
(2022) 11 DEL CK 0179

In the Delhi High Court

Case No : Civil Writ Petition No. 2225 Of 2020, Civil Miscellaneous Application
No. 20491 Of 2021

Sandeep Bhalla And Ors

APPELLANT

Vs

Reserve Bank Of India And Ors

RESPONDENT

Date of Decision : 30-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 136, 226
Banking Regulation Act, 1949 — Section 22, 30, 35A
Deposit Insurance Credit Guarantee Corporation Act, 1961 — Section 16(1)
Multi-State Cooperative Societies Act, 2002 — Section 33

Citation : (2022) 11 DEL CK 0179

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Sandeep Bhalla, Jayant Bhushan, H.S. Parihar, Kuldeep S. Parihar, Ikshita Parihar, Rakesh Kumar, Sunil, Aditya Madan, Ramesh Babu, Manisha Singh, Nisha Sharma, Sanya Panjwani

Final Decision : Dismissed

Judgement

Prateek Jalan, J

1. The present petition under Article 226 of the Constitution is directed principally against directives dated 23.09.2019, 26.09.2019, 03.10.2019, 14.10.2019 and 05.11.2019 issued by the respondent No.1-Reserve Bank of India [hereinafter, "RBI"]. By the aforesaid directives, issued under Section 35A of the Banking Regulation Act, 1949 [hereinafter, "BR Act"], the RBI imposed certain restrictions on withdrawals by depositors from their accounts in respondent No. 2 - Punjab and Maharashtra Co-operative Bank Limited [hereinafter, "PMC Bank"].

A. Factual Background

2. The petitioners are account holders in PMC Bank. The petitioner Nos. 2 and 3 are the parents of petitioner No. 1. The petitioner Nos. 2 and 3 hold four fixed

deposits in PMC Bank amounting to a total of ₹97 lakhs. The contentions in the writ petition are that PMC Bank was established in the year 1984 as an Urban Co-operative Bank [hereinafter, "UCB"]. It was conferred with the status of a Scheduled Bank in the year 2000 and with the status of a Multi-State Urban Co-operative Bank in the year 2004.

3. According to the petitioners, PMC Bank's annual reports for the year 2018-19 showed deposits in excess of ₹11,000 crores, income of almost ₹1,300 crores and a profit of almost ₹100 crores, with a net ratio of Non-Performing Assets of 2.19%. It is contented that the petitioners, being depositors in PMC Bank, were taken by complete surprise when the RBI issued the impugned directives restricting the permissible extent of withdrawal from the amounts deposited by them in PMC Bank. From the various impugned directives placed on record, it appears that PMC Bank was first restrained from granting loans and advances, making investments, incurring liabilities and disbursing any payments. As far as the petitioners are concerned, the effective restrictions against them were that PMC Bank was restrained from releasing an amount in excess of ₹1,000/- from the total balance in each savings account or current account or deposit account. This amount was increased to ₹10,000/- and thereafter to ₹25,000/- by subsequent directives dated 26.09.2019 and 03.10.2019. The amount of ₹25,000/- was subsequently increased to ₹40,000/- by a directive dated 14.10.2019, noting that the financial position of PMC Bank had been substantially impaired due to fraud perpetrated on it by certain persons. While increasing the amount to ₹50,000/- by a directive dated 05.11.2019, the RBI noted that 78% of the depositors would thus be able to withdraw their entire account balance in PMC Bank.

4. An Administrator was also appointed in respect of PMC Bank by a directive dated 26.09.2019. The Administrator-Mr. J B Bhorla, has been arrayed as respondent No. 5 in this petition.

5. The grievance of the writ petitioners is that the impugned directives impose a fetter on their access to their own funds lying deposited in PMC Bank. The petitioners have drawn attention to a fraud committed by various persons in management of PMC Bank, which led to the substantial erosion of PMC Bank's financial position. It is contented that the aforesaid position was a result of inadequate supervision and control by the RBI, being the regulator of the banking sector. It is further stated that one of the senior officers of the RBI namely, Mr. Laxman Kamble [hereinafter, "Kamble"], who was responsible for supervising UCBs during the period of these irregularities, thereafter took employment with PMC Bank. Thus, in addition to allegations of actionable negligence against the RBI, the petitioners, in fact, plead fraud and active collusion on the part of the concerned officers of the RBI. In these circumstances, the petitioners seek the following reliefs in this writ petition:-

"I. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ/Order of Direction, quashing/setting aside or modifying

Directions with regards to Directive No. DCBS.CO.BSD-1/D-I/12.22.183/2019-20 dated 23rd September 2019, and subsequent directives dated 26 September 2019, Directive No. dated 3 October 2019, the Directive dated 14 October 2019 and dated 5 November 2019 (Attached as Annexures P 4 to Annexure P8) issued by the RBI to the extent that it sets limits on the withdrawals of Petitioners and other account holders.

II. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ/Order of Direction, holding that the directions issued by Reserve Bank of India are not in the interest of the depositors or in the public interests and modifying the directions issued vide directives/ press release mentioned at I above.

III. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other Writ/Order of Direction, directing Respondent No. 1 to issue directions to ensure that the liability of the Deposit Insurance Credit Guarantee Corporation to any one depositor in respect of his deposit in that bank in the same capacity and in the same right, shall be equal to the sum of deposits with that bank.

IV. That this Hon'ble Court be pleased to issue a Writ of Declaration or any other Writ/Order of Declaration, holding that section 16(1) of the Deposit Insurance Credit Guarantee Corporation Act, 1961, to the extent that it limits the liability of the Deposit Insurance Credit Guarantee Corporation to any one depositor in respect of their deposit in that bank in the same capacity and in the same right shall not exceed One Lakh Rupees, as being illegal and bad in law.

V. That pending and upon hearing this petition, this Hon'ble Court be pleased to direct the Reserve Bank of India to issue a statement clearly stating the timelines and safety for the deposits held by depositors with the PMC Bank, and to ensure that the Petitioners and depositors are paid their monies in full, along with interest.

VI. That pending and upon hearing this petition, this Hon'ble Court be pleased to direct the Reserve Bank of India to allow depositors to withdraw amounts up to the interest on their deposits so as to enable many of the senior citizen depositors to make their living.

VII. That pending and upon hearing this petition and the completion of the investigation conducted by the EOW, the Hon'ble Court be pleased to prevent Respondent No. 2 from crediting full salaries to the accounts of staff members outside of the PMC Bank until the depositors are paid in full.

VIII. Ad-interim reliefs in terms of prayer clause (V) to (VII) above.

IX. For such other and further orders as this Hon'ble Court deems fit in the facts and circumstances of this case.

X. For the costs of this petition. "

B. Submissions of parties

6. Mr. Sandeep Bhalla, petitioner No. 1, who appeared in person, advanced arguments on behalf of all the petitioners. He submitted that the impugned actions of the RBI have left innocent depositors, including senior citizens like petitioner Nos. 2 and 3, unable to access their own savings. He argued that the negligence and complicity of the RBI is evident from the following:-

a. Mr. Bhalla referred to affidavit of the petitioners dated 02.10.2020 to submit that a former employee of PMC Bank had brought fraudulent activities to the attention of the RBI by a letter dated 28.01.2011. According to Mr. Bhalla, instead of taking independent action on the said complaint, the RBI only forwarded the complaint to PMC Bank, and thus entrusted the action upon the complaint to the perpetrators themselves.

b. Mr. Bhalla alleged that the RBI did not undertake statutory inspections under the BR Act as required and consequently, did not discover the mis-reporting of financial data, by which the management of PMC Bank was able to conceal its misfeasance.

c. Mr. Bhalla submitted that Kamble, who was in-charge of regulation of UCBs at the relevant time and, in fact, assisted the expert committee looking into allegations against PMC Bank, resigned from the RBI and was thereafter employed by PMC Bank itself.

d. Mr. Bhalla drew my attention to the fact that, even in the year 2018-19, well after the fraud was allegedly brought to the attention of the RBI in the year 2011, PMC Bank was given an Audit Classification 'A'. He contended that during this period, PMC Bank managed to attract several deposits and its portfolio of deposits more than trebled from approximately ₹3,400 crores in 2011 to ₹11,000 crores in 2019. Mr. Bhalla submitted that such enhancement in the deposits held by PMC Bank would not have occurred if the RBI had been vigilant with exposing the risks associated with PMC Bank in a timely manner.

7. Mr. Bhalla also argued two grounds relatable to Article 14 of the Constitution:-

a. Mr. Bhalla submitted that the actions of the RBI suffer from the vice of arbitrariness, which is demonstrated inter alia by the fact that the maximum withdrawal amount was repeatedly enhanced by issuance of new circulars every few days. He contended that this sequence of events shows non-application of mind on the part of the regulator while setting the initial withdrawal limits.

b. Mr. Bhalla's second Article 14 argument was one of discrimination. He submitted that depositors in other banks – particularly Yes Bank Limited [hereinafter, "Yes Bank"] – have been protected by the timely implementation of reconstruction schemes with the active intervention of the Union of India [hereinafter, "UoI"] and the RBI. He further submitted that in the case of PMC Bank also, the concerned authorities ought to have intervened in good time.

8. Mr. Jayant Bhushan, learned Senior Counsel for the RBI, submitted at the outset that the grievances raised in the present petition are no longer res integra

as the Bombay High Court has, in Haresh Tekchand Raisinghani and Ors. vs. Union of India and Ors. [Judgment dated 05.12.2019 in Writ Petition (L) No. 3030/2019 and connected matters], upheld the very same directives, holding that the RBI had rightly invoked its power under Section 35A of the BR Act to deal with the erosion in PMC Bank's financial position. Mr. Bhushan submitted that the aforesaid judgment of the Bombay High Court has been upheld by the Supreme Court [Order dated 31.07.2020 in SLP (Civil) Diary No. 13047/2020 [Guru Nanak Vidhyak Society vs. Reserve Bank of India & Ors.].].

9. With regard to the specific allegations advanced by Mr. Bhalla, Mr. Bhushan submitted as follows:-

a. He submitted that the alleged complaint from an ex-employee of PMC Bank dated 28.01.2011, although stated to be from one Ms. Manpreet Kaur, was in fact in the nature of an anonymous complaint, upon which no action was required to be taken by virtue of prevailing guidelines of the Central Vigilance Commission [hereinafter, "CVC"]. Although PMC Bank had two employees by the same name at the relevant time, both have denied making the complaint in question. In such circumstances, Mr. Bhushan submitted that the RBI was not required to act thereupon. He relied upon CVC circulars dated 31.01.2002, 11.10.2002 and 25.11.2014 in this regard.

b. Mr. Bhushan submitted that the aforesaid complaint was forwarded to the concerned officer of PMC Bank for their comments and not for disposal thereof. As the concerned records relating to the complaint have been weeded out of the RBI's records under a circular dated 28.03.2014, Mr. Bhushan submitted that the RBI was not in a position to clarify at this stage, with regard to the comments received from PMC Bank, if any, or the action taken thereupon.

c. Mr. Bhushan submitted that the petitioners' claim for restitution from the RBI on account of negligence and performance of its statutory duties is not maintainable in the light of the judgment of the Supreme Court in Pramod Malhotra and Others vs. Union of India and Others (2004) 3 SCC 415 [paragraph 25].

d. With regard to the allegations regarding Kamble joining PMC Bank, Mr. Bhushan submitted that such allegations cannot be adjudicated in the present petition, as Kamble has not been impleaded as a party respondent in the writ petition. Without prejudice to this contention, Mr. Bhushan referred to the RBI's affidavit dated 24.02.2022 to submit that a former employee is restricted from taking employment with any bank with which he or she had dealt with as an officer of the RBI. He submitted that Kamble only provided secretarial assistance to the expert committee and was not dealing with the regulation of the banking affairs of PMC Bank in which he was later appointed as the General Manager (Human Resources).

e. Mr. Bhushan submitted that the audit report in support of PMC Bank showed no adverse remarks which could have necessitated further scrutiny on part of the

RBI.

f. With regard to Mr. Bhalla's arguments on discrimination, Mr. Bhushan submitted that PMC Bank, being a co-operative bank, is not similarly placed as Yes Bank, which is a scheduled bank. He submitted that the two kinds of entity are vastly different, in respect of their ability to attract potential investors and the consequent potential for reconstruction. Nevertheless, Mr. Bhushan pointed out that a scheme of reconstruction has, in fact, been approved in the case of PMC Bank, whereunder complete repayment of deposits is contemplated, albeit over a staggered period of time.

g. Mr. Bhushan finally submitted that the Court's interference with the regulatory functions of the RBI in exercise of Article 226 jurisdiction is extremely limited. He relied, for this purpose, upon the judgments of the Supreme Court in *Peerless General Finance and Investment Co. Limited and Another vs. Reserve Bank of India* (1992) 2 SCC 343, *Shri Sitaram Sugar Company Limited and Another vs. Union of India and Others* (1990) 3 SCC 223, and a Division Bench judgment of this Court in *Holystar Natural Resources Pvt. Ltd. vs. Union of India* 2014 SCC OnLine Del 230 : (2014) 207 DLT 396.

10. With regard to the circumstances which led to the imposition of the directives upon PMC Bank, Mr. Bhushan drew my attention to the contents of the reply affidavit filed by the RBI, which notes that serious irregularities and mismanagement of the affairs of PMC Bank were reported, and that restrictions were imposed so as to avoid preferential payments by PMC Bank to any particular depositor or class of depositors. It is also submitted that by virtue of directions dated 05.11.2004 and 13.04.2020, limited additional withdrawal on the ground of hardship (for example, medical treatment, marriage, education, livelihood) have also been permitted.

11. Mr. Rakesh Kumar, learned Standing Counsel for the UoI, adopted the submissions of Mr. Bhushan. He additionally drew my attention to an affidavit dated 04.08.2020 filed by the UoI with regard to the distinction between the cases of PMC Bank and Yes Bank.

12. In rejoinder, Mr. Bhalla reiterated his challenge on the ground of negligence and discrimination. With regard to the first ground, Mr. Bhalla submitted that the RBI admittedly received the complaint dated 28.01.2011 and, even assuming that the complaint was anonymous or pseudonymous, did take action upon the complaint by referring it to PMC Bank. Relying upon the CVC circular dated 11.10.2002, Mr. Bhalla contended that the enquiry ought to have continued, albeit subject to CVC's consent. He submitted that the RBI failed to follow its own procedure with regard to complaints of fraud by weeding out the required material in the present case in three years rather than retaining it permanently, as required in correspondence related to fraud. Mr. Bhalla submitted that the RBI wrongly relied upon the absence of any adverse comments in the audit report relating to PMC Bank as the complaints were never referred to the internal

auditor at all.

C. Analysis

1. Judgment of the Bombay High Court:

13. As the judgment of the Division Bench of the Bombay High Court in Haresh Tekchand Raisinghani Supra (note 1) deals with a similar issue, it is appropriate to deal with the said judgment in some detail. The challenge therein was inter alia to the RBI directives dated 23.09.2019, 24.09.2019, 26.09.2019, 03.10.2019 and 14.10.2019. Directions were sought upon the RBI to withdraw the restrictions imposed upon withdrawal of deposits by the depositors. The contentions recorded in the judgment include contentions regarding hardship to consequential depositors, obligations and duties of the RBI and the scope of RBI's powers under Section 35A of the BR Act. The Division Bench has adverted to the allegations of fraudulent transactions against the management of PMC Bank and consequent misreporting of the financial data.

14. The impugned directives have been issued under Section 35A of the BR Act, which has also been considered by the Bombay High Court in Haresh Tekchand Raisinghani Supra (note 1). The provision is set out below:-

"Section 35A in BANKING REGULATION ACT, 1949

35A. Power of the Reserve Bank to give directions. —

(1) Where the Reserve Bank is satisfied that—

(a) in the [public interest]; or

(aa) in the interest of banking policy; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect."

15. The Bombay High Court upheld the impugned directives holding inter alia as follows:-

"39. A summary of the above would leave us in no manner of doubt that the RBI

arrived at a satisfaction that the financial position of the P&MC Bank has been substantially impaired by certain persons. As soon as the matter came to the notice of the RBI, action was taken by appointing an Administrator and ensuring that the bank's available resources are protected and not misused or diverted. Based on a complaint filed by the bank against its officials and borrowers associated with the fraud/financial irregularities in the bank and manipulation of its books of accounts, the Economic Offences Wing, Maharashtra Police has started its investigations into the matter. The Forensic Auditors have been appointed by the Administrator of the bank to look into the related transactions. The administrator and the three member Advisory Committee appointed by the RBI are working for speedy resolution of the various issues being faced by the bank in conducting its operations. The RBI is closely monitoring the developments and shall continue to take necessary steps in the interest of the depositors of the bank. If this is the gist and summary of the communications, then, it is futile to urge, particularly in the absence of contra material, that the directions issued by the RBI are arbitrary or suffer from any error of law apparent on the face of the record. The RBI has been conferred with specific powers. The power of the RBI to give directions is based on the satisfaction that such directions have to be given in public interest or in the interest of banking policy or to prevent the affairs of any banking company being conducted in a manner detrimental to the interest of depositors or in a manner prejudicial to the interest of banking company. The directions are issued to banking company generally or to any banking company in particular from time to time and they have to be issued as the RBI deems it fit and the banking company shall be bound to comply with such directions. These directions can be modified or cancelled by the RBI on a representation made to it or on its own motion and in order to modify or cancel any direction, the RBI may impose such conditions as it thinks fit subject to which the modification or cancellation shall have effect. As far as this satisfaction is concerned, the RBI has filed a detailed affidavit. In the affidavit filed on behalf of the RBI and its Chief General Manager, the RBI has referred to its internal audit machinery. It is said in terms there is a statutory audit which has to be carried out by qualified persons once in a year to certify the balance-sheet, profit and loss statements and other relevant parameters of the bank. The P&MC Bank has been subjected to statutory audit on an annual basis on 31st March. Thereafter, there was a concurrent audit. That was carried out by a high level committee under the Chairmanship of Shri. A. Ghosh, the then Deputy Governor of RBI. That was carried out to inquire into the various aspects relating to frauds and malpractices in the banks. The Ghosh Committee had recommended introduction of concurrent audit at large and exceptionally large branches of banks to serve as administrative support to branches, help in adherence to prescribed systems and procedures, aid in and prevention and timely detection of lapses/irregularities. Initially this requirement of concurrent audit was introduced in all scheduled and other primary (urban) co-operative banks with deposits over Rs. 50 crores. This was subsequently extended to all urban cooperative banks based on the recommendations of the Joint

Parliamentary Committee. The concurrent audit system is regarded as part of a bank's early-warning system to ensure timely detection of irregularities and lapses, which helps in preventing fraudulent transactions at branches. The scope of concurrent audit contains transaction testing. Thereafter, the RBI inspection mechanism is referred to.

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44. To our mind, the arguments of the petitioners before us are self defeating and contradictory. While they accuse the RBI of not taking prompt action although having prior knowledge, after the RBI acted and has taken action, the petitioners have challenged it on the ground that the same does not meet the requirement of section 35A of the Act of 1949. Pertinently, the petition filed in public interest challenges the RBI's action alleging that it is contrary to public interest. We do not think that such an assertion of the petitioners can be accepted in such a situation. We have found repeatedly that litigation, either in public or private interest, is instituted in this court by invoking its writ jurisdiction without knowing the restrictions and limits of the same as also the fundamental and primary requirement of complete and authentic pleadings. There is nothing on record by which one can conclude that the primary burden cast by law on such petitioners has been discharged by them. We do not know whether all investors are totally innocent or unaware of the dealings and transactions of the concerned bank with the HDIL Group. The litigants must realise that this court cannot grant reliefs on specious ground of sympathy. We are bound by law. No writ contrary to law can be issued. We render justice in accordance with law. We cannot, therefore, ignore the materials that have been brought before us by the RBI on oath and prefer some general and vague allegations of the petitioners to the contrary. When there are specific materials placed on record by the RBI to support its action under section 35A, we cannot agree with the petitioners' counsel that the RBI was not required to interfere or step in. In fact, Mr. Dhond, on instructions, has clarified that the RBI intends to bring some order and discipline in the affairs of the P&MC Bank. The bank is not yet placed under liquidation. The RBI is trying to take a stock of all the assets and properties of the P&MC Bank. The RBI is trying to ascertain its financial base as well. The RBI is trying its best to revive its operations and bring some normality in the affairs of the bank. The RBI has not stepped in only because it desired to place restrictions on the bank. We are in agreement with Mr. Dhond that if indiscriminate withdrawals are permitted, possibly, nothing would be left with the bank. Those close to wrongdoers and Management of the affairs at the relevant time would be benefited by rushing to the bank and withdrawing the amounts in their accounts entirely. Thereafter, the bank would have been left with no liquidity. It is in these circumstances that the RBI has, by the impugned directives, held that it cannot allow such withdrawals as are claimed.

45. The overriding power of the RBI under section 35A enables it to record a satisfaction and to take measures so as to prevent the affairs of the bank being

conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company. We think that on the basis of the available material, the RBI was rightly satisfied that such protective measures are indeed necessary and therefore, it must issue the directions. Further, it has been stated by the RBI in its affidavit that upto 78% of the depositors could withdraw their entire deposits despite these protective measures. We do not think that we can, in writ jurisdiction, substitute the opinion or satisfaction of the RBI with our order or direction, much less to the contrary. We possess no experience and expertise in financial and fiscal matters. In matters of banking practices and the business of banking and its regulation, we must leave everything to the wisdom of the RBI. In fact, the presumption is that it will prevent the acts conducted in a manner prejudicial to the interest of depositors. We do not think that any proof to the contrary has been placed before us and on the sketchy materials in the form of averments and allegations, which are sweeping and general, we can not set aside the impugned directives.

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

48. We also cannot interfere with the limits placed by the RBI on the withdrawal. In fact, the RBI has acted fairly, justly and reasonably in revising the limits on withdrawal from time to time. When the first limit of Rs. 1,000/- was placed, the RBI was aware of the hardship and difficulty of depositors. In a timely manner, it has stepped in to enhance the limit and which is now enhanced as aforementioned. The aspects covered by the RBI regarding medical emergencies and education are such that in appropriate cases, depending upon the facts brought before the

Administrator, he can allow the withdrawal up to specific limits. We do not think that the petitioners, styling themselves aggrieved investors and depositors, can complain. They have been candid enough to state before this court that they entered into a contractual relationship with the P&MC Bank because that was offering higher interest on the deposits. Attracted by that, this bank was approached by the investors. If later on the affairs of such a bank are not carried on smoothly and efficiently, but contrary to the interest of these depositors and investors, we do not think that they can blame the regulatory mechanism. They are partially to be blamed. If they are not, then, they would have promptly resorted to contractual remedies and forced the bank to allow them to operate their accounts. Even today, they are not remediless. As has been repeatedly held by the Hon'ble Supreme Court, the relationship between a bank and customer may be contractual, but it is based on faith. The banking system operates on such faith. The customer is not expected to be so vigilant in all cases so as to note beforehand any wrong doings in the bank with which he has contractual dealings. Therefore, the investors and depositors can still approach the competent courts and initiate proceedings so as to allege and prove the breach of this contract, trust and faith by the P&MC Bank. They can, based on the allegations and proof tendered, obtain all the permissible reliefs. If the intervention of the RBI has caused any hardship or difficulty to these investors and depositors, then, needless to clarify that in such proceedings, even the RBI can be impleaded as a party defendant. We cannot, on the basis of the limited and sketchy material before us, proceed to fault the RBI and grant any relief. More so, when the RBI says that it has acted so as to monetise the assets and properties of the bank and thereafter take further steps in the interest of the depositors and investors." Emphasis supplied.

16. The aforesaid judgment of the Bombay High Court was carried to the Supreme Court [SLP(Civil) Diary Nos. 13047/2020 and 11767/2020]. While declining special leave to appeal, the Supreme Court [Supra (note 2)] observed as follows:-

"3. The High Court has furnished cogent reasons for not interfering with the directive of the Reserve Bank of India under Section 35A of the Banking Regulation Act 1949. We are not inclined to interfere with the carefully reasoned judgment of the High Court. We decline to entertain the Special Leave Petitions under Article 136 of the Constitution."

17. It is evident from the judgment of the Bombay High Court in Haresh Tekchand Raisinghani [Supra (note 1)] that the High Court has repelled arguments relating to the power of the RBI to issue such directions under Section 35A of the BR Act, as also the challenge to the directions on the ground of public interest. The Court found that the materials placed before the RBI were sufficient to justify the action taken. The Bombay High Court also held that depositors, having entered into a contractual relationship with a particular bank on the incentive of higher interest rates, cannot blame the regulatory mechanism for

subsequent failure of the bank, but are themselves partially to be blamed. This judgment has been upheld by the Supreme Court, expressly recording its approval of the reasoning of the High Court.

18. Faced with this legal position, Mr. Bhalla limited himself to the two aspects noted above, viz, negligence in dealing with the complaint of Ms. Manpreet Kaur, and discrimination vis-à-vis other banks.

2. Complaint of Ms. Manpreet Kaur:

19. As far as the allegations levelled by Ms. Manpreet Kaur are concerned, the petitioners first referred to this communication in an affidavit dated 02.10.2020. The communication was subsequently placed on record by an affidavit dated 22.03.2021. It is stated in these affidavits that Mr. Bhalla "has been forwarded a complaint dated 28.01.2011, issued by one Ms. Manpreet Kaur, a [former] employee of PMC Bank to RBI" [Paragraph 5 of the affidavit dated 02.10.2020.]. He has also claimed to have received a copy of the alleged response issued by RBI on 07.03.2011, by which the complaint was marked to the Chief Executive Officer of PMC Bank. In the said affidavit, Mr. Bhalla specifically stated that he has received the documents as a forwarded message over WhatsApp Messenger and cannot attest to its authenticity or the veracity of its contents [Paragraph 8 of the affidavit dated 02.10.2020].

20. Mr. Bhushan, in turn, referred me to the affidavit of RBI dated 07.12.2020, wherein it has been specifically averred that, on 28.01.2011, when the complaint was made, PMC Bank had two employees by the name of Ms. Manpreet Kaur. Both the employees have subsequently denied making the complaint.

21. The communication, as placed on record with the affidavit dated 22.03.2021, does not bear the signature of the sender. It does, however, bear a stamp which is apparently of the RBI. Be that as it may, the provenance of the document is uncertain. The petitioners have candidly disavowed responsibility for its contents. The affidavit of the RBI is that neither of the ex-employees by the name of Manpreet Kaur accept that they had made the complaint. In these circumstances, I do not consider it appropriate to rest a finding of negligence against the regulator on alleged actions or omissions arising out of this complaint.

22. Mr. Bhushan also drew my attention to a CVC circular dated 31.01.2002, which clearly provided that investigations should not be commenced or action initiated on anonymous/pseudonymous complaints. This direction was apparently explained by way of a further circular dated 11.10.2002 to the effect that, if any verifiable fact contained in such complaints are proposed to be looked into, that may be done with prior concurrence of the CVC. The second circular has not been placed on record, but is referred to in a circular dated 25.11.2014, which has been placed on record by the RBI. The circular dated 11.10.2002 was withdrawn by the circular dated 25.11.2004.

23. Mr. Bhalla suggested that the circular dated 11.10.2002 enabled RBI to carry

out further investigation, which it failed to do. I am afraid this is too tenuous an argument to return a finding of negligence in performance of statutory functions, that too in the summary procedure of a writ petition. The clear policy laid down by the CVC was to avoid investigation on anonymous/pseudonymous complaints. The exception which was carved out in the circular dated 11.10.2002 was limited to a proposed enquiry into verifiable facts alleged in the complaint, that too with the concurrence of the CVC. There is no basis in the pleadings to arrive at a conclusion, one way or the other, as to whether such verifiable facts existed, whether RBI proposed to look into them further, whether the concurrence of the CVC was sought or whether it was granted. In any event, the writ petition does not lay a challenge on any of these aspects.

24. The factual uncertainty stems at least in part from RBI's assertion that its records relating to this complaint have been weeded out. RBI has explained that it is unable to deal factually with the allegation of negligence due to the records having been weeded out. It may be noted in this connection that the alleged complaint is of January, 2011 whereas the writ petition pertains to directives issued in September, 2019. In the interregnum, the RBI issued a circular dealing with destruction of records on 28.03.2014, under which the correspondence was weeded out. While Mr. Bhalla sought to argue on the proper interpretation of this circular also, in view of the contentions recorded above, I do not consider it necessary to deal with this argument further.

25. The judgment of the Supreme Court in Pramod Malhotra [Supra (note 3)] cited by Mr. Bhushan, also militates against the submissions of Mr. Bhalla. The Court was considering a writ petition in which a challenge was originally laid to a scheme framed by the RBI in respect of Sikkim Bank Limited [hereinafter, "Sikkim Bank"]. Before the Supreme Court, the only relief pressed was for the respondents to repay the petitioners and other fixed deposit holders of Sikkim Bank in full, including principal and contractual interest. The challenge was inter alia upon the ground that RBI was required to monitor banking companies and safeguard the interest of depositors. An allegation was made that there were deficiencies and irregularities in the functioning of the banks of which RBI was aware. The Supreme Court rejected the challenge with the following observations:-

"25. We have heard the submissions of both the parties. Whilst we sympathise with the depositors for their loss, we are unable to accept the submission of Mr Lalit that the principles laid down in cases relating to breach of Article 21 rights can be applied to cases of loss caused in financial transactions undertaken by individuals with open eyes. In our view the principles laid down in the cases of Yuen Kun-yeu v. Attorney General of Hong Kong [(1987) 2 All ER 705 : 1988 AC 175 : (1987) 3 WLR 776 (PC)] and Davis v. Radcliffe [(1990) 2 All ER 536 : (1990) 1 WLR 821 (PC)] are fully applicable. In our view the principles laid down in Anns case [1978 AC 728 : (1977) 2 All ER 492 : (1977) 2 WLR 1024 (HL)] have no application to financial transactions. RBI is undoubtedly performing a

statutory function. Undoubtedly, the general public interest has to be kept in mind by RBI. But that is not the only thing they have to keep in mind. They also have to balance general public interest with the interests and need of banks and financial institutions. They cannot easily close down a banking institution merely because there are a few irregularities. They have to keep in mind the implications of closing a bank or a financial institution. The closing of a bank or financial institution has its impact not just on that bank/financial institution and its customers and debtors but on the future of financial services in that region. Thus competing interests have to be weighed and balanced. In the hindsight it is easy to point fingers. However, at that stage it would not have been an easy decision for RBI to have closed SBL when it was a major bank in a small State like Sikkim. One may criticize the decision of RBI to grant SBL a licence to open a branch in Delhi when the licence under Section 22 had not yet been granted. But still that will not be sufficient to foist liability on RBI to repay all depositors. What the petitioners want is to foist on RBI liability for the default of SBL. Such liability will be rarely imposed. RBI did not have day-to-day management or control on SBL. Also the relationship of RBI with creditors or depositors of SBL is not such that it would be just or reasonable to impose a liability in negligence on RBI.

26. Even otherwise, we find that there are no proper averments. There is absolutely no averment regarding bad faith. It was fairly admitted by Mr Lalit that there is no case made out on the basis of public misfeasance. He fairly stated that at the highest the case could only be that of a violation of statutory duties. However, as observed above, compensation for violation of a statutory duty to enable individuals to recoup financial loss has never been recognized in India. In our view the petitioners having chosen on their own to deposit amounts with SBL cannot claim to recover against RBI. In such a case the loss has to be allowed to fall where it falls.” Emphasis supplied.

26. Mr. Bhalla submitted that the judgment in Pramod Malhotra Supra (note 3) is distinguishable as the RBI had not made any representation regarding the safety and stability of Sikkim Bank. I am unable to agree with Mr. Bhalla on this count. The reasoning of the Supreme Court quoted above is not dependent on the absence of such a representation. In fact, the Supreme Court notices that the RBI had granted Sikkim Bank a licence to operate a branch in Delhi despite the fact that it had no licence under Section 22 of the BR Act. In my view, the judgment of the Court covers this aspect of the case against the petitioners.

27. Mr. Bhalla also submitted that the judgment in Pramod Malhotra has been impliedly overruled by the later judgment of the Supreme Court in Union of India and Others vs. Sancheti Food Products Limited (2015) 15 SCC 447. This submission is also misconceived – the judgment in Sancheti deals with a claim of sovereign immunity raised as a defence in a suit, and not with a writ petition in which an allegation of breach of statutory duties is made. The facts in the present case are, in any event, much closer to the judgment in Pramod Malhotra, which cannot be bypassed on the grounds suggested.

28. Mr. Bhushan also relied upon the judgment of the Supreme Court in *Peerless General Finance Supra* (note 4), which cautions against judicial interference in economic matters, unless the impugned actions are found to be wholly unreasonable or violative of constitutional and statutory provisions. [Paragraphs 31 and 36 of *Peerless General Finance*] The particular role of the RBI as an important functionary in the economic and financial system of the country, with expertise in the matters entrusted to it, has also been emphasised. [Paragraph 30 of *Peerless General Finance*] To similar effect are the decisions of the Supreme Court in *Shri Sitaram Sugar Company Limited* [*Supra* (note 5)] and of the Division Bench of this Court in *Holystar Natural Resources* [*Supra* (note 6)].

3. Allegation regarding Mr. Laxman Kamble:

29. Mr. Bhalla took pains to point out that Kamble, an employee of the RBI, took employment with PMC Bank after retirement. Although this assertion was made to suggest an element of mala fides in the conduct of the RBI, it may be noted that Kamble has not been joined as a party to the writ petition. Further, the allegation is based upon an acknowledgment contained in paragraph 1.11 of a report dated 18.08.2011 submitted by an Expert Committee on Licensing of New Urban Co-operative Banks to the RBI. In the report, the Committee acknowledges secretarial assistance provided by various officers, including Kamble, General Manager, Urban Banks Department of the RBI.

30. This is insufficient to lay the foundations of an allegation of mala fides. It may also be noted that the RBI, in its affidavit dated 24.02.2022, has affirmed that Kamble was appointed as General Manager (HR) of PMC Bank, in-charge of organising training programmes for the bank's employees and officers. He was granted permission by the RBI to take the said position on a contractual basis. It has also been stated that such permission is granted only subject to various conditions, including that the officer has not dealt with the prospective employer while in service of PMC Bank. It has been pointed out that in the criminal proceedings arising out of the affairs of PMC Bank, Kamble has not been implicated by the prosecuting agencies.

31. On the material placed before the Court, therefore, allegation of mala fides cannot be upheld.

4. Article 14 challenge:

32. This brings us to the challenge predicated on Article 14 of the Constitution.

33. The first ground of challenge on this aspect is that the rapid revision of the impugned directives, enhancing the maximum amounts of withdrawal, itself shows non-application of mind. I am afraid, this is a simplistic and self-defeating argument. The original directives dated 23.09.2019 were issued in an emergent situation. The restrictions placed upon the depositors, such as the petitioners herein, were severe. If, upon further examination, the RBI found it possible to relax the limits and issue subsequent circulars to do so, that shows

responsiveness to the plight of depositors, such as the petitioners. The exercise of such administrative agility with the objective of reducing hardship to the depositors cannot be criticised on the ground that it betrays non-application of mind. In fact, a reading of the directives dated 26.09.2019, 03.10.2019, 14.10.2019 and 05.11.2019 shows that the liquidity position of PMC Bank was being reviewed, and consequent enhancements were being offered to the depositors. The last of the circulars [05.11.2019] also notes that by virtue of the relaxation, more than 78% of the bank depositors would be able to withdraw their entire balance.

34. I am also unpersuaded by Mr. Bhalla's argument that the UoI and the RBI were obliged to participate in the restructuring scheme for PMC Bank in line with the scheme in the case of Yes Bank. The RBI in its affidavit dated 16.07.2020 has drawn a distinction between a co-operative bank such as PMC Bank, and a scheduled bank such as Yes Bank. It is specifically mentioned that, as of the date of that affidavit, no bank or investor had shown interest in investing in PMC Bank. The relevant part of the said affidavit reads as follows:-

"11. That in the present case, even after the promulgation of BR Amendment Ordinance, 2020, the following legal and operational challenges continue to exist, which places PMC Bank differently from Yes Bank, for the purpose of reconstruction.

12. That unlike in the case of banking companies such as Yes Bank, where the provisions of BR Act allow investment in shares of one banking company by another willing banking company, the provisions as applicable to cooperative banks do not allow multi-state cooperative banks to acquire shares of other multi-state cooperative banks.

13. That in the reconstructed Yes Bank, the voting rights of shareholders were linked to the extent of their shareholding, like any other company. In a cooperative bank, the principle of "one member one vote" holds irrespective of amount/percentage of share-holding and there is no concept of "controlling interest". This is a huge disincentive for any prospective investor in case of a cooperative bank.

14. That any scheme of reconstruction of a bank has to be preferably an investor(s) led initiative. In the case of PMC Bank, no bank or investor(s) have so far shown any interest to invest in the bank.

15. That in the reconstructed Yes Bank, the State Bank of India (SBI) being the largest investor under the Yes Bank Limited Reconstruction Scheme, 2020, was allowed to nominate two nominee Directors on the Board of Yes Bank. Any investor (i.e. any person other than the SBI, willing to invest in the reconstructed bank under the Scheme) with voting right of 15% was allowed to nominate one Director on the Board of Yes Bank. However, in the case of cooperative banks, as per the provisions of the cooperative societies Act, the Board of Directors (BoD) comes in through the process of election and thus the outside investor has to

contest elections and his inclusion in the Board depends on results of the elections. It is pertinent to note here that the principle of "one member one vote" will hold good irrespective of amount/percentage of share-holding and there is no guarantee for the representation of the investor on the Board of cooperative bank.

16. That the Securities Contract (Regulation) Act, 1956 provides for listing of shares of only body corporates and the definition is drawn as appearing in the Companies Act which does not include Cooperative societies. In the case of cooperative banks, there is no provision of listing. This is a huge disincentive for any prospective investors in cooperative banks who even would not get any dividend income till regulatory Capital to Risk (Weighted) Assets Ratio (CRAR) is achieved and the cooperative bank concerned starts making profits.

17. That in case of Yes Bank Limited Reconstruction Scheme, 2020, the equity shareholding of the investor bank (i.e. SBI) was subject to a cap of 49% of total equity shares of the reconstructed bank, whereas for the Multistate Cooperative Banks, the cap for shareholding by an individual entity is 20% of paid up capital of the urban cooperative bank as per section 33 of MSCS Act, 2002. Furthermore, capital of a cooperative bank is withdrawable unlike in case of limited companies. To deal with a situation where a large shareholder decides to withdraw his capital thereby straining the capital adequacy of the bank adversely, UCBs have been required to adhere to the 5% ceiling on individual share-holding as a percentage of the total paid up share capital as per para 3 of RBI Master Circular DCBR.BPD.(PCB). MC.No.10/09.18.201/2015-16 dated July 1, 2015 on "Prudential Norms and Capital Adequacy-UCBs".

18. That in the case of PMC Bank, the net-worth and CRAR had year-on year plummeted from positive figures of Rs 706.20 crore and 12.7% as on March 31, 2018 to huge negative figures of Rs (-) 5278.21 crore and (-) 198.7% with significant deposit erosion of 45.43% as assessed on March 31, 2019, whereas in the case of Yes Bank, at the time of drawing the reconstruction scheme, the Net-Worth was positive and CRAR remained above 9%. That the main issue with Yes Bank was of liquidity, with the bank's Liquidity Coverage Ratio being way below the required level of 100% and the bank was defaulting in maintenance of Statutory Liquidity Ratio (SLR). The level of Gross Non-performing Assets (GNPAs) for Yes Bank projected at the time of drawing its reconstruction scheme was estimated to be around 22% by March 31, 2020 whereas in the case of PMC Bank, the level of GNPAs was 78.06% as on March 31, 2019.

19. That in light of the above, it is evidently clear that the cases of Yes Bank and PMC Bank are fundamentally different in so far as the basic constitutional structure of the two entities as also the financial position. As observed by the Supreme Court in Re: Special Reference No. 1 of 2012 [2012 (10) SCC 1] with reference to precedents, "each case entails a different set of facts" and matching "the colors of the case at hand against the colors of many sample cases" would not be correct. PMC Bank has really precarious financials and due to reasons

explained above, it has not attracted any interest from any prospective investor for its reconstruction or amalgamation. Nevertheless, efforts are still on for a satisfactory resolution of the PMC bank. It is for this reason that the directions on the PMC bank are being extended from time to time. Further, COVID 19 situation and the uncertainties around the post COVID scenario has slowed down the process. The PMC Bank is exploring the feasibility of revival/ reconstruction of the bank and is engaging with various stakeholders.”

35. It may be mentioned that during the pendency of the petition, a scheme was, in fact, approved with regard to PMC Bank as well. Mr. Bhalla has criticised the terms of the scheme, but that is a matter beyond the scope of the present proceedings.

36. Mr. Bhalla submitted that the difference in the mechanism of constitution of these two banks has no nexus with the objective of protecting depositors. He compared the terms of the reconstruction schemes in the two cases to submit that PMC Bank depositors were being unfairly treated. I am unable to proceed on this basis. The reasonableness of the reconstruction scheme is not the subject matter of this writ petition. I am called upon in this case only to examine whether the RBI has been able to explain the distinction between the two cases, and the effect of that distinction upon the potential for reconstruction of each of the banks. To this extent, I am satisfied that it has been able to do so.

D. Conclusion

37. For the aforesaid reasons, despite sympathising with the position in which the petitioners find themselves, I am unable to grant the relief sought in this petition. The petition, alongwith the pending application, is therefore dismissed, but without any orders as to costs.