liquidity. It is in these circumstances that the RBI has, by the impugned directives, held that it cannot allow such withdrawals as are claimed.

45. The overriding power of the RBI under section 35A enables it to record a satisfaction and to take measures so as to prevent the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company. We think that on the basis of the available material, the RBI was rightly satisfied that such protective measures are indeed necessary and therefore, it must issue the directions. Further, it has been stated by the RBI in its affidavit that upto 78% of the depositors could withdraw their entire deposits despite these protective measures. We do not think that we can, in writ jurisdiction, substitute the opinion or satisfaction of the RBI with our order or direction, much less to the contrary. We possess no experience and expertise in financial and fiscal matters. In matters of banking practices and the business of banking and its regulation, we must leave everything to the wisdom of the RBI. In fact, the presumption is that it will prevent the acts conducted in a manner prejudicial to the interest of

depositors. We do not think that any proof to the contrary has been placed before us and on the sketchy materials in the form of averments and allegations, which are sweeping and general, we can not set aside the impugned directives.

46. The other argument canvassed before us was that there is a specific provision in the Act of 1949 particularly the Chapters or Parts thereof applicable to co-operative banks. Part V is highlighted in this behalf. The Act of 1949 shall apply to or in relation to co-operative societies as it applies to or in relation to banking companies subject to the modifications set out in section 56. The modification that has been referred to is to be found in clause (sa) of section 56. There, for section 30 of the Act of 1949, the substituted section 30 would apply. That reads as under:-

"56(sa). for section 30, the following section shall be substituted, namely:-

"30. Audit. - (1) Without prejudice to anything contained in any other law for the time being in force, where the Reserve Bank is satisfied that it is necessary in the public interest or in the interest of the co-operative bank or its depositors so to do, it may at any time by general or special order direct that an additional audit of the co-operative bank accounts, for any such transactions or class of transactions or for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order appoint a person duly qualified under any law for the time being in force to be an auditor of companies to conduct such audit, and the auditor shall comply with such directions and make a report of such audit to the Reserve Bank and forward a copy thereof to the co-operative bank.

(2) The expenses of, or incidental to, the additional audit specified in the order made by the Reserve Bank shall be borne by the co-operative bank.

(3) The auditor referred to in sub-section (1) shall have such powers, exercise such functions vested in and discharge the duties and be subject to the liabilities and penalties imposed on auditors of companies by section 227 of the companies Act, 1956 (1 of 1956) and also that of the auditors, if any, appointed by the law establishing constituting or forming the co-operative bank to the extent the provisions of the Companies Act, 1956 are not inconsistent with the provisions of such law.

(4) In addition to the matters referred to in the order under sub-section (1) the auditor shall state in his report-

(a) whether or not the information and explanation required by him have been found to be satisfactory;

(b) whether or not the transactions of the co-operative bank which came to his notice have been within the powers of the co-operative bank;

(c) whether or not the returns received from branch offices of the co-operative bank have been found adequate for the purpose of his audit;

(d) whether the profit and loss accounts, shows a true balance or profit or loss for the period covered by such account;

(e) any other matter which he considers should be brought to the notice of the Reserve Bank and the shareholders of the co-operative bank."

47. We juxtapose this substituted portion with section 30 as appearing in the Act of 1949. This substitution leaves us in no manner of doubt that here also the RBI has to record a satisfaction that it is necessary in the public interest or in the interest of co-operative bank or its depositors so to do, it may at any time by general or special order direct that an additional audit of the co-operative bank accounts for any such transactions or class of transactions or for such period or periods, as may be specified in the order, shall be conducted. We do not think that this substitution carries the case of the petitioners and as projected by Ms. Gayatri Singh any further. Here as well, a satisfaction has to be recorded in terms of section 30 as it stands applicable to the co-operative societies. Therefore, to hold that the RBI could have easily stepped in earlier and caused an additional audit is neither here nor there. There must be further pleading before us which would enable us to hold that the RBI should have recorded a satisfaction earlier. Nothing of this nature is pleaded. We, therefore, cannot, by reference to some of the provisions of this Act, conclude that the RBI has deliberately not stepped in earlier or has stepped in belatedly in order not to protect the public interest or the interest of the depositors or the banking company, but allowed some of the officials, managing the affairs of the P&MC Bank, to get away. We do not think that the RBI can be faulted for issuing the directions as are impugned in these petitions.

48. We also cannot interfere with the limits placed by the RBI on the withdrawal. In fact, the RBI has acted fairly, justly and reasonably in revising the limits on withdrawal from time to time. When the first limit of Rs.1,000/- was placed, the RBI was aware of the hardship and difficulty of depositors. In a timely manner, it has stepped in to enhance the limit and which is now enhanced as aforementioned. The aspects covered by the RBI regarding medical emergencies and education are such that in appropriate cases, depending upon the facts brought before the Administrator, he can allow the withdrawal up to specific limits. We do not think that the petitioners, styling themselves aggrieved investors and depositors, can complain. They have been candid enough to state before this court that they entered into a contractual relationship with the P&MC Bank because that was offering higher interest on the deposits. Attracted by that, this bank was approached by the investors. If later on the affairs of such a bank are not carried on smoothly and efficiently, but contrary to the interest of these depositors and investors, we do not think that they can blame the regulatory mechanism. They are partially to be blamed. If they are not, then, they would have promptly resorted to contractual remedies and forced the bank to allow them to operate their accounts. Even today, they are not remedyless. As has been repeatedly held by the Hon'ble Supreme Court, the relationship between a bank and

customer may be contractual, but it is based on faith. The banking system operates on such faith. The customer is not expected to be so vigilant in all cases so as to note beforehand any wrong doings in the bank with which he has contractual dealings. Therefore, the investors and depositors can still approach the competent courts and initiate proceedings so as to allege and prove the breach of this contract, trust and faith by the P&MC Bank. They can, based on the allegations and proof tendered, obtain all the permissible reliefs. If the intervention of the RBI has caused any hardship or difficulty to these investors and depositors, then, needless to clarify that in such proceedings, even the RBI can be impleaded as a party defendant. We cannot, on the basis of the limited and sketchy material before us, proceed to fault the RBI and grant any relief. More so, when the RBI says that it has acted so as to monetise the assets and properties of the bank and thereafter take further steps in the interest of the depositors and investors.

49. We have, therefore, come to the conclusion that each of these petitions have no merit and they deserve to be dismissed.

50. In dismissing them, we have applied the test evolved by the Hon'ble Supreme Court of India in a decision in the case of *Indian Bank vs. Godhra Nagrik Co-operative Credit Society Ltd. and Anr.* AIR 2008 SC 2585. The Hon'ble Supreme Court in this decision has set down the parameters and particularly as to when public law remedy is available to the litigants like the petitioners. The following paragraphs in the Hon'ble Supreme Court judgment have guided us:-

"16. A writ court exercising the power of judicial review has a limited jurisdiction. A writ petition would lie against a State within the meaning of Article 12 of the Constitution of India. Indisputably, exercise of jurisdiction by the High Court is permissible in a case where action of the State is found to be unfair, unreasonable or arbitrary. The question which should have been posed by the High Court was as to whether the action of the Bank was so arbitrary so as to invoke the public law jurisdiction. If the answer to the said question was to be in the negative, the High Court should have refused to exercise its jurisdiction.

A fraud has been practiced on the Banks. Primary accused may be the Bank officers but a conspiracy with them by the outsiders has also been alleged. The original FDRs only in some cases are available; in most of the cases they are not. Even the Committee could not decide for as to which one was the original FDR and which was not. It could not distinguish between an original FDR and the Xerox copy thereof.

Opinion of the expert thereon might have been received, but the final verdict thereupon in the cases initiated by the C.B.I. is still awaited.

17. The law as regards application of the power of judicial review, inter alia, in the contractual field stands covered by a large number of decisions. (See *LIC of India & Anr. vs. Consumer Education & Research Centre & Ors.*, [(1995) 5 SCC 482]; *Sanjana M. Wig (Ms.) vs. Hindustan Petroleum Corpn. Ltd.* [(2005) 8 SCC

242]; ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Ltd. & Ors. [(2004) 3 SCC 553]; The D.F.O., South Kheri & Ors. vs. Ram Sanahi Singh [(1971) 3 SCC 864]. We, however, do not think that facts involved in each case and the law laid down therein need to be discussed at length as there does not exist any dispute in regard to basic principles laid down therein.

In *M/s. Hyderabad Commercials vs. Indian Bank & Ors.* [(1991) Supp (2) SCC 340], this Court held:

"Since the basic facts regarding the unauthorized transfer of the disputed amount from the appellant's account as well as the Bank's liability was admitted, there was no justification for the High Court to direct the appellant to file suit on ground of disputed questions of fact. The respondent Bank is an instrumentality of the State and it must function honestly to serve its customers."

Would the ratio laid down therein apply in the instant case? We do not think so. The question as to whether fraud has been committed by the officers of the Bank is pending consideration before a competent criminal court. There are other various disputed questions which are required to be gone into in the said proceeding. The role played by some of the writ petitioners-respondents is also in issue. Such a seriously disputed questions of fact, in our opinion, could not have been gone into by the writ court.

We would accept the proposition of law as pronounced by this Court in *Guruvayoor Devaswom Managing committee & Anr. vs. C.K.Rajan & Ors.* [(2003) 7 SCC 546]. In that case it was, inter alia, observed that public interest litigation procedures may be adopted in a case where initially the writ petition was filed as a private interest litigation. (See also *Ashok Lanka & anr. vs. Rishi Dixit & Ors.* [(2005) 5 SCC 598 at page 618].

We may in this behalf notice development of law in other jurisdiction.

Abram Chayes in his article on "The Role of the Judge in Public Law Litigation" [Harv. Law. Rev. Vol. 89 (1976) at Pg. 128], opines that "Traditionally, adjudication has been understood to be a process for resolving disputes among private parties which have not been privately settled." He thus emphasizes the need for a "Public Law" model wherein "the traditional adversary relationship is suffused and intermixed with negotiating and mediating process at every point. The Judge is the dominant figure in organizing and guiding the case, and he draws for support not only on the parties and their counsel, but on a wide range of outsiders-masters, experts and oversight personnel." He goes on to give examples of school desegregation, employment discrimination, and prisoners' or inmates' rights cases as also antitrust, securities fraud and other aspects of the conduct of the corporate business, bankruptcy and reorganizations, union governance, consumer fraud, housing discrimination, electoral reapportionment, environmental management-fields that display in varying degrees the features of public law litigation.

According to him, the public law litigation model inter alia has the following features:

"7. The Judge is not passive, his function limited to analysis and statement of governing legal rules, he is active, with responsibility not only for credible fact evaluation but for organizing and shaping the litigation to ensure a just and viable outcome.

8. The subject-matter of the lawsuit is not a dispute between private individuals about private rights, but a grievance about the operation of public policy."

In *Krishna Swami v. Union of India and Anr. With Raj Kanwar v. Union of India and Anr.*, (1992) 4 SCC 605, a Constitutional Bench of this Court had to decide upon the maintainability of a writ petition filed under Article 32 against the removal of a Supreme Court Judge without impleading the Judge himself as a party to the proceedings. The court on the role of an investigation committee opined:

"The investigation done by the Committee, thus is to find whether the alleged misbehaviour incapacity has been proved. Undoubtedly, the public law litigation often contradicts the premise behind those of private law. In public law wider public interest is involved over and beyond the contending parties. It concerns the future and private law litigation is retrospective in operation."

What the court could do? It could appoint a Committee. But the decision of the Committee would not have been decisive. The Division bench appears to have applied its mind on the report, but in the absence of any categorical finding that it was the officers of the Banks alone who were liable, no direction as has been done in the instant case should have been issued. It may be that in appropriate cases, the court may find the recommendations made by the Committee acceptable."

51. Applying these very parameters to the present case, we are of the opinion that no interference is permissible with the impugned directions of the RBI as they are based on the pre-requisites or the pre-satisfaction in terms of section 35A of the Act of 1949.

52. The other argument based on Section 61 of the Multi State Co-operative Societies Act, 2002 fails to impress us. It is, as often said, an enabling provision to facilitate Government aid to Co-operative Societies. We cannot, in the facts and circumstances of this case, particularly when serious charges of fraud are made, compel, by our writ, the Government to aid P&MC Bank to tide over the alleged financial crisis. Similarly, the Deposit Insurance and Credit Corporation Act, 1961 can have no application at this stage because neither there is a scheme of amalgamation or winding up of the P&MC. Finally, all the decisions cited before us have no application to the facts and circumstances of the P&MC. The guiding principles therein are applicable when a public law remedy is available and not otherwise.

53. With the aforesaid observations, all the writ petitions as also the PIL are dismissed. There would be no order as to costs.