

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR**

CIVIL WRIT PETITION NO.4526 OF 2022

Babasaheb Naik Kapus Utpadak Sahakari	]	
Soot Girni, Kasola, Tah. Mahagaon, Dist. Yavatmal	]	.. Petitioner
Vs.		
1. The Reserve Bank of India, Mumbai	]	
2. Union of India,	]	
Through the Secretary, Ministry of Finance, New Delhi	]	
3. The Malkapur Urban Cooperative Bank Ltd., Buldhana	]	.. Respondents

Mr. R.K. Khapre, Sr. Advocate, with Mr. K.S. Narwade, for the Petitioner.

Mr. M.G. Bhangde, Sr. Advocate, with Mr. Dhruv Sharma, for Respondent No.1.

Mr. Akshay A. Naik, with Mr. H. Deshpande, h/f. Ms. Meghna Munshi, for Respondent No.2.

CORAM : SUNIL B. SHUKRE & ANIL L. PANSARE, JJ

ARGUMENTS CONCLUDED ON : 20TH MARCH, 2023.

JUDGMENT PRONOUNCED ON : 23RD MARCH 2023.

[IN CHAMBER – THROUGH VIDEO CONFERENCE]

JUDGMENT : { Per Sunil B. Shukre, J. }

1. RULE. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. By this petition, the petitioner, a registered Co-operative Spinning Mill, has questioned legality and correctness or otherwise of the action of the Reserve Bank of India, respondent no.1, in imposing certain restrictions on respondent no.3, a registered Co-operative Bank and a banking company within the

contemplation of the Banking Regulation Act, 1949 (*for short "Act of 1949"*), in making investments, refunding deposits, incurring any liability and so on and so forth without prior approval of respondent no.1-RBI.

3. The petitioner contends that it being a Co-operative Spinning Mill, it has compulsions to maintain all its accounts and deposits with a Co-operative Bank like the respondent no.3. It submits that it had initially deposited an amount of Rs.11 crores from out of its working capital in the fixed deposits in the year 2017 with the respondent no.3 and against these deposits, the respondent no.3 granted overdraft facility to the petitioner. The petitioner submits that since then the petitioner was diligently utilizing the overdraft facility without a single default. It further submits that it has been using the overdraft facility for meeting its working capital needs as well as business, operational and administrative needs. It further submits that it is also using overdraft facility for paying half-yearly loan installment of Rs.4,42,17,935/- for repayment of the loan it has taken from National Co-operative Development Corporation. The petitioner further submits that due to restrictions imposed by respondent no.1, the petitioner is unable to operate its overdraft account and meet its various liabilities. It also submits that even though the petitioner is maintaining overdraft and other accounts with other banks, it is the overdraft account maintained by it with respondent no.3, which mainly caters to the business, operational and administrative needs of the petitioner including the need for payment of half-yearly loan installments.

4. According to the petitioner, the restrictions imposed by respondent no.1 are unreasonable, belated and arbitrary as they do not consider the position of an operational unsecured creditor like the petitioner. The petitioner says that it is an operational creditor vis-a-vis its employees and cotton growers, to whom it makes payments in various forms from time to time and therefore, it is not in the same position as the other depositors. Besides, the petitioner further submits that the petitioner has an excellent financial track record with respondent no.3 and it is an entity which directly supports nearly 600 skilled and unskilled female and male labourers and indirectly helps thousands of families and therefore the petitioner could not be treated at par with the other depositors. The petitioner contends that respondent no.1 had already got a fair idea about sinking financial condition of respondent no.3 during the statutory inspection of respondent no.3 taken by respondent no.1 in 2019-20 and that it had also imposed moderate restrictions as per its letter dated 4th June 2020; for example, to not declare dividends, to not make donations, to not incur capital expenditure exceeding Rs.50,000/- per year and so on, but, subsequently, when it became fairly clear that the financial condition of respondent no.3 was not improving, rather deteriorating, it was necessary for respondent no.1 to have taken serious action immediately, but, it did not do so and allowed respondent no.3 to go further down in its health. According to the petitioner, if timely action had been taken by respondent no.1, the stage for taking impugned action would not have arrived.

5. The petitioner thus submits that the entire action of respondent no.1,

which is impugned here, is arbitrary, unreasonable and amounts to giving equal treatment to unequal and it is not permissible in law.

6. Respondent nos.2 and 3 have not filed any reply. Respondent no.1-RBI has, however, filed its preliminary submissions staunchly opposing the petitioner. According to it, the impugned action has been taken to protect the interest of the depositors, to preserve the resources of the bank and restrict the possibility of preferential payment of deposits or reckless lending being made in the interregnum until a view is taken on the future set-up of the bank, while simultaneously giving the respondent no.3-bank time and opportunity to improve its financial position, apart from exploring the possibility of its merger with another strong bank.

7. Respondent no.1-RBI submits that the restrictions imposed upon respondent no.3-Bank are drawn from the material available on record of respondent no.1 and it mainly comprised reports of statutory inspections taken by respondent no.1 of respondent no.3. These reports, it further submits, revealed that the net worth of respondent no.3 deteriorated from Rs.71.60 crores as of March 31, 2019 to Rs.(-)37.11 crores as of March 31, 2021. It further submits that the material available with respondent no.3 also showed that Capital to Risk (Weighted) Assets Ratio (**CRAR**) was at (-)5.42% against the regulatory requirement of 9%. According to respondent no.1, it were these negative financial indices that necessitated respondent no.1 to swing into action

and exercise its power under Section 35A of the Act of 1949 to protect the interest of the depositors.

8. The respondent no.1-RBI further submits that although there were some representations made by respondent no.3 as well as the petitioner seeking modification of the restrictions imposed by respondent no.1, those representations could not have been accepted as their acceptance would have been unfair to the other depositors and also other lender-banks. It submits that the petitioner could not be singled out for differential treatment and petitioner being a depositor like other depositors cannot be given separate treatment or otherwise it would amount to making discrimination between the depositors. Respondent no.1 also submits that since most of the depositors are insured with Deposit Insurance and Credit Guarantee Corporation for payment upto Rs.5 lakhs during the period of All Inclusive Directions or Restrictions, respondent no.1 has taken care that the depositors are paid back certain amounts of their deposits within the permissible limits. It also submits that it has also allowed withdrawal on hardship such as medical expenses and non-medical expenses like educational expenses, marriage expenses upto certain limits. Respondent no.1 therefore submits that the restrictions imposed by it upon operations of respondent no.3, which are only for a temporary period of time, cannot be seen as unreasonable, unequal and arbitrary and therefore, it further submits that the petition is liable to be dismissed.

9. Mr. Khapre, learned Senior Advocate for the petitioner submits that the

restrictions imposed by respondent no.1-RBI upon respondent no.3-Bank have brought sufferings beyond imagination for an honest depositor and beneficiary of overdraft facility like the petitioner. He submits that the overdraft facility that has been granted to the petitioner is against the security of deposit of about Rs.11 crores made by the petitioner with respondent no.3-bank and this amount has been drawn by the petitioner from out of its working capital. He submits that the petitioner had never defaulted in the overdraft facility and the account so operated by it is not purely a deposit account but an overdraft facility, which was being used by the petitioner for not only meeting its working capital needs but also for paying of the salary and other benefits to its about 700 employees, paying electricity bills etc. and also for discharging its debt towards National Cooperative Development Corporation. He submits that the business of the petitioner mainly comprises spinning and weaving of cotton purchased from Cotton Growers during cotton season, which begins around mid-October and lasts for another two to three months thereafter every year. He submits that since restrictions were imposed at the start of new cotton season 2021-22, the petitioner could not utilize the overdraft facility for purchase of good quality cotton at cheaper price and as a result, it was forced to buy cotton at much higher rate, resulting in incurring of huge losses. He further submits that the losses suffered by the petitioner-Spinning Mill have had their cascading effect on the employees and their family members directly and also on the other subsidiary units dependent upon the product manufactured by the petitioner, all of whom are also made to suffer for no fault on their part.

10. Mr. Khapre submits that it is for aforesaid reasons that it is necessary that the petitioner shall not be treated equally with other depositors and petitioner deserves a special treatment by making an exception for it from out of the restrictions imposed by respondent no.1-RBI upon respondent no.3-Bank. The learned Senior Advocate for the petitioner relies upon the decisions of the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. and Anr. Vs. Union of India and Ors.*¹ and *Atyant Pichhara Barg Chhatra Sangh and Anr. Vs. Jharkhand State Vaishya Federation and Ors.*² in support of his submissions.

11. The learned Senior Advocate further submits that the respondent no.1-RBI knew it very well after it has done its statutory inspection for the year 2019-20 that financial condition of respondent no.3-Bank was deteriorating fast, but, instead of taking any serious action against respondent no.3, respondent no.1 only gave advises and it was after a great delay that it imposed impugned restrictions upon respondent no.3. He submits that the petitioner was not knowing about the cautions and advises issued by respondent no.1 to respondent no.3 and had they been known to the petitioner, it would not have invested huge amount by way of deposits with respondent no.3-Bank. The learned Senior Advocate for the petitioner further submits that the petitioner made representations to respondent no.1 for modifying the restrictions by virtue of the power conferred upon it under sub-section (2) of Section 35A of

1 *AIR 2019 SC 739*

2 *(2006) 6 SCC 718*

the Act of 1949, which enables respondent no.1-RBI to modify or cancel any direction issued by it under sub-section (1) of Section 35A either on any representation made to it or on its own motion. He submits that various grounds taken by the petitioner in its representation made to respondent no.1 were not considered in any manner and by a cryptic order dated 26th September 2022, the representation of the petitioner came to be rejected by respondent no.1. He further submits that respondent no.1 talks of huge increase in percentage of NPA beyond permissible limits and sliding down of net worth of respondent no.3 to Rs.(-)37.11 crores and CRAR to (-)5.42% against the regulatory requirement of 9%, but the blame for it must be taken by respondent no.1 as it failed to take timely measures for arresting the negative growth of respondent no.3. He submits that by imposing blanket restrictions treating all depositors equally, the respondent no.1 has acted disproportionately to the ailment of respondent no.3 and that this is a case of the medicine being worst than the ailment. He relies upon the case of *Internet and Mobile Association of India Vs. Reserve Bank of India*³.

12. Mr. Khapre, learned Senior Advocate for the petitioner further submits that by imposing total ban on withdrawal of deposits, operating of loan accounts and so on, respondent no.1 has completely blocked access of the petitioner to banking facility, which is violative of petitioner's fundamental right to carry on trade and business under Article 19(1)(g) of the Constitution

3 (2020) 10 SCC 274

of India. He relies upon the case of *Dharam Dutt and Ors. Vs. Union of India and Ors.*⁴ in support of this submission.

13. Mr. Bhangde, learned Senior Advocate for respondent no.1–RBI submits that the restrictions imposed by respondent no.1 vide orders dated 24th November 2021 and 25th May 2022 are reasonable and have been imposed to protect the interest of the depositors considering failing financial condition of respondent no.3 and these restrictions have been imposed in exercise of power conferred upon respondent no.1 under Section 35A(1) of the Act of 1949. He submits that these restrictions having been taken in the larger interest of depositors and to secure proper management of respondent no.3, cannot be said to be arbitrary or illegal. He submits that ultimately it is the overall interest of the depositors and the banking company, which is required to be considered and protected, and if respondent no.1 were to create special class amongst the class of depositors, it would be violative of rule of equality and reasonableness under Articles 14 and 21 of the Constitution of India. He further submits it is for this reason that it is not possible for respondent no.1 to give separate and unequal treatment to the petitioner.

14. Learned Senior Advocate Mr. Bhangde further submits that the petitioner has not challenged legality and correctness of its orders dated 24th November 2021 and 25th May 2022 and has only sought modification of its orders so as to allow the petitioner to operate its overdraft facility and withdraw funds

4 (2004) 1 SCC 712

therefrom. He submits that if the impugned orders are modified, as desired by the petitioner, it would only lead to treating unfairly the other depositors. He submits that it is impermissible for a regulatory body like respondent no.1 to give preferential treatment to any of the depositors of a banking company. He relies upon the case of *Ashok Kumar and Co. Vs. Reserve Bank of India*⁵.

15. The learned Senior Advocate further submits that it is not the case that the respondent no.1 did not take any serious action against respondent no.3 when it noticed in the year 2019-20 the failing health of respondent no.3. He submits that before any drastic measures are taken, some soft measures are required to be taken so that opportunity is granted to the banking company to arrest its negative growth by initiating strong measures. He further submits that respondent no.1 is a body of experts and it knows how to go about its job and perform its duty and therefore decisions taken by it on various occasions, from time to time, which are based upon the material before it, cannot be questioned in a court of law unless the decisions are upon non-consideration of relevant material or are perverse in nature or contrary to any provision of law or settled principles of law. He submits that such is not the case here. The learned Senior Advocate for respondent no.1-RBI further submits that even though the petitioner has stated that some funds of respondent no.3 have already been lodged with respondent no.1 on account of maintenance of Statutory Cash Reserve Ratio (**SCRR**) and Statutory Liquidity Ratio (**SLR**), there is no question of

5 2014 SCC OnLine All 15546

utilizing these amounts for refunding the deposits at this stage as these amounts can be utilized only when the banking company goes into liquidation. Thus, learned Senior Advocate for respondent no.1 urges that this petition deserves to be dismissed.

16. Before we deal with the issue involved in this petition, let us make an attempt to understand the role of Reserve Bank of India, the respondent no.1, in Indian Banking System, as that would give us sufficient insight into scope of judicial review of affairs of the respondent no.1. After all, by this petition, this court has been called upon to judicially review the impugned restrictions imposed by it on the respondent no.3-Bank.

17. Reserve Bank of India is considered to be the bankers bank. As per the Reserve Bank of India Act, 1934, it has been constituted to regulate the issue of Bank Notes and the keeping of India's reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage. Under this Act, the Reserve Bank of India has also been entrusted with the duty to operate Monetary Policy framework in India. Under the other Act, which is Act of 1949, it acts as a Regulatory Body for banks and financial institutions in India. Speaking about the regulatory role of the Reserve Bank, the Supreme Court, in the case of *Joseph Kuruvilla Vellukunnel Vs. Reserve Bank of India*⁶, observed as follows :

6 *AIR 1962 SC 1371*

*“....The first is that the whole intent and purpose of that Act is to secure the interests of the depositors. The second is that the Reserve Bank is the instrumentality by which this intent (*sic. intent) is to be achieved. The act, at every turn, makes the Reserve Bank the authority to sanction, permit, certify, inspect, report, advise, control, direct, license and prohibit. There is hardly any provision where the Reserve Bank’s judgment is not made final vis-a-vis a banking company except rarely where an appeal to the Central Government can lie. No useful purpose will be served in referring to these sections in details.”*

18. The Supreme Court reiterated this view in the case of *Peerless General Finance and Investment Company Limited Vs. Reserve Bank of India*⁷, when it said,

“Before examining the scope and effect of the impugned paragraphs 6 and 12 of the directions of 1987, it is also important to note that Reserve Bank of India which is bankers bank is a creature of Statute. It had large contingent of expert advice relating to matters affecting the economy of the entire country and nobody can doubt the bona fides of the Reserve Bank in issuing the impugned directions of 1987. The Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. It is the duty of the Reserve Bank to safeguard the economy and financial stability of the country....”

19. Considering the character of the Reserve Bank as central regulator of Banking System in India, the nature of expertise possessed by it and the powers

⁷ (1992) 2 SCC 343

given to it under Act of 1949, the Supreme Court has held in many cases that scope of judicial review of decisions and actions of the Reserve Bank is very limited and it is not for the court to substitute its own view for that of the Reserve Bank, unless the view taken by it is perverse or illegal or is the result of non-application of mind. One of such cases is the case of *Ganesh Bank of Kurandwad Ltd. Vs. Union of India*⁸, wherein the Supreme Court held as follows :

“The ultimate question is whether the inference drawn by the RBI is a possible inference or is something which can be said to be a perverse one. Even if two views are possible since the regulating body has arrived at a conclusion on the basis of the facts and figures before it, and it has pointed out that it has been warning the appellant Bank for the last over 3 years, it will not be proper for the Courts to substitute their judgment for that of RBI. In the circumstances, it cannot hold that the decision of RBI to impose the moratorium was unjustified or against the provisions of Section 45(1) or such that one can call it a perverse one and interfere with it. The RBI is an expert body to regulate the banking activities...”

20. The law so settled by the Apex Court has been followed by the Division Bench of Allahabad High Court in the case of *Ashok Kumar and Company Vs. Reserve Bank of India*⁹. It held that in matters governed by expert determination, the jurisdiction of the Court to interfere in the exercise of power of judicial review is extremely limited. It further held that Court may interfere only where the action which has been taken is wholly extraneous to the object

8 (2006) 10 SCC 645

9 2014 SCC Online ALL 15546

and purpose underlying the conferment of the power or where *ex facie* the decision is found to be perverse and contrary to binding statutory norms. Relevant observations of the Division Bench appearing in paragraph No. 14 are reproduced as follows :

“14. The Reserve Bank, it is well settled is an expert statutory body which is vested with control over the banking system. This power is vested in the Reserve Bank of India to foster public interest and to ensure a suitable financial and monetary system. It is well settled that in matters governed by expert determination, the jurisdiction of the Court to interfere in the exercise of the power of judicial review is extremely limited. The Court may interfere where the action which has been taken is wholly extraneous to the object and purpose underlying the conferment of the power or where ex-facie the decision is found to be perverse and contrary to binding statutory norms.”

21. In this case the petitioner has assailed the legality and correctness or otherwise of the various restrictions imposed by the Reserve Bank, the respondent no.1, vide its orders dated 24.11.2021 and 25.05.2022, which have been issued in exercise of the powers vested in respondent No.1 under Section 35A of the Act of 1949. These restrictions impose various prohibitions upon respondent No.3. They indicate that respondent No.3 cannot, without prior approval of respondent no.1;

- (i) grant or renew any loans or advances,
- (ii) make any investment,
- (iii) incur any liability including borrowing of funds and accepting fresh deposits,

- (iv) disburse or agree to disburse any payment whether in discharge of its liability and obligations or otherwise and
- (v) enter into any compromise or arrangement of sale, transfer or otherwise dispose of any of its properties or assets except as notified in the Reserve Bank of India directions.

22. The impugned restrictions, however, make an exception. They allow withdrawal of a sum not exceeding Rs.10,000/- (Rs. Ten Thousand only) of the total balance across all savings bank account or current accounts or any other account of a depositor and also allow withdrawals upto certain limit on emergency grounds. These prohibitions were imposed initially for a period of six months and later on they have been continued from time to time.

23. In view of the Reserve Bank of India i.e. respondent No.1 being an expert body playing a regulatory role with sufficient autonomy in the field of regulation of banking system in India, a question arises – whether the above referred restrictions imposed by respondent No.1 upon respondent No.3 could be challenged on such grounds as, the restrictions,

- (i) have the effect of treating unequals equally;
- (ii) are disproportionate to the regulation actually required;
- (iii) take away fundamental right of the petitioner to carry on trade and business under Article 91(1)(g) of the Constitution of India.

- (iv) are arbitrary and insensitive in nature and have been belatedly brought into force so as to cover up own failure of respondent No.1 to take timely action to prevent further deterioration of health of respondent No.3 Bank.

24. Principally, yes, they can be challenged on these grounds or any one of these grounds as these grounds touch upon the legality or constitutionality or rationality or reasonableness of the action of respondent no.1 and these grounds do fall within the amplitude of judicial review power of this court. But, the question is – do these grounds or some of them exist here so as to enable this court to make interference ? To find out an answer, let us now deal with the rival arguments in the light of the applicable law, some of which is already discussed earlier.

25. The principles on which judicial review of the action and the restrictions imposed by a regulatory body like Reserve Bank of India can be undertaken by this Court, as referred to in the earlier paragraphs, are well settled. The test is as to whether or not the inference drawn by the Reserve Bank of India or the respondent No.1 is a possible inference or is something which could be said to be impossible or perverse. This is because of the fact that the Reserve Bank is a body of experts and therefore, wherever there is an expert determination the scope of judicial review is very limited and Court can interfere only where the action is seen to be wholly extraneous to the object and purpose underlying the

conferment of the power or where *ex facie* the decision is found to be perverse or contrary to binding statutory norms or where the decision is the result of non-application of mind.

26. The impugned orders imposing restrictions upon respondent No.3, as stated earlier, have been issued by respondent No.1 in exercise of its power under Section 35A(1) of the Act of 1949. The object and purpose of the power of respondent No.1 – Reserve Bank of India behind such restrictions are to be seen in Sub-Section 1 Section 35A itself. The object and purpose are to safeguard public interest or to have proper banking policy or to prevent the affairs of any banking company from 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. For the sake of convenience, Section 35A (1) is reproduced as under :-

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

(1) here the Reserve Bank is satisfied that –

(a) in the [public interest]; or

[(aa) in the interest of banking policy; or]

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

(c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking

company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.”

27. It can be seen from these provisions that whenever the Reserve Bank is satisfied that it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit and whenever such directions are issued, the banking companies or the banking company are or is, as the case may be, bound to comply with such directions.

28. In the present case, the respondent No.1 has exercised its power under these very provisions. The exercise of the power by respondent No.1, as can be seen from its communication dated 26th September, 2022 was founded upon the determination made by it that the failing financial position of respondent No.3 Bank, as disclosed by the statutory inspection conducted by respondent No.1, necessitated respondent No.1 to protect the interests of depositors, to preserve the resources of the bank and restrict the possibility of preferential payment of deposits or reckless lending in the interregnum until a view was taken on the future set up of respondent No.3 Bank and, therefore, all inclusive directions imposing various restrictions upon respondent No.3 Bank were issued by respondent No.1. This decision of respondent no.1 is a decision of an expert in banking matters and is also in consonance with the object and purpose of Section 35A (1) of the Act of 1949. The decision is primarily to

protect interests of the depositors and to restrict the possibility of preferential payment of deposits or reckless lending in the meantime by respondent no.3-Bank, lest there be further deterioration of financial health of respondent no.3-Bank.

29. The above referred decision, it appears, has been taken on the basis of material available before respondent No.1 Bank which, though not disclosed in any of the initial orders or communications of respondent No.1 Bank, was briefly disclosed in its communication dated 26th September 2022 and thus was very much there and it has been referred to in the written submissions of respondent No.1 Reserve Bank of India. This material indicated that the net worth of respondent No.3 Bank deteriorated from Rs. 71.60 Crores as of March 31, 2019 to Rs (-) 37.11 Crores as of March 31, 2021. It further indicated that CRAR of respondent No.3 Bank was at (-)5.42% as against the regulatory requirement of 9.00%. It further indicated that the percentage of Non Performing Assets of respondent No.3 Bank increased to 44.00%. Thus, as per the material available before the Bank, all the vital parameters of financial health of respondent No.3 Bank had turned negative and the respondent No.3 Bank was sliding down on these parameters day by day. It may be noted here that about these negative parameters, no dispute has been raised by the petitioner. It is this material that has gone into the decision that respondent No.1 has taken here, which ultimately has led to imposition of various restrictions upon respondent No.3 Bank, which are impugned herein. These

restrictions having been based upon material available with respondent No.1, which is relevant, cannot be said to be the result of non-application of mind or perverse or having been taken upon any extraneous consideration. The impugned restrictions being what they are can also not be said to be beyond the scope of the power under Section 35A (1) of the Act of 1949 that has been conferred upon respondent No.1 nor could it be said that they are contrary or extraneous to the object and purpose of Section 35A (1) of the Act of 1949. If this is so, there is hardly any scope for this Court to make any interference in the matter.

30. Mr. Khapre, learned Senior Advocate for the petitioner has contended that the impugned restrictions have the effect of treating an unequal entity like the petitioner equally with the rest of the depositors and that they are disproportionate to the object sought to be achieved by them. Shri Bhangde, learned Senior Advocate for respondent No.1 disagrees. According to him, the petitioner, in so far as respondent No.3 Bank is concerned, is no more than a depositor and a borrower and therefore, there can be no separate class created for the petitioner. He also submits that a mere look at the restrictions imposed by respondent No.1 would be sufficient to hold that they are perfectly within the scope of Reserve Bank of India's powers under Section 35A (1) of the Act of 1949 and that they have been imposed only for certain period of time just to give opportunity to respondent No.3 Bank to improve its performance. He further submits that the banking license of respondent No.3 Bank has not been

so far cancelled. On these grounds, he submits that the impugned restrictions cannot be said to be disproportionate in measure or violating rule of equality.

31. Upon overall consideration of the matter, we find no substance in the submission of learned Senior Advocate for the petitioner and find great merit in the argument of learned Senior Advocate for respondent No.1 – Reserve Bank of India. The reasons for our such conclusion are to be seen in the material on the basis of which the impugned restrictions have been imposed by respondent No.1 and the scope of power of respondent No.1 under Section 35A (1) of the Act of 1949, discussed at length in the earlier paragraphs.

32. Although the mandate of Article 14 of the Constitution of India is to treat similar similarly and different differently, as held in the case of *Atyant Pichhara Barg Chhatra Sangh* (supra), here, there can be no doubt about the fact that in relation to respondent no.3–Bank, the position of petitioner is no different than any of its other depositors and borrowers. It may be true that situation of the petitioner Society *vis-a-vis* its employees, its creditors, its debtors, its consumers, its suppliers of raw material and so on, is different. It may be true that several hundreds of families of its employees are directly dependent upon the employment provided by the petitioner Society. It may be true that it has a debt liability which it has to discharge. It may also be true that several of its consumers and suppliers look upon the petitioner–Society for its services and procurement of cotton. But, such distinctive standing of the petitioner–Society is in the field which is beyond the field of banking and so is not liable to be

considered by a Regulatory Body like Reserve Bank of India whose job is to monitor, supervise and regulate the affairs of banking companies in general or a banking company in particular like the respondent No.3 for achieving the object and purpose of Section 35A (1) of Act of 1949. In relation to respondent No.3 Bank, the petitioner-Society nevertheless is and will always be one of its depositors and borrowers. What it is and what it can be outside the field of banking cannot be the aspect of consideration for respondent No.1 to impose various restrictions to protect interests of the depositors in exercise of its power under Section 35A(1) of the Act of 1949 and if respondent No.1 were to really consider it, respondent No.1 would be exceeding its jurisdiction under Section 35A (1) of the Act of 1949.

33. If the position of petitioner Society in the market or outside the field of banking is considered by a Regulatory Body like Reserve Bank of India for making its decision to protect interests of the depositors in general, it would be something extraneous to its authority under Section 35A (1) of the Act of 1949 and thus, would amount to committing perversity in taking its decision. Besides, it would also be like creating a separate class of depositors and borrowers within the general class of depositors and borrowers without there being any rationale to it or any intelligible differentia to create a separate class within a class for giving separate treatment to a particular person or entity in the name of protecting an unequal. To do so, there must be a differential existence between one person or entity and another or entity on the same plane or

platform; there must also be a need or purpose to throw a protective cover around that unequal, and the purpose must have a reasonable nexus with the object sought to be achieved by giving such differential treatment. It must not happen that in our zeal to protect the position and existence of one person or entity, outwardly, though not in reality dissimilar, the situation and very existence of another person or entity is destroyed, for rule of equal protection amongst equals is founded upon the universal idea of 'Live and Let Live'; and is about co-existence, about inclusiveness, about happiness for all and not about happiness in the name of parity to the point of perishing of others or excluding others.

34. In the present case, when we weigh the position of the petitioner on the same scale as other depositors are on, insofar as its banking activities are concerned, which is the first requirement of applying the principle of equal protection to equals, we find that it is in the same placement as other depositors and borrowers of respondent no.3-Bank. To say that because the petitioner Society has its own commitments and liabilities towards its creditors, suppliers, employees and some statutory agencies, it deserves to be placed in a different class would be like admitting that the other depositors and borrowers do not have any engagements, commitments and liabilities in their own life. If the petitioner Society has its own liabilities, commitments and difficulties, every other depositor or borrower too has his or its own liabilities, difficulties, expectations and promises to fulfill and the only difference between them is of

the nature of their liabilities, commitments, promises and difficulties. Therefore, any separate treatment of petitioner Society to enable it to operate its overdraft facility would only amount to unreasonable classification between similarly situated persons or entities. In fact, considering the own difficulties of depositors and borrowers of respondent No.3 Bank, the respondent No.1 has already permitted withdrawal of deposits by all depositors, irrespective of their positions outside the field of banking in the sums not exceeding Rs.10,000/- (Rs. Ten Thousand only) and has also allowed withdrawal by all depositors of sums of money up to Rs.5,00,000/- (Rs. Five Lakh Only) for treatment of serious life threatening illnesses and other limited purposes. The respondent No.1 thus has taken care of the difficulties and hardships faced in life by its various depositors and thus here also respondent No.1 has treated all the depositors equally. If the petitioner Society is permitted to operate its overdraft facility, it is very likely to lead to rapid depletion of funds and resources of respondent No.3 Bank and that would mean that very little would be left for the rest of the depositors. It would be like giving special treatment to an equally situated depositor and borrower, bringing about a situation of 'Live and Let Die' eulogized in a James Bond thriller of same title. So, here neither the position of petitioner Society can be considered to be different than that of the rest of the depositors nor the object for which differential treatment is sought for by the petitioner Society can be seen to be reasonable. We, therefore, do not find the impugned restrictions to be so arbitrary and unreasonable for the petitioner – Society as to violate the

principles of equality and fairness under Article 14 and 21 of the Constitution of India.

35. There is one more point pressed into service by Shri Khapre, learned Senior Advocate for the petitioner to show why a registered co-operative society like the petitioner holds a distinctive position from that of the other depositors thereby justifying its differential treatment. According to him, the petitioner Society is in the same position as an unsecured creditor as against a secured creditor like a banking company and he submits that while a banking company would be a financial creditor for its borrowers, the petitioner-Society would be an unsecured operational creditor for supply of goods and services to its consumers and employees and, therefore, it needs a different treatment. He submits that while a financial creditor by virtue of its typical loan agreement containing specified repayment schedules and dealing with defaults and right to recall a loan in totality stands on a safe and different footing, it is not so in case of an unsecured operational creditor like the petitioner and, therefore, position of operational creditor is vulnerable as compared to the secured financial creditor like the respondent no.3-Bank. He invites our attention to the observations of the Supreme Court made in the case of *Swiss Ribbons Pvt. Ltd. Vs. Union of India* (supra) wherein in paragraph Nos.27 and 28, the Supreme Court has made the distinction between financial creditor and operational creditor holding that there is an intelligible differentia between the two and this distinction has a direct relation to the object sought to be achieved by the

Insolvency and Bankruptcy Code, 2016 (for short the “Code”) and, therefore, a reasonable one.

36. We must say that the distinction so found between a financial creditor and operational creditor in Swiss Ribbons Pvt. Ltd. has its genesis in the classification made between a financial creditor and an operational creditor of any corporate debtor in the Code itself, which distinction is not to be found in the Act of 1949. The Supreme Court while examining reasonableness or otherwise of such classification made in the Code, found that there was an intelligible differentia separating two kinds of creditors and it had a direct relation to the object sought to be achieved by the Code and, therefore, the Apex Court found the difference between a secured creditor and an operational creditor made in the Code to be a case of reasonable classification. As stated by us just now, the Act of 1949 does not make any such distinction between a financial creditor and an operational creditor and, therefore, in our considered view, it is not possible to accept the argument of learned Senior Advocate for the petitioner. If this Court is to create such a classification artificially without there being any basis provided in the legislation, which is the Act of 1949, this Court would be acting beyond its powers and authority in law. Similarly, a regulatory body like respondent No.1 which is bound to perform its duty within the parameters of the law conferring upon it a supervisory function cannot create a separate class of a depositor on the ground that a particular depositor is an unsecured operational creditor as well as a

corporate debtor *vis-a-vis* respondent No.3 Bank, whose character as a going concern is required to be preserved, unless the legislation permits it to do so, which is not the case here. The argument is, therefore, rejected.

37. This takes us to the next challenge raised by the petitioner Society which is about the impugned restrictions being disproportionate to the actual requirement of protecting the interests of the depositors. In this regard, case of the *Internet and Mobile Association of India (supra)* would have to be referred to for having an enlightenment on the concept. This case holds that whatever may be the power of the Reserve Bank, the measure taken by the Reserve Bank should pass the test of proportionality. The concept comprises four-pronged test prescribed in the case *Modern Dental College & Research Centre Vs. State of M.P.*¹⁰. In *Internet and Mobile Association of India (supra)*, the Supreme Court made a useful reference to it and the four indices of the test, as indicated in these cases, are :-

- (i) that the measure is designated for a proper purpose,
- (ii) that the measure is rationally connected to the fulfillment of the purpose,
- (iii) that alternately there is no less invasive measure available and
- (iv) that there is a proper relation between the importance of achieving the aim and the importance of limiting the right.

38. Applying the above referred four pronged test to the restrictions imposed

¹⁰ (2016) 7 SCC 353

by respondent No.1 upon respondent No.3, we find that the restrictions fulfill each of the four corners of the test. We find that the impugned restrictions are designated for a proper purpose, as found in Section 35A(1), have a rational connection to the object and purpose of Section 35-A (1) of the Act of 1949 and that there is a proper relation between the object and purpose to be achieved and the extent of restrictions imposed. In addition, though the respondent No.1 has the power to take extreme measure like suspending or cancelling the banking license, the respondent No.1 has not done it and has resorted to impose restrictions for the time being, which are less invasive in nature, which is nothing but an instance of proportionality of the measure. Therefore, we cannot but find that the impugned restrictions pass the four pronged test of proportionality and accordingly we do not accept argument of learned Senior Advocate for the petitioner in this regard.

39. There is one more argument made by learned Senior Advocate for the petitioner to show why the imposed restrictions could be said to be violative of principle of proportionality. He submits that instead of imposing impugned restrictions, the respondent no.1 could have withdrawn funds, which the respondent no.3-Bank maintains with respondent no.1 in the nature of SCRR and SLR. Respondent no.1 has already made it clear that as per rules, these amounts can be utilized only when the banking company goes into liquidation and respondent no.3 is not being liquidated as of now. This stand has not been denied by the petitioner. Besides, irrespective of permissibility of it at this stage,

the respondent no.1 being an expert body, has a right and autonomy to decide as to how to protect interest of depositors of a banking company, and it's wisdom in such matters cannot be questioned in court, except on limited grounds discussed earlier and found by us to be not available to the petitioner. The argument is, therefore, rejected.

40. Relying upon the cases of *Dharam Dutt and Others* and *Internet and Mobile Association of India (supra)*, the learned Senior Advocate for the petitioner has laid much stress upon the adverse impact the impugned restrictions are having on the position of petitioner-Society as a going concern, thereby virtually denying its fundamental right to carry on trade or business under Article 19(1)(g) of the Constitution of India.

41. In the case of *Dharam Dutt and Others (supra)* it is held that since Article 19 confers fundamental rights on citizens, these rights cannot be taken away by any legislation and a legislation can only impose reasonable restrictions on the exercise of the right. In the case of *Internet and Mobile Association of India (supra)* it is held that bank channels provide the lifeline of trade or business and therefore, the moment a person is deprived of the facility of operating a bank account, the lifeline of his trade or business is severed, resulting in the trade or business getting automatically shut down. It is further held that such being the nature of banking facility, the burden of showing that larger public interest warranted such a serious restriction bordering on prohibition is heavily upon the Reserve Bank.

42. When we examine the nature of the restrictions imposed on respondent no.3, we find that the restrictions so imposed are reasonable and respondent No.1 has also sufficiently discharged its burden to show their reasonableness.

43. There is no doubt that the impugned restrictions, though imposed for a temporary period of time, do have the effect of virtually prohibiting the petitioner from operating its overdraft facility and withdrawing its deposits made with respondent No.3 Bank. But, it cannot be ignored that such restrictions bordering on prohibition have been imposed by respondent No.1 in the overall interest of all the depositors of respondent No.3 Bank and also for arresting the further down fall of respondent No.3 bank. Besides, they have been imposed for a limited period of time while the respondent No.1 examines the performance and future set up of respondent No.3 Bank. Eventually, respondent No.1 would take its final decision keeping in view the object and purpose of Section 35A (1) of the Act of 1949. The decision so taken by respondent No.1 for the time being is in accordance with the provisions made in Section 35A (1) of the Act of 1949 and is based upon reasonable material and as such, it is not a perverse decision, which we have already found. The decision is in the nature of a determination made by an expert regulatory body and, therefore, it is not for this Court to question the wisdom of respondent No.1 in imposing impugned restrictions and substitute its own view for that of respondent No.1, as held in the case of *Ashok Kumar and Co.* (supra). Even if two views are possible, still, it is not permissible for this Court to interfere in the

matter, especially when one of the two views is already preferred by respondent No.1, a regulatory body having expertise in the field of banking, unless the view is perverse or dictated by any extraneous consideration, as held in the case of *Ganesh Bank of Kurandwad Ltd.* (supra), which is not the case here. Then, there is no altogether denial of banking facility to the petitioner Society and withdrawal of deposits up to certain limit has been permitted by respondent No.1. It then follows that the result of impugned restrictions is not total deprivation of the fundamental right of the bank to carry on trade or business rather it is of imposing reasonable restrictions upon banking facility available to the petitioner and the burden to show reasonableness of the restrictions, as we have seen, has been sufficiently discharged by the respondent No.1. The argument of the learned Senior Advocate for the petitioner is therefore rejected.

44. Insofar as the aspects of inaction for a long time, belated action taken as an attempt to cover up own inaction of respondent No.1 and insensitivity of respondent No.1 to the dangerous condition of petitioner are concerned, we must say that it is well settled law that once it is seen that the measures taken by an expert regulatory authority like the Reserve Bank are within the scope of its power under Section 35A(1), are based upon the material before it, are not extraneous to the object and purpose of Section 35A (1) of the Act of 1949 and are not perverse or impossible, interference with them is not permissible and is beyond the scope of power of judicial review of this court. We have already found that the action of respondent no.1 here is perfectly within these

parameters of law, insofar as exercise of its power under Section 35A(1) of the Act of 1949 is concerned. Now, the question is whether these aspects should have been considered by respondent no.1 for exercising its power under Section 35A(2) or not. We would make an attempt to deal with it later. Before that, we would like to make it clear that it is not for this court to consider them here. If these aspects were to be considered by this court, it would amount to usurping the regulatory function of respondent no.1 by this Court and micromanagement of respondent no.3-Bank. Law does not permit this Court to decide as to which particular measure ought to have been taken by the Reserve Bank and when, so as long as the action of respondent no.1 meets requirements of law, which is the case here.

45. Now coming back to the question of failure of respondent No.1 to exercise its power under Section 35A (2) of the Act of 1949, which enables the Reserve Bank to modify or cancel any direction issued Sub-Section 1 of Section 35A, either on representation made to it or on its own motion, we find that it is necessary for respondent No.1 to duly consider various issues raised by the petitioner in its representation dated 27th July, 2022, which appear to be not considered appropriately when respondent No.1 rejected the representation vide its communication dated 26th September, 2022, which is impugned herein. This is for the reason that Section 35A(2) of the Act of 1949 casts a duty upon respondent no.1 to consider modification of its measures initiated as per its power under Section 35A(1) when a representation is made to it on various

grounds. The duty so cast envisages application of mind by it to all the issues raised in the representation. But, in rejecting the representation of the petitioner by its communication dated 26th September 2022, we do not see any appropriate consideration of all issues raised in the representation received by it. We are of the view that even now, respondent No.1 can have a re-look at and reconsideration of the representation of the petitioner dated 27th July, 2022 in the light of its power under Section 35A (2) of the Act of 1949, but for that matter, there is no need to quash and set aside its letter dated 26th September 2022 by partly allowing this petition.

46. We thus find that there is no merit in the petition. The Writ Petition stands dismissed.

47. We, however, direct respondent No.1 to reconsider the representation of the petitioner dated 27th July, 2022 in the light of its power under Section 35A (2) of the Act of 1949 and take its appropriate decision afresh thereon, notwithstanding its earlier decision communicated vide its letter dated 26th September, 2022.

48. Rule is discharged. No order as to cost.

49. At this stage, liberty is granted to the respondent no.1 to move this Court by filing a miscellaneous application for claiming restoration of the amount to the respondent no.3-Bank, which was disbursed as per the order passed by this

Court on 5th September 2022, after a fresh decision is taken by respondent no.1 upon the representation of the petitioner dated 23rd July 2022, which decision shall be subject to rights of the parties to challenge this judgment or any finding or any decision contained in the judgment or taken in compliance with the directions given here-in-above.

[ANIL L. PANSARE, J.]

[SUNIL B. SHUKRE, J.]