
(1991) 08 MAD CK 0042
In the Madras High Court
Case No : Writ Petition No. 6324 of 1983

T.S. Arumugham

APPELLANT

Vs

Lakshmi Vilas Bank Ltd. and others

RESPONDENT

Date of Decision : 30-08-1991

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 9
Banking Regulation Act, 1949 — Section 10A, 12A, 35A, 35B
COMPANIES ACT, 1956 — Section 256
Constitution of India, 1950 — Article 12, 19, 20, 43A

Citation : (1994) 80 CompCas 814 : (1992) 2 LLJ 210

Hon'ble Judges : Govindasamy, J

Bench : Single Bench

Judgement

Govindasamy J.

1. Lakshmi Vilas Bank, the first respondent herein is a company, incorporated under the Indian Companies Act on November 3, 1926. The

affairs of the company are entrusted with the board of directors of the company. The articles of association of the said bank, at the time of

incorporation, provided that the board of directors of the said bank shall consist of not less than seven and not more than eleven members. The

first respondent-bank is also governed by the provisions of the Banking Regulation Act, 1949 (hereinafter referred to as "the Act").

2. Sub-section (2) of section 10A of the Act provides that not less than fifty-one per cent. of the total numbers of the board of directors of a

banking company shall consist of persons, who -

(a) shall have special knowledge or practical experience in respect of one or more of the following matters, viz.,

(i) accountancy
(ii) agriculture and rural economy
(iii) banking
(iv) co-operation
(v) economics
(vi) finance
(vii) law
(viii) small-scale industry
(ix) any other matter the special knowledge of and practical experience in which would, in the opinion of the Reserve Bank, be useful to the banking company.

3. The proviso to the said section provides that out of the aforesaid number of directors, not less than two shall be persons having special

knowledge or practical experience in respect of agriculture and rural economy, co-operation or small-scale industry, and shall not -

(1) have substantial interest in, or be connected with whether as employee, manager or managing agent..... or

(2) be proprietors of any trading, commercial or industrial concern, not being a small scale industrial concern.

4. Sub-section (3) to section 10A of the Act provides that if, in respect of any banking company, the requirements as laid down in sub-section (2)

are not fulfilled at any time, the board of directors of such banking company shall reconstitute such board so as to ensure that the said requirements

are fulfilled. Sub-section (4) of section 10A of the Act contemplates retirement of directors by lots, so as to enable the board of directors to

reconstitute the board as contemplated under sub-section (2). Sub-section (5) of section 10A provides that where the Reserve Bank is of opinion

that the composition of the board of directors of a banking company is such that it does not fulfill the requirement as provided in sub-section (2), it

may, after giving to such banking company a reasonable opportunity of being heard, by an order in writing, direct the banking company to so

reconstitute its board of directors as to ensure that the requirements are fulfilled and, if within two months from the date of receipt of that order, the

banking company does not comply with the directions made by the Reserve

Bank, that bank may, after determining, by lots drawn in such manner as may be prescribed, remove such persons from the office of director of such banking company and appoint a suitable person as a member of the board of directors, in the place of the person so removed. Sub-section (6) provides that every appointment, removal or reconstitution duly made, and every election duly held under this section shall be final and shall not be called into question in any court. Sub-section (7) provides for the duration of the office of the director so appointed. The category of directors representing fifty-one per cent. of the total members of the board as provided u/s 10A(2) of the Act are commonly called the directors from the majority sector.

5. The board of directors of the first respondent-bank resolved in the meeting held on May 11, 1976, to give representation to the board of management of the staff of the bank (clerical and supervisory) in accordance with the 20 point economic programme announced by the Prime Minister of India and decided to co-opt Thiru S. T. Singaram as one of the directors of the bank. The said Singaram was a shareholder and was also a staff member.

6. In an extraordinary general body meeting held on June 26, 1976, the shareholders passed a special resolution for amending article 12 of the article of association of the bank to the effect that the number of directors in the board shall not less than nine and not more than twelve, instead of seven and even. The Reserve Bank of India on September 24, 1976, forwarded its approval to increase the strength of the board of directors.

7. The said Singaram vacated his office of directorship in the annual general meeting held on September 12, 1977, on offering himself for appointment as elected director. He was elected as one of the directors in the annual general meeting.

8. On a representation made by the officer's association, a joint meetings was held between the representatives of the offices association and the management on April 24, 1979, wherein the first respondent-bank agreed to co-opt the writ petitioner as one of the directors representing the officers of the bank. The Reserve Bank of India, the third respondent herein, expressed no objection to the board of directors of the first respondents bank co-opting the representative of the offence as director but

advised the board to take steps to set right the imbalance in the composition of the directors, which at time consisted of six directors in the majority sector and five in the minority sector.

9. The first respondent-bank applied to the third respondent on December 21, 1979, for the amendment of the relevant provisions of the articles of association so as to increase the strength of the board of directors to 13 so that there would be a majority of directors in the majority sector as contemplated u/s 10A(2) of the Act and the rest would be representing the officers of the bank and others etc.

10. The Reserve Bank of India on April 12, 1980, approved the appointment of the petitioner and included him in the majority sector of the first respondent-bank. In pursuance thereof, by a resolution dated April 28, 1990, the board of directors of the first respondent-bank recommended and co-opted the petitioner as one of the directors of the first respondent-bank. Since the writ petitioner happened to be a shareholder, the shareholders later elected the writ petitioner as one of the directors of the bank in the annual general meeting held on July 30, 1980.

11. As per articles 19 and 20 of the articles of association of the first respondent-bank, a director has to retire by rotation. The directors representing the clerical staff as also representing the officer were to be elected by the shareholders at the annual general body meeting. The clerical staff and the officer have no voting rights. The petitioner, during his tenure of office as one of the directors of the said bank, pointed out certain irregularities in the day to day affairs of the banking company and the particulars were set forth in detail in the affidavit filed by the writ petitioner in support of the writ petition.

12. Article 19 of the articles of association provides that at the annual general meeting one-third of the directors are liable to retire by rotation and if the number of directors is not a multiple of three, the number nearest to the one-third shall retire from office. In terms of the said article, four directors, viz., M. S. M. Krishnan, K. R. Chandrasekharan, S. T. Singaram and T. S. Arumugham (the petitioner herein) retired in the annual general meeting held on June 27, 1983. However, M. S. M. Krishnan and K. R. Chandrasekharan were re-elected and re-appointed as directors.

In the said meeting when the item regarding the appointment of directors in the

place of Singaram and T. S. Arumugham were taken up for consideration, the general body decided that these vacancies need not be filled up for the present. The said resolutions were put to vote separately and they were carried by a majority of votes. In these circumstances, the petitioner ceased to be the director of the first respondent-bank and that the vacancy caused as a result of his retirement was not filled up. It is at this stage, the petitioner has filed the above writ petition for issue of a writ of mandamus directing the Reserve Bank of India, Madras, the third respondent herein, to take action u/s 35A of the Act and directing the respondent Nos. 1 and 2 to fill up the vacancies caused by the retirement of directors representing the officers of the first respondent-bank.

13. Mr. Venkatraman, learned counsel for the petitioner contended that the representation of the employees in the board of directors of the bank is based on the theory of the employees' participation in the management which has been accepted throughout the industrial world and the said theory is based on the principles enshrined in article 43A of the Constitution of India under Part IV as one of the Directive principles of State Policy.

14. Learned counsel for the petitioner further contended that the Government of India in exercise of its powers u/s 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, framed a scheme wherein clause 3(b) or 3(c) are consistent with the provisions contained in article 43A of the Constitution of India setting out the Directive Principles of State Policy. Learned counsel for the petitioner further contended that in the instant case, it is only with a view to introduce the employees' participation in the board of management, Thiru S. T. Singaram and the petitioner were originally co-opted and since they happened to be shareholders they were elected subsequently by the general body and the decision not to fill up such vacancies cannot be said to be expressing the real intention of the general body, but it was only at the instance of the management who were able to get the resolution passed to the effect that the existing vacancies need not be filled up and such a resolution is also in contravention of article 43A of the Constitution of India.

15. Learned counsel for the petitioner further contended that the third respondent, the Reserve Bank of India, has ample powers powers under

sections 12A, 35A and 35B to issue directions to the scheduled banks and that keeping in view the policy of the Government and the provisions contained in article 43A of the Constitution of India, the Reserve Bank should have directed the first respondent herein to appoint any employee so as to enable them to be represented on the board of directors of the first respondent-bank and that though the offices association requested the third respondent to initiate action u/s 35A of the Act by issuing appropriate directions to the first respondent to fill up the vacancies, the third respondent has not paid any heed, even though the third respondent has the statutory duty u/s 35A of the Act to direct the first respondent to fill up the vacancies caused on account of the retirement of an officer/employee in the board of directors of the first respondent. Learned counsel further contended that there is no agenda to resolve in the annual general body meeting as to whether the vacancy caused as a result of retirement of the writ petitioner as well as Mr. Singaram should be filled up or not. In support of the aforesaid contentions, learned counsel for the petitioner cited the decisions in National Textile Workers' Union v. P. R. Ramakrishnan [1983] 53 Comp Cas 184 and (2) All India Bank Officers' Confederation v. Union of India [1990] 1 LLJ 352 which will be considered later.

16. In reply, Mr. T. S. Gopalan, learned counsel for respondents Nos. 1 and 2, contended that the writ petition instituted by the writ petitioner is not maintainable for the reason that the first respondent is only a company registered under the Companies Act and that, therefore, the first respondent is not amenable to the writ jurisdiction of this court. Learned counsel for respondents Nos. 1 and 2 contended that the third respondent has no control in the matter of filling up vacancies in the board of directors or in the election of director or election of directors of any banking company except as mentioned in the proviso to section 10A of the Banking Regulation Act, 1949. The third respondent could exercise its powers to control or supervise over the first respondent only under the provisions of the Act. The third respondent does not have power to issue any direction in the matter of filling up the vacancy of the directors of the first respondent banking company. Therefore, this court cannot direct the third respondent to issue directions as desired by the writ petitioner unless and until it is warranted by any of the statutory provisions contained in the

Act. Learned counsel further contended that the policy of giving representation to the employees in the board of directors has no application to the banking company registered under the Companies Act. The first respondent-bank being a limited liability company, the shareholders cannot be forced to have any person as a director on the board against their wish. The shareholders in the general body meeting have resolved not to fill up vacancies and the resolution of the shareholders has become final and respondents Nos. 1 and 2 cannot have any say with reference to the resolution passed in the annual general meeting. Learned counsel further contended that in order to invoke the power available u/s 35A of the Act, the Reserve Bank has to assess whether there is any situation warranting exercise of powers u/s 35A of the Act.

17. Learned counsel appearing on behalf of the Reserve Bank of India, Madras, the third respondent herein, contended that the powers conferred on the Reserve Bank of India u/s 35A of the Act may be exercised only if the Reserve Bank of India is satisfied that it is in the public interest or in the interest of the banking company or to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company or to secure the proper management of any banking company generally. It is further contended that though the Reserve Bank of India has power as provided u/s 35A of the Act to issue directions to the first respondent-bank, such power could be exercised only when the situation warrants interference and the Reserve Bank has no control in the matter of filling up the vacancies in the board of directors or in the election of directors in the banking company. It is further contended that when the issue of filling up the vacancies on account of the petitioner's retirement was taken up for consideration, the general body of the first respondent-bank passed a resolution to the effect that the vacancy need not be filled up for the present. The authority to decide in filling up vacancies vests entirely with the shareholders. Consequently, the Reserve Bank of India cannot issue any directions in the exercise of powers conferred on it u/s 35A of the Act.

18. On considering the aforesaid facts of the case, it is not in dispute that the petitioner was originally co-opted by the board of directors of the first

respondent-bank and later, the petitioner was elected as one of the directors by the shareholders of the bank in the annual general body meeting, since the petitioner happened to be a shareholder of the first respondent-bank. In view of the fact that the petitioner was elected as one of the directors, he was considered as one of the directors representing the majority sector of the shareholders. The petitioner, after his term was over, retired from the board of directors. The company, in its annual general body meeting, considered as to whether the vacancy caused as a result of the retirement of the petitioner should be filled up or not and ultimately resolved that such vacancy need not be filled up for the present. However, there appears to be no impediment whatsoever to the writ petitioner being elected as one of the directors, provided that the majority of the shareholders elected him as such. Now the question for consideration is whether the petitioner, since he happens to be an officer/employee of the bank, or any other officer/employee of the bank, should be co-opted as one of the directors of the first respondent-bank or in other words whether the first respondent can be compelled to co-opt any of the officers/employees of the bank as one of the directors in order to ensure representation of the officers/employees on the board of directors of the first respondent-bank.

19. The contention of Mr. T. S. Gopalan, learned counsel for respondents Nos. 1 and 2 that the writ petition is not maintainable by reason of the fact that the first respondent is only a company incorporated under the Companies Act and consequently is not amenable to the writ jurisdiction of this court is not sustainable in law. The relief that it prayed for in the writ petition by the petitioner is only to issue a writ of mandamus directing the Reserve Bank of India to take action u/s 35A of the Act by directing respondents Nos. 1 and 2 to fill up the vacancies caused by the retirement of the director representing the officers of the first respondent-bank. It is manifest that the third respondent being a statutory authority is required to exercise its powers available under the provisions, viz., u/s 35A of the Act. Since the statutory authority is being called upon, by issuing appropriate directions, to exercise its authority under the statutory provisions viz., section 35A of the Act, it is futile to contend that the writ petition is not maintainable.

20. The contention of the writ petitioner that the representation of the employees in the board of directors of the bank is based on the theory of the employees' participation in the management and that the said theory is based on the principles enshrined in article 43A of the Constitution of India as one of the Directive Principles of State Policy appears to be a sound proposition but cannot be enforceable in the absence of any statutory provision to that effect. Since the first respondent-bank is a bank incorporated under the Companies Act, the management and the affairs of the company are governed by the provisions of the company law and there cannot be any direction contrary to the provisions contained under the statute. It is not in dispute that article 43A of the Constitution of India provides for participation of workers in the management of an undertaking. In fact, article 43A of the Constitution of India contemplates that the State shall take steps, by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishment or other organisations engaged in any industry. It is not brought to the notice of this court that the State has taken steps either by suitable legislation or in any other way to secure the participation of workers in the management of the affairs of the company in question. The Central Government, by the exercise of the power conferred u/s 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act framed a scheme in consultation with the Reserve Bank of India and such a scheme had provided, inter alia, for participation of the representatives of employees or depositors in the board of directors of the nationalised bank. In this connection, the decision in All India Bank Officers' Confederation v. Union of India [1990] 1 LLJ 352 was cited by learned counsel for the petitioner, wherein the All India Bank Officers' Confederation challenged the circular issued by the Government, which provides a different mode of appointment of officers representing the board of a directors. The Supreme Court considered that the mode contemplated for appointment of a director representing the officers/employees is not consistent with the provision contained for appointment of workman/employee and consequently set aside the circular and directed the Central Government to amend the scheme to improve on the machinery for the conduct of an appropriate election.

21. In *National Textile Workers' Union v. P. R. Ramakrishnan* [1983] 53 Comp Cas 184, the question arose when a petition for winding up the company was filed in court, whether the workmen of the company were entitled to ask the court to implead them as parties in the winding up petition or to allow them to appear and contest the winding up petition or whether they have any locus standi so far as the winding up petition is concerned. There the controversy was not whether the unions of workmen were entitled to be heard in a winding up partition, but whether the workmen had such right when a winding up petition was filed against a company. The controversy was narrowed down as that the workmen represented by them were entitled to intervene in the winding up petition and to be heard before any order was made by the company judge in the winding up petition. It was contended therein that the right to be heard in the winding up petition was governed solely by the provision of the Companies Act and since no such right was conferred on the workmen by any of the provisions of the Companies Act, the workmen were not entitled to intervene in the winding up petition, though making up an order might result in termination of their services. It is in these circumstances, the learned counsel refers to the following passages at pages 195-200 :

The concept of a company has undergone radical transformation in the last few decades. The traditional view of a company was that it was a convenient mechanical device for carrying on trade and industry, a mere legal framework providing a convenient institutional container for holding and using the powers of company management. The company law was at that time conceived merely as a statute intended to regulate the structure and mode of operation of a special type of economic institution called "company". This was the view which prevailed for a long time in juristic circles all over the democratic world including the United States of America, United Kingdom and India. That was the time when the doctrine of laissez faire held sway and it dominated the political and economic scene. This doctrine glorified the concept of a free economic society in which State intervention in social and economic matters was kept at the lowest possible level. But gradually this doctrine was eroded by the emergence of new social values which recognised the role of the State as an active participant in the social and economic life of the citizen in order to bring about

general welfare and common good of the community. With this change in socio-economic thinking, the developing role of companies in modern economy and their increasing impact on individuals and groups, through the ramifications of their activities, began to be increasingly recognised. It began to be realised that the company is a species of social organisation, with a life and dynamics of its own and exercising a significant power in contemporary society. The new concept of corporate responsibility transcending the limited traditional views about the relationship between management and shareholders and embracing within its scope much wider groups affected by the trading activities and other connected operations of companies, emerged as an important feature of contemporary thought on the role of corporation in modern society. The adoption of the socialistic pattern of society as the ultimate goal of the country's economic and social policies hastened the emergence of this new concept of the corporation. The socio-economic objectives set out in Part IV of the Constitution have since guided and shaped this new corporate philosophy, We shall presently refer to some of the Directive Principles of State Policy set out in Part IV which clearly show the direction in which the corporate sector is intended to move and the role which it is intended to play in the social and economic life of the nation. But, one thing is certain that the old nineteenth century view which regarded a company merely a legal device adopted by shareholders for carrying on trade or business as proprietors has been discarded and a company is now looked upon as a socio-economic institution wielding economic power and influencing the life of the people.

It is now accepted on all hands, even in predominantly capitalist countries, that a company is not property. The traditional view that the company is the property of the shareholders is now an exploded myth. There was a time when a group controlling the majority of shares in a company used to say : "This is our concern. We can do what we like with it." The ownership of the concern was identified with those who brought in capital. That was the outcome of the property-minded capitalistic society in which the concept of company originated. But this view can no longer be regarded as valid in the light of the changing socio-economic concepts and values. Today social scientists and thinkers regard a company as a living, vital and

dynamic, social organism with firm and deep-rooted affiliations with the rest of the community in which it functions. It would be wrong to look upon it as something belonging to the shareholders. It is true that the shareholders bring capital, but capital is not enough. It is only one of the factors which contributes to the production of national wealth. There is another equally, if not more, important factor of production and that is labour.

Then, there are the financial institutions and depositors, who provide the additional finance required for production, and, lastly, there are the consumers and the rest of the members of the community who are vitally interested in the product manufactured in the concern. Then how can it be said that capital, which is only one of the factors of production, should be regarded as the owner having an exclusive dominion over the concern, as if the concern belongs to it ? ... There was at one time a serious controversy between two schools of thought, one represented by Adolf Berle and the other by Professor Dodd as regards the nature of duties and obligations owed by directors representing the management of a company. Adolf Berle took the view that directors are trustee only for shareholders - that is, the traditional view which directly flows from a purely capitalistic approach which identifies ownership and dominion with capital - while Prof. Dodd believed that directors are trustees not only for shareholders but also for the entire community. Ultimately, however, in his subsequent book, *Twentieth Century Capitalist Revolution*, Adolf Berle conceded that Prof. Dodd was right and that modern directors are not limited to running business enterprises for maximum profit motive alone, but are in fact administrators of a community system or a social institution. That is why we find that in recent times there is considerable thinking on the subject of social responsibilities of corporate management and it is now acknowledged even in highly developed countries like the United States and England that maximisation of social welfare should be the legitimate goal of a company and shareholders should be regarded not as proprietors of the company, but merely as suppliers of capital entitled to no more than a reasonable return and the company should be responsible not only to shareholders but also to workers, consumers and the other members of the community and should be guided by considerations of national economy and progress.

... The workers, therefore, have a special place in a socialist pattern of society. They are not mere vendors of toil, they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital-may, very much more ... article 43A which is intended to herald industrial democracy and in the words of Krishna Iyer J. marks "the end of industrial bonded labour." That article says that the State shall take steps, by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. The constitutional mandate is, therefore, clear and undoubted that the management of the enterprise should not be left entirely in the hands of the suppliers of capital but the workers should also be entitled to participate in it, because in a socialist pattern of society, the enterprise which is a center of economic power should be controlled not only be capital but also by labour. It is, therefore, idle to contend thirty-two years after the coming into force of the Constitution and particularly after the introduction of article 43A in the Constitution that the workers should have no voice in the determination of the question whether the enterprise should continue to run or be shut down under an order of the court. It would indeed be strange that the workers who have contributed to the building of the enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that centre of economic power.

22. Learned counsel by referring to the above passage strenuously impresses upon the court that the Reserve Bank can issue directions to the first respondent-bank to appoint the officers-employees as one of the directors to manage the affairs of the company.

23. Learned counsel may be right in bringing to the notice of the court that the concept of the company has undergone a radical transformation and that there is considerable thinking on the concept of social responsibility of corporate management. However, it is for the Government to take steps as provided under article 43A of the Constitution of India for participation of workers in the management of industry and also it is for the Government to take note of the concept of social responsibility of corporate management and to bring necessary legislative changes in order to enable the workman-employee/officer-employee to participate in the management of the affairs of the banking company. Of course, the provisions

contained in the Banking Companies (Acquisition and Transfer of Undertakings) Act brought about a change and the Central Government framed a scheme as contemplated u/s 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, so as to ensure the employees' representation in the board of directors of the nationalised banks. However, these provisions are applicable to nationalised banks. In so far as scheduled banks are concerned, there is no such provision enabling the employees to be represented on the board of directors of the banking company. In the absence of any such provision enabling the Reserve Bank of India to issue direction to the first respondent-bank to fill up the vacancy caused as a result of the retirement of the writ petitioner from the board of directors, there cannot be any direction to the Reserve Bank of India to issue directions as prayed for. In fact, the writ petitioner has not represented the officers-employees of the bank while he was acting as a director on being elected by the general body of the shareholders. It may be that the board of directors originally co-opted the writ petitioner representing the officers-employees of the first respondent-bank and subsequently the writ petitioner was elected as one of the directors by the general body of the first respondent-bank. Consequently, it cannot be said that his election by the general body of the first respondent-company was as one of the directors of the company in order to represent the officers employee of the first respondent-bank. His election as one of the directors in the general body meeting was by reason of his being a shareholder of the first respondent-bank and not otherwise.

24. The company law is a self-contained code and the provisions of the company law shall be applicable to the first respondent-bank and in so far as the appointment of directors are concerned, the provision of the Act shall prevail. Section 256(3) of the Companies Act provides that at the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto. However, in view of the fact that the provisions of the Banking Regulation Act also applicable, such appointment of directors shall be consistent with the provision contained u/s 10A of the Act. Even though the provisions contained u/s 10A of the Act specify the class of persons who should represent not less than two-thirds of the directors of the company, such class of persons shall be appointed as contemplated

u/s 256 of the Companies Act. In other words, it may be said that the appointment of directors as contemplated under the provision of section 256

of the Companies Act shall also consists of persons who shall have knowledge or practical experience in respect of matters viz., (i) accountancy,

(ii) agricultural and rural economy, (iii) banking, (iv) co-operation, (v) economics, (vi) finance, (vii) law, (viii) small-scale industry, and (ix) any other

matter, the special knowledge of and practical experience in which would, in the opinion of the Reserve Bank, be useful to the banking company.

From and out of the persons appointed as directors of the bank, not less than two shall be persons having special knowledge of practical

experience in respect of agriculture and rural economy, co-operation or small-scale industry. Section 10A of the Act further provides that where

the Reserve Bank of India is of opinion that the composition of the board of directors of a banking company is such that it does not fulfill the

requirements of sub-section (2) it may, after giving to such banking company a reasonable opportunity of being heard, by an order in writing direct

the banking company to so reconstitute the board of directors as to ensure that the said requirement are fulfilled and if the banking company does

not comply with the directions made by the Reserve Bank, the Reserve Bank may remove such person from the office of director and with a view

to complying with the provisions of sub-section (3) appoint a suitable person as a member of the board of directors, in the place of the person so

removed whereupon the person so appointed shall be deemed to have been duly elected by the banking company as its director, From the above,

it is manifest that if the composition of directors by the company does not fulfil the requirements of sub-section (2) of section 10A of the Act, the

Reserve Bank has authority to direct them to reconstitute the board of directors so as ensure that the requirements of the sub-section are fulfilled.

In case the bank does not comply with the directions, the Reserve Bank has authority to remove the two directors and to appoint suitable persons

so as to ensure that the requirements of sub-section (2) of section 10A of the Act are fulfilled. u/s 35A of the Regulation Act, the Reserve Bank

has power to issue direction when it is satisfied that in the public interest or in the interest of banking policy or to prevent the affairs of any banking

company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the banking company

or to secure the proper management of any banking company generally and the banking company shall comply with such directions. These are the contingencies in which the Reserve Bank has authority to appoint directors.

25. That apart, the Reserve Bank of India has no authority to issue any direction to the banking company incorporated under the Companies Act

with reference to the appointment of a person as one of the directors of the company. It may be considered that there is no provision enabling the

company or the board of director either under the Companies Act or under the Banking Regulation Act to nominate or to appoint either the

workman/employee or an officer/employee as a director in order to ensure the workman/staff's representation in the management of the affairs of

the company. In the absence of any such provision, the first respondent-bank cannot be compelled to appoint or to co-opt any workman or staff

as one of the directors of the first respondent-company. The powers of the Reserve Bank is also limited to the extend provided u/s 10A and 35A

of the Act and that the Reserve Bank has no authority to go beyond the powers available under the aforesaid provisions. Though in the instant

case, the writ petitioner prays for the issue of a writ of mandamus directing the third respondent to issue directions u/s 35A of the Act to the first

respondent to fill up the vacancies caused by the retirement of the director representing the officers of the first respondent-company, it may be

relevant by way of repetition to state that section 35A of the Act does not empower the Reserve Bank of India to issue direction to respondent

Nos. 1 and 2 to fill up vacancies caused by the retirement of directors by appointing any of the officers-employees to the board of directors of the

first respondent-bank. In the absence of any provision enabling the officer, representing the officers of the first respondent-bank, to be appointed

as one of the directors, the Reserve Bank of India has no authority to issue such directions as prayed for by the petitioner. Unless a situation as

contemplated u/s 35A of the Act arises warranting interference by the Reserve Bank of India or the exercise of power u/s 35A of the Act, there

cannot be any direction by issuing a writ of mandamus directing the Reserve Bank of India to issue direction to respondents Nos. 1 and 2 to fill up

the vacancy caused as a result of the retirement of the director representing the officers of the first respondent-bank. The appointment of a director

can be made only by following the procedure prescribed u/s 256 of the Companies Act except to the extent that is provided u/s 10A(4) of the

Act. In the instant case, since the general body of the first respondent resolved not to fill up the vacancy caused as a result of the retirement of the

writ petitioner, the Reserve Bank cannot issue any such direction unless a situation so warrants as contemplated under the provisions of section

35A of the Act for the reason that a director could be appointed only by following the procedure prescribed u/s 256 of the Companies Act.

26. The contention of learned counsel for the petitioner that the decision not to fill up vacancies cannot be said to be expressing the real intention of

the general body, but was only at the instance of the management, who are able to get their resolution passed to the effect that the existing

vacancies need not be filled up, etc., cannot have any merit at all. The general body of the first respondent have its ultimate say over the election of

the director and the management does not have any power or authority to over-reach the general body in order to achieve their real objects. As

stated earlier, the petitioner has no impediment whatsoever for being elected by the general body and that in the instant case the general body

resolved not to fill up the vacancy caused as a result of the retirement of the writ petitioner, Once when the resolution was passed, the

management, viz., the board of directors, has no say over the matter. Even the Reserve Bank of India cannot compel the general body to elect

unless the conditions specified u/s 35A of the Act are satisfied. In the instant case, it is not the case of the petitioner that the conditions specified u/s

35A of the Act are satisfied. Consequently, the Reserve Bank of India cannot issue directions to the first respondent-Bank as prayed for by the

writ petitioner. Even otherwise, it is for the Reserve Bank to assess the entire situation so as to satisfy itself that the situation in the first respondent-

bank warrants interference compelling the Reserve Bank of India to issue directions u/s 35A of the Act. It may be that as contended by the learned

counsel for the petitioner, the Reserve Bank has wide powers under sections 10A, 12A and 35A of the Act. But such powers are to be exercised

only under circumstances as contemplated under these provisions and not otherwise. It may be futile to contend that by reason of the provisions

contained in article 43A of the constitution, the Reserve Bank should have directed the first respondent to appoint any employee so as to enable

such employee to be represented on the board of directors, unless and until a provision to that effect is incorporated either under the Act or under the Companies Act or under a special statute.

27. In so far as the contention that there is no agenda to resolve as to whether the vacancy caused as a retirement of the writ petitioner should be filled up or not is concerned, it is manifest from the notice issued for holding the annual general meeting that as one of the items it was specified to appoint a director in the place of T. S. Arumugham, who retires by rotation as per articles 19 and 20 of the articles of association, etc. In view of the above, this contention has no merit.

28. Learned counsel for the respondents is right in contending that the third respondent has no control in the filling up of the vacancies in the board of directors or in the election of directors of any banking company except as mentioned in the proviso to sections 10A and 35A of the Act. In the absence of any provision for appointment of a director by the Reserve Bank of India, except as provided u/s 10A of the Act, this court issue any such direction as prayed for by the petitioner.

29. Learned counsel for the respondents may be right in contending that the policy of giving representation to the employees on the board of directors has no application to a banking company incorporated under the Companies Act and in the instant case the first respondent-bank, being a limited company, the shareholders cannot be forced to have any person as a director on the board against their wish. Learned counsel for the first respondent is also correct in contending that the powers available u/s 35A of the Act can be exercised only when it is satisfied about the existence of the conditions specified u/s 35A of the Act. Unless the situation or exigency warrants such interference as contemplated u/s 35A of the Act, the Reserve Bank of India cannot be compelled to issue directions to the first respondent nor can the Reserve Bank of India issue any direction contrary to the statutory provisions.

30. In view of the aforesaid circumstances, there are no merits in the contentions of the learned counsel for the petitioner and consequently the writ petition fails and is dismissed. However, there will be no order as to costs.