THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.V.M.P.No.1861 of 2017 in/and W.P.No.13192 of 2017

ORDER:

The petitioner Nos.1 to 9 herein are officers belonging to erstwhile Associate Banks which have come to the fold of the State Bank of India w.e.f. 01-04-2017 and 10th petitioner is the Associate Banks' Officers Association in which petitioner Nos.1 to 9 are members. The 10th petitioner is stated to be an association registered under the Trade Unions Act, 1926.

2. They challenge various acquisition orders issued by Government of India, Ministry of Finance under sub Section (2) of Section 35 of the State Bank of India Act, 1955 acquiring by way of amalgamation the business including the assets and liabilities of Associate Banks such as the State Bank of Bikaner and Jaipur, State Bank of Hyderabad, State Bank of Mysore, State Bank of Patiala and State Bank of Travancore. In particular, they also challenge Annexure-B (1) to the offer letter dt.29-03-2017 issued by the Chief General Manager (HR), State Bank of India, Corporate Centre, Mumbai (2nd respondent) and seek a direction to the respondents to seek options from the officers of the Associate Banks after finalizing the terms and conditions of services of officers duly complying with principles of natural justice.

3. The State Bank of India (for short 'SBI') was constituted under the State Bank of India Act, 1955 and the banking business, assets and liabilities of the erstwhile Imperial Bank were transferred to it.

4. Subsequently the State Bank of India (Subsidiary Banks) Act, 1959 was enacted to take over the management of the various State Associate Banks which were either owned in part by the State Governments or with which the State Governments had close association. Thus the management of State Bank of Bikaner and Jaipur, State Bank of Hyderabad, State Bank of Mysore, State Bank of Patiala and State Bank of Travancore came into its fold. Under Section 24 of this Act, the SBI was empowered to give directions and instructions to the above subsidiary banks with regard to their affairs, business etc., but the officers and employees of the subsidiary banks were not officers or employees of the SBI for any purpose.

5. The Boards of the five above named subsidiary banks and the SBI met at Mumbai on 17-05-2016 and 18-05-2016 and in principle agreed to transfer the assets and liabilities and banking business of all the five subsidiary banks to the SBI. A proposal to this effect framed by the SBI was sent to the Central Government and it approved the same on 16-06-2016 vide a Union Cabinet decision.

6. On 22-02-2017, the Central Government passed an order in exercise of its powers under sub Section (2) of Section 35 of the State Bank of India Act, 1955 according sanction to the acquisition by the SBI of the above named five subsidiary banks under the following separate acquisition orders:

> *(i) G.S.R.(E) 156 – The Acquisition of State Bank of Bikaner and Jaipur Order, 2017.*
> *(ii) G.S.R.(E) 157 – The Acquisition of State Bank of Hyderabad Order, 2017.*
> *(iii) G.S.R.(E) 158 – The Acquisition of State Bank of Mysore Order, 2017.*

(iv) G.S.R.(E) 159 – The Acquisition of State Bank of Patiala Order, 2017.

(v) G.S.R.(E) 160 – The Acquisition of State Bank of Travancore Order, 2017.

7. This was published in the Gazette of India and came into effect on 01-04-2017.

8. Clause 2 of the gazette publication stated that from 01-04-2017, the undertaking of the aforesaid subsidiary banks (referred to as 'transferor banks') as they stood immediately before the said date shall, without any further act, instrument or deed, stand transferred to, and vest in, the SBI (referred to as 'transferee bank').

9. Clause 7 of the gazette notification stated:

> *"Every permanent and regular officer or other permanent and regular employee of the Transferor Bank (except the Board of Directors and Executive Trustees) and officers or employees on probation, serving in the employment of the Transferor Bank immediately before the effective date shall become, as from the effective date, an officer or, as the case may be, employee of the Transferee Bank and shall hold his office or service therein in the Transferee Bank on such terms and conditions as may be approved by the Central Board of the Transferee Bank and shall continue to work in accordance therewith.*
>
> *Provided that the pay and allowances offered to the employees or officers of the Transferor Bank shall not be less than the overall pay and allowance as they would have drawn in the Transferor Bank."*

10. In terms of the said orders, an option letter dt.29-03-2017 was issued to the employees of the Associate Banks stating as under:

> *"3. Please convey your acceptance of the offer of employment or otherwise, within 15 days from the date of this letter by choosing one of thee options as detailed hereunder.*

A. I have examined the terms and conditions of service and accept the offer of employment from the Effective Date on the terms and conditions stated in the Annexure including SBI Terminal Benefits as mentioned in Option A of clause 2 (a) of the Annexure B1/B2.

B. I have examined the terms and conditions of service and accept the offer of employment from the Effective Date, on the terms and conditions stated in the Annexure except the SBI Terminal Benefits. I opt for Terminal/Superannuation Benefits of State Bank of Mysore as mentioned in Option B of clause 2 (a) of the Annexure B1/B2.

C. I do not accept the offer of employment in SBI and wish to discontinue the services. I may be paid Terminal Benefits as available in State Bank of Mysore."

11. The terms and conditions of service were set out in Annexure-B (1) to the above letter and dealt with aspects such as:

(a) Terminal benefits – pension, provident fund and gratuity.

(b) Pay and allowances

(c) Promotions, *inter se* seniority etc.

12. It is not in dispute that the SBI had now finalized the norms for fixing inter se seniority between existing SBI employees and officers on the one hand and the employees and officers of the five subsidiary banks which have now been amalgamated, on the basis of which it would make promotions. On this aspect the petitioners have no grievance.

13. However with regard to certain aspects i.e., terminal benefits, number of increments payable to probationary officers and trainee officers of Associate Banks, Special Compensatory Allowance and Special Balancing Allowance, etc. the petitioners have certain grievances.

CONTENTIONS OF PETITIONERS

14. According to them, there was no adequate consultation with the 10th petitioner association before 01-04-2017 with regard to the above aspects and other aspects and they allege that upon the acquisition of the five subsidiary banks by the SBI, officers and employees of the erstwhile subsidiary banks suffer discrimination and disadvantage; that the scheme of acquisition did not provide adequate safeguard to their service conditions; that the terms and conditions of their service post merger should have been finalized before 01-04-2017 and could not have been left vague since they were entitled to know before hand what they would be so that they can inform themselves and then make up their minds as to which option they should exercise. They contend that the SBI cannot unilaterally fix the terms and conditions of their service and compel them to accept the same and it violates Articles 14, 16 and 21 of the Constitution of India; that there cannot be different conditions of service between existing officers of SBI and persons like the petitioners who were employees of the subsidiary banks; that since only 15 days was given in clause (5) of the letter dt.29-03-2017 to the employees and officers of the subsidiary banks to exercise option and if not they are deemed to have chosen option B in para-3 mentioned therein, it amounts to transferring their services by legal fiction which is impermissible in law; and unless their grievances are redressed by proper negotiations and discussions with representatives of SBI, the time for exercising the option should be extended.

THE INTERIM ORDER Dt.13.4.2017

15. On 13-04-2017 this Court recorded their contentions and granted an interim direction not to finalize the options until 15-06-2017 and directed the listing of the Writ Petitions on 05-06-2017.

16. W.V.M.P.No.1861 of 2017 was filed to vacate the above order by the SBI and its senior officials and branches in the States of Telangana and Andhra Pradesh Circles (respondent Nos.1 to 5).

17. The matter was listed before this Court on 05-06-2017 and arguments of Sri G.Vidya Sagar, Senior Counsel for Ms.K.Udaya Sri and D.V.Sitarama Murthy, Senior Counsel for Sri B.S.Prasad, learned counsel for vacate stay petitioners were heard in the matter on 08-06-2017 and 09-06-2017.

18. The learned Senior Counsel for the petitioners reiterated the above contentions of the petitioners.

CONTENTIONS OF COUNSEL FOR RESPONDENTS

19. The learned Senior Counsel for the respondent Nos.1 to 5 refuted the above contentions.

20. According to him, the 6th respondent, in exercise of powers conferred under Section 35 of the State Bank of India Act, 1955 passed separate orders for acquisition of the above named five subsidiary banks after carefully considering all issues relating to the acquisition after approval by the Reserve Bank of India; that in terms of the said notifications, acquisition of the five Associate Banks by SBI became effective on and from 01-04-2017; from that date, their undertaking vested with the SBI; the SBI followed the

above orders of the Central Government and issued the offer letter dt.29-03-2017; and the services of the employees and officers of the Associate Banks were well protected under the above orders of the 6th respondent.

21. He pointed out that the schemes of acquisition of each of the subsidiary banks had been made public and had been accessible to all employees and officers of Associate Banks as well as the SBI and had been displayed on their web portal; clarifications were provided to representatives of the 10th petitioner in a meeting held on 31-08-2016 that the schemes of amalgamation provided that the terms and conditions to be offered to the employees and officers of Associate Banks would be decided by the Central Board of the SBI after the schemes of acquisition were approved by respondent Nos.6 and 7; the schemes of acquisition dt.18-08-2016 though did not contain terms and conditions of service, they did provide that after merger, pay and allowances, over all, of the employees of the Associate Banks would not be less than what they would have drawn in their respective banks; that offers of employment will be made to all permanent officers and employees in the service of such subsidiary banks as on the effective date ensuring that their over all pay and allowances would not be lower than what they would have drawn in their parent banks; and no discrimination has been shown in respect of service conditions, retirement benefits, pay and allowances to employees and officers of subsidiary banks.

22. He stated that 70% employees of Associate Banks had already exercised their option with a huge majority of them opting for the terminal benefits available to SBI employees which would enable them to get

additional third benefit of Bank's contribution to PF from 01-04-2017; that 220 employees have only opted for option C in the five Associate Banks by voluntarily resigning and relinquishing their services; and at this stage, post merger of the Associate Banks with SBI w.e.f. 01-04-2017, if options are not finalized, as directed in the interim order dt.13.4.2017, grave and irreparable loss would be caused to the respondents since they would not be in a position to know whom to transfer and whom to promote to the higher posts causing confusion and chaos in the administration of the SBI affecting services to be provided to the large number of customers of the SBI. According to him, public interest would be seriously prejudiced if the options are not finalized.

THE CONSIDERATION BY THE COURT

23. From the admitted facts, it is clear that there has been a transfer of undertaking, business including assets and liabilities of the five Associate Banks referred to above with the SBI w.e.f. 01-04-2017 by virtue of the separate orders dt.22-02-2017 issued by the Government of India in exercise of its powers under Sub-Section (2) of Section 35 of the State Bank of India Act, 1955.

24. The petitioners' grievances relate to service conditions such as terminal benefits, seniority, promotions, allowances, increments etc. with regard to employees and officers of the erstwhile Associate Banks which have now been amalgamated with SBI.

25. The question is : "*whether petitioners are justified in insisting that the stay of finalization of the options granted in the interim order*

dt.13-04-2017 in the instant Writ Petition be continued, till their service grievances mentioned above to be decided first?".

26. No doubt, clause (7) of the Orders dt.22-02-2017 of the Government of India ensures that every permanent and regular officer or employee of the Associate Banks including officers or employees on probation, serving in the said Banks immediately before 01-04-2017, becomes an officer or employee of the SBI. It states that his office of service in the SBI would be *on such terms and conditions as may be approved by the Central Board of SBI and that he shall continue to work in accordance therewith.* The proviso to clause (7) guarantees that the pay and allowances offered to the employees or officers of the Associate Banks shall not be less than the overall pay and allowances as they would have drawn in the Associate Banks after the said Banks are amalgamated with SBI.

27. However, the assurance given in the proviso to clause (7) seeks to protect pay and allowances only, and there was no clarity about issues such as seniority etc. at the time when the schemes of acquisition of the Associate Banks were announced on 18-08-2016.

28. Each of the Associate Banks had issued staff circular before 01-04-2017 inviting options from their officers and employees. One such Staff circular No.76/2016-17 dt.30-03-2017 issued by the State Bank of Mysore has been filed in the material papers by petitioners.Annexure-A1 to the said circular contained in para-3, options A, B and C regarding terminal benefits. Annexure-B1 contained in para-2 details of the said options, in para-3 details of pay and allowances and in para-4 details of promotions,

interse seniority. In respect of some of these items, the petitioners have grievances.

29. The above documents indicate that the employees and officers of the Associate Banks have to make a choice between (i) continuing their employment in SBI (options –A or B) *and* (ii) not to continue their employment in SBI (Option-C). Para 7 of the Circular and Clause (5) of Annexure-A-1 state that even if an employee omits to exercise his/her option within the 15 days stipulated period, he or she is deemed to have chosen option-B. This is to ensure that services of no officer or employee of the Associate Banks get terminated on account of the amalgamation of the said Banks with SBI unless he/she exercises option-C.

30. If the SBI is prevented from finalizing the options of the officers and employees of the Associate Banks till the petitioners' service grievances are resolved to their satisfaction, in my opinion, grave and irreparable loss would be caused to the public interest and to the functioning of the SBI.

31. This is because unless the options are finalized, the erstwhile officers or employees of Associate Banks (of whom 70% are said to be willing to join SBI by exercising option-A or others who had exercised option-B), would not become employees of SBI. Their status would be indeterminate since they cannot claim to be employees or officers of the Associate Banks also since the said Banks stood amalgamated with SBI w.e.f. 01-04-2017.

32. Also, it would be difficult for SBI to finalise the cadre strength in each scale, prepare seniority lists or effect promotions and transfers leading to administrative chaos and consequent lowering of efficiency in providing

banking services to the customers who are spread all over the country. This is not in public interest.

33. Justice Krishna Iyer in **T.N.Education Department M & G Subordinate Service Association Vs. State of Tamil Nadu**[1], reminded that in Service jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. According to him, some play in the joints, even some wobbling, must be left to Government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the Executive, not to the Court. All life, he said, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and absent unconstitutional "excesses", judicial correction is not a right.

34. It is an admitted fact that a Division Bench of the Gujarat High Court in **State Bank of India Vs. Associate Banks Officers Association and others**[2], considered similar grievances as in the instant case in regard to the acquisition of the State Bank of Saurashtra by the SBI under a similar order dt.13-08-2008 issued by the Government of India. The Division Bench held that no scheme of amalgamation can be fool proof and a Court would be entitled to interfere only when it comes to the conclusion that either the scheme is arbitrary or irrational or has been framed on some extraneous considerations; and the Court can only see whether there is any inequality of opportunities among employees belonging to the same class.

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[1] AIR 1980 SC 379
[2] 2014 SCC Online Guj 9103

35. In the instant case, I am not expressing any opinion on the genuineness or otherwise of any of the petitioners' grievances in regard to their service conditions post-merger of the Associate Banks with SBI. But the existence of such grievances cannot be allowed to be a bottle neck which seriously affects the administrative efficiency of the SBI organization post-merger jeopardizing public interest.

36. Therefore, I am not inclined to extend the stay of finalization of options granted by this Court on 13-04-2017 in this Writ Petition and I accordingly vacate the said order. W.V.M.P.No.1861 of 2017 is allowed accordingly.

37. I am also of the view that both parties can be given an opportunity to discuss through negotiations and arrive at an amicable settlement, if possible.

38. Accordingly, the Writ Petition is disposed of permitting the representatives of the petitioners to put forth their grievances before the 1st respondent within two (02) weeks from the date of receipt of a copy of this order; and the 1st respondent is directed to nominate its representatives within two (02) weeks from receipt of the grievances of the petitioners to discuss the issues/grievances raised by the petitioners and explore the possibility of a peaceful resolution satisfactory to both sides. If the issues/grievances raised by the petitioners are not satisfactorily resolved within three (03) months from the commencement of the discussions/negotiations, the petitioners can avail appropriate legal remedy.

39. The Writ Petition is disposed of accordingly. No costs.

40. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-06-2017
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