(2015) 05 RAJ CK 0146

In the Rajasthan High Court

Case No : Civil Writ Petition No. 26 of 2013

Sajjan Singh Bhati APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Banking Regulation Act, 1949 — Section 22, 22(1), 5(b)
Multi-State Cooperative Societies Act, 2002 — Section 49(2)(h)(k), 67

Citation : (2016) 1 BC 674 : (2015) 4 CDR 1989 : (2015) 4 RLW 2830

Hon'ble Judges : Sunil Ambwani, C.J;Ajit Singh, J

Bench : Division Bench

Advocate : S.P. Sharma and Kaushal Sharma, for the Appellant; M.S. Singhvi, Vinit Dave, Mahesh Bora, Arun Kumar, Ravi Bhansali, Pankaj Sharma, Girish Sankhla and S.S. Ladrecha, A.A.G., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Sunil Ambwani, C.J—Heard learned counsels appearing for the parties.

2. By this writ petition, the petitioner has prayed for the following reliefs:--

"It is, therefore, most respectfully prayed by the humble petitioners, before your kind Lordships that; this writ petition filed by the petitioners, may kindly be allowed with cost and;

(i) By an appropriate writ, order or direction, the respondent State Government and so also respondent Union of India, may very kindly be directed to immediately issue guidelines to stop and put a bank on the financial and banking activities, being carried out by various Credit Cooperative Societies, spread over in the State of Rajasthan and so also in other states, so as to protect healthy banking system, established by the Reserve Bank of India.

(ii) By an appropriate writ, order or direction, the respondent No. 1 to 8 may very kindly be directed to take necessary action in the matter, so that, illegal activities, being carried out, in the nature of financial and banking activities, by the respondent No. 9 to 12 societies and other such credit cooperative societies which are either registered under Rajasthan Cooperative Societies Act, 2001 or under The Multi-State Cooperative Societies Act, 2002, could be stopped and necessary directions, may kindly be issued for refund of money of public, with interest, who have invested money with these societies or a committee may kindly be directed to be appointed under supervision of Reserve Bank of India, to find out the ways for solution of the problem.

(iii) By an appropriate writ, order or direction, the registration certificate of the private respondent credit cooperative societies, and others if found doing banking activities, may kindly be seized and the properties of such societies may kindly be taken over by the Government, by appointing administrator so as to protect the public money, in larger public interest.

(iv) Any other order or direction which the Hon''ble Court deems fit and proper may kindly be passed in the matter."

3. On 19.11.2014, this Court passed following order:--

"1. In this writ petition filed in public interest, the petitioner, an Advocate, has brought to the notice of the Court large scale banking business done by various Cooperative Societies registered under the Multi-State Cooperative Societies Act, 2002 and the Cooperative Societies registered under the Rajasthan Cooperative Societies Act,2001 without taking out licence under Section 22, of the Banking Regulation Act, 1949.

2. It is alleged that Sanjivani Credit Cooperative Society Ltd. - respondent No. 9 is a Multi-State Cooperative Society and that respondents Nos. 10, 11 and 12 are State Level Cooperative societies. They are not authorised to carry on banking business by accepting deposits and giving interest to the general public either by opening the accounts directly or after their spot enrolment for which these Cooperative Societies are also operating ATM facility without obtaining licence under the Banking Regulation Act, 1949.

3. A large number of documents have been filed including FIRs which clearly demonstrate and establish on record that respondents Nos. 9 to 12 are actively engaged in the banking business. They are accepting deposits by enrolling the persons as members and giving interest on such deposits. They are giving pass-books and also offering ATM cards. The petitioner has also annexed a large number of documents to show that amount is collected from the general public by way of deposit on the false promise of getting higher rate of interest, and also prizes to be given by lottery on which winners may be given cars, scooters, mobile phones or gold coins. The deposits are then diverted for private use and for illegal activities. It is alleged that the politicians in the State run these cooperative societies and are regularly opening branches of these cooperative societies commonly known and termed as Cooperative Banks.

4. A preliminary objection has been raised to the maintainability of the writ

petition by the petitioner who is an Advocate and was himself engaged in the business of banking under the name of Mateshwari Credit Cooperative Society. It is alleged that several FIRs have been lodged against the petitioner and thus, he is not the person who is competent under the Rules of the Court to file Public Interest Litigation.

5. In response to the preliminary objection raised by learned counsel appearing for the respondents Nos. 9 to 12, the petitioner submits that he was the Chairman of one of such society. The business was, however, closed down and that all accounts have been settled. It is stated that he was in legitimate business of cooperative society but since some of his employees had committed fraud, his business had to be closed. He is no longer in any such business for last many years and that in respect of each of FIRs on the deposit of money, final reports have been submitted. It is submitted that though the petitioner may appear to be a concerned person but since he has suffered himself, he wishes to bring notice of the Court the ill-deeds of the other cooperative societies who are carrying on banking business. He wants to save general public from the losses which they may suffer in the hands of unscrupulous persons.

6. We do not find that the petitioner has approached the Court with any ulterior motive or ill will and, accordingly, the objections are over-ruled.

7. Learned counsel appearing for the respondents Nos. 9 to 12 have contested the averments made in the petition. It is stated that they are registered under the Multi-State Cooperative Societies Act, 2002 and Rajasthan Cooperative Societies Act,2001 and are carrying on their business in accordance with the bye-laws registered under the aforesaid Acts. It is submitted that respondents Nos. 9 to 12 are not carrying on any banking business. They are engaged in providing loans to its members in accordance with the approved guidelines and registered bye-laws which is perfectly legal activity. The respondents, however, have not given the source of the capital from the amount is advanced to its members. They have also failed to specify the purpose for which the amounts are advanced as loans.

8. The respondent No. 2 - Union of India has filed a counter affidavit stating that respondent No. 9 and 10 are Multi-State Cooperative Societies and respondents Nos. 11 and 12 are State Level Cooperative Societies. It is admitted that no cooperative society can start banking business unless it is registered as a Cooperative Bank and unless it fulfills all the conditions of registration and obtains a licence for carrying on banking business under the Banking Regulation Act, 1949.

9. The petitioner has annexed a reply given by the Reserve Bank of India under the Right to Information Act, 2005, in which, it is clearly stated that Multi-State Cooperative Society cannot carry on any banking business unless it obtains licence from the Reserve Bank of India.

10. We are, prima facie, satisfied that a large amount of money is being collected

from unwary and innocent people by the respondents-societies in the name of attractive banking offering prizes by lottery. Most of the deposits are of poor people. By issuing attractive advertisements for deposits, the respondents Nos. 9 to 12 are engaged in the activities in accepting the deposits by issuing pass-book, opening branches and ATM counters. These activities are nothing but banking activities, which cannot be said to be valid activities of a cooperative society.

11. In The Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd. Vs. The Maharashtra State Co-operative Bank Ltd. and Others, AIR 2004 SC 141 : (2003) 117 CompCas 618 : (2003) 8 JT 170 : (2003) 9 SCALE 84 : (2003) 11 SCC 66 : (2003) 48 SCL 319 : (2003) 4 SCR 1071 Supp : (2004) 1 UJ 441 , the Hon''ble Supreme Court held that Multi-State Cooperative Society cannot carry out banking business until and unless a licence is issued by the Reserve Bank of India under the Banking Regulation Act. The relevant paras 18 and 46 are quoted below:--

"18. In view of the above, we hold that the RBI by virtue of its power under Section 22 cannot grant a license to any cooperative bank unless it is a state co-operative bank or a central co-operative bank or a primary co-operative bank. It would be necessary that a declaration under the NABARD Act be first obtained...."

"46. It is to be seen that the RBI can only give a license to a state co- operative bank which has been so declared by a particular State. As the definition of co-operative societies in the NABARD Act is restricted to co-operative societies registered under State Acts and as the provision is for a State to declare a co-operative society as a "state co- operative bank" the license, which can be issued by the RBI, can only be in respect of that State. Merely because one State declares a co- operative society as a "state cooperative bank" would not enable the RBI to issue that society a license to carry on banking business in other States or in the rest of the country. In this case, the RBI was wrong in issuing a license to the Appellants for the States of Maharashtra and Goa when, admittedly, the Appellants had not been declared a state co-operative bank in the State of Goa. Thus, it is held that the banking license could not have been issued for the State of Goa."

12. Let a reply be filed by the Reserve Bank of India, Central Registrar of Multi-Cooperative Society as well as Registrar, Rajasthan Cooperative Society within four weeks.

13. As an interim measure, until further orders, the Central Registrar, Multi-State Cooperative Society, New Delhi, the Registrar, Cooperative Society, Rajasthan, Jaipur, the District Collectors, Barmer, Jaisalmer and Jodhpur and Director General of Police, Rajasthan will ensure that respondents Nos. 9 to 12 or any other Multi-State Cooperative Society or the State Cooperative Society do not carry on any banking business in the State of Rajasthan, unless they have a licence under the Banking Regulation Act, 1949. These cooperative societies will

not be allowed to carry on banking business namely, to take deposits, opening branches for its banking activities, installation and running of ATMs and distributing loans to the depositors. The respondents will not allow any banking business by the Multi-State Cooperative Society and the District Cooperative Society unless they have licence from the Reserve Bank of India under the Banking Regulation Act, 1949.

14. The petitioner is also directed to file audited balance-sheet of Mateshwari Credit Cooperative Society and the latest income-tax returns filed by it. The petitioner will also give details of the settlement of the accounts of the claimants including those who has filed FIRs. The entire financial statement of Mateshwari Credit Cooperative Society may be filed within four weeks.

List on 04.02.2015."

4. An application for clarification was made, on which, an order was passed on 18.03.2015 which is as follows:--

"The petitioner, a practicing Advocate, has preferred this petition for writ to have direction for the respondents to issue necessary guidelines to ban financial and banking activities carried out by various Credit Cooperative Societies including the respondents Nos. 9 to 13.

On 19.11.2014, noticing the facts averred in the petition for writ, this Court by relying upon the judgment of Hon''ble Supreme Court in The Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd. Vs. The Maharashtra State Co-operative Bank Ltd. and Others, AIR 2004 SC 141 : (2003) 117 CompCas 618 : (2003) 8 JT 170 : (2003) 9 SCALE 84 : (2003) 11 SCC 66 : (2003) 48 SCL 319 : (2003) 4 SCR 1071 Supp : (2004) 1 UJ 441 , passed an interim order in following terms:--

"As an interim measure, until further orders, the Central Registrar, Multi-State Cooperative Society, New Delhi, the Registrar, Cooperative Society, Rajasthan, Jaipur, the District Collectors, Barmer, Jaisalmer and Jodhpur and Director General of Police, Rajasthan will ensure that respondents Nos. 9 to 12 or any other Multi-State Cooperative Society or the State Cooperative Society do not carry on any banking business in the State of Rajasthan, unless they have a licence under the Banking Regulation Act, 1949. These cooperative societies will not be allowed to carry on banking business namely, to take deposits, opening branches for its banking activities, installation and running of ATMs and distributing loans to the depositors. The respondents will not allow any banking business by the Multi-State Cooperative Society and the District Cooperative Society unless they have licence from the Reserve Bank of India under the Banking Regulation Act, 1949."

As desired under the order aforesaid, a reply to the writ petition has already been filed by the Reserve Bank of India stating therein that "the role of the RBI in the regulation and supervision of co-operative societies is limited to those of "co-operative banks". Co-operative societies that are not accepting deposits from the public (non-members) do not fall within the regulatory purview of RBI. However, those co-operative societies that are carrying on the business of "banking" are required to obtain a license from RBI. RBI does not have any information regarding the business carried on by respondent Nos. 9 to 12."

Today the matter came up before us on the applications preferred by some of the cooperative societies seeking modification of the directions given on 19.11.2014.

At the threshold Shri M.S. Singhvi, learned counsel appearing on behalf of respondent Sanjivani Credit Cooperative Society Ltd., states that conduct of the petitioner disentitles him to approach this Court by claiming this petition for writ in public interest.

We are not inclined to entertain the preliminary objection raised being already considered and decided by this Court on 19.11.2014. In the order aforesaid this Court arrived at the conclusion that the petitioner has not approached the Court with any ulterior motive or ill-will.

Shri Ravi Bhansali, learned counsel appearing on behalf of respondent Union of India submits that the Registrar, Cooperative Societies, New Delhi has already initiated inspection of the respondent cooperative societies except the respondent No. 11 to ensure that the societies may not undertake banking activities or any activity i.e. not in consonance with the applicable by-laws and the provisions of Multi State Cooperative Societies Act, 2002.

Learned counsels appearing on behalf of the respondents Nos. 9 to 13 states that the cooperative societies are neither involved in banking activities nor intend to do so. According to them the activities of the societies are confined to the projects necessary for achieving aims and objects accepted in their by-laws.

On behalf of the respondent No. 13, it is stated that the society is involved purely in socio economic activities pertaining to its members. The society never issued any advertisements introducing its activities to public at large. According to learned counsels the respondents Nos. 1 to 8 are not permitting the cooperative societies even to carry on activities for which they are legally entitled as per applicable by-laws, the Multi State Cooperative Societies Act, 2002 and the Rajasthan Cooperative Societies Act, 2001, as the case may be.

We have considered the arguments advanced.

The petitioner has approached this Court to stop banking activities by the respondent cooperative societies who are not having requisite licence as per provisions of the Banking Regulation Act, 1949. Some of the advertisements published in different news papers on behalf of respondents Sanjivani Credit Cooperative Society Ltd. and Navjivan Credit Cooperative Society Ltd. indicate about involvement of the societies in banking activities, however, at this stage we do not want to give any definite finding in this regard but certainly we desire to record our displeasure about such misleading publicity undertaken by the societies. We are also of considered opinion that the respondent societies are not entitled to undertake any banking activity without having licence under the Act of 1949.

Looking to the factual position noticed above we deem it appropriate to dispose of the applications with following directions as interim measures:--

"1. No Multi State Cooperative Society or any other cooperative society created and registered under the Multi State Cooperative Societies Act, 2002 or any other State legislation including the Rajasthan Cooperative Societies Act, 2001, as the case may be, shall carry on "banking" activity as defined under Section 5(b) of the Banking Regulation Act, 1949;

2. The respondents Nos. 9 to 13 (except the respondent No. 11) shall be at liberty to carry on their activities as per applicable by-laws. While doing so, the cooperative societies shall ensure absolute compliance of the provisions of Multi State Cooperative Societies Act, 2002 including prohibitions and restrictions given therein;

3. The respondent No. 11 shall be at liberty to carry on its activity as per applicable by-laws. While doing so, the society shall ensure absolute compliance of the provisions of the Rajasthan Cooperative Societies Act, 2001 including prohibitions and restrictions given therein;

4. The respondent cooperative societies shall confine their activities within the scope of applicable by-laws among their existing members only. If any cooperative society desires to provide its membership to any person, then that shall examine eligibility of such person as per applicable law and grant that by recording satisfaction of the competent authority to do so;

5. The respondent cooperative societies may publish or otherwise exhibit their activities by issuing advertisements but those shall be only for use and consumption of their members. No advertisement shall be issued by any of the respondent cooperative society to allure public at large to become its member or to avail benefit of its scheme without getting such advertisement approved by the Registrar, Multi State Cooperative Societies or the Registrar, Rajasthan State Cooperative Societies, as the case may be;

6. The Directors and other elected/nominated/appointed office bearers of the respondent cooperative societies shall furnish details of their identity, addresses and property (immovable as well as movable) to Deputy Registrar (Judicial) of this Court within a period of 15 days from today; and

7. The Registrar Multi State Cooperative Society, New Delhi and the Registrar, Cooperative Societies Rajasthan shall ensure compliance of the directions given by periodical inspection of the record of the respondent cooperative societies falling within their jurisdiction and also to report this Court about their functioning.

Put up on 20.04.2015."

5. It is stated by learned counsel appearing for the respondent - Cooperative Societies, in which the respondent No. 9 is Multi-State Cooperative Society that they are carrying on business strictly in accordance with the provisions of the Rajasthan Cooperative Societies Act, 2001 and the Multi-State Cooperative Societies Act, 2002, under which, they are entitled on the registration of the Cooperative Society and a Multi-State Cooperative Society to accept the deposits from its members. Reference has been made to the provisions of Section 50 and 51 of the Rajasthan Cooperative Societies Act, 2001 and the provisions of Section 49(2)(h)(k) and (l) and Section 67 of the Multi-State Cooperative Societies Act, 2002 as well as the Bye-laws of the Cooperative Societies registered under the Rajasthan Cooperative Societies Act, 2001 and with the Central Registrar under the Multi-State Cooperative Societies Act, 2002 to justify the deposits and borrowings.

6. Learned counsel appearing for the petitioner submits that respondents Cooperative Societies are not Cooperative Banks under the State or the Central Act. They are Cooperative Societies carrying banking business as prescribed under Section 22 of the Banking Regulation Act, 1949 (''the Act of 1949''). It is submitted that Section 5(b) of the Act of 1949 defines "banking" and Section 22 of the Act of 1949 prohibits banking business unless accepted after obtaining licence. Section 5(b) and Section 22(1) of the Act of 1949 are quoted as follows:--

"5(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;"

22. Licensing of banking companies.--(1) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose."

7. It is submitted by learned counsel for the petitioner that Reserve Bank of India regulates banking business in respect of all the banking activities carried out by the banks under the Act of 1949. The Act of 1949 provides for Regulations, under which, the Reserve Bank of India is under obligation to control the banking business. In case, Cooperative Societies and the Multi-State Cooperative Societies are allowed to do banking without a licence, the Regulations of Reserve Bank of India would cease to have control over banking business and would give rise to an anomalous situation effecting the economy of the country. It is submitted that Sanjivani Credit Cooperative Society - respondent No. 9 is a Multi-State Cooperative Society. It has transacted banking to the extent of more than 200 crores, which has been invested in the banks and for giving personal loans, mortgage and yearly loans, of which, details are not provided in the balance-sheet. With a paid up share capital of Rs. 504600/-, it has accepted deposits of

Rs. 2772707754/- in various schemes of interest rates of 18% to 32% per annum which is much above the rates permitted by the Reserve Bank of India. The loans and advances of Rs. 2700930526.25 are not reflected clearly in the balance-sheet nor sufficient securities in giving such loans and advances are taken. There are several deposit scheme such as Sanjivani Gullak Yojna, Sanjivani Super Scheme, Sanjivani Pension Yojana etc., which are widely advertised in general public is attracted to deposit money on the attractive prizes of Cell Phone, Motor Cycle, Car etc. These deposits are not secured. There is no security in terms of RBI and SEBI guidelines for investors. The Regulations such as Cash Reserve Ratio and Statutory Liquidity Ratio are not applicable to Cooperative and Multi State Cooperative Societies leaving investors'' fund at risk. Although it is stated that nominal members are not given loans, most of the loans are given to the nominal members for which the complaints have been made and enquiries are pending with the Registrar, Rajasthan Cooperative Societies and the Central Registrar, Cooperative Societies, in which, investigations having not been made.

8. It is submitted by learned counsel appearing for the Registrar, Cooperative Societies and the Central Registrar, Cooperative Societies that they do not have any machinery to investigate the complaints and to carry out the investigation. They hand over these complaints to the machinery of the State Government with no effective steps taken so far.

9. Learned counsel appearing for the Reserve Bank of India has categorically stated that no banking as defined under Section 5(b) of the Act of 1949 can be carried out without a licence under Section 22 of the Act of 1949. In paragraphs 2, 4, 5, 6 and 7 of the reply filed on behalf of Reserve Bank of India, Shri Shekhar Choudhary, Assistant General Manager, Department of Cooperative Banking Supervision, Reserve Bank of India - Officer-incharge has stated as follows:--

"3. That the role of the RBI in the regulation and supervision of co-operative societies is limited to those of "co-operative banks". Co-operative societies that are not accepting deposits from the public (non-members) do not fall within the regulatory purview of RBI. However, those co-operative societies that are carrying on the business of "banking" are required to obtain a license from RBI. RBI does not have any information regarding the business carried on by respondent Nos. 9 to 12.

4. That RBI had issued letters to the Registrar of Cooperative Societies, Rajasthan requesting him to furnish to RBI the names of co-operative Societies that were/are carrying on banking business without having a licence issued by RBI. Various reminders were also issued to the Registrar, Co-operative Societies, Rajasthan. Copies of all such communications as issued by RBI to the Registrar, Co-operative Societies, Rajasthan, are collectively produced and marked as ANNEXURE-R/3-1. Thereafter, RBI vide its communication dated 17.10.2014 again requested the Registrar, Co-operative Societies, Rajasthan to provide

information/documents/evidence regarding banking business of four Co-operative Societies (present respondent No. 9 to 12). A copy of communication dated 17.10.2014 is hereby produced and marked as ANNEXURE-R/3-2.

5. That the RBI even sent communication dated 08.03.2013 and a reminder dated 11.04.2014 to the Central Registrar, Office of Central Registrar Co-operative Societies, Government of India and requested the authority concerned to initiate desired inquiry in regard to the activities of respondents No. 9 to 11. The RBI got a legal notice on behalf of the present petitioner and immediately thereafter, the RBI issued various communications to the Central Registrar as well as the Registrar, Co-operative Societies, Rajasthan. Copies of communications dated 08.03.2013 and 11.04.2014 are collectively produced and marked as ANNEXURE-R/3-3. Thereafter, yet another communication dated 21.11.2014 was also issued to the Central Registrar. A copy of communication dated 21.11.2014 is hereby produced and marked as ANNEXURE-R/3-4.

6. That the Joint Registrar (Banking), Office of Registrar, Co-operative Societies, Rajasthan sent a communication dated 27.11.2014 and alongwith the said communication the details regarding Co-operative Societies situated in various Districts of all the seven Divisions were sent to the RBI. It becomes apparent from this communication that information from certain units were still not received. The said communication was received at the Jaipur office of the RBI on 16.12.2014. Copy of communication dated 27.11.2014 is hereby produced and marked as ANNEXURE-R/3-5.

7. That after due examination entire information as provided the Registrar, Co-operative Societies, Rajasthan, it was found that five societies were accepting deposits from non-members. Details regarding paid-up capital of two such societies were also available whereas, the said information regarding other three societies was not available. The respondent Bank compiles the relevant information and the same has been sent to the Central Office vide communication dated 06.01.2015. A copy of communication dated 06.01.2015 alongwith statement showing particulars of the Primary Credit Societies is hereby produced and marked as ANNEXURE-R/3-6. Thereafter, RBI vide its communication dated 13.01.2015 addressed to the Registrar, Co-operative Societies, Rajasthan, sought all the documents of the said five Credit Co-operative Societies related to banking business and RBI also inquired about the proceedings initiated by the Registrar against the said Co-operative Societies for violation of Section 22(1) of the BR Act. The said communication has been sent by E-mail to the concerned authority and a hard copy shall be sent/delivered on 15.01.2015. A copy of communication dated 13.01.2015 as issued by the respondent Bank to the Registrar, Cooperative Societies, Rajasthan, is hereby produced and marked as ANNEXURE-R/3-7."

10. Learned counsel for the Registrar, Rajasthan Cooperative Societies also appearing for the Central Registrar under the Multi-State Cooperative Societies Act, 2002, states that both the charges are held by the Registrar, Rajasthan

Cooperative Societies and that these societies can carry out business in accordance with the registered bye-laws. He, however, admits that banking business can only be carried out only in accordance with the licence under Section 22 of the Act of 1949.

11. The issue involved in this writ petition is whether a Cooperative Society registered under the Rajasthan Cooperative Societies Act, 2001 or a Multi-State Cooperative Society registered under the Multi-State Cooperative Societies Act, 2002 is entitled to carry on banking business without a licence under Section 22 of the Banking Regulation Act, 1949?

12. Learned counsel appearing for the respondent No. 9 registered under the Multi-State Cooperative Societies Act, 2002 states that respondent No. 9, is permitted to carry out the business other than the banking business in accordance with the provisions of the Multi-State Cooperative Societies Act, 2002 and the registered bye-laws. It is submitted that after the order was passed by this Court on 19.11.2014. the respondent No. 9 has stopped deposits from nominal members. It has stopped ATMs which were installed within the premises of the Society, and that no cheque books are issued. The facility of deposits and loans are given only to the regular members in accordance with the provisions of the bye-laws. He submits that activity of the respondent No. 9 in accepting deposit and giving loans is not a banking activity as deposits are not accepted from public. He submits that Cooperative Society is formed for the benefits of members and that a Cooperative Society can carry on its business within the purview of the provisions of the Rajasthan Cooperative Societies Act, 2001 and the Multi-State Cooperative Societies Act, 2002 and its registered bye-laws. It does not require a licence under the Act of 1949. It is submitted that the petitioner was also running a Cooperative Society in which deposits were accepted. This Court has directed an enquiry into the affairs of the petitioner both as Director of the Cooperative Society and as Advocate and that Superintendent of Police is carrying out the enquiry. The petitioner has not filed balance-sheet and the income tax returns despite direction issued by the Court and thus, he is not entitled to maintain the writ petition.

13. After hearing learned counsels for the parties, we are of the view that activities carried out by the respondents Nos. 9 to 12 as Cooperative Societies may be within the purview of legitimate business under the Rajasthan Cooperative Societies Act, 2001 and the Multi-State Cooperative Societies Act, 2002 and the registered bye-laws, these activities in accepting for the purpose of lending and investment, the deposit from the public, repayment on demand and its withdrawal, fall within the definition of "banking" under Section 5(b) of the Act of 1949. The word "public" in the definition of the word "banking" cannot be restricted to general public. The word "public" will also include those persons who are nominal members, ordinary members and the members of any category under the bye-laws of the Cooperative Society so long as deposits are accepted without any restriction from such members who may be enrolled as members on

the same day at the time of accepting deposits. Even the person enrolled as nominal member, does not fall outside the purview of the word "public" and that any deposits from the members on interest and for which amount is to be repayable on demand or otherwise, is an activity which amounts to banking activity.

14. We do not find any material or any assertion that there is any restriction for enrollment of members for making deposits. This virtually amounts that any member of general public, who wants to make deposit, can seek membership, which is readily granted to him. In this manner, there is no restriction in any of the member of the general public to become a nominal member or ordinary member or member of any class of the society and make deposits in the Cooperative Societies.

15. Even if facility of withdrawal by cheque is not provided, the words, "and otherwise", for repayment under Section 5(b) will cover the activity of the societies as banking activities, for which, they are required to take out licence under Section 22 of the Act of 1949 and to be regulated by the Regulations of Reserve Bank of India for security of the investors. On 26.03.2014, the Joint Secretary to the Government of India and Central Registrar of Cooperative Societies has written a letter to the Registrar, Cooperative Societies of all States informing that Reserve Bank of India (RBI) is of the view that acceptance of deposit from nominal members by Multi State Credit Cooperative Societies may have to be construed as accepting deposit from Public and carrying out banking activity. The RBI has instructed that Multi State Credit Cooperative Societies shall, henceforth, discontinue accepting deposit from nominal members. The letter dated 26.03.2014 is quoted as under:--

"OFFICE OF THE CENTRAL REGISTRAR OF CO-OPERATIVE SOCIETIES

ORDER

1. Vide order of even number dated 29th May, 2013, certain instructions were issued for registration and extension of area of operation of Multi-State Cooperative Societies having objects and functioning relating to thrift and credit.

2. In order to protect the interest of members and public, it has been decided to extend the applicability of the instructions issued vide this Department''s order of even number dated 29th May, 2013 to the multipurpose cooperative societies.

3. It has also been decided that, henceforth, the primary multi state cooperative societies shall be registered initially with only two contiguous states, UTs as area of operation. After starting the operation, the society may submit proposal for amendment of its bye-laws for extending the area of operation.

4. The existing multipurpose and credit societies shall have to submit N.O.C. from the concerned Registrars for extending type of activities and area of operation.

5. Reserve Bank of India (RBI) is of the view that acceptance of deposit from nominal members by Multi State Credit Societies may have to be construed as accepting deposit from Public and carrying out banking activity. In view of the observation of RBI, it is therefore instructed that Multi State Credit Societies shall, henceforth, discontinue accepting deposit from nominal members.

Sd/- (Ashish Kumar Bhtani) Joint Secretary to the Government of India & Central Registrar of Cooperative Societies"

16. We are concerned here with the protection of the general public which includes members, nominal members, ordinary members and members of any category under the bye-laws of Cooperative Societies. A large number of instances have come to notice and it is admitted by learned counsel appearing for the Registrar, Rajasthan Cooperative Societies that a number of Cooperative Societies offering attractive ''Ponzi'' schemes have vanished after accepting the deposits from members leaving their investments in jeopardy.

17. The activities of the Cooperative Societies in the State of Rajasthan have clearly demonstrated that the deposits and investments of general public, who can become nominal members and ordinary members of the Cooperative Societies, and for them lucrative schemes are being floated by the Cooperative Societies are at risk. Their investments are not covered by any protection. The provisions under the Multi-State Cooperative Societies Act, 2002 restrict the deposits upto ten times the paid up capital and the reserve. This condition is not sufficient to protect the deposits if the reserves can be advanced as loans without sufficient security. If such a restriction was sufficient, the entire banking activity could be carried out without obtaining licence under the Act of 1949. The Reserve Bank of India circulars and directives are binding on all the banks which are licensed under the Act of 1949. This protection must apply to all kind of banking activities which is defined under Section 5(b) of the Act of 1949. We do not agree with the submission of learned counsel appearing for the respondent No. 9 that under the legislative scheme, Multi-State Cooperative Society is permitted to carry out banking activity which does not fall within the meaning of Section 5(b) of the Act of 1949. He submits that legislative policy provides Multi-State Cooperative Society to carry out the activities of taking deposits from its members on interest and that so long legislative scheme permits such activity, the respondent is not violating the provisions of the Act of 2002. The argument is devoid of any substance.

18. So far as the allegation against the petitioner is concerned, this Court has already directed the Superintendent of Police of the concerned district to enquire about the complaints of the investors. In case the petitioner has committed any misconduct under the Regulation of Bar Council of India, a complaint can be made against him to the Bar Council of Rajasthan. These allegations against the petitioner was not detain us to decide the writ petition in the larger public interest.

19. The writ petition is partly allowed with a direction that respondents Nos. 9 to 12 or any other Cooperative Societies or the Multi-State Cooperative Societies registered under the Rajasthan State Cooperative Societies Act, 2001 and the Multi-State Cooperative Societies Act, 2002 shall not accept deposits of any kind and under any scheme from public, including nominal members, ordinary members or the members of any category of these Societies, except after obtaining licence under Section 22 of the Banking Regulation Act, 1949.

20. The restriction will, however, not apply for repayment of the deposits for a period of three months. If licences are obtained within three months under Section 22 of the Banking Regulation Act, 1949, the respondents Nos. 9 to 12 as well as other Cooperative Societies in the State of Rajasthan may be allowed to accept the deposits.

21. All the authorities of the State of Rajasthan will strictly enforce these aforesaid directions.

