
(1990) 01 MAD CK 0029
In the Madras High Court
Case No : Writ Petition No. 11020 of 1988

R.R. Delavai

APPELLANT

Vs

The Indian Overseas Bank and Others

RESPONDENT

Date of Decision : 19-01-1990

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 9
Banking Regulation Act, 1949 — Section 34A, 35A, 45D, 45T, 46A
Constitution of India, 1950 — Article 12, 151, 174, 226, 355
Evidence Act, 1872 — Section 114
Industrial Disputes Act, 1947 — Section 11

Citation : AIR 1991 Mad 61 : (1994) 81 CompCas 446

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : R.R. Dalavai and C. Ramakrishna for S. Vishnu Mohan, for the Appellant; T. Srinivasamurthy, Addl. Central Govt. standing counsel and S. Govindaswaminathan for M/s. King and Patridge, for the Respondent

Judgement

1. The petitioner, who claims to be the Chairman, Madras Provincial Consumers' Association, Convener, Civil Liberties Panel and the elected

Honorary President of the Triplicane Co-operative Bank Limited, Madras-5, has filed this writ petition for issue of Mandamus directing (1) the

third respondent to seek the expert opinion of the Auditor-General of India and act on his advice concerning the overseas operations of the first

respondent during the period 1981 to 1987 in its branches at Sayapur, Singapore, Hongkong and Indonesia and (2) the respondents to place

before this court the full Inspection Report of Shri A. Namasivayam, the present Executive Director of the first respondent together with the original

correspondence among them to enable this court to arrive at a fuller understanding of the issues raised in the affidavit of the petitioner and for

formulating corrective guidelines that may be essential in preserving national wealth. The first respondent in the writ petition is the Indian Overseas

Bank, represented by its Governor. The third respondent is the Union of India represented by the Additional Secretary, Ministry of Finance.

2. In the affidavit filed in support of the petition, the petitioner has stated that he is a tax-payer and a citizen of India. The following are the relevant

allegations made in the affidavit in support of the prayers in the writ petition; Notwithstanding the instructions, statutory obligations and restraints

imposed by and enjoined by the various Acts, Ordinances, Banking regulations governing the corporate system of banking in India, in particular by

passing the Inspection Report of Sr. A. Namasivayam, former Deputy General Manager and at present Executive Director of the first respondent

and contravening the advisory notes and communications of Sri P. S. Khera, Bar-at-law, New Delhi and Sri S. Kannappan, Associate Lecturer,

Government College of Arts and Crafts, Madras, Director on the Board of Directors of the first respondent, nefarious and corrupt practices, have

crept into the overseas branches of the first respondent bank. There is a systematic depletion of hefty funds, nearly 200 crores of rupees from and

out of the Hongkong and Singapore Branches of the first respondent in its operations covering Sayapur, Singapore, Hongkong and Indonesia.

Staggering loss was sustained by the first respondent, due to mala fide and indiscriminate advances granted by the Senior Executives of the

Overseas Branch Offices favouring uninvestigated business concerns, who offered worthless securities or no security fully aware of the

irrecoverability of the advances. Loss was occasioned by the appointment of unscrupulous person in surreptitious manouvres in the top cadres

oriented exclusively to the relatives of the top echelons of the first respondent. Adoption of sick industries was another mode by passing proper

checks on the credibility of the concerns. Shri Bala Subramaniam, an employee-Director of the Board of Directors of the first respondent culled

out from the Inspection Report of Shri A. Namasivayam, on the activities of the Bank, as on 9-2-1985 that Shri P. B. Sri-nivasan, a former

Chairman-Managing Director of the first respondent and Shri P. H. Ahuja, the then Regional Manager, Singapore Branch of the first respondent,

misused their powers for personal gain. A list of fraudulent deals was revealed in the Inspection Report. A writing off of the losses as normal

bussinee losses is contemplated. The modus operandi adopted by the concerned officers is set out in detail. At one stage, the Ministry of Finance, Department of Eco-nomic Affairs (Banking Division), directed a review of the position. The Ministry proposed impounding of the passports of the individuals responsible for loss and their extradition to India. The Officers offered resignation at that stage, which were accepted without the concurrence of the Board of Directors, whose admonitions were bypassed by the Chairman-Managing Director. The Government nominee and the Reserve Bank nominee on the Board of Directors failed to evidence due care. The Inspection Report dated 9-2-1985 of Shri A.

Namasivayam on the operations of the Singapore Branch read with the letters dated 6-3-1984 and 12-7-1985 of the two Directors of the Board

of Directors, Shri P. S. Khera, Bar-at-law, New Delhi and Shri S. Kannakappan, Shri P. B. Srinivasan the former Chairman-Managing Director

and his Co-brother Shri P. D. Ramamurthy, General Manager, and the then Regional Manager Shri P. R. Ahuja of having contrived an atmosphere

to defraud the first respondent to the tune of Rs. 200 crores, which is now sought to be written off. During the years 1981 to 1987, the first

respondent lost crores of rupees in its overseas ventures, particularly in Sayapur, Singapore and Hongkong and the present senior Executives are

seeking to suppress and conceal the true facts in the public eye. Successive Managements have kept the depositors in the dark. The successors to

the top echelon Shri P. D. Ramamurthy, General Manager and Shri S. Padmanabhan, manipulated and deliberately attempted to prevent the

revelation of the mala fide acts of their predecessors, committing collusion. Shri P. D. Ramamurthy had misguided the Board of Directors in

respect of the advances made by the Singapore Branch of the first respondent by recommending the acceptance of the resignation of an erring

officer and reporting that the operation of the first respondent in Singapore were in good order. The illegal acts and omissions resulting in

unprecedented irregularities in the history of banking in India, have damaged the reputation of the first respondent in its overseas branches in the

Eastern Board of the world. As a result, the following ignominious situations have arisen;

(a) The Reserve Bank of India had, in order to maintain the equilibrium in the liquidity concerning the first respodnent and to preserve the ""liquid

ratio", extended its guarantee to the Central Bank of Singapore and Hongkong, as it was essential to protect the interests of the depositors in cities

and to conserve the image of the first respondent.

(b) Considerable erosion has set in on the National Economy at the relevant points of time and public funds which could otherwise have been

utilised for public good was wasted.

(c) Had the first respondent been a private sector bank it would have gone into liquidation.

(d) Banking Regulations, directives of the Reserve Bank of India, the lukewarm warnings of the Ministry of Finance, the dispatches of the Board of

Directors, the counselling of individual Directors, were spurned for gratification.

(e) The consensus opinion of a C.B.I. Investigation did not materialise.

(f) The Auditors appointed by the first respondent were at their wits end to approve the annual balance sheet of the first respondent. They appear

to have refused certification.

(g) There is "writing off" in the air inasmuch as there is no escape.

The petitioner has no other remedy except to approach this Court. Ways and means have to be devised for the recovery of the huge sums of

money scattered as advances to the spurious concerns involved. This Court alone can take the matter in hand and issue directions and guidelines

for safeguarding the public interest and frame measures for prevention of recurrence of similar situations among the Banking fraternity in India. The

matter at present is eminently suitable to be referred to the Auditor General of India for his expert opinion on the said issues. The guilty have to be

identified and evidence gathered against them for eventual arraignment. The second and third respondents have conspicuously been unmindful of

the magnitude of the loss. No timely action was initiated to dispel the .. anxiety of the public at large. There is likely to be further deterioration as

even the present management has spelled out its penchant for adopting sick mills and industries as reported in "The Hindu" dated 18-5-1988. The

first respondent has proposed to write off the cumulative loss over the years as reflected in its Annual Balance Sheet for the year 1987. The

Balance Sheet was published belatedly on 17-5-1988. It appears to be a qualified one as so approved by the auditors of the first respondent.

While it is common knowledge that the first respondent had sustained staggering loss in its overseas transactions, the present management of the

first respondent has shown in its publication a balance of profit of Rs. 6.62 crores, obviously to mislead the public at large and suppressing the loss

during the previous years. In the circumstances the relief prayed for in the petition should be granted.

3. On notice of motion, a counter affidavit was filed on behalf of the first respondent raising certain preliminary objections regarding the

maintainability of the writ petition and the locus standi of the petitioner herein. According to the first respondent, the petitioner must satisfy this

court that a specific right of his under the statute of the constitution has been violated for him to move a petition under Article 226 of the

Constitution of India. The stand taken by the first respondent in the counter affidavit is that the wrongs alleged by the petitioner, assuming for a

moment were proved, are not remediable and consequently, the petition is bereft of remedies, thus nullifying the petitioner's prayers. It is stated

that when Parliament has by specified statutes endowed power to watch the affairs of a Bank to certain authorities, the petitioner cannot assume in

law a superior status to that of an authority such as Reserve Bank of India and Ministry of Finance, Government of India. The Bank's accounts

and affairs are audited every financial year by a statutory Auditor who is not an employee of the Bank. The first respondent is adhering to all the

norms of acceptable banking practices and therefore, there is no specifically alleged dereliction of duty on the part of the Managing Director for the

Bank to be exposed to the extra-ordinary jurisdiction of Article 226 of the Constitution. It cannot be assumed that the deficiencies in the society

which have failed to correction by other means could be cured in Courts. When a parliamentary committee consisting of Members of Parliament

scrutinises the functions of the Bank. The petitioner cannot introduce elements wholly alien and outside the authority of law, either to investigate the

affairs of the Bank or to seek a writ from this Court to issue directions to a Constitutional functionary such as the Auditor General of India. It is not

proper or correct in law for the petitioner to ferret information from the Bank through a proceeding under Article 226 of the Constitution of India

and then endeavour to make out a case for invoking the extraordinary jurisdiction. The deponent of the counter affidavit will be violating his oath of

secrecy if he were to divulge in any manner the details of any account. The financial position of a client with a Bank is a highly privileged one and if

on an inchoate set of allegations, the deponent is to lay bare several accounts, their business would be immediately adversely affected, ruining them

and also the vital interests of the Bank. This" Court should consider another essential element of public interest that of protecting the inviolability of

the precious rights of secrecy of the customers of the Bank. The Joint Secretary from the Ministry of Finance and a Senior representative from the

Reserve Bank of India have a special status in the Board of Directors as they are representatives directly appointed by the Government of India,

Ministry of Finance and Reserve Bank of India, respectively. The Ministry of Finance keeps itself informed of all aspects of the administration of

the Bank. Hence, the writ petition should be dismissed.

4. So runs the counter affidavit of the first respondent.

5. The question of maintainability of the writ petition was heard by Sivasuhramaniam, J. and by order dated 7-12-1988 the learned Judge admitted

the Writ Petition overruling the objections raised by the first respondent. He directed notice to respondents 2 and 3. He observed, however, that

the question of maintainability is decided only provisionally and it is open to the first respondent to canvass his objections in the main writ petition".

It is necessary to extract the following passages from the order of the Learned Judge :--

..... In spite of the fact that this Court wanted to know whether the First Respondent Bank repudiates the averments contained in paragraph 9 of

the petitioner's affidavit relating to several dealings causing loss to the Bank to the tune of Rs. 200 crores, the First Respondent did not want to

submit any reply on that question on the ground that that is not relevant at this stage.....

.....Therefore, I wanted to know whether the specific averments made in paragraph 9 of the affidavit of the Petitioner are disputed by the First-

Respondent Bank. If only the Bank had repudiated those allegations, this Writ Petition would have been dismissed in limine. However, the First-

Respondent did not want to commit themselves at this stage. Therefore, I have to proceed on the basis that those allegations made by the

petitioner stand un rebutted at this stage. This does not mean that the

respondents have admitted the same. The only question to be decided now is whether if those allegations are found to be true, this Court can direct certain competent authorities to go into the said allegations and find out the truth. The purpose of exercise of such a power by this Court is not to enter into any factual investigation of those allegations but only to direct some authority who is competent to go into the affairs of the First-Respondent Bank. Even this power is being disputed by the Bank on the ground that these are matters which would not come within the purview of the jurisdiction of this Court under Article 226 of the Constitution of India.

Therefore, when serious allegations of fraud and misrepresentation to the tune of about 200/- crores is made, this Court cannot close its eyes and dismiss the petition even at the threshold, especially when such allegations are not denied.

There cannot be any dispute on this aspect since what is required to be done by this Court is only to direct any one of the authorities to consider the allegations made against the First Respondent.

The question whether the remedies could be granted in terms of the prayer in the writ petition or not, is a matter to be decided by this Court. It is not necessary that the Court should restrict its discretion in the matter of granting proper reliefs to the prayer in the writ petition alone. This Court can always mould the reliefs according to the necessity in each case.

6. The first respondent preferred an appeal in W. A. No. 20 of 1989 against the said order and the First Bench of this Court disposed of the appeal by its judgment dated 12-4-1989. It is better to incorporate the said judgment herein :--

After much of argument it is admitted by the Appellant that the Appellant Bank being an authority within the scope of Art, 12 of the Constitution of India, the writ petition will be maintainable against it. However Mr. C. Ramakrishna, learned counsel for the appellant raises the following points before us :

(1) The appellant is not obliged to answer the First Respondent, the writ petitioner; (2) There are other statutory controlling authorities who exercise control and supervision over the affairs of the Appellant Bank, and they alone, if at all, can call upon the Bank to answer these irregularities if ever there is any such irregularity. Lastly it is contended, in any

event, having regard to several legal impediments it is impossible that such prayer can ever be granted because should such an enquiry is to take place into the affairs of the Appellant-Bank, that will be violative of the legal provisions.

The merits of the above contentions we are not called upon to decide now, because that stage has not arisen. The learned Judge, for the purpose of admission of the writ petition, has merely held that the writ petition is maintainable in view of the fact that the allegations in paragraph 9 therein have not been controverted. However, Mr. C. Ramakrishna, learned counsel for the Appellant-Bank would say that the paragraph cannot be controverted because of the legal impediments the Bank has to face. Consequently, we hold that the finding of the learned Judge that the writ petition is maintainable has to be upheld. However, we make it clear that there is no question of maintainability provisionally. Either the writ petition is maintainable or not maintainable. Accordingly the writ appeal is ordered affording an opportunity to the appellant to traverse the allegations in the affidavit if the appellant feels so. It is open to the Bank to raise the contentions advanced before us in the counter-affidavit and seek an adjudication thereon. It is entirely up to the Bank to traverse the allegations factually or take a stand that they cannot be gone into by the Court.

7. The first respondent filed a review petition in review C.M.P. No. 6679 of 1989 and the Bench passed the following order on 22-9-1939 :--

We hereby order that it is well open to the appellant-petitioner-Bank to take a stand that because of the legal impediments, it will not be in a position to answer or traverse the various allegations made in paragraph 9 and on that legal stand, it may take an adjudication at the hands of the learned single Judge. However, because of the stand, if the factual allegations are not traversed, it does not and cannot mean that a presumption can be drawn against the Bank as though those allegations having not been denied or presumed to be admitted.

8. Thus, the parties as well as this Court have come back to square one, if I may use that expression without meaning any dis- respect to anybody.

Naturally, the arguments of learned counsel for the first respondent were focussed more on the maintainability of the writ petition and the locus standi of the petitioner than on the merits of the petition. The first respondent

chose not to file any counter-affidavit with reference to the merits of the case. As at present, there is no denial by any of the officials of the first respondent by way of filing an affidavit in this Court having any bearing on the drastic allegations made by the petitioner in the affidavit filed in support of the writ petition. Yet, the direction by the Division Bench is that no presumption can be drawn against the first respondent and the allegations of the petitioner could not be presumed to be admitted. I do not think it necessary to decide whether the said direction given by the Bench is binding on me as it runs counter to principles of law established and recognised by the Supreme Court of India. No such argument was advanced by the petitioner, who appeared in person. Even otherwise, on the facts and circumstances of this case, I do not propose to exercise myself over that question.

9. The second respondent has filed a counter affidavit annexing thereto a copy of the guidelines issued by it to all banks. The third respondent has filed a separate counter-affidavit. The stand taken by respondents 2 and 3 is almost similar. On the question of maintainability of the writ petition, both of them support the first respondent. It is the contention of the second respondent that the petitioner has no locus standi and the petition cannot be treated as a public interest litigation. According to the counter-affidavit, a public litigation envisages (a) a Court action by an individual or a group of individuals belonging to a community or an indeterminate class against an administrative wrong affecting the members of that community or class, and (b) a Court action by a public spirited citizen or a body devoted to public cause, to vindicate the rights of individuals, groups or even the public at large, against administrative wrong, though the person or body undertaking the Court action may not have suffered any injury. It is stated categorically in both the counter-affidavits that the first respondent bank has no branches at Sayapur or Indonesia. It is the case of the second respondent that necessary powers regarding inspection and control of the banks under the Banking Regulation Act, 1949 are vested with it and its role and function as an apex body as far as the Banking system is concerned, has been considered by the Supreme Court and the powers conferred on it had been upheld by the Courts. Reference is made to the judgment of the Supreme Court in Joseph Kuruvilla Vellukunnel Vs. The

Reserve Bank of India and Others, and Corporation of Calcutta Vs. Calcutta Tramways Co. Ltd., . It is stated in the counter-affidavit that the

second respondent closely monitors the activity of the foreign branches of the Indian Banks and issues appropriate instructions to the banks

concerned for the proper functioning of the overseas branches. A detailed reference is made in the counter-affidavit to several measures taken by

the second respondent from 1983 to tune up and strengthen the overseas operations of the public sector banks so that the overseas portfolio is

managed in a prudential and efficient manner taking into account the radical changes that have taken place in the international banking and money

markets. With reference to writing off loans, the second respondent has issued detailed guidelines to all the banks, a copy of which is annexed to the

counter-affidavit. According to the second respondent, inasmuch as necessary steps had been taken by it which is the only body authorised to

supervise and control the banks in the country, any order directing relief as prayed for in the writ petition would be against public interest. It is

stated that it is only the President of the country or the Governor of a State who can ask the Comptroller and Auditor General to undertake the

audit of the accounts of anybody or authority and that too with his consent, and hence the first prayer of the petitioner cannot be granted. It is also

submitted that the accounts of a customer with a bank are subject to law both in India and Singapore and any direction to a bank to make public

the accounts of its customers of an overseas branch would cause grave prejudice to the bank concerning its operations abroad. After taking a

similar stand in its counter-affidavit, the third respondent has stated that the Central Government is closely monitoring and keeping itself informed of

the working of all the Nationalised Banks including the working of the first respondent bank.

10. In the course of arguments, the petitioner placed reliance on the provisions of the Consumer Protection Act, 1986 for sustaining his locus

standi. He invited my attention to the provisions of the Comptroller and Auditor General's (Duties, powers and Conditions of Service) Act, 1971

and the documents referred to in the affidavit. Filed in support of the writ petition comprising of correspondence between some of the Directors

and the Chairman as well as the Inspection Report of Shri A. Namasivayam, the present Executive Director of the first respondent Bank. The

petitioner submitted that the materials placed before this Court are sufficient to enable this Court to issue a Mandamus as prayed for and direct the Auditor-General to investigate the matter.

11. Learned counsel for the first respondent reiterated his staged that the petitioner has no LOCUS STANDI to maintain the writ petition and that

this Court has no jurisdiction to grant the prayers made in the writ petition and the subject-matter of the dispute is outside the pale of justiciability.

He submitted that no reliance can be placed on the contents of any of the documents referred to by the petitioner as they have not come from

proper custody and the petitioner has not disclosed the source from which he obtained those documents. Learned counsel also referred to the

provisions of the Banking Act prevailing in the Republic of Singapore and the Banking Companies (Acquisition and Transferor Undertakings) Act,

1979. Learned counsel invited my attention to certain decision of House of Lords in England and the Judgments of the Supreme Court in support

of his contentions.

12. Learned counsel for the second respondent submitted that the nominee of the Reserve Bank of India in the first respondent's Board of

Directors is only for the purpose of making the Board Know the rules and regulations of the Reserve Bank of India and he does not occupy the

position of a watch-dog on the Board of Directors. According to him, the Reserve Bank of India can put pressure on the head office of the first

respondent's bank to issue ""Letter of Con-forts"" to the Branch Bank in order to avoid the image of the Bank going down in the foreign country

and any damage to the reputation of the bank in the country. He submitted that the petitioner having illegally obtained custody of certain

documents, cannot make use of them to invoke the provisions of Art. 226 of the Constitution of India. It is also his contention that the Reserve

Bank of India could not make public the steps taken by it in this matter, but he could assure the Court that the necessary steps have been taken by

the second respondent. He submitted that neither of the prayers made in the writ petition could be granted to the petitioner. With reference to the

first prayer, his contention was that there was no duty on the part of the Central Government to seek the opinion of the Auditor-General and

consequently, this Court cannot issue a Mandamus. With reference to the second

prayer, he submitted that respondents 2 and 3 have not seen the report of Shri. Namasivayam who is only an employee of the first respondent and they cannot be directed to place the report before the Court.

Learned counsel for third respondent adopted the arguments advanced by learned counsel for the second respondent.

13. In his reply, the petitioner submitted that after the judgment of the Division Bench in W.P. No. 20 of 1989, it is not open to the respondents to raise the question of maintainability of the writ petition. He argued that the Auditor appointed under the Banking Regulation Act by the first respondent is its own man and he cannot be expected to view the matter impartially. He also contended that the Form of Balance Sheet prescribed under the relevant provisions, does not help anybody to find out the clear position of the Bank. He referred to Ss. 45D, 45T and 46A of the Banking Regulation Act and submitted that this court has ample powers to direct the first respondent to disclose whether there are any bad debts and it was also contended by him that the fact that the Reserve Bank claims to have taken the necessary steps in the matter shows that something has gone wrong with the first respondent Bank and the entire affair is fishy requiring to be investigated thoroughly by an independent agency. He prayed that this Court should issue suitable directions to bring out the truth of the matter.

LOCUS STANDI :

14. First I will advert to the question of Locus Standi of the petitioner. There is no difficulty in holding that the petitioner has locus standi to maintain the writ petition. In this country public interest movement has been almost entirely initiated and nurtured by the apex Court. Being aware of the limitations of legalism, the Supreme Court in the main and the High Courts to some extent for the last decade and a half did their best to bring law into the service of the poor and down trodden under the banner of Public Interest Litigation. The range is wide enough to cover from bonded labour to prison conditions and from early trial to environmental pollution. It is not confined to enforcement of fundamental rights of an individual or a group of persons, but would take in the rights of the public at large. One of its distinctive characteristics is liberalisation of the rules of standing. In *Maharaj Singh Vs. State of Uttar Pradesh and Others*, , the Supreme Court

declared the law thus: "Where a wrong against community interest is done, "no locus standi", will not always be a plea to non-suit an interested public body chasing the wrong-doer in court. In the case before us, Government, in the specious sense of "person aggrieved" as comfortably placed. Its right of resumption from the Gaon Sabha, meant to be exercised in public interest, will be seriously jeopardised if the estate slips into the hands of a trespasser. The estate belonged to the State, is vested in the Gaon Sabha for community benefit, is controlled by the State through directions to the Land Management committee and is liable to be divested without ado any time. The wholesome object of the legislature of cautiously decentralised vesting of estates in local self-governing units will be frustrated, if the State, the watch-dog of the whole project, is to be a helpless spectator of its purposeful bounty being wasted or lost. It must act, out of fidelity to the goal of the statute and the continuing duty to salvage public property for public use. Long argument is otiose to make out a legal grievance in such a situation of peril and, after all, the star of processual actions pro bono publico has to be on the ascendant in a society where suspine-ness must be substituted by activism if the dynamic rule of law is to fulfil itself. "Locus standi" has a larger ambit in current legal semantics than the accepted, individualistic jurisprudence of old.

15. In S.P. Gupta Vs. President of India and Others, , the law was stated thus (at page SC 189; AIR 1982) :--

18..... But there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation, resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury.

Who would have standing to complain against such act or omission of the State or public authority? Can any member of the public sue for judicial

redress? Or is the standing limited only to a certain class of persons? Or there is no one who can complain and the public injury must go

unredressed. To answer these questions it is first of all necessary to understand what is the true purpose of the Judicial function. This is what Prof.

This stated in his book on "Locus Standi and Judicial Review" (at page SC 190 : AIR 1982) :--

Is the judicial function primarily aimed at preserving legal order by confining the

legislative and executive organs of government within their powers

in the interest of the public (Jurisdiction de droit objectif) or is it mainly directed towards the protection of private individuals by preventing illegal

encroachments on their individual rights (Jurisdiction de droit subjectif)? The first intention rests on the theory that courts are the final arbiters of

what is legal and illegal..... Requirements of locus standi are therefore necessary in this case since they merely impede the purpose of the function

as conceived here." (at page SC 192, AIR 1982).

19.A.If public duties are to be enforced and social collective "diffused" rights and interests are to be protected, we have to utilise the initiative

and zeal of public-minded persons and organisations by allowing them to move the court and act for a general or group interest, even though, they

may not be directly injured in their own rights. It is for this reason that in public interest litigation -- litigation undertaken for the purpose of

redressing public injury, enforcing public duty, protecting social, collective, "diffused" rights and interests or vindicating public interest, any citizen

who is acting bona fide and who has sufficient interest has to accord standing.....

22. We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury

arising from breach of public duty or from violation of some provision of the constitution or the law and seek enforcement of such public duty and

observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and

accelerating the pace of realisation of the constitutional objective.

16. No doubt, in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, a note of caution was administered by the

Supreme Court :

45..... Today public spirited litigants rush to Courts to file cases in profusion under this attractive name. They must inspire confidence in Courts

and among the public. They must be above suspicions. See the facts of this case and the end result.

47. This public interest litigation takes its birth perhaps from the righteous indignation of the petitioners, against the State Government at their

bartering away of four acres of land belonging to the zoo to the Taj Group of Hotels. The writ petition is mainly based on the ground that the

decision of the Government is arbitrary. The question to be answered is whether this accusation can be justified. On a perusal of the records I find

that the State Government had made available to the Court all the relevant documents so as to satisfy the Court about the propriety of its action.

58. My purpose in adding these few lines of my own is to highlight the need for restraint on the part of the public interest litigants when they move

Courts. Public interest litigation has not come to stay. But one is led to think that it poses a threat to Courts and public alike. Such cases are now

filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of

such petitions. If Courts do not restrict the free flow of such cases in the name of Public Interest Litigations, the traditional Litigation will suffer and

the Courts of Law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

59. I should not be understood to say that traditional litigation should stay put. They have to be tackled by other effective methods, like

decentralising the judicial system and entrusting majority of traditional litigation to village Courts Lok Adalats without the usual populist stance and

by a complete restructuring of the procedural law which is the villain in delaying disposal of cases.

60. It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded

or when there are complaints of such acts as shock the judicial conscience that the Courts, especially this Court, should leave aside procedural

shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy,

the underdog and the neglected. I will be second to none in extending help when such help is required.

But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self imposed restraint on

public interest litigations.

17. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the petitioner, who was not a riparian owner, filed a writ petition for prevention of

pollution caused to the river Ganga. The Supreme Court held that he was a person interested in protecting the lives of the people who make use of

the water flowing in the river Ganga and the right of the petitioner to maintain the petition cannot be disputed. It was observed that the petition was,

therefore, entertained as a Public Interest Litigation and the petitioner was entitled to move the Supreme Court in order to enforce the statutory

provisions which impose duties on the municipal authorities and the Boards constituted under the water Act.

18. In *Sheela Barse Vs. Union of India (UOI) and Others*, , the Supreme Court has pointed out that in a public interest litigation, unlike traditional

dispute-resolution-mechanism, there is no determination or adjudication of individual rights and the proceedings cut across and transcend the

traditional forms and inhibitions. It was held that the compulsions for the judicial innovation of the technique of a public interest action was the

constitutional promise of a social and economic transformation to usher-in an egalitarian social order and a welfare-State.

19. In the light of the above principles enunciated by the Supreme Court there is no doubt that the petitioner as a citizen and tax payer of this

country has the requisite "standing" to maintain the writ petition as his complaint is that the high officials of Nationalised Bank have failed to do their

duty resulting in a huge loss of over 200 crores of rupees to the bank and thereby to the nation. It is wholly unnecessary for him to invoke the

provisions of the Consumer Protection Act. There is considerable force in the arguments of learned counsel for the first respondent that the said

Act is not applicable to this case, but I do not find it necessary to pronounce upon the same as I take the view that the petitioner has "Locus

standi" to file this writ petition as a rate-payer in this country.

JURISDICTION

20. I shall now consider whether this Court has jurisdiction to entertain the writ petition. Though at one stage of the arguments learned counsel for

the first respondent contended that there is total lack of jurisdiction with this Court, he did not, wisely, if I may say so, pursue that further. Art. 226

of the Constitution of India is wide enough to enable this Court to issue a writ for any purpose and it is not confined to enforcement of Fundamental

Rights. There is no need to say anything further in this regard. I hold that this Court has jurisdiction under Art. 226 of the Constitution of India to

entertain this writ petition.

JUSTICIABILITY

21. The next question is whether the subject matter is justiciable in the light of the specific prayers in the writ petition. The first prayer is directed

against the third respondent. The petitioner seeks a direction to the third respondent to obtain the expert opinion of the Auditor-General of India

and Act on his advice concerning the overseas operations of the first respondent during the period 1981-1987 in its branches at Sayapur,

Singapore, Hongkong and Indonesia. The definite case of the respondents is that the first respondent bank has no branches at Sayapur or

Indonesia. There is nothing on record to show that the first respondent has its branches in the said places. Hence, the prayer has to fail in so far as

it refers to branches in Sayapur and Indonesia.

22. The question that arises is whether there is a duty or for that matter a public duty on the part of the third respondent to refer the matter to the

Auditor-General and seek his opinion or advice even assuming that the averments in the affidavit of the petitioner filed in support of the writ petition

are true. In other words, is it open to this Court to compel the third respondent to get the advice or opinion of the Auditor-General? For deciding

this question, it is necessary to advert to the provisions of the Constitution of India and the Comptroller and Auditor-General's (Duties, Powers

and Conditions of Service) Act, 1971. The said Act will be referred to hereinafter as "Act 56 of 1971". Arts. 148 and 149 of the Constitution of

India are the relevant articles. Under the former Article, there shall be a Comptroller and Auditor-General of India who shall be appointed by the

President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the

Supreme Court. He shall subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the

form set out for the purpose on the Third Schedule. His salary and other conditions of service shall be such as may be determined by parliament by

law and, until they are so determined, shall be as specified in the Second Schedule. He shall not be eligible for further office either under the

Government of India or under the Government of any State after he has ceased to hold his office. Subject to the provisions of the Constitution and

of any law made by Parliament, the conditions of service of persons serving in

the Indian Audit and Accounts Department and the Administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General. The administrative expenses of his office, including all salaries, allowances and pensions payable to him or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India. Under the latter Article, the Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament, and until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of the Constitution in relation to the accounts of the Dominion of India and the Provisions respectively.

23. It is by virtue of the provisions contained in the said two Articles, the Parliament enacted Act 56 of 1971. While Ss. 3 to 9 of Act 56 of 1971 provide for salary and other conditions of service, Ss. 10 to 20 deal with his duties and powers. Under S. 10 of the said Act, he shall be responsible for compiling the accounts of union and of each States. Under S. 11, he is required to prepare the annual accounts separately for the Union and each of the States and each of the Union territory having a Legislative Assembly, showing under the respective heads the annual receipts and disbursements and submit to the President, Governor of State or Administrator of the Union territory as the case may be. In addition, where the accounts are compiled by him, he had also to prepare an Appropriation Account showing the expenditure brought to account against the moneys authorised under the Appropriation Act and Submit the same to the President, the Governor or the Administrator, as the case may be. Under S. 12, a duty is cast on him to furnish such information to the Union Government or the State Governments or Governments of Union territories having Legislative Assemblies as required and as could be gathered from the accounts for the compilation or keeping of which he is responsible. S. 13 provides that he will audit all expenditure from the

Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly, all transactions relating to the Contingency Funds and Public Accounts and of trading, manufacturing, profit and loss accounts and balance-sheets and other subsidiary accounts. Cl. (c) of S. 13 enjoins a duty on him "to audit all trading, manufacturing, profit and loss account and balance-sheets and other subsidiary accounts kept in any department of the Union or of a State.

24. It is the contention of the petitioner that a Nationalised Bank is a department of the Union and it would fall under Cl. (c) of S. 13 of Act 56 of

1971. I do not agree. The Supreme Court had occasion to consider the position of Nationalised Banks including State Bank of India via-a-via the

provisions of the Tamil Nadu Shops and Establishments Act, which exempt from the purview of the Act Establishments under Central

Government, in C.V. Raman Vs. Management of Bank of India and Another, . In that case, while holding that such Banks are establishments

under the Central Government, the Supreme Court held unequivocally that the Banks were not departments of the Central Government or owned

by the Central Government, even though the Central Government has a deep pervasive control over the Banks.

25. Section 14 of Act 56 of 1971 provides for audit by the Comptroller and Auditor-General of the accounts of bodies or authorities substantially

financed by grants or loans from the Consolidated Fund of India or a State or of a Union territory having a Legislative Assembly. S. 15 of that Act

requires him to scrutinise the procedures by which any authority sanctioning a grant or a loan from the Consolidated Fund of India or of any State or

of a Union territory having a Legislative Assembly to any authority or body other than a foreign State or International Organisation satisfied itself as

to fulfilment of the conditions subject to which the grant or loan was given. For that purpose, he has been conferred with right of access, after giving

reasonable previous notice, to the books and accounts of the authority or body in so far as Corporation established by law is concerned, if the law

establishing the Corporation provides for the audit of its accounts by an agency other than himself, he will not have right of access to the books and

accounts unless he is so authorised by the President, the Governor of a State or the Administrator of a Union of territory after consultation with him

and after giving an opportunity to the concerned Corporation to make any representation with regard to such authorisation. S. 16 empowers the

Comptroller and Auditor-General to audit all receipts which are payable into the respective Consolidated Funds and to satisfy himself that the rules

and procedures are designed to secure an effective check on assessment, collections, etc., and to report thereon as recommended by the

Administrative Reforms Commission and as envisaged in Art. 151 of the Constitution of India. Under S. 17, he shall have authority to audit and

report on the accounts of stores and stock kept in any office or department of the Union or of a State.

26. Section 18 of Act 56 of 1971 confers powers of inspection etc., in connection with the performance of his duties under the Act with reference

to audit of accounts. Ss. 19 and 20 will be the relevant provisions to be considered for the purpose of this case, as they deal with the duties and

powers of the Comptroller and Auditor-General in relation to the audit of the accounts of Government companies, which shall be performed and

exercised by him in accordance with the provisions of the Companies Act, 1956. By virtue of S. II of the Banking Companies (Acquisition and

Transfer of Undertaking) Act, 1970 (Act 5 of 1970), every corresponding new bank shall to deemed to be an Indian company and a company in

which the public are substantially interested for the purpose of the Income Tax Act, 1961. "Corresponding new bank" has been defined in the said

Act in relation to an existing bank as the body Corporation specified against such bank in Column 2 of the First Schedule. "Indian Overseas Bank

has been described in column 2 of the First Schedule as "Corresponding new bank" to the "existing bank" vi/., "The Indian Overseas Bank

Limited". Ss. 19 and 20 of Act 56 of 1971 read thus :--

19. Audit of Government companies and Corporation.-- (1) The duties and powers of the Comptroller and Auditor-General in relation to the

Audit of the accounts of Government companies shall be performed and exercised by him in accordance with the provisions of the Companies

Act, 1956.

(2) The suits and powers of the Comptroller and Auditor-General in relation to the audit of the accounts of corporations (not being companies)

established by or under law made by Parliament shall be performed and

exercised by him in accordance with the provisions of the respective legislations.

(3) The Governor of a State or the Administrator of a Union territory having a Legislative Assembly may, where he is of opinion that it is necessary

in the public interest so to do, request the Comptroller and Auditor-General to audit the accounts of a corporation established by law made by the

Legislature of the State or of the Union territory, as the case may be, and where such request has been made, the Comptroller and Auditor-

General shall audit the accounts of such corporation and shall have, for the purposes of such audit, right of access to the books and accounts of

such corporation :

Provided that no such request shall be made except after consultation with the Comptroller and Auditor-General and except after giving reasonable

opportunity to the corporation to make representations with regard to the proposal for such audit.

20. Audit of accounts of certain authorities or bodies.-- (1) Save as otherwise provided in S. 19, where the audit of the accounts of any body or

authority has not been entrusted to the Comptroller and Auditor-General by or under any law made by Parliament, he shall, if requested so to do

by the President or the Governor of a State or the Administrator of a U nion Territory having a Legislative Assembly, as the case may be,

undertake the audit of the accounts of such body or authority on such terms and conditions as may be agreed upon between him and the

concerned Government and shall have, for the purposes of such audit, right of access to the books and accounts of that body or authority :

Provided that no such request shall be made except after consultation with the Comptroller and Auditor-General.

(2) The Comptroller and Auditor-General may propose to the President or the Governor of a State or the Administrator of a Union territory

having a Legislative Assembly, as the case may be, that he may be authorised to undertake the audit of the accounts of any body or authority, the

audit of the accounts of which has not been entrusted to him by law, if he is of opinion that such audit is necessary because a substantial amount

has been invested in, or advanced to, such body or authority by the Central or State Government or by the Government of a Union territory having

a Legislative Assembly, and on such request being made, the President or the Governor or the Administrator, as the case may be, may empower

the Comptroller and Auditor-General to undertake the audit of the accounts of such body or authority.

(3) The audit referred to in sub-sec. (1) or sub-sec. (2) shall not be entrusted to the Comptroller and Auditor-General except where the President

or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, is satisfied that it is

expedient so to do in the public interest and except after giving a reasonable opportunity to the concerned body or authority to make

representations with regard to the proposal for such audit.

By virtue of sub-sec. (3) of S. 20, the audit of the accounts of the first respondent Bank shall not be entrusted to the Comptroller and Auditor-

General, except where the President or a Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case

may be, is satisfied that it is expedient so to do in the public interest and except after giving a reasonable opportunity to the concerned body or

authority to make representations with regard to that proposal of audit.

27. Hence, the matter is left by Act 56 of 1971 to the satisfaction of the President of the Union or the Governor of a State or the Administrator of

a Union territory having a Legislative Assembly.

28. In *State of Rajasthan and Others Vs. Union of India and Others*, , a question arose with reference to Arts. 355 and 356 of the Constitution of

India read with Art. 174. Art. 356(1) of the Constitution of India calls for an assessment of a "situation" and the satisfaction of the President. The

Supreme Court held that the satisfaction of the President was a subjective one and could not be tested by reference to any objective tests. It was

observed that it was deliberately and advisedly subjective as the matter to which he was to be satisfied was of such a nature that its decision must

necessarily be left to the executive branch of Government, which by its very nature could not be a fit subject-matter for judicial determination. In

Kehar Singh and Another Vs. Union of India (UOI) and Another, , which dealt with the President's power to pardon under Art. 72 of the

Constitution of India, it was observed that the order of the President could not be subjected to judicial review on its merits except within certain

limitations. It was pointed out that, however, the function of determining whether the act of a constitutional or statutory functionary falls within the constitutional or legislative conferment of power, or is vitiated by self-denial on an erroneous appreciation of the full amplitude of the full amplitude of the scope of the power is a matter for the Court.

29. On a consideration of the provisions of the Constitution of India and Act 56 of 1971, in the light of the Supreme Court decisions referred to

above, it is clear that the first prayer of the petitioner cannot be granted as such. There is no duty cast on the third respondent to seek an opinion

from the Comptroller and Auditor-General as required by the petitioner in his prayer. Hence, this Court is not in a position to issue a Mandamus

prayed by the petitioner.

PRAYER No. 2:

30. This prayer is directed against all the respondents. But, respondents 2 and 3 have a very simple answer on the basis of which the writ petition

has to be dismissed as against them. The prayer is to direct the respondents to place before this Court the full Inspection Report of Sri. A.

Namasivayan, present Executive Director of the first respondent. It is not in dispute that the said Shri. Nama-sivayam is only an employee of the

first respondent and respondents 2 and 3 cannot have any control over him. Hence, no mandamus can be issued against respondents 2 and 3 to

produce before this Court the full Inspection Report of Sri. A. Namasivayam.

31. With reference to the first respondent, the defence is that the correctness and genuineness of the documents relied on by the petitioner is

disputed. It is stated that the petitioner had not disclosed the source from which he obtained the documents and consequently, he is not entitled to

get any relief under Art. 226 of the Constitution of India. In so far as this part of the argument is concerned, I do not find any difficulty in rejecting

the same. The first respondent has not chosen to file any counter affidavit denying the correctness or genuineness of the documents on which

reliance is placed by the petitioner in his affidavit filed in support of the writ petition in spite of the fact that the first respondent had been served

with a copy of the affidavit soon after notice of motion was ordered by this Court. Having taken a stand that it is not necessary for the first

respondent to make any statement positively with reference to the facts or deny

the avernments found in the petitioner's affidavit, it is not now open to the first respondent to dispute the correctness or genuineness of the statement. However, that does not lead to a presumption of the facts against the first respondent.

32. Learned counsel for the first respondent produced before me the Annual Report of the Chartared Accountants of the first respondent Bank, which comprises the Balance Sheet and Profit and Loss Account for the year ending 31st December, 1987. According to the Balance Sheet, debts considered doubtful or bad and not provided for were "nil". Nothing has been placed before me to warrant a rejection off-hand of the Balance Sheet or the report of the statutory auditors.

33. Learned counsel for the first respondent invited my attention to S. 42 of Banking Act of 1970 prevailing in the Republic of Singapore. That section imposes banking secrecy on every official of any bank. There is no dispute that the branch of the first respondent in Singapore is a "bank" within the meaning of S. 42 of the said Banking Act. That section in so far as it is relevant reads thus :--

(2) No officials of any bank and no person who by reason of his capacity or office has by any means access to the records of the bank registers

or any correspondent or material with regard to the account of any individual customer of that bank shall give, divulge or reveal any information

whatsoever regarding the moneys or other relevant particulars of the account of that customer to-

(a) any person who, or any bank, corporation or body of persons which, is not resident in Singapore; or

(b) any foreign Government or organisation, unless-

(i) the customer or his personal representatives gives or give his or their permission so to do;

(ii) the customer is declared bankrupt; or

(iii) the information is required to assess the creditworthiness of the customer in connection with or relating; to "bona fide" commercial transaction

or a prospective commercial transaction.

(3) For the purposes of paragraph (a) of sub-sec. (2) of this section a bank, corporation or body of persons shall be regarded as not residing in

Singapore if the control and management of the business thereof is exercised outside Singapore.

(4) Any person who contravenes the provisions of this section shall be guilty of an offence under this Act and shall be liable on conviction to a fine

often thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

A similar provision is found in S. 13 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. That section is in the

following terms :--

13. Obligation as to fidelity and secrecy.--(1) Every corresponding new bank shall observe, except as otherwise required by law, the practices

and usages customary among bankers, and, in particular, it shall not divulge any information relating to or to the affairs of its constituents except in

circumstances in which it is, in accordance with law or practices and usages customary among bankers, necessary or appropriate for the

corresponding new bank to divulge such information.

(2) Every director, member of a local,, board or a committee, or auditor, advisor, officer or other employee of a corresponding new bank shall,

before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Third Schedule.

(3) Every custodian of a corresponding new bank shall, as soon as possible, make a declaration of fidelity and secrecy in the form set out in the

Third Schedule.

34. Learned counsel for the first respondent place reliance on two judgments of the House of Lords in The Law Reports 1978 in D. v. National

Society for The Prevention of Cruelty to Children (1978) AC 171 and in the Law Reports 1983 in AIR Canada v. Secretary of State for Trade

(1983) 2 AC 94. In the former case, Lord Denning M. R. observed as follows :--

We are also asked to assume that the object of the action is to obtain damages from the N.S.P.C.C. and not merely to obtain the name of the

informant: though it is acknowledged -- and it is clear from the plaintiff may initiate proceedings against the informant.

If the courts thus restrain a breach of confidence, surely they should not themselves Compel a breach save when the public interest requires. Such

is the principle which runs through the case. In applying it, there are subsidiary

rules of particular application. They have emerged singly, but the time has come to group them together. They are sometimes said to be grounds of "Privilege," but I would discard that word because it is

misleading. It distracts the mind from the true question which is whether the Court will compel a person to breach a confidence.

Eighth, when a Government department claims to withhold documents or information on the ground of crown Privilege -- these are nearly always

confidential -- the Court has to balance the detriment to the public interest on the administration side against the public interest in the judicial side :

see *Conway v. Rimmer*, (1966) AC 910, 952 per Lord Reid : *Reg v. Lewes Justices, Ex Parte Secretary of State for the Home Department*,

(1973) AC 388 per Lord Pearson.

Such are the particular rules : but in every new case the courts should follow the advices given by Lord Cross of Chelsea in *Alfred Crompton*

Amusement Machines Ltd. v. Customs and Excise Commissioner (No. 2), (1974) AC 405, 434, when, speaking for all, he said :

What the Court has to do is to weigh on the one hand the consideration which suggest that it is in the public interest that the documents in question

should be disclosed and on the other hand those which suggest that it is in the public interest that they should not be disclosed and to balance one

against the other.

I proceed to hold the balance in this case. In the scales on the one side I put the reasons why it is in the public interest that the same and address

of the informant should be given. There is only one reason which is of any weight at all. It is that it will assist the mother in her action for damages. It

will enable her to living informant as a defendant; and to investigate the circumstances in which the information was given. But the weight of this

reasoning is diminished by the fact that it is doubtful whether she was any cause of action against the society at all, and even more doubtful whether

she has a cause of action against the informant. The occasion was, no doubt, a privileged occasion and the mother would have to prove express

malice in order to make the informant liable.

35. In the latter case, the House of Lords observed at Pp. 410 and 411 :

9. The due administration of justice.

In all the case it is said that the courts are required to have regard to the public interest in the due administration of justice. But I would point out

that this depends on the nature of the issue between the parties. In some cases it means simply ascertaining the truth -- finding out what in fact

happened --and then adjusting the rights and liabilities of the parties on the faith of it. That is how the Judge regarded our present case. He said :

The Concern of the Court must surely be to ensure that the truth is elicited, not caring whether the truth favours one party or the other but anxious

that its final decision should be grounded on a sure foundation of fact In my judgment documents are necessary for fairly disposing of a cause

or for the due administration of justice if they give substantial assistance to the Court in the determining the facts upon which the decisions in the

cause will depend.

That is why he thought that the mineserial documents in category A should be disclosed. He said :

I consider that some of these documents are very likely to be necessary for the just determination of the second and third issues in the airlines

constitutional case. They are very likely to affect the outcome one way or the other. I do not think any Court could be confident that its decision on

those issues was founded on a sure foundation of fact in the absence of the documents.

10. I differ from the Judge

This is where I differ from the Judge. The due administration of justice does not always depend on eliciting the truth. It often depends on the

burden of proof. Many times it requires the complainant to prove his case without any discovery from the other side

36. At this stage it is necessary to decide what exactly is the complaint of the petitioner. In para 4 of the affidavit filed in support of the petition, the

complaint is vague and generally, directed against the alleged nefarious and corrupt practices which had crept into the affairs of the Overseas

Branches of the first respondent bank. There is no allegation in particular against any individual. In paragraph 7 of the affidavit, a complaint is made

as against the mala fide and indiscriminate advances granted by the Senior Executives of the Overseas Branch of the officers of the first respondent

and the loss which was occasioned by the appointment of unscrupulous persons

in surreptitious manoeuvres. An express reference is made in the affidavit to the report of Shri A. Namasivayam, former Deputy General Manager and present Executive Director dated 9-3-1985 as well as the communication from Shri Balasubramaniam, an employee-Director. The sum and substance of the affidavit filed in support of the petition is that Successive Chairman-Managing Directors and some of the senior officials of the bank who were in management of the branch in Singapore had been guilty of certain mala fide acts and fraudulent irregularities which led to loss of above 200 crores of rupees to the bank. Nothing has been stated as to why the Board of Directors did not take any steps to check effectively the activities of the concerned senior officials and prevent the alleged huge loss. It is not the allegation of the petitioner that all the other Directors who are members of the Board of Directors have been won over by the erring officials.

37. The allegation against the second respondent is very vague and it is found in paragraph 18(a) of the affidavit filed in support of the writ petition.

It reads that ""The Reserve Bank of India had, in order to maintain the equilibrium in the liquidity concerning the first respondent and to preserve the "liquid ratio" extended its guarantee to the Central Bank of Singapore and Hongkong as it was essential to protect the interests of the depositors in those cities and to conserve the image of the first respondent."" The allegations in paragraphs 18(f) and (g) are as follows :--

(f) The auditors appointed by the first respondent were at their wits end to approve the annual balance sheet of the first respondent. They appear to have refused certification.

(g) There is "writing off" in the air, inasmuch as there is no escape

On the basis of the vague allegations, no writ could be issued against the respondents. The second respondent has filed a counter affidavit in which

it is stated in paragraphs 8 and 9 as follows :--

8. The second respondent closely monitors the activity of the foreign branches of the Indian Banks and issues appropriate instructions to the banks concerned for the proper function in of the Overseas Branches.

9. 1 he second respondent has considered the operation of overseas branches of Indian Banks including those of the first respondent having

overseas operations and has taken several measures from 1983 to tone up and strengthen the overseas operations of public sector banks so that

the overseas portfolio is managed in a prudential and efficient manner taking into account the radical changes that have taken place in the

international banking and money markets. These measures include :

(a) (i) directing the banks to set up system of per party credit ceilings and also group borrower credit ceiling;

(ii) Prudential guidelines to maintain in the banks a system of fixing up country exposure limits (i.e., ceiling on discounting of import or export bills in respect of each country);

(iii) Cautioning against mis-matches in various currencies in creating assets and liabilities so that the bank avoids any liquidity crunch and;

(iv) Cautioning the banks against keeping uncovered foreign exchange positions to ward off any risks and losses involved in currency fluctuations.

(b) The Management Information System was revamped and a new reporting system called PALOO (position of Assets and Liabilities of

Overseas Offices) returns was introduced, which will serve as a self-monitoring system for the bank and as the supervision medium for the Reserve

Bank.

(c) The banks were asked to regularly review all the large credit limits and all problem credits and place analytical review before the Boards of

Directors for their review/guidance/ directions.

(d) A new personnel policy was introduced whereby the managerial personnel posted to man the various branches are selected in a very objective

manner based on their experience, knowledge and proven track record and on the basis of system of interview by a committee and all such

personnel are governed by certain stringent service conditions including the execution of bonds for payment of liquidated damages in case of

resignation from the bank service and such resignations were required to be tendered only after their return to the home country.

(e) The banks were also asked to look into the aspect of staff accountability whenever the advances become irregular in order to ensure that the

loan losses are genuine and bona fide commercial losses.

(f) The banks were also asked to look into the viability of operations of each of the overseas branches and those of the branches which are non-

viable are directed to be closed and that the viable branches are effectively and efficiently managed.

38. In paragraph 10 it is stated that in regard to writing off of loans, the second respondent had issued guidelines to all banks and a copy of the

same is annexed to the counter affidavit. In paragraph 11 it is averred that inasmuch as the second respondent had taken necessary steps and since

it is the only body authorised to supervise and control the banks in the country, any order directing relief as prayed for in the writ petition would be

against public interest. In paragraph 13 reference is made to S. 13 of Banking Companies (Acquisition and Transfer of Undertakings Act, 1970)

and S. 42 of the Singapore Act and averred that any direction to a bank to make public the accounts of its customers of an overseas branch would

cause grave prejudice to the banks concerned in its operation abroad. I find that the guidelines which are claimed to have been issued in regard to

writing off of loans and which are annexed to the counter affidavit of the second respondent are sufficient to safeguard the interests of the public

comprising of customers and depositors of the bank.

39. In so far as the third respondent is concerned, in the counter affidavit it is stated categorically that the allegation that the Union of India is not

discharging its statutory obligations in the matter is not correct and that the Central Government is closely monitoring and keeping itself informed of

the working of the Nationalised Banks including the working of the first respondent bank.

40. Nothing has been placed before me warranting a rejection of the categorical statement found in the counter affidavits of respondents 2 and 3.

On the other hand, the statements made by the petitioner himself in two other affidavits filed in the proceedings, to which my attention was drawn

by learned counsel for the first respondent prove that there is no cause of action for the petitioner to approach this Court under Art. 226 of the

Constitution of India. In paragraph 15 of the affidavit of the petitioner herein in CMP 747 / 89 in CMP No. 75 of 1989 in W. A. No. 20 of 1989

it is stated as follows :

My prayer is to recover Rs. 200 crores lent as detailed in my writ petition, atleast to the extent possible, though I am certain full amount is

realisable together with accrued interest from the relevant debtors, who are all

solvent and in high prosperity in business. They are all capable of payment and still flourish in their business, vide inspection reports of first respondent.

In the same affidavit in paragraph 28 it is slated that the petitioner is least concerned with the violations committed by the officials in this regard as it

is entirely an administrative matter. In paragraphs 15, 17 and 18 of the affidavit of the petitioner filed in W.M.P. No. 8257 of 1989 in the writ

petition it is stated as follows :

15. I now seek a limited relief to secure repayment of loan amounts as due to date by the loanees.

17. And the loans are recoverable as admitted by the 1st respondent.

18. I now only seek Hon. Court to direct the first respondent to issue demand notices for the amount due on date to the concerned loanees, giving

relevant and reasonable time to repay as per demand or utmost sufficient part to prove their bona fides.

41. In view of the above admissions made by the petitioner that there is no difficulty in recovering the amounts from the persons to whom loans

have been issued by the first respondent in Singapore and other foreign countries, no writ can be issued by this Court as prayed; for by the

petitioner herein.

42. in the course of arguments, learned counsel for the second respondent stated that the second respondent is putting pressure on the first

respondent's head office to issue ""Letters of Comfort"" to its branch situated overseas. He also stated that it is not possible for the second

respondent to make public the steps taken by the second respondent in this regard. According to him, the secrecy is necessary in order to maintain

the prestige of the entire country in the eye of the foreign country viz., Singapore.

43. As laid down by the Supreme Court, this Court has to weigh on the one hand the public interest that would be served by issuing a writ as

prayed for and on the other the public interest that will be served by refusing to issue the same. In my opinion, in view of the express admissions

made by the petitioner that it is possible to recover the amounts from the persons who had taken loans as they are not in affluent circumstances, the

public interest in refusing to grant the relief will be served better than the public

interest in granting the direction.

44. In fact, the substantial part of the second prayer is to formulate the corrective guidelines that may be essential in preserving the national wealth

and it is only for that purpose a request is made to this Court to direct the respondents to place before this Court the full Inspection Report of Shri

A. Namasivayam. I am of the view that it is not possible for this Court to formulate guidelines as prayed for by the petitioner as it would

tantamount to making judicial legislation. However desirable it may seem to legislate, it is something which is not within the judicial competence of

this Court. That is essentially a Legislative exercise and one on which, in my opinion, I should hesitate long before embarking. Particularly when it

is brought to the notice of the Court that suitable guidelines have been framed by the second respondent, who is the authority empowered to do so,

it is not open to this Court to trench upon the powers of the second respondent and formulate the guidelines as prayed for by the petitioner. The

validity of conferment of such powers on Reserve Bank of India by the provisions of Banking Companies Act, 1949, was upheld by the Supreme

Court in Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India and Others, .

45. In Asif Hameed and others Vs. State of Jammu and Kashmir and Others, , the question of doctrine of separation of powers has been

considered in detail. The Supreme Court stated the law thus (at page SC 1905; AIR 1989):

Although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the constitution makers

have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres

demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs

to function and exercise their discretion by strictly following the procedure prescribed therein. The function of democracy depends upon the

strength and independence of each of its organs. Legislature and executive, the two facets of People's will, they have all the powers including that

of finance judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function

within the constitutional limits. It is the sentinel of democracy. Judicial review is

a powerful weapon to restrain unconstitutional exercise of power by the Legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

at page SC 1906, AIR 1989.

19. When a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the Court must strike down the action. While doing so the Court must remain within its self-imposed limits. The Court sits in judgment on the action of a co-ordinate branch of the Government. While exercising power of judicial review of administrative action, the Court is not an appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize on any matter which under the Constitution lies within the sphere of legislature or executive provided these authorities; do not transgress their constitutional limits or statutory powers.

46. Section 34A of the Banking Regulation Act, 1949 (Act X of 1949), reads as follows :

Production of Documents of Confidential Nature :---

(1) Notwithstanding anything contained in S. 11 of the Industrial Disputes Act, 1947 (14 of 1947), or any other law for the time being in force, on banking company shall, in any proceeding under the said Act or in any appeal or other proceeding arising therefrom or connected therewith be compelled by any authority before which such proceeding is pending to produce, or give inspection of, any of its books of account or other document or furnish or disclose any statement or information, when the banking company claims that such document, statement or information is of a confidential nature and that the production or inspection of such document or the furnishing or disclosure of such statement or information would involve disclosure of information resulting to -

(a) any reserves not shown as such in its published balance-sheet; or

(b) any particulars not shown wherein in respect of provisions made for bad and doubtful debts and other usual or necessary provisions.

(2) If, in any such proceeding in relation to any banking company other than the Reserve Bank of India, any question arises as to whether any

amount out of the reserves or provisions referred to in sub-sec. (1) should be taken into account by the authority before which such proceeding is

pending, the authority may, if it thinks fit, refer the question to the Reserve Bank and the Reserve Bank shall, after taking into account principles of

sound banking and all relevant circumstances concerning the banking company, furnish to the authority a certificate stating that the authority, shall

not take into account any amount as such reserves and provisions of the banking company or may take them into account only to the extent of the

amount specified by it in the certificate, and the certificate of the Reserve Bank on such question shall be final and shall not be called in question in

any such proceeding.

(3) For the purposes of this section ""banking company"" includes the Reserve Bank, the Development Bank, the Exim Bank, the National Bank, the

State Bank of India, a corresponding new bank, a regional rural bank and a subsidiary bank.

Under sub-sec. (3), for the purpose of this section, ""banking company"" will include a Nationalised Bank, which will fall under the provisions of the

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act 5 of 1970). Under S. 9 of the said Act, the Central Government is

empowered to make a scheme for carrying out the provisions of the Act after consultation with the Reserve Bank. It is not necessary to refer to the

provisions in detail. Suffice it to point out that a Board of Directors is constituted under the scheme made under the said section. Under sub-sec.

(5) of S. 9 of Act 5 of 1970, every scheme made by the Central Government shall be laid, as soon as may be after it is made, before each

House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions and if,

before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the

scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no

effect, as the case may be. Any such modification or annulment shall, however, be without prejudice to the validity of anything previously done

under that scheme. It is seen that the Central Government has framed Nationalised Banks (Management and Miscellaneous Provisions) Scheme,

1970 in exercise of the powers conferred on it by S. 9 of the Act.

47. The petitioner invited my attention to Ss. 45D, 45T and 46A of the Banking Regulation Act, 1949. Those sections will come into play only

when there is a proceeding for winding up a banking company. They cannot be invoked, in these proceedings under Art. 226 of the Constitution of

India.

48. In the circumstances, this Court cannot frame or formulate any guidelines as prayed for by the petitioner. The net result of the analysis of the

above facts and circumstances of the case is that the two prayers contained in the writ petition cannot be granted to the petitioner. No argument

was advanced by the petitioner as to whether this Court should grant any relief in a moulded form. No prayer was made by the petitioner. On the

facts and circumstances of the case, I am of the view that it is not possible to grant any such relief in moulded form when it is found that the reliefs

actually prayed for by the petitioner cannot be granted in his favour.

49. In the circumstances, the writ petition fails and it is dismissed. However, there will be no order as to costs.

50. Petition dismissed.