

**IN THE HIGH COURT OF KARNATAKA AT
BENGALURU**

(Original Jurisdiction)

WRIT PETITION No. 10860 /2021 [Am-2021]

BETWEEN:

Nyayamithra Sahakari Bank Niyamitha **Petitioner**

AND:

The Union of India & Ors

Respondents

SYNOPSIS

Sl.no.	Date	Particulars
1	Nil	The petitioner has been incorporated/registered as the Co-operative Society under the provisions of the Karnataka Co-operative Societies Act 1959, (hereinafter referred to as the State Act) and upon the banking license issued by the Reserve Bank of India, has been conducting the banking operations as a Co-operative Bank since 2000.
2	30.9.2018	Previous elections were conducted and presently the Management is vested with the Board of Directors in accordance with the provisions of the State Act and the bye-laws
3	31.12.2019	The 2 nd and 3 rd respondents have issued circulars/ directions to the Primary (Urban) Co-operative Banks (UCBs) for constitution of Board of Management(BoM).
4	Nil	The very direction of constitution of a BOM and the nature of functions which could be exercised impinges upon the State Legislation and in the event of any BOM being constituted as indicated in Annexure-C circular, the very structure of a Co-operative Society and its Management as provided for under the State Act of 1959 stands breached or otherwise is redundant or otios. The petitioner society is entitled to be regulated in terms of

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		the law made by the competent authority and the State Legislation being a penal legislation under Entry 32 of List 2 of Sch. VII of the Constitution, is entitled to conduct the affairs of the Management
5	Nil	The petitioner asserts that the RBI has no jurisdiction or competency to issue the impugned circular at Annexure-C and therefore aggrieved with the action of the 2 nd and 3 rd respondents with the issuance of such circular, having no other alternative and efficacious remedy for the redressal of the grievances, prefers this writ petition.

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BRIEF FACTS

The petitioner asserts that the RBI has no jurisdiction or competency to issue the impugned circular at Annexure-C and therefore aggrieved with the action of the 2nd and 3rd respondents with the issuance of such circular, having no other alternative and efficacious remedy for the redressal of the grievances, prefers this writ petition.

Place: Bangalore

Date: 18.06.2021.

Advocate for Petitioner
D.R. RAVISHANKAR
(KAR/2005/95)

**IN THE HIGH COURT OF KARNATAKA AT
BENGALURU**

(Original Jurisdiction)

WRIT PETITION No. 10860 /2021

BETWEEN:

Nyayamithra Sahakari Bank Niyamitha
Rept. by its General Manager
High Court Building (New Annexe)
Dr.B.R.Ambedkar Veedhi,
Bengaluru-560 001

....Petitioner

AND:

1. The Union of India
By the Secretary
Ministry of Finance,
15, Safdarjung Road,
New Delhi-110006.

2. The Reserve Bank of India
Infantry Road,
Bengaluru -560 001

3. The Chief General Manager
Reserve Bank of India
Infantry Road,
Bengaluru - 560 001

4. The State of Karnataka
Rept. by the Secretary,
Department of Co-Operation
M.S Buildings,
Dr. B.R.Ambedkar Veedhi,
Bengaluru - 560 001

....Respondents

**MEMORANDUM OF WRIT PETITION UNDER
ARTICLES 226 OF THE CONSTITUTION OF INDIA**

The petitioner above named submits as under:-

1. The petitioner has been incorporated/registered as the Co-operative Society under the provisions of the Karnataka Co-operative Societies Act 1959, (hereinafter referred to as the State Act) and upon the banking license issued by the Reserve Bank of India, has been

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conducting the banking operations as a Co-operative Bank since 2000. The copy of the bye-laws with which the petitioner has been registered and the banking license issued is produced as **Annexure-A & B.**

2. As per the bye-laws, periodically the elections are conducted and the previous elections were conducted on 30.09.2018 and presently the Management is vested with the Board of Directors in accordance with the provisions of the State Act and the bye-laws Annexure-A.

3. The 2nd and 3rd respondents have issued circulars/directions to the Primary (Urban) Co-operative Banks (UCBs) for constitution of Board of Management (BOM) vide communication dated.31.12.2019 in No. RBI/ 2019/ 20/128, DOR(PCB).PBD.CIR.No.8/ 12.05. 002/2019-20. There are annexures to the said directions issued by the 3rd respondent and Annexure-1 consists of guidelines for constitution of BOM for the UCBs, Annexure-2 is the list of documents and Annexure-3 is the details of the members of BOM/CO to be submitted and there is an Appendix which provides for fit and proper criteria for appointment of BOM. The copy of the circular instructions dated.31.12.2019 which has also been communicated to the petitioner is produced as **Annexure-C.** The circular dated 31.12.2019 requires that wherever the UCBs having a deposit size in excess of Rs.100 crores it is required to constitute a Board of Management (BOM) which will also be a mandatory requirements allowing the banks to expand the area of operation and to open new branches. The object of such imposition is for good governance practice. There is a specific direction by the RBI that the by-laws has to be

amended for constitution of the BOM by the Board of Directors consisting of persons with special knowledge and practical experience in Banking to facilitate professional management and focused attention to the Banking related activities. The members of the BOM is required to be appointed after exercise of due diligence on the suitability of person and the fit and proper criteria as set out in Appendix I has to be applied has also the appointment of the CEO for the Co-operative Bank, due diligence has to be undertaken as per the guidelines in Appendix II to **Annexure-C**.

4. Annexure-1 which lays down the guidelines for constitution of the Board of Management for the UCBs has provided that a High Power Committee headed by the Chairmanship of one Sri R Gandhi had recommended for the concept of BOM as per the Malegam Committee as a condition precedent for expansion of the UCBs and the report of the High Power Committee dated 20.08.2015 had been placed and the public objection/ opinion was sought for and based on which the RBI has taken a decision to implement the Board of Management for the UCBs. The constitution of the Board of Management is in addition to the Board of Directors who have to be constituted by the Board of Directors within a period of one year from the date of the Circular. The Board of Directors is required to delegate such powers necessary for the proper functioning of the Bank. It is necessary to extract the functions of the Board of Management as has been proposed in terms of the guidelines for the constitution of the Board of Management and the same is extracted as under for ready reference:-

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4. Functions of Board of Management

The BoM shall exercise oversight over the banking related functions of the UBCs, assist the BoD on formulation of the policy and any other related matters specifically delegated to it by the Board for proper functioning of the bank. The functions of the BoM shall include the following:

- i. Rendering expert advice on all proposals being put up to the Board or any Committee of the Board for sanction of loans.
- ii. Recommending action for recovery of NPA's, One Time Settlement or Compromise Settlement and assisting the Board in monitoring the same.
- iii. Overseeing the management of funds and borrowings in the bank
- iv. Recommending proposals for investment of bank's funds as per the board approved policy
- v. Oversight on internal controls and system and risk management in the bank
- vi. Exercising oversight on implementation of computerization, technology adoption and other incidental issues in the bank
- vii. Overseeing internal audit and inspection functions including compliance
- viii. Oversight on complaint redressal system
- ix. Assisting the Board in formulation of policies related to banking functions, illustratively loan policy, investment policy, recovery policy, ALM and Risk management, etc. to ensure that policies are in tune with RBI guidelines
- x. Any other responsibility as may be delegated to it by the BoD

NB: In the event where the BoD differs with the recommendations of BoM, it shall do so by recording, in writing, the reasons thereof.

The Board of Management has to consist of a minimum of five members and the same should not exceed 12 members with the CEO being a non voting member and the qualifications of the BoM is contained in clause 6 of the guidelines. Clause 7 & 8 speaks about the meetings of the BOM and the sitting fees. The tenure of the BOM is rendered co-terminus with the Board of Directors and

the Board of Directors is made responsible for the general directions and control of the UCB and would continue to look after all the administrative functions and has to delegate powers to BOM and other Committees without there being conflicts in delegation and UCBs having deposits of Rs.100 crores and above is required to take prior approval of RBI for appointment of CEO. The powers of CEO is also provided in terms of clause 11. What is important is that as per clause 12, the RBI has the powers to remove any member of the Board of Management (BOM) and the CEO if he is not meeting the criteria prescribed and the Board of Directors has to seek concurrence from the RBI before removing any member of the Board of Management/ accepting the resignation of any BOM. RBI has also the powers to supersede the BOM if the same is found to be unsatisfactory and is entitled to appoint a new member or a CEO or constitute a new BOM as the case may be within a period of three months as an interim arrangement. Clause 13 provides for the UCBs to make suitable amendments to the by-laws. Appendix I provides for the fit and proper criteria for undertaking due diligence for appointment of any member as a Member of the Board of Directors. The further requirement in terms of clause 5 is that not than 50% of the BOM should consist of the members of the Board of Directors.

5. Though there was requirement that the same has to be done within a period of one year from 31.12.2019, the same period has been extended from time to time for various reasons including the present pandemic and the last date now which is fixed for carrying out the directions under the Circular is 30.06.2021.

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6. The petitioner being a Society registered under the State Act of 1959, is having the Management structure strictly in accordance with the said act. The very direction of constitution of a BOM and the nature of functions which could be exercised impinges upon the State Legislation and in the event of any BOM being constituted as indicated in Annexure-C circular, the very structure of a Co-operative Society and its Management as provided for under the State Act of 1959 stands breached or otherwise is redundant or otios. The petitioner society is entitled to be regulated in terms of the law made by the competent authority and the State Legislation being a penal legislation under Entry 32 of List 2 of Sch. VII of the Constitution, is entitled to conduct the affairs of the Management, more particularly after the amendment of the Constitution (97th Amendment w.e.f 15.02.2012) where the protection of the rights to form association and Unions of Co-operative Societies is rendered as a fundamental right as also insertion of Part 9(b) to the Constitution by virtue of the 97th Amendment (though the said constitutional amendment has been struck down by a Bench of Gujarat High Court in the case of **Rajendra N Shah vs. Union Of India (2013 54 (2) GLR 1698)** and the matter is presently before the Hon'ble Apex Court). The petitioner specifically contends that RBI has no regulatory powers over the manner in which the Management could be carried out and except the powers which are specifically reserved in terms of Banking Regulation Act as well as the RBI Act and also such recognition in terms of Part 9(b) of the Constitution and the provisions of the State Act of 1959, the petitioner asserts that the RBI has no

jurisdiction or competency to issue the impugned circular at Annexure-C and therefore aggrieved with the action of the 2nd and 3rd respondents with the issuance of such circular, having no other alternative and efficacious remedy for the redressal of the grievances, prefers this writ petition urging the following amongst other grounds.

7. The petitioner has not filed any other case before any court of law or authority on the same cause of action.

GROUND

8. The legislative competence of the Union and the State is well defined under Article 246 of the Constitution of India. Parliament has exclusive powers to make laws in respect of the matters enumerated in list one to the VII Schedule called as Union list and the State Legislature has exclusive powers to make laws in respect of any matters enumerated in List II of the VII Schedule called as the State list and the Parliament and the State having competency to make laws in respect of List III in the VII Schedule, namely the concurrent list. The constitution has never been designed in order to create a conflict between the legislative fields in the Union List and the State List but an eclipse between the legislations has been sought to be addressed and justified on the principle of an incidental encroachment relying upon the doctrine of pith and substance and the object of the legislations qua the entries in the VII schedule. The relevant entries which requires consideration for the instant case is entry 45 of List 1 (Union List) and Entry 32 of the (State list) and the same is extracted for ready reference -

List I-Union List

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Entry 45- Banking

List II- State ListBetween:
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Entry 32 - Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

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The Banking is the exclusive domain in the Union list and the parliament has exclusive jurisdiction and the Bank Regulation Act, 1949 which is deemed to be a statute relating to Entry 49 itself defines Banking in terms of Section 5(b) and the same is extracted as under for ready reference:

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Section 5 (b) *"banking" means the accepting, for the purpose of lending or investment; of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;*

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Banking Company is also defined but the same is not necessary to be referred as Section 56 of the Act specifically deals with the applicability of the Banking Regulation Act qua the Co-operative Societies and seeks to make amends to the other applicable provisions to a Banking company with the changes as indicated under Section 56.

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Section 56 of the Act which provides for the application of the Act to Co-operative Societies is subject to modifications has been inserted since 1965 taking into account the plenary powers of the State legislature in relation to the Co-operative Sector. Director is defined under Section 56(c)(iii) as a member of the local body for the time being vested with the Management of the affairs of the Society. What is relevant to mention is that

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Section 5(a) of the BR Act 1949 in so far as it applies to the Co-operative Societies is required to be read as provided under Section 56(d) and for the purpose of ready reference, the relevant provision is extracted as under -

(d) for section 5A, the following section shall be substituted, namely:— “5A. Act to override bye-laws, etc.—(1) The provisions of ³⁶¹ [this Act] shall have effect, notwithstanding anything to the contrary contained in the bye-laws of a co-operative society, or in any agreement executed by it, or in any resolution passed by it in general meeting, or by its Board of Directors or other body entrusted with the management of its affairs, whether the same be registered, executed or passed; as the case may be before or after the commencement of the Banking Laws (Application to Co-operative Societies Act, 1965 (23 of 1965).

(2) Any provision contained in the bye-laws, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of ³⁶¹ [this Act,] become or be void, as the case may be.”;

There appears to be certain powers vested with the RBI which are regulatory in nature and Section 36(aaa) of the Act of 1949 which provides for the RBI to remove managerial and other persons from the office and power of the RBI to appoint additional directors is substituted to be read in terms of 36(aaa) under Section 56 (zaa) and the same is extracted as under for ready reference

“36AAA. Supersession of Board of directors of a multi-State co-operative bank. —(1) Where the Reserve Bank is satisfied in the public interest or for preventing the affairs of a multi-State co-operative bank being conducted in a manner detrimental to the interest of the depositors or of the multi-State co-operative bank or for securing the proper management of the multi-State co-operative bank, it is necessary so to do, the Reserve Bank may, for reasons

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to be recorded in writing, by order, supersede the Board of directors of such multi-State co-operative bank for a period not exceeding five years as may be specified in the order, which may be extended from time to time, so, however, that total period shall not exceed five years.

(2) The Reserve Bank may, on supersession of the Board of directors of the multi-State co-operative bank under subsection (1) appoint an Administrator for such period as it may determine.

(3) The Reserve Bank may issue directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

(4) Upon making the order of supersession of the Board of directors of a multi-State co-operative bank,—

(a) the chairman, managing director and other directors as from the date of supersession of the Board shall vacate their offices as such;

(b) all the powers, functions and duties, which may, by or under the provisions of the Multi-State Co-operative Societies Act, 2002 (39 of 2002) or this Act or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of directors of such a multi-State co-operative bank or by a resolution passed in general meeting of such co-operative bank, shall, until the Board of directors of such co-operative bank is reconstituted, be exercised and discharged by the Administrator appointed by the Reserve Bank under subsection (2); Provided that the power exercised by the Administrator shall be valid notwithstanding that such power is exercisable by a resolution passed in the general meeting of such multi-State co-operative bank.

(5) (a) The Reserve Bank may constitute a committee of three or more persons who have experience in law, finance, banking, administration or accountancy to assist the Administrator in discharge of his duties.

(b) The committee shall meet at such times and places and observe such rules of procedure as may be specified by the Bank.

(6) *The salary and allowances payable to the Administrator and the members of the committee constituted by the Bank shall be such as may be specified by the Bank and be paid by the concerned multi-State co-operative bank.*

(7) *On or before the expiration of the period of supersession of the Board of Directors as specified in the order issued under sub-section (1), the Administrator of the multi-State co-operative society shall call the general meeting of the society to elect new directors.*

(8) *Notwithstanding anything contained in any other law or in any contract, or bye-laws of multi-State co-operative society, no person shall be entitled to claim any compensation for the loss or termination of his office.*

(9) *The Administrator appointed under sub-section (2) shall vacate office immediately after the Board of Directors of the multi-State co-operative society has been constituted.*

Coming to the provisions of the Karnataka Co-operative Societies Act, Chapter IV of the State Act of 1959 provides for the Management of the Co-operative Societies. The relevant provisions would be Section 26, 28A and Section 30 which is extracted for ready reference as under

Section. 26 – *Final authority in a co-operative society (1) Subject to the provisions of this Act, the rules and the bye-laws, the final authority of a cooperative society shall vest in the General Body of members:*

Provided that nothing contained in this sub-section shall affect the exercise by a committee or any office bearer of a registered co-operative society of any power conferred on such committee or such office bearer by this Act, the rules and the bye-laws.

(2) *Notwithstanding any thing contained in sub-section (1)*

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(a) where the area of operation of a co-operative society is not less than the area that may be prescribed or
(b) where a co-operative society consists of not less than the number of members that may be prescribed,

[The general body of the co-operative society may amend the bye-laws] providing for the constitution of a similar body consisting of such number of members of the co-operative society as may be prescribed, elected in accordance with the rules (herein after referred to as the representative general body) to exercise all or any of the powers of the general body as may be specified in the bye laws and any reference by whatever form or words in this Act to the general body or a meeting thereof shall have effect as if such reference were a reference to representative general body or a meeting thereof as the case may be

(3) The amendments of the bye-laws made by the Registrar under sub-section (2) shall be sent to the Registrar for approval under Section 12]

Section 28A. Management of Co-operative Societies vest in the Board (1) The management of a co-operative society shall vest in a Board constituted in accordance with this Act, the rules and the Bye-laws of such society. The Board shall exercise such powers, discharge such duties and perform such functions as may be conferred or imposed upon it by this Act, the rules and the Bye-laws.

(2) The Board of a co-operative society shall consist of not less than nine but not exceeding the number of members specified below excluding and the Chief Executive, namely:— (i) in case of a primary society and a secondary society whose area of operation extends to,-

(a) a part of taluk, eleven members;

(b) whole of taluk, thirteen members;

(c) beyond a taluk but not beyond a district, fifteen members: Provided also that in case of Urban Cooperative Banks having area of operation not beyond a district the maximum number shall not exceed seventeen members.

(d) beyond a district, nineteen members;

(ii) in the case of a federal society, including Apex societies, twenty one members;

(3) In the Board of every co-operative society there shall be reserved:—

(i) one seat to be filled by election, in favour of the persons belonging to the Scheduled Castes and Scheduled Tribes;

(ii) two seats to be filled by election, in favour of women:

(iii) one seat to be filled by election, in favour of the person belonging to backward classes provided that such reservation shall be made on the board of every co-operative society consisting of individuals as members and having members from such class or category of persons.

(4) Subject to the provisions of sections 29A and 39A, the term of office of the members of the Board shall be five years from the date of election and they shall be deemed to have vacated office as such members of the Board on the date of completion of the said term: Provided that if an election to the Board of any co-operative society had already been held in accordance with the Bye-laws of such society, prior to the commencement of the Karnataka Co-operative Societies (Amendment) Act, 1997, the term of office of the Board of such co-operative society shall be three years including the cooperative year in which such election was held. Provided also that the first general meeting of the Co-operative Society or Societies formed after amalgamation or reorganization or division in accordance with section 14 shall be held within three months from the date of registration to elect the first Board to manage the affairs of the Co-operative Society or Societies, and the term of office of such Board shall also be five years from the date of election

(4A) The board of a cooperative society, may co-opt persons having experience in the field of banking, management, finance or specialization in any other field relating to the objects and activities undertaken by the cooperative society to be the members of the board. Provided that the number of such co-opted members shall not exceed two in addition to the maximum number specified in sub-section (2).

Provided further that such co-opted members shall not have a right to vote in any election of the cooperative society in their capacity as such members or to be eligible

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for being elected as office bearers of the board. Provided also that the functional directors not exceeding three, if any, shall also be the members of the board in accordance with the byelaws and such members shall be excluded for the purpose of counting the total number of directors specified in sub-section (2). Provided also that the professional directors and functional directors shall not form a part of the quorum for the conduct of the board meetings.

(5) If the new Board is not constituted under section 29A, on the date of expiry of the term of office of the Board, or if the election is not held within the time limits specified in section 39A, the Registrar or any other officer within whose jurisdiction the society is situated, and who is authorized by the Registrar, shall be deemed to have assumed charge as Administrator and he shall, for all purposes function as such Board of management. The Administrator shall, subject to the control of the Registrar, exercise all the powers and perform all the functions of the Board of the co-operative society or any office bearer of the co-operative society and take all such actions as may be required, in the interest of the co-operative society. Provided that the Registrar shall appoint an administrator to a Co-operative Society or each of the cooperative Societies formed after amalgamation or reorganization or division in accordance with section 14 for a period of three months and the administrator so appointed shall arrange for holding elections to a Board of such Co-operative Society or Societies as the case may be.

Section 30. Supersession of the board: (1) Notwithstanding anything contained in any law of the time being in force, no board of a cooperative society shall be superseded or kept under suspension for a period exceeding six months. Provided that in case of a cooperative society carrying on the business of banking, the provision of this clause, shall have effect as if for the words "six months", the words "one year" had been substituted.

(2) If in the opinion of the Registrar, the board of a cooperative society

(i) persistently makes default or is negligent in the performance of the duties imposed on it by this Act, or the rules or the bye-laws; or

(ii) commits any act, which is prejudicial to the interest of the society or its members; or

(iii) where there is a stalemate in the constitution or functioning of the board; or

(iv) has serious financial irregularities or frauds which have been detected; or

(v) fails to provide books and records, necessary information and assistance to the election commission as per the calendar set out by the election commission to conduct elections to the board within the stipulated time and as a result or otherwise, the election commission has failed to conduct elections to the board within the stipulated time; Registrar, may, after giving the board an opportunity to state objections, if any, by order in writing, superseded or suspend the said board and appoint an administrator to manage the affairs of the society for such period not exceeding six months. Provided that the board of any cooperative society shall not be superseded or kept under suspension where there is no Government share holding or loan or financial assistance or any guarantee by the Government. Provided further that the supersession or suspension of the board of a cooperative bank shall be done only after consultation with the Reserve Bank of India / National Bank as the case may be and the provisions of Banking Regulation Act, 1949 shall also apply.

(3) The administrator so appointed shall, subject to the control of the Registrar and such instructions as he may give from time to time, exercise all or any of the functions of the board or of any officebearer of the co-operative society and take such action as he may consider necessary in the interest of the society.

(4) In case of supersession of a board, the administrator shall, before the expiry of his term of office, arrange for the conduct of elections and the constitution of a new board in accordance with this Act" the rules and the bye-laws of the co-operative society and hand over management to the elected board.

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(5) In case of suspension of a board, the Registrar shall reinstate the said board and the administrator shall, on the expiry of his term of office, handover the management to the said board and the period of suspension shall be reckoned while computing the original term of office of the board.

(6) Any officer or employee of the Government or a Cooperative organization may be appointed as administrator of a cooperative society-

(i) if he is appointed on full time basis, his pay and other allowances shall be borne by the cooperative society. The service rules applicable to him in the department or organization shall continue to govern his service as administrator of the society;

(ii) if he is appointed as administrator in addition to his regular post, he shall be paid remuneration at the rate of ten percent of his basic pay out of the funds of the cooperative society. The service rules applicable to him in the department or organization shall continue to govern his service as administrator of the society;

The 2nd and 3rd respondents, have now issued circulars directing the UCBs to amend the by-laws for constitution of the BOM in accordance with the guidelines provided. The BOM is required to consist of a minimum of five members and a maximum of 12 members with the CEO being a non voting member and such BOM should consist of the members in terms of clause 6 of the guidelines and that not more than 50% of Board of Members shall be from the Members of Board of Directors and in all circumstances at least two members should be from outside the Board of Directors. The functions which could be discharged as has been extracted herein above is into various aspects as reflected therein including any other powers / responsibilities which would be delegated by the Board of Directors and there is again a requirement for delegating the powers to

the BOM. The circular also provides for appointment of a CEO.

9. The petitioner has challenged the very competency of the RBI to issue such circular qua the provisions of the Banking Regulation Act 1959 and Entry 45 of the Union List in conjunction with the provisions of the State Act of 1959 and entry 32 of List II (State list) with reference to Part 9(b) as inserted under the 97th Amendment to the Constitution. The very basis for the regulatory legislation in the nature of the State Act of 1959 is to promote the co-operative movement by giving widest scope to Entry 32 of the State List.

10. The Management of such a Co-operative Society is to be regulated in terms of the State Legislation made under the State list. Now there has been a circular which has been impugned in this writ petition where there is another parallel body created for certain purposes of Management, though the same may be regarded as the Banking activities, the question would still be whether the delegated legislation could impinge upon the penal legislation though they are under two separate lists and secondly whether there is a competency for the RBI within the scope of Entry 45 of List I to make provisions for Management as is presently contemplated in terms of the impugned circular.

11. So far as the 1st contention is concerned, it is no more res-integra and needs no reiteration that a delegated legislation, though treated as part of the statute and is enforceable as a statute by itself, would

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not lose its status as a delegated legislation. It is also not res-integra that a delegated legislation has to yield to the full operation of the plenary legislation, more particularly where a conflict arises between exercise of powers for delegated legislation in list I and that of a plenary legislation by the State legislature under List II as has been held in the case of **Jagadish Prasad Sharma vs. State of Bihar (2013 SCC 633)**. The relevant portion of the said judgment is extracted as hereunder for ready reference -

Para 77:- We are inclined to agree with such submission mainly because of the fact that in the amended provisions of Section 67(a) it has been categorically stated that the age of superannuation of non-teaching employees would be 62 years and, in no case, should the period of service of such non-teaching employees be extended beyond 62 years. A difference had been made in regard to the teaching faculty whose services could be extended up to 65 years in the manner laid down in the University Statutes. There is no ambiguity that the final decision to enhance the age of superannuation of teachers within a particular State would be that of the State itself. The right of the Commission to frame Regulations having the force of law is admitted. However, the State Governments are also entitled to legislate with matters relating to education under Entry 25 of List III. So long as the State legislation did not encroach upon the jurisdiction of Parliament, the State legislation would obviously have primacy over any other law. If there was any legislation enacted by the Central Government under Entry 25 List III, both would have to be treated on a par with each other. In the absence of any such legislation by the Central Government under Entry 25 List III, the Regulation framed by way of delegated legislation has to yield to the plenary jurisdiction of the State Government under Entry 25

Annexure-C being purely a delegated legislation, being in conflict with Chapter IV of the State Act of 1959 had

seeks to breach the very structure of the Management, is repugnant to the plenary State Legislation and can't have precedent over the State Legislation to be implemented and requires to be set aside/quashed.

12. Whether the Union/RBI has the power to legislate in respect of a Co-operative Society other than in relation to purely Banking matters is also no more res-integra in as much as the conflict between the views expressed in **Greater Bombay Co-operative Bank 2007(6) SCC Pg 236; Delhi Cloth and General Mills Co-operative Ltd 1983(4) SCC Pg 166; T Veludayan Achari 1992(3) SCC Pg 582 and Delhi Bar Association case 2002(4) SCC Pg 275** has considered this very issue and the question relates to the scope of the legislative field covered by List I Entry 45 namely Banking and entry 32 of State List. The matter having been considered by a Constitution Bench in the case of **Pandurang Ganapati Chowgle vs viswas Rao Patil Murgod Sahakari Bank Ltd (2020 9 SCC 215)** had formulated the following question.

“Whether Co-operative Banks which are co-operative societies also are governed by Schedule VII List I Entry 45 or List II Entry 32 of the Constitution of India and to what extent.”

13. Considering a blather of judgments as also the definition of Banking under the Banking Regulation Act, has upheld the views taken by the Punjab & Haryana High Court in the case of **Sadhusingh AIR 1970 P&H 528** and by a Bench of the Bombay High Court in the case of **Nagpur District Central Co-operative Bank Ltd AIR 1971, Bombay Page 365** to hold that any infringement on the rights and powers of the

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shareholders in managing the affairs of the Co-operative Society and a question related to Management aspect though it was a co-operative Bank, was held to be exclusively within the domain of Entry 32 of List II and in the concluding paragraphs, the Hon'ble Supreme Court also considered the case in ***Veerendra Paul Singh vs Registrar of Co-operative Societies 1980(1) SCC Pg 109*** and observed at para 100 in the case of Pandurang (supra) that the question of Management/regulation of Co-operative Society was involved and in that context, on the principles of pith and substance, it was held that U.P Co-operative Societies Act, dealt with incorporation, management and winding up and an incidental trenching would not breach the legislative competence. The specific observations were made that merely because a co-operative society is into banking business would not ipso-facto seized to be a Co-operative society. Therefore consistent view has been expressed by the constitution Bench that in so far as incorporation, regulation, management and winding up is concerned, even in relation to a co-operative Bank is within the exclusive domain of the State legislature. The concept of regulating the affairs of the non banking society and regulating Banking business of a society are two different aspects and are covered under two different entries. Entry 45 does not intend to regulate the incorporation, management, regulation or winding of a Co-operative Society or a Bank but it includes such activities defined as Banking and other incidental activities in terms of Section 5(b) which provides that Banking means accepting for the purpose of lending or investment, deposit of money from public, repayable on demand or

otherwise, and withdrawal by cheque, draft, order or otherwise. In such circumstances, the Apex Court has dealt with the matter in great detail and has held that when it comes to the question of incorporation, management, regulation, winding up, the State Legislature has the exclusivity, sans and incidental trenching and the Union List Entry 45 can regulate the Banking aspects but not trenching upon the essential state legislatures primacy in so far as legislating on the incorporation, management, regulation and winding up. Therefore the parliament lacks competence to regulate any other business function or facet of Co-operative society other than laying down the guidelines or procedures or regulating the banking activities within the frame work of the management provided by a Co-operative society.

14. This is also the scheme under the constitution in as much as under Part 9(b) which was introduced under the 97th amendment to the Constitution, the limited powers which is vested with the authorities under the Banking Regulation Act is in terms of the 2nd proviso to Article 243(zl)(1). The reflections of this amendment could also be seen under Section 30 of the State Act of 1959. Section 30(5) which has been extracted herein above specifically provides that notwithstanding anything contained in the Act, the RBI, in public interest and for preventing the affairs of the Co-operative bank to be conducted in a manner detrimental to the interest of the depositors and for securing proper management, may by an order in writing remove the committee of that Co-operative Bank and appoint an Administrator to manage

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the affairs of a Co-operative Bank from time to time. Further, the exercise of powers of supersession and suspension of the Board by the State is also with a fetters of a consultation with the RBI to exercise such powers. Therefore the object sought to be achieved i.e., the ensuring of proper management or otherwise is specifically vested under the constitutional scheme as also Section 30(5) of the State Act of 1959 and therefore the constitution and the legislative scheme is well in its place. The peeping back into the amendment made to the Banking Regulation Act of 1949 by virtue of 1965 amendment act i.e., Act No. 23/1965, it can be seen that extensive amendments and omissions of several provisions of the Banking Regulation Act were made on account of Entry 32 of List II conferring the State legislature with plenary powers of legislate and the provisions relatable directly or indirectly to incorporation, management and winding up of the Co-operative Banks were omitted as these parts or provisions were not part in pith and substance with the scope of any Central or concurrent lists subjects of the VII Schedule and as such amendments were incorporated under various provisions in parts 2A, 3 & 3A. This will clearly reflect that the extent of managerial control even in relation to the Banking functions is restricted to the powers which could be exercised under 36(AAA) and nothing more.

15. The conjoint reading of the explicit language in the entries, on the principle of doctrine of pith and substance as also taking into account the legislative history of the Banking Regulation Act and the State Act of 1959 and the subsequent constitutional amendment and the

amendments to the Banking Regulation Act as also in the light of the constitutional Bench judgment of the Hon'ble Supreme Court in the case of *Pandurang Ganapati Chaugule* supra, the circular lacks competency and otherwise impinges upon the plenary state legislation and therefore the circular requires to be declared as ultra vires the powers under the Banking Regulation act or is otherwise ultra vires the powers that could be exercised by the RBI on account of the fetters under Entry 32 of the State list in contradistinction with the entry 45 of Part I Union List of the Constitution of India.

16. What cannot be directly achieved cannot be sought to be achieved indirectly and though these regulatory provisions were in place in the unamended Act in the Banking Regulation Act, 1949 which stood deleted/omitted by virtue of an 1965 amendment is now sought to be given rebirth in the nature of issuance of circulars by the RBI and therefore this cannot be, but be held to be a colorable exercise of power. It is a settled law that colourable exercise of powers renders the very exercise of powers and the outcome thereof as amenable to judicial review resulting in its striking down.

GROUND FOR INTERIM PRAYER

17. Under the Banking Regulation Act, any directions issued is required to be complied with and the non adherence to the circular directions has serious consequences including a possible supersession and appointment of an administrator or a cancellation of the Banking license in its extreme situations and there are other penal consequences for the officers incharge of the Management. The petitioner has raised and urged good

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grounds to support the relief sought for and there is every likelihood of success and suspension of the requirements to be fulfilled in terms of the circulars in the interregnum would enable an appropriate adjudication without any adverse consequences on the petitioner. The petitioner Society is consisted of the Advocates as its members and the whole Board of Directors is consisting of Advocates and they are much more equipped in making assessments and taking appropriate decision in relation to the affairs of the Society of the Advocates and therefore an interim prayer is sought for.

PRAYER

WHEREFORE, the petitioner most humbly prays that this Hon'ble Court be pleased to:-

- a) **ISSUE A** writ or a direction of appropriate nature declaring that the Circular bearing No. DoR(PCB).BPD.Cir.No.8/12.05.002/2019-20, dated.31.12.2019 issued by the Respondent No.2 vide **Annexure-C** is ultra vires the powers of the Reserve Bank of India under the provisions of the Banking Regulation Act 1949 and Entry 45 of List I (Union List of the Constitution of India) in contradistinction to the State Legislature powers under Entry 32 of List II (State list) of the Constitution of India and the Karnataka Co-operative Societies Act 1959 (particularly Chapter IV) and consequently quash the Circular bearing No. DoR(PCB).BPD.Cir.No.8/12.05.002/2019-20, dated.31.12.2019 vide **Annexure-C**, issued by the Respondent No.2, by issuance of Certiorari; and

b) **PASS** any other appropriate writ order or direction as may be deemed appropriate by this Hon'ble Court in the ends of justice and equity.

INTERM PRAYER

PENDING disposal of the above writ petition, the petitioner most humbly prays that this Hon'ble Court be pleased to stay the operation and implementation of the Circular bearing DoR(PCB).BPD.Cir.No.8/12.05.002/2019-20, dated.31.12.2019 issued by the Respondent No.3 issued vide **Annexure-C**, on such terms as this Hon'ble Court may deem fit and proper to impose in the ends of justice and equity.

Place: Bengaluru

Date: 18.06.2021.

Address for Service

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(KAR/2005/95)