
(1999) 09 MAD CK 0060

In the Madras High Court

Case No : Writ Petn No's. 4157, 4158, 5932, 7576, 7577, 7976, 7977 and etc.
of 1998, 4467, 4819, 4887 and 12375 of 1999 and connected W.M. Ps.

Thiru Muruga Finance and

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 08-09-1999

Acts Referred:

Banking Regulation Act, 1949 — Section 5
Constitution of India, 1950 — Article 14, 19(1), 21
Reserve Bank of India Act, 1934 — Section 45I
Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act,
1997 — Section 11, 2(3), 3, 5, 7

Citation : AIR 2000 Mad 137 : (2000) 3 LW 298

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : C. Chinnasamy for P. Rajamanickam, K. Jeyakumar, S. Ramasamy, M. Palanichamy, for the Appellant; T.R. Rajagopalan, A.A.G. assisted by S. Gopinathan, GA (W), V. Raghupathy, K.G. Sattarkhan, L.J. Krishnamurthy and P.K. Rajagopal, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—All these writ petitions challenge the constitutional validity of Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act. 1997 (Tamil Nadu Act XIV of 1997). Hence, they are dealt with in a common judgment.

2. For the convenience I shall refer the facts narrated by the petitioner in Writ Petition No. 4157 of 1998. The petitioner Thiru Muruga Real Estate started its business in theyear 1984. Vast extent of properties were purchased and layout formed and sold to public for construction of houses. For the past few years, the Real Estate Market was going down by 30 to 40 per cent and there are no immediate purchasers. The petitioner's firm was formed on 18-4-1994 as a Sister concern for the Thiru Muruga Real Estate to accept deposit from the public.

Deposits were accepted both by the petitioner-firm and also by the Real Estate entity Thiru Muruga Real Estate. From 15-4-1995 deposits were received and within a short span of time, a total of 2.75 crores were raised from the public. Because of the adverse trend in finance market, the depositors of the petitioner Company started demanding repayment and therefore they could not utilise the funds for developing the property as originally planned. Therefore, the petitioner decided to pay back the amount with interest even if no profit is earned by the firm. With the short period a sum of Rs. 180 crores were returned to the public leaving a balance of about Rs. 94.44,250.00. Out of this amount, about 40 per cent matured for payment and others not matured for payment. It is further stated that the value of asset in the form of immovable properties of the petitioner firm and the sister concern Thiru Muruga Real Estate run about 13.80 crores. Their intention is not to cheat anybody. All the properties were purchased out of own funds long before accepting deposits from public. The balance payable to depositors for entire group of concerns is only Rs. 94.44.250.00. Majority of the depositors have faith in the petitioner and in fact given letters, accepting to take their funds in instalments. But, few persons who are highly mischievous have given complaints to the second respondent, who threatened to take action under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 44/97 (hereinafter referred to as the "Act"). It is further stated that, he is a honest businessman and also having assets worih several crores. If action taken on frivolous complaint by the second respondent under the aforesaid Act, he will be thrown out of business and his reputation will be lowered down in the Real Estate Market. The first respondent in haste passed the above Act. The first respondent is also not competent to make the said law, which is draconian in character. The said Act is therefore ultra vires, unconstitutional and liable to be struck down by issuance of a writ of declaration. In the grounds of attack it is stated that the Act is unconstitutional for the reasons that the Tamil Nadu Legislative Assembly has no legislative competence to enact the said Act and Parliament alone can enact, since the subject-matter falls squarely under Entry 45, List 1 in VII Schedule of the Constitution. It is also stated that, in the light of the provisions of Reserve Bank of India Act 2 of 1934 by an amendment Act 23 of 1997. Tamil Nadu Act is not at all a necessary and the same is repugnant to the provisions of Section 45 of the Central Act. The present Act also offends Article 14 of the Constitution and it is therefore liable to be struck down. It infringes the fundamental rights as guaranteed under Article 19(1)(g)and depriving the personal liberty and offends Article 21 of the Constitution of India. With these and other grounds, the petitioner prayed for necessary relief by declaring the Tamil Nadu Act 44 of 1997 as invalid. Since identical and similar averments have been made in other writ petitions, 1 am not referring the same.

3. Though the first respondent. Government of Tamil Nadu have filed separate counter-affidavits disputing various averments made by the petitioners, here again, for the convenience, 1 shall refer their defence as stated in Writ Petition

Nos. 4157 and 4158 of 1998, It is stated that there is mushroom growth of Financial Establishments not covered by Reserve Bank of India Act, 1934, in this State in the recent past with the sole object of grabbing money as deposits from the public, particularly from the middle class and poor without any obligation to refund the deposits on maturity. Many of such Financial Establishments closed their operations after collection of huge amounts from the public. They have defaulted to return the deposits on Its maturity to the public and this amount running to 195 crores of rupees and thereby inviting the public resentment, which created law and order problems in the State. Therefore, the Government have decided to undertake suit able Legislation, in the public interest, in order to regulate the activities of such Financial Establishments other than those covered by the Reserve Bank of India Act, 1934. Accordingly, the Government enacted Tamil Nadu Act 44 of 1997, which has come into force with effect from 8-8-1997. With regard to the claim of the petitioner in Writ Petition No. 4157 of 1998 it is stated that the petitioner's firm was started on 14-4-1995 and against this firm number of complaints started cropping up. Cases in Crime No. 916 of 1997 and 158 of 1998 were registered for the complaints from aggrieved persons and in Crime No. 916 of 1997 there were specific allegations that the petitioner collected deposits besides the name. "Thiru Muruga Finance" in the names "Thiru Muruga Enterprises", "Thiru Muruga Advertisers", "Thirumuruga Coating Division," "Thiru Muruga Fibre Glass Industry" and the like. The petitioner has also collected deposits in the name of "Thiru Muruga Real Estate" and Thiru Muruga Finance." Even though within a short span a sum of Rs. 2.75 crores was collected, by the said petitioner, he failed to refund even the matured deposit amounting to Rs. 35,000.00 which resulted in complaint No. 916 of 1997.

4. With regard to the Legislative competency of the State is passing the impugned Legislature, they referred to various Entries in the State and Concurrent List. It is specifically stated that the petitioner's business does not come under Banking activity and denied that it is a sort of Banking business. It is further stated that, Tamil Nadu Act is intended to extend its arms on those who fall to perform their obligations to their customers and the Act is not in any way detrimental to the interest of the business people. It is stated that the Reserve Bank of India Act is only to regulate monetary stability in India and deals with various monetary systems for the Indian monetary system and the banking business have to be carried in accordance with the said Act. However, Tamil Nadu Act is intended to safeguard the interest of depositors by providing stringent measures against those who deprive the depositors their dues. The provisions in the Tamil Nadu Act are so exhaustive and comprehensive, so as to bring within Its clutches the dealings of the concerns, if they turn to the detrimental to the interest of depositors. There is no repugnancy in the said Act and the same is intra vires and not unconstitutional. The punishment is for the gravity of the offence done by a financial Institution or individual on the public by non-payment of their lawful claim under the Act while the Reserve Bank of India Act 1934 is for violations of the statutory regulations u/s 45S of the Reserve Bank of India Act.

The subject matter Insolvency and Criminal Procedure Code falls under Entries 9 and 2 respectively of the Concurrent List in the Seventh Schedule to the Constitution. As these provisions of the Act seek to overrule existing laws, viz., Insolvency laws and earlier law made by Parliament, viz., Criminal Procedure Code on Concurrent subjects, the assent of the President has been obtained under Article 254(2) of the Constitution. As such, it is stated that the Tamil Nadu Act is intra vires the Constitution. The Act is intended only to punish those who deprive the public of their lawful claim and when the public Invest at large is to be safeguarded and that the individual cannot lay claim that his business is affected. By virtue of the special enactment, a Special Court is constituted for implementing the provisions of the Act in its letter and spirit and the procedural law is not given a go by. The Act only points out that there shall be a Special Court and Special Public Prosecutor for the conduct of prosecution, appointed in the cadre of District and Sessions Judge and Advocate with 10 years standing in the bar respectively. There is no violation by presenting the mode of conduct of cases under the Special enactment. Complaints have been registered only when the petitioner failed to return the matured deposits. If the properties are sold away, then the interest of the depositors will be defeated. With these averments they prayed for dismissal of all the writ petitions.

5. In the light of the above pleadings, I have heard Mr. C. Chinnasamy, learned senior counsel and Mr. P. Rajamanickam for the petitioners and learned Additional Advocate General for the State Government. In one writ petition depositors' Association got themselves impleaded, for whom Mr. P. K. Rajagopal advanced arguments defending the enactment.

6. After taking me through the object and reasons, various provisions from the Act as well as Rules made thereunder, Mr. C. Chinnasamy, learned senior counsel for the petitioners has raised the following contentions :

(i) The impugned Tamil Nadu Act is unconstitutional for the reasons that, Tamil Nadu Legislative Assembly has no Legislative competence to enact the said Act. Since the subject-matter falls within Entry 45 of List 1 of Seventh Schedule, the Parliament alone can enact any laws in respect of these matters. Even the assent of the President cannot save the enactment, atleast so far as Sections 3 and 5 are concerned.

(ii) The Central Government has already amended the Reserve Bank of India Act, 2 of 1934 by Amendment Act 23 of 1997 with effect from 1-4-1997 which gives protection and relief to the depositors as well as Financial Establishments. Hence, Tamil Nadu Act is not at all necessary and under Article 254 of the Constitution, Tamil Nadu Act is repugnant to the provisions of Section 45 of the Central Act.

(iii) The definition "Financial Establishment" in the Tamil Nadu Act makes a distinction between Individual and firms on the one hand and Companies and Corporations on the other hand. If the object of the Act is to protect the depositors -- public, then there may not be any discrimination. The

discrimination in the Act between the individual and the firm and the Company is not reasonable and there is no relation to the object of the Act. It is therefore a hostile discrimination and offends Articles 14, 19(1)(g) and 21 of the Constitution and liable to be struck down.

Mr. P. Rajamanickam, learned counsel for other petitioners has also made similar submissions.

7. On the other hand, learned Additional Advocate General after taking me through the reasons for bringing the above enactment, various provisions therein and after pointing out relevant provisions from the Reserve Bank of India Amendment Act, 1997, has raised the following submissions :

(i) The Act is within the Legislative competence of the State, since it falls within Entry 32 of the State List. The petitioners' business does not come under "Banking activity" as mentioned in Entry 45 in Union List. The "Financial Establishments" which are covered under the impugned Act are all unincorporated trading establishments, and therefore they fall under Entry 32 of the State List in Seventh Schedule of the Constitution. The impugned law is made only in relation to such unincorporated trading establishments, and therefore the State of Tamil Nadu is competent to Legislate in respect of those Establishments, Mere trenching upon the other enactments cannot take away the power of legislature considering the scheme of the Act. Further, the State of Tamil Nadu had obtained the assent of the President under Article 254, sub-Clause (2) of the Constitution of India. The statute in question is within the competence of the State Legislature;

(ii) Reserve Bank of India Act is only to regulate the monetary stability in India and deals with various monetary systems and the Banking business have to be carried out in accordance with the said Act, whereas the Tamil Nadu Act is intended to safeguard the interest of depositors by providing stringent measures against those who deprive the depositors of their dues;

(iii) There is no hostile discrimination between depositors in the individual financial establishments, firms and companies, since the State has enacted the Act within its Legislative competency covering financial establishments only and not in respect of other institutions covered by Reserve Bank of India Act. There is a nexus between the classification and object of the Act under consideration.

8. Mr. Rajagopal, learned counsel for the impleaded Depositors' Association reiterated the arguments made by learned Additional Advocate General. Apart from the above legal submissions, petitioner in Writ Petition No. 5932 of 1998 appeared in person and highlighted his grievance and also attacked the Legislation as it affects even the genuine person doing business in financial matters, like him.

9. I have carefully considered the rival submissions.

10. In order to appreciate the rival submissions, I shall refer the Object and

Reasons furnished in the "Bill".

"There is mushroom growth of financial establishments not covered by Reserve Bank of India Act, 1934 (Central Act II of 1934) in the State in the recent past with the sole object of grabbing money received as deposits from the public, mostly middle class and poor on the promise of unprecedented high rates of interest and without any obligation to refund the deposits to the investors on maturity. Many of these financial establishments have defaulted to return the deposits on maturity to the public, running to crores of rupees and thereby inviting public the resentment, which created law and order problems in the State. The Government have, therefore, decided to undertake suitable legislation in the public interest, in order to regulate the activities of such financial establishments other than those covered by the Reserve Bank of India Act, 1934 (Central Act II of 1934)."

In order to achieve the above object, the Government of Tamil Nadu has passed the impugned Act 44 of 1997. Now, I shall refer relevant Sections and Rules.

"2. Definitions.-- In this Act, unless the context otherwise requires:--

(1) "Competent authority" means the au-thority appointed u/s 4;

(2) "Deposit" means the deposit of a sum of money made with a Financial Establishment for a fixed period, for interest or return in any kind.

(3) "Financial Establishment" means an individual, an association of individuals or a firm carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a company registered under the Companies Act, 1956 or a corporation or a co-operative society owned or controlled by any State Government or the Central Government, or a banking company as defined u/s 5(c) of the Banking Regulation Act, 1949 or a non-banking financial company as defined in Clause (f) of Section 45I of the Reserve Bank of India Act, 1934.

(4)"

"3. Attachment of properties on default of return of deposits.-- Notwithstanding anything contained in any other law for the time being in force-

(i) where, upon complaints received from a number of depositors, that any Financial Establishment defaults the return of deposits after maturity, or

(ii) where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors,

and if the Government are satisfied that such Financial Establishment is not likely to return the deposits, the Government may, in order to protect the interests of the depositors of such Financial Establishment, pass an act interim order attaching the money or other property alleged to have been procured either in

the name of the Financial Establishment or in the name of any other person from and out of the deposits collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, manager or member of the said Financial Establishment, as the Government may think fit and transfer the control over the said money or property to the competent authority."

"4. Competent Authority.--(1) The Government may, by notification, appoint an authority hereinafter called "the Competent Authority" to exercise control over the properties attached by the Government u/s 3.

(2) The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act.

(3) Upon receipt of the orders of the Government u/s 3, the Competent Authority shall apply within fifteen days to the Special Court, constituted under this Act for making the ad interim order of attachment absolute.

(4) An application under Sub-section (3) shall be accompanied by one or more affidavits, stating the grounds on which the belief that- the Financial Establishment has committed any default or is likely to defraud, is founded, the amount of money or value of other property believed to have been procured by means of the deposit, and the details, if any, of person in whose name such property is believed to have been Invested or purchased out of the deposits or any other property attached u/s 3."

"5. Default in Repayment of deposits and interests honouring the commitment.-- Notwithstanding anything contained in Chapter II, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees and such Financial Establishment is also liable for fine which may extend to one lakh of rupees."

"6. Special Court.-- (1) For the purpose of this Act, the Government may, with the concurrence of the Chief Justice of the High Court, by notification, constitute a Special Court in the cadre of a District and Sessions Judge.

(2) No Court including the Court constituted under the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, other than the Special Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(3) Any pending case in any other Court to which the provisions of this Act apply shall stand transferred to the Special Court.

(4) The Special Court shall, on an application by the Competent Authority, pass

such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money realised from out of the property attached."

"7. Power of Special Court regarding attachment.

(1) Upon receipt of an application u/s 4, the Special Court shall issue to the Financial Establishment or to any other person whose property is attached by the Government u/s 3, a notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

(2) The Special Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any Interest or title in the property of the Financial Establishment or the person to whom the notice is issued calling upon such person to appear on the same date as that specified in the notice and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Special Court at any time before an order is passed under Sub-section (4) or Sub-section (6).

(4) If no cause is shown and no objections are made on or before the specified date, the Special Court shall forthwith pass an order making the ad interim order of attachment absolute.

(5) If cause is shown or any objection is made as aforesaid the Special Court shall proceed to investigate the same, and in so doing, as regards the examinations of the parties and in all other respects; the Special Court shall, subject to the provisions of this Act, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) and any person making an objection shall be required to adduce evidence to show that at the date of attachment he had some interest in the property attached.

(6) After investigation under Sub-section (5) the Special Court shall pass an order either making the ad interim order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the ad interim order attachment.

Provided that the Special Court shall not release from attachment any interest which it is satisfied that the Financial Establishment or the person referred to in Sub-section (1) has in the property unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for repayment to the depositors of such Financial Establishment."

"11. Appeal.-- Any person including the Competent Authority, if aggrieved by an order of the Special Court may appeal to the High Court within thirty days from the date of order."

"15. Power to make Rules.-- (1) The Government may make rules for carrying out the provisions of" this Act.

(2) (a) All rules made under this Act shall be published in the Tamil Nadu Government Gazette and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(b) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, shall come into force on the day on which they are published.

(3) Every rule made or notification issued under this Act, shall, as soon as possible after it is made or issued be placed on the Table of the legislative Assembly, and if before the expiry of the session in which it is so placed or the next session, the Legislative Assembly agrees in making any modification in any such rule or notification or the Legislative Assembly agrees that the rule or notification should not be made or issued the rule or notification shall, thereafter have effect only in such modified form or be of no effect as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification."

11. In exercise of the powers conferred by Sub-section (1) of Section 15 of the Act, the Governor of Tamil Nadu has made the Rules called Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Rules, 1997 (hereinafter referred to as the "Rules").

"Rule 3. Ad interim order and examination of the complainant and witnesses.--

(1) The Government shall pass the ad interim order of attachment u/s 3 of the Act.

(2) Upon receipt of the orders of the Government under sub-rule (1), the Competent Authority may examine the complainant and such examination shall be reduced in writing.

(3) The Competent Authority shall have power to examine any person who in his opinion will be able to give any information about the financial establishment, and no oath shall be administered to such person."

"7. When an order is made attaching the money or other property, transfers void.--when an ad interim order attaching the money or other property of a Financial Establishment is made by the Government u/s 3 of the Act, such money or property referred to in the order shall not be transferred to any other persons by any mode whatsoever and if any such transfer is made, it shall be null and void."

12. Among the provisions mentioned above, the main attack is only with

reference to Sections 3 and 5 of the Act. A perusal of the provisions of the Act shows that, [t is enacted to identify and to take legal action against certain Financial Establishment which on receipt of deposits from the public commit default in returning the deposit after maturity. In order to safeguard the interest of depositors, the Act gives infrastructures to identify them and compel to return the money by taking proceedings under the Act. The Act prescribes procedures not only for taking legal proceedings against such Financial Establishments, but also make every person responsible for the management of the affairs of such Establishment by prescribing punishment, if there is a failure in returning the amount by the Financial Establishment. Section 2, Sub-clause (3) does not include Companies registered under the Companies Act or Statutory Corporation. Co-operative Societies owned or controlled by any State Government or the Central Government, or a Banking Company as defined u/s 5(c) of the Banking Regulation Act, 1949 or a non-banking financial company as defined under Clause (f) of Section 45-1 of the Reserve Bank of India Act. 1934.

13. Before considering other Sections, particularly Sections 3 and 5, I shall consider whether the State Legislature is competent to enact the subject referred to therein. In order to show that the Act is within the Legislative competency of the State, falling within the Entries of the State and Concurrent List in Seventh Schedule to the Constitution the deposits furnished in the counter-affidavit of the Government, are as follows :

STATE LIST

Entry 32: -- Incorporation, regulation and winding up of Corporation, other than those specified in List I, and Universities. unincorporated trading, literacy, scientific, religious and other societies and associations; co-operative societies.

Entry 64:-- Offence against laws with respect to any of the matters in this List.

Entry 65:--Jurisdiction and powers of all Courts, except Supreme Court, with respect to any of the matters in this List.

CONCURRENT LIST

Entry 1:-- Criminal Law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

Entry 2:-- Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

Entry 7:-- Contracts, including partnership, agency contracts of carriage, other special forms of contracts, but not including contracts relating to agricultural land.

Entry 8:-- Actionable wrongs.

Entry 9:-- Bankruptcy and insolvency.

Entry 11-A:--Administration of justice: constitution and organisation of all Courts except the Supreme Court and the High Courts.

Entry 42:-- Acquisition and requisitioning of property.

Entry 46:--Jurisdiction and powers of all Courts, except Supreme Court, with respect to any of the matters in this list."

14. On the other hand, it is submitted on behalf of the petitioners that none of the above entries will attract for passing Tamil Nadu Act 44 of 1997. It is stated by the petitioners that, inasmuch as the receipt of deposits from the public falls under Entry 45 of List 1, the State Government is incompetent to legislate the entire Act and the same is liable to be struck down. Entry 45 in Union List 1 in Seventh Schedule relates to "Banking ". According to the learned senior counsel for the petitioners with regard to item 45 in Union List, it is not open to the State Legislature to pass any enactments. According to him, acceptance of deposit from public does not fall in Entry 30 or 32 in List 2 of Seventh Schedule to the Constitution. In support of the above contention, learned senior counsel has very much relied on a decision reported in T. Velayudhan Achari and Another Vs. Union of India (UOI) and Others, . First, I shall narrate the facts in that case and refer the conclusion arrived at by their Lordships. In the year 1949, the Banking Regulation Act of 1949 was enacted. That contained regulatory provisions in regard to banking under the surveillance of the Reserve Bank of India as to what would constitute "banking" as defined u/s 5(b) of the 1949 Act. In the year 1959, the Banking Companies (Amendment) Act, 1959 was passed. Sections 17 and 18 were substituted which required banking companies to create reserve fund and maintain cash reserve. In the year 1963, Banking Laws (Miscellaneous Provisions) Act, 1963 inserted Chapter III-B in the Reserve Bank of India Act. This Chapter conferred extensive powers on the Reserve Bank of India to issue suitable instructions, to regulate and monitor diverse activities of non-banking companies. The powers to control and regulate these non-banking institutions are set out in Section 45-1 to 45-L. While exercising these powers, the Reserve Bank of India was issuing various directions to these non-banking financial institutions. One such important direction was issued on 1st January, 1967 to the effect that the non-banking financial companies were not to hold deposits in excess of 25 per cent of Us paid-up capital and the reserves as also to non-banking, non-financial companies. They were also required to take steps to keep the deposits within the limits. This direction was challenged unsuccessfully before this Court. In 1974, Section 58A of the Companies Act was inserted by the Companies (Amendment) Act of 1974, which came into force from 1st February, 1975. The object was to regulate deposits received by non-banking non-financial companies. The financial companies were already covered by Reserve Bank of India directions under the Reserve Bank of India Act. After issuing several directions, in 1981, several new regulatory directions were given by the Reserve Bank of India. Inter alia they included restrictions on accepting or renewing

deposits from shareholders. Directors etc., which exceeded 15 per cent of the net-owned funds of the companies as also restricted payment of interest on deposits at a rate of interest exceeding 15 per cent per annum. The validity of the amendment was upheld by this Court in the case, reported in A.S.P. Aiyar and Another Vs. Reserve Bank of India, Calcutta and Another, . The Supreme Court while quashing the F.I.R. launched against the firm, in State of West Bengal and Others Vs. Swapan Kumar Guha and Others, . directed that the Government and Reserve Bank of India should look into the matter deeply. It is in this background the Banking Laws (Amendment) Act, 1983 came to be enacted. These provisions were challenged in various civil appeals as violative of Articles 14 and 19 of the Constitution.

15. A Division Bench of the High Court of Delhi in Kanta Mehta v. Union of India, (1987) 62 Com Cas 769 held :--

"Section 45S read with Section 58B(5A) of Chapter III-C of the Reserve Bank of India Act, 1934. as Introduced by Section 10 of the Banking Laws (Amendment) Act, 1983, is not violative of Articles 14 and 19 of the Constitution. There is nothing demonstrably irrelevant or perverse in limiting in Section 45S the number of depositors that an individual, firm or association could accept.

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The business of acceptance of deposits from the public does not fall within Entry 30 or Entry 32 of List II of Schedule VII of the Constitution. It falls within Entry 45 or in any case under Entry 97 of List I of Schedule VII under which only Parliament has power to pass the impugned legislation. Parliament had full competence and power to pass Chapter III-C of the Reserve Bank of India Act, 1934."

In the light of the conclusion arrived at by the Division Bench of Delhi High Court referred to above, their Lordships of the Supreme Court considered the matter in detail and affirmed the conclusion arrived at therein. By pointing out the said conclusion, it is contended that the petitioners are doing only banking business within Entry 45 in the Union List, accordingly, the judgment of the Supreme Court reported in T. Velayudhan Achari v. Union of India. 1993 AIR SCW 1201 is directly applicable and helpful to their cases. It is also contended that the said judgment of the Supreme Court conclusively holds that receipt of deposits from the public falls under Entry 45. List 1.

16. No doubt. Entry 45 in List 1 deals with Banking business. It is the case of the petitioners that, acceptance of deposits, payment of interest on the same is Banking business, hence according to them Parliament alone can legislate on those subjects and the State Government is incompetent to legislate in respect of Banking business. In this regard learned Additional Advocate General would contend that, among other entries, Entry 32 in List 2 alone is applicable. Entry

32 in List 2 deals with unincorporated trading. The petitioners are unincorporated trading bodies. While so, acceptance of deposit is not Banking business as per Banking Regulation Act, accordingly State Government has got power to legislate in respect of unincorporated trading establishments. Several other entries in List 3 empower the State Government to enact the Act 44 of 1997. Insofar as the subjects falling in the Concurrent List, there is no dispute that assent of the President has been obtained. In the above said decision, the Supreme Court had an occasion to decide the issue. Sections 45S and 58B of Reserve Bank of India Act came to be challenged in Delhi High Court in (1987) 62 Comp Cas 769. The petitioners therein challenged the power of Parliament to limit the petitioners to accept deposits. Their argument was that acceptance of deposit was not Banking, therefore Reserve Bank of India cannot control them. It is also stated that they are Trading Corporation and only State Government can regulate them under Entry 32, List 2 and hence according to them Section 45(2) and B ultra vires. It is pointed out that the Delhi High Court did not accept the said argument and they held that the business of acceptance of deposit will fall only under Entry 45 of List 1 and not under Entry 32 of List 2. Both Mr. Chinnasamy, learned senior counsel and Mr. P. Rajamanickam would vehemently contend that the Hon'ble Supreme Court approved the said finding of the Delhi High Court and ruled that business of acceptance of deposit falls only under Entry 45 of List 1 and Parliament alone can legislate in respect of this business. They also contended that, inasmuch as, per Article 141, the law laid down by the Supreme Court is binding on all, this Court has to necessarily hold that, State Government has no Legislative competence. I am unable to accept the said contention for the following reasons. Article 246 of the Constitution of India gives power to legislate entries in Seventh Schedule of the Constitution or fields of Legislation. Learned Additional Advocate-General by pointing out decisions of the Apex Court in,

(i) Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., ;

(ii) Rajinder and Others Vs. State of Haryana, ; and

(iii) Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., would contend that. Entries in Seventh Schedule are not powers, but fields of legislation. There is no dispute that the Legislature derives its power from Article 246 and other related Articles of the Constitution. In the first decision viz.. Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., , Their Lordships have held,

"7. It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended

in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as the possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude. Burden is on the appellants to prove affirmatively of its invalidity. It must be remembered that we are interpreting the Constitution and when the Court is called upon to interpret the Constitution, it must not be construed in any narrow or pedantic sense and adopt such construction which must be beneficial to the amplitude of legislative powers. The broad and liberal spirit should inspire those whose duty is to interpret the Constitution to find whether the impugned Act is relatable to any entry in the relevant list."

17. In P.N. Krishna Lal and Others Vs. Govt. of Kerala and Another, , the above referred observation has been once again reiterated. Their Lordships have observed :

"8. The legislature derives its power under Article 246 and other related articles in the Constitution. The language of an entry should be given the widest meaning fairly capable to meet the need of the Government envisaged by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended with it. When the vires of an enactment is Impugned, there is an initial presumption of its constitutionality. If there exists any difficulty in ascertaining the limits of the legislative power, it must be resolved, as far as possible, in favour of the legislature, putting the most liberal construction on the legislative entry so that it is intra vires. Narrow interpretation should be avoided and the construction to be adopted must be beneficial and cover the amplitude of the power. The broad liberal spirit should Inspire those whose duty it is to interpret the Constitution to find out whether the Impugned Act is relatable to one or the other entry in the relevant list. The allocation of the subjects of the entries in the respective lists is logical definitions but it is a mere enumeration of broad and comprehensive categories. The power to legislate on a particular topic includes the power to legislate on subjects which are ancillary to or incidental thereto or for purposes necessary to give full effect of the power conferred by the entry.

9. In determining whether the impugned Act is a law with respect to a given power the Court has to consider whether the Act. in its pith and substance, is a law on the subject in question. If the statute relates in pith and substance to a topic assigned to a particular legislature, the Act will not be invalidated even if it incidentally trenches on topics coming within another legislative list. The fact of incidental encroachment does not affect the vires of the law even as regards the area of encroachment. The Court has to ascertain the true nature and character of the subject of the Act or its pith and substance to find whether the impugned Act falls within the competence of the particular legislature. Blind adherence to strict interpretation which would lead to invalidation of statutes as being

legislated in the forbidden sphere should be avoided, lest all beneficial legislations would be stifled at birth and many a subject entrusted to the State legislature rendered ineffectual divesting the State legislature of its power to deal with particular subject of entry or topic."

.....

13. It is not the requirement of law under Article 254 that the State Government should seek assent of the President in respect of each and every specified provisions of the Central Act or Acts in respect of which there would be inconsistency or repugnancy in the operation of the Central provisions and the State enactment. It is enough that once the assent of the President is sought and given to the State amendment, though to some extent inconsistency or repugnancy exists between any provision, part or parts of any Act or Acts of any Central statutes, the repugnancy or inconsistency ceases to operate in relation to the State in which the assented State enactment operates."

18. In Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., . while considering Kerala State Electricity Supply (Kerala State Electricity Board and Licensees Areas) Surcharge Order, after analysing various provisions from the Kerala Act and Electricity Supply Act, 1948. their Lordships have observed.

"16. It would be obvious that one part of the Act does not deal with the constitution of the Board, the incorporation of the Board and the regulation of its activities. But the main purpose of the Act is for rationalising the production and supply of electricity. The regulation contemplated in Entries 43 and 44 is not regulation of the business of production, distribution and supply of electricity of the corporation. As the 1910 and 1948 Acts together form a complete code, with respect to Entry 38 in List III the Board is only an instrument fashioned for carrying out this object. The provision regarding the incorporation and regulation of the Electricity Board should be taken to be only incidental to the provision regarding production, supply and distribution of electricity."

19. It is clear that the above decisions of the Hon'ble Supreme Court that the entries in VII Schedule are not powers, but fields of Legislation. The Legislature derives its power from Article 246 and other related Articles of the Constitution. Their Lordships of the Supreme Court have held that the language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. It is settled law that, when a vires of an enactment is impugned there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the Legislative power, the difficulty must be resolved, as far as possible in favour of the Legislature putting the most liberal construction upon the Legislative entry so that it may have the widest amplitude. The burden is on the petitioners to prove affirmatively of its invalidity. When the Court is called upon to interpret the Constitution. It must

not be construed in any narrow or pedantic sense, and adopt such construction which must be beneficial to the amplitude of Legislative powers. The broad and liberal spirit should inspire those whose duty is to interpret the Constitution to find whether the impugned Act is relatable to any entry in the relevant list. Their Lordships have also held that the power to legislate on a particular topic includes the power to legislate on subjects which are ancillary to or incidental thereof, or for the purposes necessary to or incidental thereof or for the purposes necessary to give full effect to the power conferred by the entry. In determining whether the impugned Act is a law with respect to a given power, the Court has to consider whether the Act, in its pith and substance is a law on the subjects in question. If the statute relates in pith and substance to a topic assigned to a particular Legislature, the Act will not be invalidated even if it incidentally trenches on topics coming within another Legislative list. The fact of incidental encroachment does not affect the vires of the law even as regards the area of encroachment. The Court has to ascertain the true nature and character of the subject of the Act or its pith and substance to find whether the impugned Act falls within the competence of the particular Legislature. As observed by their Lordships, blind adhering to strict interpretation which would lead to invalidation of statutes as being legislated in the forbidden sphere should be avoided.

20. In our case, the Legislation in question falls within the entries referred and explained in para 11 of the counter affidavit filed by the State in Writ Petition Nos. 4157 and 4158 of 1998. The "Financial Establishments" which are covered under the impugned Act are all unincorporated trading establishments and therefore they fall under Entry 32 of the State List in the 7th Schedule. The impugned law is made only in relation to such unincorporated trading establishments and therefore. State of Tamil Nadu has the legislative competence to legislate in respect of those financial establishments. As rightly contended by the learned Additional Advocate-General, merely because the enactment incidentally trenches upon some of the provisions of the other enactments, the law cannot be held to be bad as the incidental trenching upon the provisions of the other enactments is an integral scheme of Act itself. As a matter of fact, in *P.N. Krishna Lal and Others Vs. Govt. of Kerala and Another*, the Hon'ble Supreme Court has held that in such case the assent of the President is not necessary. However, in our case the State of Tamil Nadu had obtained the assent of the President under Article 254(2) of the Constitution of India. No doubt, Mr. C. Chinnaswamy, learned senior counsel by referring various entries mentioned in State and Concurrent List in para 11 of the counter affidavit would contend that it is not clear that what are the materials placed before the President and how the assent was given by the President. In the light of the said contention, on direction by the Court, learned Additional Advocate-General has placed the file relating to the assent given by the President. I have carefully perused the entire file. After getting clarification from the Government of Tamil Nadu, Ministry of Home, Finance, Law as well as Reserve Bank of India, on 7-8-1997 the President of India assented to the "Bill" No. 12 of 1997 passed by

the Tamil Nadu Legislative Assembly. In the light of the details furnished or the various doubts and questions raised I am of the view that there is no substance in the argument of the learned senior counsel for the petitioners. In the light of the above mentioned factual position, the decision in 1993 AIR SCW 1201 (cited supra) is not helpful to the petitioners' contention.

21. The other decision referred to by the learned Additional Advocate-General is reported in *Virendra Pal Singh and Others Vs. District Assistant Registrar, Cooperative Societies, Etah and Another*, . In the above case the Supreme Court has held that, in pith and substance the U.P. Co-operative Societies Act deals with a Co-operative Societies and that it trenches upon "banking" incidentally does not take it beyond the competence of the State Legislature. The Hon'ble Supreme Court held that, for proper financing and effective functioning of co-operative societies there must also be co-operative societies which do banking business to facilitate the working of other co-operative societies. Following the decisions of the Privy Council reported in AIR 1940 60 (Privy Council) , *Nagpur District Central Co-operative Bank Ltd. and Another Vs. Divisional Joint Registrar, Co-operative Societies, Nagpur and Another*, and *Sant Sadhu Singh and Others Vs. The State of Punjab and Another*, held that the legislation by the State of Uttar Pradesh is competent (para 10 of the judgment). The said Act also falls under Entry 32 of the List 2 of the 7th Schedule as in the present case.

22. The following observation in the Constitutional Bench judgment of the Supreme Court reported in *Ameerunnissa Begum and Others Vs. Mahboob Begum and Others*, is relevant . In para 11 their Lordships have held:

"..... It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects, and for that purpose it must have large powers of selection or classification or persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not per se amount discrimination within the inhibition of the equal protection clause. To attract the operation of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary, that it does not rest on any rational basis having regard to the object which the legislature has in view."

23. In *A.S. Krishna Vs. State of Madras*, another Constitutional Bench wherein their Lordships have held .

"8. The appellants are right in their contention that Section 4(2) of the Act enacts a rule of evidence but does it follow from this that it is a law on evidence, such as is contemplated by Entry 5 in the Concurrent List ? So also Ss. 28 to 32 undoubtedly deal with matters of procedure in relation to crimes, but are they for that reason to be regarded as legislation on Criminal Procedure Code within Entry 2 of List III? The basic assumption on which the argument of the appellants rests is that the heads of legislation set out in the several Lists are so precisely drawn

as to be mutually exclusive. But then, it must be remembered that we are constructing a federal Constitution. It is of the essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but, even when the Constitution enumerated elaborately the topics on which the Centre and the Statutes could legislate, some overlapping of the fields of legislation is inevitable. The British North America Act, 1867, which established a federal Constitution for Canada, enumerated in Ss. 91 and 92 the topics on which the Dominion and the Provinces could respectively legislate. Notwithstanding that the lists were framed so to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the Dominion and Provincial legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was intra vires, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment."

Same view has been reiterated in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , *C.I. Emden Vs. State of Uttar Pradesh*, and *Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.*,

24. It is clear from various decisions of the Hon'ble Supreme Court that to decide whether the impugned Legislation is intra vires the doctrine, regard must be had to its pith and substance. If a statute is found in substance to relate to a topic within the competence of the Legislature, it should be held to be intra vires even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its legislative competence may be an element in determining whether the legislation is colourable i.e., whether in the guise of making a law on a matter within its competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment. It is settled law that to ascertain the true character of the legislation which is impugned on the ground that it is ultra vires the powers of the Legislature which enacted it, one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provision. It would be quite an erroneous approach to the question to view such statute not as an organic whole, but as a mere collection of sections, then disintegrate it, into parts, examine under what heads

of legislation those parts would severally fall and by that process determine what portions thereof are ultra vires and what are not.

25. It is the contention of the learned counsel for the petitioners that, in the light of the various provisions in the Reserve Bank of India Act, the same subject cannot be regulated by the State Legislature by enacting the Tamil Nadu Act and in any event the impugned Act is unnecessary. In order to appreciate the said contention, certain relevant provisions from the R.B.I. Act has to be considered. Section 45A of the Act speaks about Definitions. Banking Company is defined in Section 45-A(a) of the Act, which reads as follows,

45-A Definitions

In this chapter, unless the context otherwise requires.-

(a) "banking company" means a banking company as defined in Section 5 of the Banking Regulation Act, 1949 (10 of 1949), and includes the State Bank of India, any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), any corresponding new bank constituted by Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), and any other financial institution notified by the Central Government In this behalf;

Chapter III-B speaks about the Provisions relating to non-banking institutions receiving deposits and financial institutions. Section 45-1 reads thus.

45-I Definitions

In this chapter, unless the context otherwise requires-

(a) "business of a non-banking financial institution" means carrying on of the business of a financial institution referred to in Clause (c) and includes business of a non-banking financial company referred to in Clause (f);

(bb) "deposit" includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form, but does not include.-

(i) amounts raised by way of share capital;

(ii) amounts contributed as capital by partners of a firm;

(iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in Clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(iv) any amount received from,-

(a) the Development Bank.

(b) a State Financial Corporation,

(c) any financial institution specified in or u/s 6A of the Industrial Development

Bank of India Act, 1964 (18 of 1964), or

(d) any other institution that may be specified by the Bank in this behalf;

(v) amounts received in the ordinary course of business, by way of-

(a) security deposit,

(b) dealership deposit,

(c) earnest money, or

(d) advance against orders for goods, properties or services;

(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in any State; and

(vii) any amount received by way of subscriptions in respect of a chit.

Explanation I : "Chit" has the meaning assigned to it in Clause (b) of Section 2 of the Chit Funds Act, 1982 (40 of 1982).

Explanation II : Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause;

(c) "financial institution" means any non-banking institution which carries on as its business or part of its business any of the following activities, namely :--

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a government or local authority or other marketable securities of a like nature;

(iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in Clause (c) of Section 2 of the Hire-Purchase Act, 1972 (26 of 1972):

(iv) the carrying on of any class of insurance business;

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto,

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person.

(but, does not include any institution, which carries on as its principal business,--

(a) agricultural operations; or (aa) industrial activity; or

(b) the purchase or sale of any goods (other than securities) or the providing of any services; or

(c) the purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the financing of purchases. constructions or sales of immovable property by other persons;

(Explanation : For the purposes of this clause, "industrial activity" means any activity specified in Sub-clause (i) to (xviii) of Clause (c) of Section 2 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(d) "firm" means a firm as defined in the Indian Partnership Act. 1932 (9 of 1932);

(e) "non-banking institution" means a company, corporation or co-operative society;

(f) "non-banking financial company" means-

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify".

26. Chapter III-C speaks about Prohibition of acceptance of deposits by unincorporated bodies.

Section 45S is as follows, 45S Deposits not to be accepted in certain cases

(1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit-

(i) if his or its business wholly or partly includes any of the activities specified in Clause (c) of Section 45-1; or

(ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner:

PROVIDED that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners.

(2) Where any person referred to in subsection (1) holds any deposit on the 1st day of April, 1997 which is not in accordance with Sub-section (1), such deposit shall be repaid by that person immediately after such deposit becomes due for repayment or within three years from the date of such commencement,

whichever is earlier :

PROVIDED that If the bank is satisfied on an application made by any person to the bank that such person is unable to pay a part of the deposits for reasons beyond his control or such repayment shall cause extreme hardship to him, it may, by an order in writing, extend such period by a period not exceeding one year subject to such conditions as may be specified in the order,

(3) On and from the 1st day of April, 1997, no person referred to in Sub-section (1) shall issue or cause to be Issued any advertisement in any form for soliciting deposit".

Section 58B speaks about Penalties.

Section 58B-(5A) is as follows.

58B-(5A) :

If any person contravenes any provision of Section 45S. he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of deposit received by such person in contravention of that section or two thousand rupees, whichever is more, or with both :

PROVIDED that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees".

58B-(5B) :

Notwithstanding anything contained in Section 29 of the Code of Criminal Procedure, 1973 (2 of 1974). It shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to impose a sentence of fine in excess of the limit specified in that section on any person convicted under subsection (5A)".

We are not concerned with other Sections in the Act.

27. It is the contention of the learned senior counsel for the petitioners that, the Parliament have already enacted an Act, viz.. Reserve Bank of India Act 2 of 1934, covering all the aspects as stipulated in the Tamil Nadu Act, and therefore there is no necessity to enact Tamil Nadu Act. According to them, Reserve Bank of India Act provides for prohibition of acceptance of deposits. Section 45S in the Reserve Bank of India Act prohibits, among others, individuals from accepting any deposit making an exception only with regard to receipt of money by way of loan from any of his relatives etc., Sub-section (2) of Section 45S deals with individuals and directs repayment of the deposits referred to in Sub-section (1) and time limit is also provided therefor. There is a proviso to Section 45S(2). which gives powers to Reserve Bank of India to consider request of such persons regarding their inability to return the deposit for reasons beyond his or her control and extend the time limit for such repayment. But such extension is

limited to one year only. Section 45T confers power on the Court to issue Search Warrants to secure documents. Section 58B(5A) in Chapter V provides punishment of imprisonment or with fine which may extend to twice the amount of deposit and as per proviso to Clause (5A) the minimum period of punishment of imprisonment is one year and the fine is not less than Rs. 1,000.00. Section 58B(5B) makes it lawful for a Metropolitan Magistrate or a Judicial Magistrate of the First Class to impose a sentence of fine in excess of the limit specified in Section 29 of Criminal Procedure Code on any person convicted under Sub-section 5A of Section 58B. Section 58E provides power of Court to try cases and cognizance of offence. In respect of offences punishable under Sub-section 5A of Section 58B, a complaint in writing may also be made by an officer of the State Government generally or specifically authorised in writing in that behalf by that Government. After a comparative analysis, it is stated that except certain aspects the matters dealt with in both the Reserve Bank of India Act and Tamil Nadu Act are one and the same. Even though there is no provision in the Reserve Bank of India Act similar to that in Sections 3 and 4 of Tamil Nadu Act, according to them, the difference or omission in the Acts will not be a relevant point for the purpose of considering the competence of the Tamil Nadu Legislature. Pointing out the said provisions, it is further stated that, Reserve Bank of India Act deals not only with the question of deposits, but with recovery also, since it provides for punishment for failure to repay. It is also contended that Section 45S(i) of the Reserve Bank of India Act lays down that no person being an individual or a firm or an incorporated association of individuals shall, accept any deposit, if his or its business wholly or partly includes any of the activities specified in Clause (C) of Section 45-1, or if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner. By pointing out this, it is very much stressed that, Section 45S(I)(i)(ii) prohibits any person or a firm or an unincorporated association of Individuals to accept any deposit not only under any scheme or arrangement, but also in any other manner. Thus, according to them, the prohibition contained in Section 45S squarely applies to cases of Individuals. They also pointed out the notice issued to the petitioner by the Reserve Bank of India. If such deposit is not in accordance with Sub-section (1), there is a provision in Sub-section (2) of Section 45S for repayment of the deposit immediately after such deposit becomes due for repayment. It is true that while Section 45S(1) prohibits acceptance of deposit Section 45S(2) provides for repayment of the same if it is not in accordance with the business activities specified in the Act. Thus, Section 45S of the Reserve Bank of India Act lays down not only prohibition for acceptance of deposits but also return of the deposits if the same were not in the manner specified therein. But in the Tamil Nadu Act, there is no such prohibition against receipt or acceptance of deposits. Mr. P. Rajamanickam, learned counsel for some of the petitioners also contended that. Section 58B(5A) of Reserve Bank of India Act provides for prosecution and punishment and that u/s 58E the prosecution can be launched by an Officer of the State Government. According to him. Criminal Law Amendment Ordinance 1944 is still in force. Hence, if the

prosecution desires to attach the properties, they can set the law in motion under the same.

28. Though several provisions of the R.B.I. Act have been brought to my notice, as rightly contended by the learned Additional Advocate-General, the Reserve Bank of India Act is only to regulate the monetary stability in India and it deals with several monetary systems for the Indian Monetary System and Banking business have to be carried in accordance with the Reserve Bank of India Act. On the other hand, as stated earlier. Tamil Nadu Act 44 of 1997 is intended to safeguard the interest of depositors by providing stringent measures against those who deprived the depositors of their dues. Section 3 of the Tamil Nadu Act is so exhaustive and comprehensive, so as to bring within its clutches the dealings of such concerns if they turn to the detriment to the interest of depositors.

29. It is also clear from the provisions of R.B.I. Act that, there is a prohibition viz., that unincorporated body should not accept deposits. The Tamil Nadu Act provides for recovery of monies due to the public on such deposits. To put it in nut shell. Reserve Bank of India Act has imposed a prohibition and the Tamil Nadu Act has provided for recovery of deposits from persons who have defaulted to repay. Even though there is no mens rea in the Tamil Nadu Act, in the light of the law laid down by the Apex Court reported in Ravula Hariprasada Rao v. The State, AIR 1951 SC 2044; Sarjoo Prasad Vs. The State of Uttar Pradesh, and Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others, , I hold that, mens rea need not be proved. In State of Maharashtra Vs. Hans George, , their Lordships of the Supreme Court have held that, mens rea is not an essential ingredient of offence u/s 23(1-A) read with Section 8(1) of the Foreign Exchange Regulation Act. In that case, their Lordships have held, that the very object and purpose of the Act and its effectiveness as an instrument for prevention of smuggling would be entirely frustrated if a condition were to be read with Section 8(1) and or Section 23(1-A) of the Act qualifying the plain words of the "enactment" that the accused should be proved to have knowledge that he was contravening the law before he could be held to be contravening the provisions. In Dineshchandra Jamnadas Gandhi Vs. State of Gujarat and Another, as well as in State of Madhya Pradesh Vs. Narayan Singh and Others, , the Hon"ble Supreme Court has held that mens rea is irrelevant. When there is a prohibition against the business being carried on by the unincorporated trading establishments, the carrying on of the business is illegal. It is clear that the Tamil Nadu Act was passed in order to see that crores of deposits deposited with such establishments are recovered and distributed to the general public. To drive the public to institute action individually will be harmful to the society. The submission of the counsel for petitioners that the Establishments in question are carrying on banking business therefore the Legislation in respect of such banking business is not within the competence of the State Legislature is not correct. Mere receipt of deposit and payment of interest cannot be termed as banking business, as defined under the Banking

Regulation Act, 1949. Unless the bank receives deposits and enables the customer to operate the account by issue of cheques, drafts etc., the business cannot be termed as banking business. After referring to Section 5(1)(b) of the Banking Companies Act, a Division Bench of the Calcutta High Court in Mahaluxmi Bank Ltd. Vs. Registrar of Companies, West Bengal, has observed ,

"Now this definition makes it clear that receiving money on deposit forms essential characteristic of banking. The money deposited by the customers can be utilised by the banker for lending it or for investing it but the bank also undertakes the obligation to repay the deposit on demand or otherwise and the mode by which the withdrawal of the deposit can be effected is by the issue of cheques, drafts, orders or otherwise, that is, by like methods."

Their Lordships have further observed,

"7. Then Section 6(1) of the Banking Companies Act. 1949, provides that in addition to the business of banking, a banking company may engage in any one or more of the different kinds of business specified in the various Sub-clauses of Sub-section (1) of Section 6. This indicates that the main or real business of a banking company is as stated in Section 5(1)(b) of the Act but banking companies usually carry on and are permitted to carry on other kinds of business which are auxiliary or incidental to the main business. Sub-section (2) of Section 6 lays down that no banking company shall engage in any form of business other than those referred to in Sub-section (1). So the banking company is expressly prohibited from carrying on any kind of incidental or allied business other than those enumerated in Sub-clause (a) to (o) of Sub-section (1) of Section 6 of the Act. Thus it is abundantly clear that the essence of banking is the relationship which is brought into existence at the time of the deposit; that is the core of banking. It is true that the business of banking covers every possible phase or combination of deposit, custody, investment, loan, exchange, issue and transmission of money, creation and transfer of credit and other kindred activities but if the essential characteristic of banking, namely, the power to receive deposits from the public which are repayable in the manner indicated in Section 5(1)(b) of the Banking Companies Act is absent and merely the power of granting loans is retained and exercised that, in my view, does not make the company a banking company. Lending of money may be one phase of a banking business but it is not the main phase or the distinguishing phase."

Accordingly, I hold that mere receipt of deposits and payment of interest cannot be termed as banking business as defined under the Banking Regulation Act, 1949. I also hold that, even in the light of certain provisions in the Reserve Bank of India Act, in the absence of effective machinery from the said Act, the State Government is competent to enact the impugned Act in the interest of the General Public. The State has got the best machinery to enforce the provisions of the Act and in order to protect the interest of the depositors the Act has provided all safeguards for the Financial Establishments also. Accordingly, I am unable to accept the contra argument made by the learned senior counsel for the

petitioners.

30. Regarding violation of Article 14 of the Constitution of India, it is stated on the side of the petitioners that, Article 14 does not merely deal with discrimination, but also arbitrariness. They also referred to decisions of the Supreme Court reported in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, and *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, in support of their contention. By referring those decisions, it is stated that, Article 14 strikes at arbitrariness. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, their Lordships have held that (at P. 499 of AIR) :

"Article 14 strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the Courts is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a Judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore, there is arbitrariness in State action, whether it be of the legislature or of the executive or of an "arbitrary" under Article 12, Article 14 immediately springs into action and strikes down such State action."

In *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, while reiterating the above legal position, their Lordships have further observed that.

"Article 14 strikes at arbitrariness in State action, whether it be of the Legislature or of the executive or of an "authority" under Article 12, because any action that is arbitrary must necessarily involve the negation of equality and if it affects any matter relating to public employment, it is also violative of Article 16. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equal protection by law."

31. Apart from the legal principles narrated above, it was once again contended on the side of the petitioners that, in the light of detailed procedure in the Amended Reserve Bank of India Act, stringent provisions in the Tamil Nadu Act cannot be sustained. I have already explained in the earlier part of my order how for the provisions in the Reserve Bank of India Act including the Amended Act would help thousands of depositors who made deposits with unincorporated persons/ firms, accordingly it is unnecessary to refer the same once again.

32. It is also the case of the petitioners that, the impugned Act makes a distinction between individual and firms on the one hand and Companies and Corporations on the other hand. If the object of the Act is to protect the depositors-public, according to the petitioners, then there need not be any discrimination treating the depositors who make the deposits in the limited Company on a different footing does not speak well of the object of the

Legislation. It is also stated that the depositors who deposit their savings in a firm or with an individual is well protected, whereas the depositors who made deposits in a company is discriminated. This is a hostile discrimination. It is also the claim that the petitioner however honest in his banking business is subjected to harassment even on a frivolous complaint for a very small amount. The Tamil Nadu Act cannot reach big Nidhi company and other company even if they defraud crores of rupees. Accordingly, it is stated that there cannot be two different stands in dealing with the financial establishments and the discrimination in the impugned Act between an individual and firm and the company is not reasonable and there is no relation to the object of the Act.

33. In addition to tills it is stated that, arbitrariness is also patent from the fact that after the attachment of all the properties of a person u/s 3, Section 5 also may be invoked and it will be absolutely impossible for such a person to make any payment towards deposit or interest. Both the Sections 3 and 5 are unconstitutional, because it is arbitrary, violating Articles 14, 19(1)(g) and also 21. Learned senior counsel for the petitioners has also contended that, even in the Criminal Law Amendment Ordinance, the Government can only approach the Court for interim attachment. But however, in the present case the Government has been clothed with such authority conferring judicial power on the Government and the power conferred is unguided. Likewise, no time limit has been prescribed for receipt of the orders of the Government by the competent authority, hence according to him such conferment of unguided power invalidates Section 3 of the Act. By drawing my attention to Section 5 of the impugned Act, it is stated that mere reading of the Section shows (hat punishment of 10 years is only for civil failure, since offence is not made out to it the Financial Establishment fails to return the deposit. Mr. Chinnasamy, learned senior counsel also stressed this point by saying. even for non-return of deposit of one rupee will result in one lakh rupees fine and 10 years rigorous imprisonment. There is no opportunity given to the genuine finance companies for return of deposits. Hence it hits Article 14. It is also stated that, even Negotiable Instruments Act provides provision of issuing notice calling for the payment to the dishonoured cheques, giving 15 days time. It becomes offence, only after failure of payment after receipt of notice. Here according to them, in Section 5 there is no such protection. Even the poor officials, who work in Financial Establishment made accused and punished. In such circumstances, it is stated that inasmuch as Sections 3 and 5 are prime sections and they are not sever-able from the rest of the provisions. Hence, if these sections are struck down, ultimately the impugned Act cannot stand and will not also be enforceable.

34. In order to appreciate the contentions raised by the petitioners with regard to Articles 14, 19(1)(g), I shall first refer the decision reported in Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, . The following observations of their Lordships are relevant.

"11. The nature and scope of the guarantee that is implied in the equal

protection clause of the Constitution have been explained and discussed in more than one decision of this Court and do not require repetition. It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not "per se" amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view."

Hence it is clear that mere differentiation or inequality of treatment does not per se amount to discrimination. It is also clear that, before considering inequality of treatment, the object of the legislation has to be considered.

35. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, a Constitution Bench of the Hon'ble Supreme Court has considered the true meaning and scope of Article 14. Their Lordships have observed (at Pp. 547 and 548 of AIR),

"it is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of the Supreme Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The decisions further establish.

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstance or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

The above principles will have to be constantly borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws. The view expressed by the Constitutional Bench has been once again stated in C.I. Emden Vs. State of Uttar Pradesh, .

36. In C.I. Emden Vs. State of Uttar Pradesh, ,

"the basis adopted by the legislature in classifying one class of public servants who are brought within the mischief of Section 4(1) is a perfectly rational basis. It is based on an intelligible differentia and there can be no difficulty in distinguishing the class of persons covered by the impugned section from other classes of persons who are accused of committing other offences. The object which the Legislature thus wanted to achieve is the eradication of corruption from amongst public servants, and between the said object and the Intelligible differentia on which the classification is based there is a rational and direct relation."

The impugned Act is enacted by the Tamil Nadu Legislature to identify and to take legal action against certain Financial Establishments doing unincorporated trading who on receipt of deposits from public commits default in returning the same after maturity. In order to safeguard the interest of the depositors, the Act create infrastructure to identify them and compel them by taking proceedings under the Act. In the light of the principles laid down in various decisions referred to above, when there is a prohibition against the business being carried on by the unincorporated trading establishments like the petitioners, the carrying on of the business is illegal. Even though there is a prohibition/restriction in the Reserve Bank of India Act, since" there is no provision for recovery of matured debts and no effective remedy against persons committing default, the State Act was passed in order to see that crores of deposits deposited with such establishments are recovered and distributed to the general public. Accordingly, I do not find any merit in the contention that the Act is violative of Articles 14,

19(1)(g) and 21 of the Constitution.

37. I have already extracted the object and reasons for enacting the impugned legislation. In order to ameliorate thousands of depositors from the clutches of the unincorporated trading establishments, the State Government has enacted the impugned Act by providing speedy recovery of the matured/defaulted amount. As per Section 2(3) of the Act only individual or firm doing unincorporated trading viz., carrying on the business of receiving deposits under any scheme or arrangement alone are controlled by this Act. The companies registered under the Companies Act or a Corporation or a cooperative society owned and controlled by the Central Government or a banking company as defined u/s 5(c) of the Banking Regulation Act or a non-banking financial company as defined in Clause (f) of Section 45-1 of the R.B.I. Act are excluded from the definition of "Financial Establishment". Since the excluded categories are covered by statutory provisions and only unincorporated trading establishments like the petitioners who are not having statutory control, particularly for recovery, the State Government has rightly passed the impugned Legislation.

38. With-regard to Section 3 which speaks about attachment of properties on default of return of deposits, it is stated that the said Section contemplates civil action for attachment of the property. Section 3(1) contemplates receipt of complaints from a number of depositors, that any Financial Establishment defaults the return of deposits after maturity or the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors and after satisfaction that the said Financial Establishment is not likely to return the deposits, the Government, may in order to protect the interests of the depositors of such Financial Establishments pass an ad interim order attaching the money or the other property of the said Financial Establishments. Even though it is stated that Section 3 is arbitrary, violative of Articles 14, 19(1)(g) and 21, in the light of Sub-sections (i) and (11) of Section 3 I am unable to accept the said contention. Before considering the validity of Section 3, I shall consider the other submission made on this provision. By pointing out certain provisions of Criminal Law (Amendment) Ordinance, 1944, it is stated that the Government can only approach the Court under the said Ordinance even for interim attachment. However, according to them in the present case the Government has been clothed with such authority conferring judicial power on the Government and the power conferred is ungulded. As stated earlier, it is not open to the Government to attach the property merely on the basis of a complaint from a depositor. It is clear from Sub-section (1) that only upon complaints received from number of depositors stating that the Financial Establishment committed default to return the deposits after maturity, it is possible for the Government to pass an interim order of attachment. Likewise, as per Sub-section (ii) where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors, on satisfaction it is open to the

Government to pass an interim order of attachment. In the Individual counter-affidavits filed by the respondents Government have highlighted various instances such as how the monies of the depositors were utilised by purchasing immovable properties either in the name of the establishment or in the name of other fictitious companies. Further, later part of Sub-section (ii) of Section 3 makes it clear that, only if the Government satisfied that such Financial Establishment is not likely to return the deposit, they in order to protect the interest of the depositors pass an interim order. It is also clear that, it is open to the Government to attach the money or other property procured either in the name of Financial Establishment or in the name of any other person from and out of the funds collected by the Financial Establishments or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the depositors, it is open to the Government to attach such other property of the Financial Establishment or the promoter, manager or member of the said Financial Establishment and transfer the control over the said money or property to the competent authority. As rightly contended by the respondents, the word "in a calculated manner" in Sub-section (ii) in Section 3 is very exhaustive and comprehensive, so as to bring within its clutches the dealings of the concerns, if they turn to the detriment to the interest of depositors.

39. In order to exercise the control over the properties attached by the Government u/s 3, Government is empowered to appoint a competent authority u/s 4. Sub-section (2) of Section 4 enables the competent authority to exercise all required powers as may be necessary for carrying out the object of the Act. As per subsection (3), on receipt of orders of the Government u/s 3, the competent authority is to apply within 15 days to the Special Court constituted u/s 6 of the Act for making the ad interim order of attachment absolute. Sub-section (4) authorises the competent authority to make an application under Sub-section (3) supported by affidavits stating the grounds on which the belief that the Financial Establishment has committed any default or is likely to defraud, particulars regarding the amount of money or value of property believed to have been procured by means of such deposits and other details.

40. As per Section 6 of the Act, for the enforcement of the provisions of the Act, the Government has to constitute a Special Court in the cadre of a District and Sessions Judge with the concurrence of the Chief Justice of the High Court. Sub-section (4) of Section 6 enables the Special Court, on any application made by the competent authority to pass such order or issue such direction as may be necessary for equitable distribution among the depositors of the money realised from and out of the property attached. Powers of the Special Court regarding attachment have been enumerated in Section 7 of the Act. On receipt of application u/s 4, from the competent authority, the Special Court is to issue notice accompanied by the application, affidavits and of the evidence, if any, recorded, to the Financial Establishment or to any other person whose property is attached by the Government u/s 3 calling upon him to show cause why the order of attachment should not be made absolute. Sub-section (2) of Section 7

enables the Special Court to issue such notice to all other persons represented to it as having or being likely to claim any interest or title in the property of the Financial Establishment to appear on the date as specified in the notice and pass orders after hearing all the parties concerned. As per Sub-section (3) any person claiming an interest in the property attached or any portion thereof may notwithstanding that no notice has been served upon him, make an objection to the Special Court at any time before an order is passed under Sub-section (4) of Section 6. As per Sub-section (4) if there is no sufficient cause and no objection is made before the specified date, the Special Court is expected to pass an order forthwith making the ad interim order of attachment absolute. As per Sub-section (5), if cause is shown or objection made, the Special Court is empowered to Investigate the same. For doing so, it is open to it to examine the parties, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908. Likewise, any person making an objection can also adduce evidence to show that at the date of attachment he had some Interest in the property attached. Sub-section (6) enables the Special Court, after investigation under Sub-section (5), to pass an order either making the ad Interim order of attachment absolute or modifying the same by releasing a portion of the property from attachment. If it is satisfied it is open to the Special Court to cancel the ad interim order of attachment subject to the condition prescribed in the proviso to Sub-section (6). The reading of Sub-sections (1) to (6) of Section 7 shows that elaborate procedure is prescribed and it is open to the person affected or to be affected to make his/her submission to explain their case. It is also clear that, if the Special Court is satisfied, it has power to make the interim order of attachment absolute or modify the said order by releasing a portion of the property or even cancel the interim order of attachment. Hence, I agree with the contention of the learned Additional Advocate-General that, elaborate procedure has been prescribed u/s 7 of the Act. .

41. Apart from this, as per Section 9, any Financial Establishment or a person whose property has been or is about to be attached at any time, may apply to the Special Court for permission to give security in lieu of such attachment. If the security is sufficient, on satisfaction, it is open to the Special Court to cancel the interim-order of attachment. How the attachment properties have to be administered is dealt with in Section 10 of the Act. Further, if any person is aggrieved by an order of the Special Court he may prefer an appeal to the High Court within 30 days from the date of the order as per Section 11 of the Act. The said provision enables the competent authority also to file an appeal if it is aggrieved before the High Court within the said period. In the light of the elaborate procedures in the Tamil Nadu Act and of the fact that there are provisions to attach or release the property or cancel the order of attachment or to go on appeal to the High Court, I am of the view that those provisions cannot be termed as arbitrary or unguided.

42. Now, I shall consider Section 5 of the Act, which speaks about default in

repayment of deposits and interest. The said section comes under Chapter III of the Act. Chapter II as discussed earlier, speaks about attachment of properties on default of return of deposits and competent authority to exercise control over the properties attached by the Government u/s 3. It opens with a non obstante clause viz., notwithstanding anything contained in Chapter II, where any Financial Establishment defaults, the return of deposit or defaults the payment of interest on the deposit, every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees. According to the learned senior counsel for the petitioners, Section 5 is arbitrary and unconstitutional. It is stated that, offence is not made out if the Financial Establishment fails to return the deposit. By pointing out this aspect, it is contended that though many protections were given in Sections 3(i) and (ii), as per Section 5 even for a single case of default or interest the defaulter or the person responsible can be arrested and punished with imprisonment extending to 10 years. Though it is stated that, even non-repayment of deposit of Re. 1 will result in, imprisonment of 10 years and fine of Rs. one lakh, as rightly contended by the learned Additional Advocate-General, the 10 years period of imprisonment is only a maximum period prescribed in the Act and there may not be any apprehension that the maximum period of Imprisonment will be imposed in all cases. Further such apprehension is misconceived. Only when Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposits, the person responsible for the management shall be punished with imprisonment as stated in Section 5. Hence, if the Financial Establishment or person dealing with the deposits makes proper repayment on maturity or pays interest on the deposit on due dates, there is no chance of Implementing Section 5 at all. Further, the imprisonment of 10 years and fine of Rs. 1 lakh prescribed in Section 5 are the maximum and there is no need to apprehend that in each and every case the maximum punishment will be awarded. Here again, elaborate procedure has been prescribed in Section 13. As per Sub-section (1) of Section 13, it is open to the Special Court to take cognizance of the offence without the accused being committed to it for trial and in trying the accused person, it shall follow the procedure prescribed in the Code of Criminal Procedure 1973 (Central Act II of 1974) for the trial of warrant cases by Magistrates. In the light of Section 13 and in view of the fact that Section 5 comes into operation only when financial establishments defaults the return of deposit or defaults the payment of interest on the deposit, the contention and apprehension raised by the petitioners cannot be accepted. In the light of the elaborate and flexible procedure adumbrated in the Act itself, it is unnecessary to deal with the point with regard to detention of debtor in civil prison for non-payment of contractual debt and the other safeguards as observed by their Lordships in Jolly George Varghese and Another Vs. The Bank of Cochin, . Further, even though it is stated that, as per Section 5 every person responsible for the management of the affairs of the Financial Establishment viz., a clerk will be held responsible and punishment imposed, I

am of the view that such apprehension is again misconceived. It is clear from Section 5 that, if there is any default in return of the deposit after maturity or default in payment of Interest on such deposit, every person responsible for the management of the affairs of the Financial Establishment alone will be punished. Such safeguards cannot be construed as an arbitrary.

43. Even in the earlier part of my order, I have observed, that as directed, learned Additional Advocate General has brought to my notice relevant file relating to the assent given by the President of India. In view of certain doubts raised by Mr. C. Chinnasamy, learned senior counsel for the petitioners, I have carefully perused the entire correspondences between the Law Department of the Government of Tamil Nadu and the Ministry of Home Affairs, Government of India and Ministry of Finance, Department of Economic Affairs of the Government of India and the Reserve Bank of India and the ultimate assent given by the President of India. As a matter of fact, learned Additional Advocate General has filed typed set of papers containing all the relevant correspondences. As stated earlier, I am satisfied with the particulars furnished therein and I do not find any substance in the submission made by the learned senior counsel for the petitioners.

44. Apart from highlighting the general legal position as well as relevant provisions of the impugned Act, learned Additional Advocate General has also brought to my notice certain observations and directions made by Reserve Bank of India. He also placed a Report of the Task Force on Non-Banking Finance Companies dated 28-10-1998. All those particulars have been complied in the common typed set of papers filed by the respondents. In the letter dated 29-1 - 1998 addressed to the Principal/Chief Secretary/Secretary to the Government of various States, Reserve Bank of India, after highlighting the Reserve Bank of India Amendment Act, 1997 has given, the following suggestion :--

"3. Keeping in view the interest of depositors of unincorporated bodies in the context of the recent amendment (o the Reserve Bank of India Act, as mentioned above, we suggest that a similar enactment may be passed by the Government of your State also, A copy of the Tamil Nadu Act is enclosed for your perusal. The steps so taken in your State would help in restoration of confidence amongst the innocent depositors as also serve as a deterrent tp such establishments engaged in acceptance of public deposits."

In the report of Task Force on Non-Banking Financial Companies, the following recommendations/observations are relevant.

Chapter-V"

Unincorporated Financial Intermediaries

"5.3. The provisions of Section 45S, however, proved to be difficult to implement. Innovative methods were devised to circumvent these provisions of the Act. For example, certain unscrupulous operators created a large number of firms by

having a number of permutations and combinations of partners. The situation was further aggravated by the fact that the RBI did not have adequate machinery to enforce the provisions while most of the State Governments did not set up or designate any official machinery which could oversee the implementation of the provisions in a focused manner.

.....

5.11. As regard unincorporated bodies, the State Governments are required to designate officials, on whose complaints the Courts can take cognisance of the offence. Normally, the Courts could issue process in cognizable offences directly which does not require the complainant to further investigate and develop evidence. We would suggest that this offence also should be made cognizable. The State Governments should also review the arrangements in this regard and ensure effective implementation of these provisions. In order to provide immediate relief to depositors of such unincorporated bodies, the Tamil Nadu Government has passed an Act which enables the State Government, on having reasons to believe that such a body is likely to defraud its depositors, to attach the property of any such entity. The disposal of such attached assets is to be carried out under the orders of special Courts set up for this purpose. Other State Governments should also expeditiously consider enacting legislation on these lines."

It is clear that, even though amendments have been made in the Reserve Bank of India Amendment Act, 1997, in respect of unincorporated Financial Establishments there is no effective remedy to recover the matured deposits, and for non-payment of interest for such deposits. Further, taking note of seriousness of the issue, the Reserve Bank has requested and suggested all the other State Governments to enact similar enactments as passed by the Tamil Nadu Government. As a matter of fact, Maharashtra Government has also passed similar enactment. No doubt, by pointing out various provisions from the Maharashtra Ordinance Mr. Rajamanickam, learned counsel for some of the petitioners, would contend that, the rigour in that Act is lesser when compared to the Tamil Nadu Act. When the Legislature is competent to legislate the enactments, I am of the view that the legislature is free to prescribe adequate punishment, hence the same cannot be compared with other enactments. However, the fact remains that except the fact that the punishment prescribed in Maharashtra Ordinance is lesser than that prescribed in the Tamil Nadu Act, the other provisions are there; accordingly I am unable to countenance the argument of the learned counsel for the petitioners in this score"also.

45. In view of Entry 32 in State List, in the VII Schedule to the Constitution, I am satisfied that the State Legislature is competent to enact Tamil Nadu Act 44 of 1997. As observed earlier, even though the Tamil Nadu State Act trenches certain other enactments upon which the State Legislature is not competent, in view of the law laid down by the Supreme Court, in various decisions, taking note of the object of the Act and in view of the fact that the Legislature have obtained the

consent of the President, I hold that the State Legislature are competent in passing the impugned Act and the same is valid in all respects. The Tamil Nadu enactment constitute a Special Court only for implementing the provisions of the Act. It also enables the Special Court to follow the procedure prescribed under the CPC as well as Code of Criminal Procedure. It is also clear that, only in the cadre of District and Sessions Judge is permitted to preside over a Special Court that too with the concurrence of the Chief Justice of the High Court. As observed by me earlier, elaborate procedure has been prescribed for making the ad interim order of attachment absolute or for modifying or vacating the said order. Provision has been made in Section 11 of the Act for aggrieved persons including the competent authority to file an appeal before the High Court. No doubt, there are certain lacunae in the Act as well as in the Rules with regard to sale of the attached properties etc. However, keeping in view the "Object of the Act", if there is any hurdle or difficulty in the proper implementation of the Act, I believe and trust that undoubtedly the Legislature would make suitable amendments then and there.

46. Under these circumstances, I do not find any merit in all these writ petitions. I uphold the impugned provisions in the Tamil Nadu Act 44 of 1997. Accordingly, all the writ petitions are dismissed. No costs. Consequently, connected WMPs., are also dismissed.

47. This Court records the valuable assistance rendered by Mr. C. Chinnasamy, learned senior counsel and Mr. P. Rajamanickam, learned counsel for the petitioners while arguing the matter on several days, and strenuous efforts taken by the learned Additional Advocate General in highlighting the various provisions of the impugned Act and placing before Court the materials culled out from the Original Files. This Court equally appreciates the assistance rendered by Mr. P. K. Rajagopal learned counsel for the Depositors' Association.