

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

WRIT PETITION NO. (M/B) of 2021

1. Ms. Ranjana Singh, aged about 58 years, daughter of Mr. Harihar Prasad Singh, resident of A-3, PWD Bunglows, Sector A, Near Chhanni Lal Chauraha Mahanagar, Lucknow - 226 006, presently working on the post of Secretary/Chief Executive Officer, Nagrik Sahakari Bank Ltd., Lucknow.
2. Mr. Shaval Gupta, aged about 54 years, son of Shri Santosh Kumar Gupta, resident of 766, Hospital Road, Nai Basti, Lakhimpur Kehri, Uttar Pradesh - 262701, presently working on the post of Secretary/Chief Executive Officer of Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur.

.....PETITIONERS

-Versus-

1. Union of India through its Secretary, Department of Financial Services, Ministry of Finance, Government of India.
2. Reserve Bank of India through its Governor, Central Office, Central Office Building, 12th/ 13th Floor, Shahid Bhagat Singh Marg, Fort, Mumbai - 400001.
3. Chief General Manager-in-Charge, Reserve Bank of India , Department of Regulation, Central Office, Central Office Building, 12th/ 13th Floor, Shahid Bhagat Singh Marg, Fort, Mumbai - 400001.
4. Regional Director, Reserve Bank of India, Regional Office, 8-9 Vipin Khand, Gomtinagar, Lucknow-226010.

5. State of U.P. through its Additional Chief Secretary/
Principal Secretary, Cooperative, U.P. Civil Secretariat,
Lucknow.
6. Nagrik Sahakari Bank Ltd., Lucknow an Urban Cooperative
Bank, a Cooperative Society registered under the
Cooperative Societies Act, 1965, through its Chairman.
7. Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur, an
Urban Cooperative Bank, a Cooperative Society registered
under the Cooperative Societies Act, 1965, through its
Chairman.

.....**RESPONDENTS**

WRIT PETITION UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA

To,

Hon'ble The Chief Justice & his other companion Hon'ble
Judges of this Hon'ble Court, Lucknow Bench, Lucknow.

The Petitioners above named most humbly begs to submit
as under:

1. That the Petitioners declare that no other Writ Petition,
application including review application etc. or any other
proceedings arising from or related to the impugned order
or the relief sought before this Court has been filed or is
pending to the best of his knowledge before this Court, at
Allahabad or Lucknow or any other Court/Authority Tribunal,
etc. The Petitioners further declare that he has not received
notice, information or copy of any caveat application by

Registered Post or otherwise from any of the Respondents or from any other source.

2. That the Petitioners beg to assail the Sub-clause 4.2 of the Circular bearing no RBI/2021-22/60/DOR.GOV.REC.25/12.10.000/2021-22, dated 25.06.2021 (hereinafter referred to as the **"impugned circular"** for sake of brevity), issued by the Chief General Manager-in-Charge, Reserve Bank of India, Department of Regulation, Respondent No. 3, purportedly issued in exercise of power conferred under Sections 10, 10B, 10BB, 35A, 35B, 36AA and 53A (read with Section 56) of the Banking Regulation Act, 1959, whereby in an illegal, whimsical and arbitrary manner, an embargo has been sought to be imposed upon the Managing Director/Whole Time Director of the Urban Cooperative Bank providing that they cannot hold the aforesaid office for a period more than 15 years in continuation, however, the same incumbent shall be eligible for re-appointment after a period of three years. Furthermore, it has also been provided that for the cooling period of three years, the incumbent shall not be appointed/ associated with the bank either directly or indirectly.

The impugned circular dated 25.06.2021, is *per se* untenable in the eyes of the law for the reason that the same has been issued in gross violation of the Fundamental Rights of the Petitioners contained in Article 19(1)(g) and Article 21 of the Constitution of India.

The Article 19(1)(g) of the Constitution of India confers a fundamental right on every citizen to practice any profession or any occupation or trade or business. Aforesaid fundamental right contained in Article 19(1)(g) of the Constitution of India is subject to any reasonable restriction imposed by the State as provided in Article 19(1)(g) of the Constitution of India by *inter alia* making any law imposing in the interest of general public, reasonable restriction on the exercise of right conferred under Article 19(1)(g) of the Constitution of India.

A Constitution Bench of the Hon'ble Supreme Court of India as also on various other occasions, the Hon'ble Supreme Court after considering the aforesaid issue of imposition of the reasonable restriction to the freedom contained in Article 19 of the Constitution of India has time and again held that such reasonable restriction can be imposed only by competent legislature by enacting acts or amending the existing enactment. However, the same cannot be done merely by issuance of circulars/executive instructions. The aforesaid view has been expressed by the Hon'ble Supreme Court of India in a catena of pronouncement details whereof have been enumerated in succeeding paragraphs.

The impugned circular dated 25.06.2021, is also in violation of the Fundamental Right of livelihood of the Petitioners contained in Article 21 of the Constitution of India in as much as the the Petitioners who are continuing in the Urban Cooperative Bank as CEO is literally being turned out of employment merely because they have completed 15 years

as CEO of the Cooperative Bank, though they have not attained the age of superannuation without considering or realizing that the Petitioners are already overage for Government Employment and on account of implementation of impugned circular dated 25.06.2021 they would be rendered jobless. The aforesaid impugned circular dated 25.06.2021, is violative of legitimate expectation of the Petitioners to continue till attaining age of superannuation and thus is not sustainable.

At this juncture, it is pertinent to mention that the urban cooperative bank are *inter alia* covered by the Banking Regulation Act, 1949, which already contained necessary safeguard for regulating the services of the CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank in as much as power to dispense with the services of such CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank against which material exists has been *inter alia* conferred upon the Reserve Bank of India which in emergent situation can be exercised without even affording opportunity of hearing.

Not only so another safeguard has been provided vide circular dated 25.06.2021 vide clause 4.3 whereby it has been made mandatory to obtain approval from Reserve Bank of India after completion of 05 years tenure. Thus, in such cases where Reserve Bank of India having any such material which warrants discontinuance of the concerned CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank, the Reserve Bank of India can always

disapprove/not grant approval for continuance of the concerned CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank after his five years termed gets over. Thus, in addition to the same there was not occasion warranting imposition of blanket embargo as is sought to be put vide clause 4.2 of the impugned circular dated 25.06.2021.

As a matter of fact, since there is no provision contained in the Banking Regulation Act, 1949 (as amended) mandating the discontinuance of CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank on completion of 15 years tenure, such a stringent condition could not have been imposed by the Reserve Bank of India by means of impugned circular dated 25.06.2021, as the same amounts to supplanting the statutory provisions by means of circular which is legally impermissible.

The embargo imposed vide clause 4.2 of the impugned circular dated 25.06.2021, whereby a CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank shall have to discontinue from the services of the Urban Cooperative Bank for three years after completion of 15 years as CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank, has got no nexus with the object sought to be achieved by the parliament by enacting section 36AA in the 1949, Banking Act, as even a tainted official would be eligible to be the Managing Director of the Urban Cooperative Bank after three years of cooling period.

Thus, it is evident that the clause 4.2 of the impugned circular dated 25.06.2021, is *per se* illegal besides being arbitrary and without jurisdiction as such is unsustainable in the eyes of law.

Copy of the Circular bearing no RBI/2021-22/60/DOR.GOV.REC.25/12.10.000/2021-22, dated 25.06.2021, issued by the Chief General Manager-in-Charge, Reserve Bank of India, Department of Regulation, Respondent No. 3, is annexed herewith as **Annexure-1** to this Writ Petition.

3. That the brief facts of the case giving rise to the instant Writ Petition for the kind consideration of this Hon'ble Court are as hereunder.
4. That the Urban Cooperative Banks are Cooperative Banks registered under the respective Cooperative Societies Act, enacted by the State Government or Multi State Cooperative Societies Act, 2002. The regulation and supervision of the aforesaid urban cooperatives banks are governed by their respective Cooperative Societies Act, under which they are registered. In so far as the banking affairs are concerned the aforesaid Urban Cooperative Banks are governed as per the provisions of the Banking and Regulation Act, 1949.
5. That the Petitioner no. 1 completed her Post Graduate Diploma in Business Management before joining the Nagrik Sahkari Bank Limited, Lucknow in the year 1997. After providing her services to the utmost satisfaction of its

employer, the Petitioner no. 1 was promoted as Secretary/Chief Executive Officer of the Nagrik Sahkari Bank Limited, Lucknow on 30.04.2003.

6. That the Nagar Sahkari Bank Limited, Respondent no. 6 is a Cooperative Bank registered under the U.P. Cooperative Societies Act, 1965. For the purposes of its regulation and supervision, the Nagar Sahkari Bank Limited are governed under the U.P. Cooperative Societies Act, 1965. In so far as the regulation of banking affairs are concerned, the same are governed under the Banking Regulation Act, 1949. The deposit size of the Respondent no. 6 Bank is less than 100 crores as per the preceding years audited balance-sheet.
7. That during the tenure of the Petitioner no. 1 as the Secretary/Chief Executive Officer of the Nagrik Sahkari Bank Limited, Lucknow for over 17 years, the Nagrik Sahkari Bank Limited, Lucknow which is a Cooperative Bank under the Uttar Pradesh Cooperative Act, 1965, has achieved great heights and striving to work harder for the betterment of its customer. Copy of the Curriculum-Vitae of the Petitioner no. 1 is annexed herewith as **Annexure-2** to this Writ Petition.
8. That the Petitioner no. 2 completed his Master in Business Administration (Finance) and other educational qualification before joining the Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur in the year 1991 as Manager. After providing his services to the utmost satisfaction of its employer, the Petitioner no. 2 was promoted as Secretary/Chief Executive

Officer of the Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur on 28.10.2004.

9. That Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur, Respondent no. 7 is a Cooperative Bank registered under the U.P. Cooperative Societies Act, 1965. For the purposes of its regulation and supervision, the Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur are governed under the U.P. Cooperative Societies Act, 1965. In so far as the regulation of banking affairs are concerned, the same are governed under the Banking Regulation Act, 1949. The deposit size of the Respondent no. 7 Bank is more than 100 crores as per the preceding years audited balance-sheet.
10. That during the tenure of the Petitioner no. 2 as the Secretary/Chief Executive Officer of the Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur for over 17 years, the Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur which is a Cooperative Bank under the Uttar Pradesh Cooperative Act, 1965, has achieved great heights and striving to work harder for the betterment of its customer. Copy of the Curriculum-Vitae of the Petitioner no. 2 is annexed herewith as **Annexure-3** to this Writ Petition.
11. That while the Petitioners have been working to the best of their abilities to enhance the business of their Banks and in the interest of the Urban Cooperative Bank's customers, recently the impugned circular dated 25.06.2021, has been issued by the Respondent no. 3, whereby purportedly in exercise of the power conferred under Sections 10, 10B, 10BB, 35A, 35B, 36AA and 53 read with Section 56 of the

Banking Regulation Act, 1949 (as amended) (hereinafter referred to as the "**1949 Banking Act**" for sake of brevity), directions have been issued for appointment, reappointment, termination and removal of Managing Director and Whole Time Director of all the Urban Cooperative Banks.

12. That as per Clause 2 of the impugned circular dated 25.06.2021, the aforesaid directions are not applicable to all primary Urban Cooperative Banks having deposit size of less than Rs. 100,00,00,000/- (Rupees Hundred Crores Only). However, the exempted Urban Cooperative Banks are not required to obtain prior approval, they are required to formulate the board approved policy based on all the other provisions of the directions contained in the impugned circular dated 25.06.2021, for appointment, reappointment and termination of the Managing Director and Whole Time Director of the Urban Cooperative Banks.
13. That since the Bank i.e. Respondent no. 6 of the Petitioner no. 1 has deposit size of less than Rs. 100,00,00,000/-, the Respondent no. 6 bank does not require prior approval of the Reserve Bank of India for appointment, re-appointment and termination of Managing Director/Whole Time Director. However, Respondent no. 7 of the Petitioner no. 2 has deposit of more than Rs. 100,00,00,000/-, the Respondent no. 7 bank does require prior approval of the Reserve Bank of India for appointment, re-appointment and termination of Managing Director/Whole Time Director. In any even the

guidelines in the impugned circular dated 25.06.2021, are made applicable on both the Petitioners.

14. That the eligibility and propriety criteria as stipulated in Clause 3 of the impugned circular dated 25.06.2021, which provides for appointment of Managing Director/Whole Time Director. For ease of perusal and kind consideration of this Hon'ble Court, Clause 3 of the impugned circular dated 25.06.2021, is reproduced hereinbelow:

“3. Appointment of Managing Director / Whole-Time Director

3.1 Managing Director, who may also be designated as Chief Executive Officer or by any other name, is a person who is entrusted with the management of the whole, or substantially the whole of the affairs of a UCB, subject to the regulations or directions issued by the Reserve Bank from time to time. MD shall function under the overall general superintendence, direction and control of the Board of Directors (BoD).

3.2 If a UCB decides to appoint Whole-Time Director (WTD), who may also be designated as Executive Director or by any other name, the need for such an appointment may be decided by the bank keeping in view the growth in business, expansion of activities, geographical footprints and organisational vision for growth in the medium and long term. The creation of the post of WTD and the functions that can be performed may be decided by the BoD and approved by the General Body of the bank. The WTD shall report to the Managing Director.

3.3 The UCBs shall ensure that the following ‘fit and proper’ criteria is fulfilled by the person being appointed as MD/ WTD.

3.4 Eligibility

3.4.1 The person shall be a graduate, preferably, with

(a) Qualification in banking/ co-operative banking such as CAIIB / Diploma in Banking and Finance / Diploma in Co-operative Business Management or equivalent qualification; or

(b) Chartered / Cost Accountant / MBA (Finance); or (c) Post graduation in any discipline.

3.4.2 The person shall not be below the age of 35 years and above the age of 70 years at any time during his/ her term in office. However, within the overall limit of 70 years, as

part of their internal policy, individual bank's Boards are free to prescribe a lower retirement age.

3.4.3 The person shall have a combined experience of at least eight years at the middle / senior management level in the banking sector (including the experience gained in the concerned UCB) or non-banking finance companies engaged in lending (loan companies) and asset financing.

3.4.4 Knowledge of regional language may be considered as an advantage.

3.5 Propriety Criteria

3.5.1 The person shall **not**

(i) be engaged in any other business or vocation;

(ii) be holding the position of a Member of Parliament or State Legislature or Municipal Corporation or Municipality or other local bodies;

(iii) be a director of any company other than a company registered under section 8 of the Companies Act, 2013;

(iv) be a partner of any firm which carries on any trade, business or industry;

(v) have substantial interest in any company or firm as defined in Section 5(ne) read with section 56 of the Banking Regulations Act, 1949;

(vi) be a Director, Manager, Managing Agent, partner or proprietor of any trading, commercial or industrial concern;

(vii) be of unsound mind and stands so declared by a competent court;

(viii) be an undischarged insolvent;

(ix) be convicted by a criminal court of an offence involving moral turpitude;

(x) be a director of any other co-operative bank or a co-operative credit society.

3.5.2. The person shall submit a self-declaration on personal integrity as per Annex II.”

15. That furthermore, the tenure of the Managing Director and Whole Time Director of all the Urban Cooperative Banks is stipulated in Clause 4 of the impugned circular dated 25.06.2021. Pertinently, as per Clause 4.1 of the impugned circular dated 25.06.2021, the tenure of the Managing Director/Whole Time Director shall not be for a period of

more than 05 years at a time subject to a minimum period of 03 years at the time of first appointment, unless terminated or removed earlier, and shall be eligible for re-appointment. The performance of Managing Director/Whole Time Director shall be reviewed by the board annually. For ease of perusal and kind consideration of this Hon'ble Court, the Clause 4.1 of the impugned circular dated 25.06.2021, is reproduced hereinbelow:

“4.1 The tenure of MD/ WTD shall not be for a period more than five years at a time subject to a minimum period of three years at the time of first appointment, unless terminated or removed earlier, and shall be eligible for re-appointment. The performance of MD/WTD shall be reviewed by the Board annually.”

16. That pertinently, as per Clause 4.2 of the impugned circular dated 25.06.2021, the post of Managing Director or Whole Time Director cannot be held by the same incumbent for more than 15 years. In such a case the individual will be eligible for reappointment as Managing Director or Whole Time Director in the same bank, if considered necessary and desirable by the board, after a minimum gap of three years, subject to the meeting conditions.
17. That it is apposite to mention that it has been provided in the aforesaid Clause 4.2 of the impugned circular dated 25.06.2021, that during this three years of cooling period, the individual shall not be appointed or associated with the bank in any capacity. For ease of perusal and kind consideration of this Hon'ble Court, the Clause 4.2 of the impugned circular dated 25.06.2021, is reproduced hereinbelow:

“4.2 However, the post of the MD or WTD cannot be held by the same incumbent for more than 15 years. Thereafter, the individual will be eligible for re-appointment as MD / WTD in the same bank, if considered necessary and desirable by the board, after a minimum gap of three years, subject to meeting other conditions. During this three-year cooling period, the individual shall not be appointed or associated with the bank in any capacity, either directly or indirectly.”

18. That at this juncture, it is imperative to mention that the aforesaid Clause 4.2 is wholly illegal and arbitrary on account of the fact that it puts a restriction on such employs of the Urban Co-operative Banks who have been discharging their duties as the Chief Executive Officer/Managing Director/Whole Time Director of the Urban Co-operative Bank for and above 15 years to continue in their service neither as the Chief Executive Officer/Managing Director/Whole Time Director of such Urban Cooperative Banks nor as a employee of such Urban Cooperative Bank for a succeeding period of 3 years after completing 15 years on the post of the Chief Executive Officer/Managing Director/Whole Time Director of the Urban Co-operative Bank.
19. That for sake of clarity, it is submitted that the impact of the aforesaid restriction imposed vide clause 4.2 of the impugned circular dated 25.06.2021, is that any employee of the Urban Cooperative Bank who has been in service on the post of Chief Executive Officer/Managing Director/Whole Time Director of the Bank over 15 years, cannot continue with such bank even directly or indirectly for a minimum cooling period of three years after completing such period of 15 years. In such circumstances, an incumbent of the Urban Cooperative Bank whose length of service are still left even

after expiry of 15 years as Chief Executive Officer/Managing Director/Whole Time Director, would have to either resign or go out of his service from such Urban Co-operative Bank for a period of minimum three years, which is wholly arbitrary and illegal.

20. That it is submitted that the Clause 4.2 of the impugned circular dated 25.06.2021, is illegal and unreasonable for the Petitioners on account of the fact that they were appointed in regular service in their respective Urban Cooperative Banks as the provisions contained in U.P. Co-operative Societies Act, 1965 read with U.P. Co-operative Societies Rules, 1968 and U.P. Co-operative Societies Employees Service Regulation, 1975. It is only after completing a length of service to their best of abilities and to the utmost satisfaction of its employers, the Petitioners was appointed on the post of Chief Executive officer/ Managing Director / Whole Time Director in the Urban Co-operative Banks and continuing to discharge his duties on the aforesaid post. Such post of the Chief Executive officer/ Managing Director / Whole Time Director in the Urban Co-operative Banks shall be normally held by its employees till their age of superannuation at the instance of their service.
21. That however, by imposing the restrictions as stipulated in the Clause 4.2 of the impugned circular dated 25.06.2021, the Petitioners are not only deprived from the fruits of their labour which they have done in their service but also the Petitioners would be left in lurch in the middle in their service after completing 15 years of service as Chief

Executive officer/ Managing Director / Whole Time Director in their Bank.

22. That at this juncture, it is pertinent to mention that the impugned circular dated 25.06.2021, has been issued by the Respondent no. 3 in exercise of power conferred under Section 10, 10B, 10BB, 35A, 35B, 36A and 53A read with Section 56 of the 1949 Banking Act. Copy of the relevant provision contained in Section 10, 10B, 10BB, 35A, 35B, 36A and 53A read with Section 56 of the 1949 Banking Act, are annexed herewith as **Annexure-4** to this Writ Petition.

23. That Section 10 of the 1949 Banking Act, provides for prohibition of employment of managing agent and restrictions on certain form of employment. Pertinently, proviso to sub-section 1 of the Section 10 of the 1949 Banking Act, provides that the term of office of any such person may be renewed or extended by further delay not exceeding 05 years on each occasion subject to the condition that such renewal/restriction shall not be sanctioned earlier than two years from the date on which it is to come into force. It further provides that where the term of office of such person indefinite period, such terms, unless it otherwise come to an earlier, shall come to an end immediately on expiry of 05 years from the date of his appointment or on expiry of 03 months from the date of commencement of Section 8 of the Banking Laws (Miscellaneous Provisions) Act, 1963, whichever is later. For ready reference Section 10 of the 1949 Banking Act, is reproduced herein below:

“10. Prohibition of employment of Managing Agents and restrictions on certain forms of employment

(1) No banking company-

(a) shall employ or be managed by a Managing agent; or
(b) shall employ or continue the employment of any person-

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company:

PROVIDED that nothing contained in this sub-clause shall apply to the payment by a banking company of-

(a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business;

(b) any commission to any broker(including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as a regular member of the staff of the company; or]

(iii) whose remuneration is, in the opinion of the Reserve Bank, excessive; or

(c) shall be managed by any person-

(i) who is a Director of any other company not being-

(a) a subsidiary of the banking company, or

(b) a company registered under section 25 of the Companies Act, 1956 (1 of 1956):

PROVIDED that the prohibition in this sub-clause shall not apply in respect of any such Director for a temporary period not exceeding three months or such further period not exceeding nine months as the Reserve Bank may allow; or]

(ii) who is engaged in any other business or vocation; or

(iii) 1[whose term of office as a person Managing the company is]for period exceeding five years at any one time:

[PROVIDED that the term of office of any such person may be renewed or extended by further periods not exceeding five years on each occasion subject to the condition that such renewal/extension shall not be

sanctioned earlier than two years from the date on which it is to come into force:

PROVIDED ALSO that where the term of office of such person is for an indefinite period, such term, unless it otherwise comes to an end earlier, shall come to an end immediately on the expiry of five years from the date of his appointment or on the expiry of three months from the date of commencement of section 8 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), whichever is later:]

PROVIDED FURTHER that nothing in this clause shall apply to a Director, other than the Managing Director, of a banking company by reason only of his being such Director.

Explanation.--For the purpose of sub-clause (iii) of clause (b), the expression "remuneration", in relation to person employed or continued in employment, shall include salary, fees and perquisites but shall not include any allowances or other amounts paid to him for the purpose of reimbursing him in respect of the expense actually incurred by him in the performance of his duties.

(2) In forming its opinion under sub-clause (iii) of clause (b) of sub-section (1), the Reserve Bank may have regard among other matters to the following:-

(i) the financial condition and history of the banking company, its size and area of operation, its resources, the volume of its business, and the trend of its earning capacity;

(ii) the number of its branches or offices;

(iii) the qualifications, age and experience of the person concerned;

(iv) the remuneration paid to other persons employed by the banking company or to any person occupying a similar position in any other banking company similarly situated; and

(v) the interests of its depositors. 1[***].

(6) Any decision or order of the Reserve Bank made under this section shall be final for all purposes.]”

24. That furthermore, the Section 10B of 1949 Banking Act, provides that the Banking Company to be managed by the whole time chairman. As per Section 10B(1) of the 1949 Banking Act provides that notwithstanding anything contained in any law for the time being in force or in any contract or in any contract to the contrary, every banking

company in existence on the commencement of the amended 1949 Banking Regulation Act or which comes into existence thereafter shall have one of its directors, who may be appointed on a whole time or part time basis, as chairman of its Board of directors, and where he is appointed on a whole time basis, as chairman, Board of directors, he shall be entrusted with the management of the whole of the affairs of the banking company.

25. That pertinently, Section 10(B)(2) of the 1949 Banking Regulation, provides that every chairman of the Board of directors who is appointed on a whole time basis and every managing director of a banking company shall be in the whole time employment of such company and shall hold office for such period, not exceeding five years, as the Board of directors may fix, but shall, subject to the provisions of this section, be eligible for re-election or reappointment.
26. That furthermore, the Section 10(B)(6) of the 1949 Banking Regulation *inter alia* provides that where the Reserve Bank is of opinion that any person who, is, or has been elected to be, the Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director of a banking company is not a fit and proper person to hold such office, it may, after giving to such person and to the banking company a reasonable opportunity of being heard by order in writing, require the banking company to elect or appoint any other person as the Chairman of the board of Directors who is appointed on a whole-time basis or the Managing

Director]and if, within a period of two months from the date of receipt of such order, the banking company fails to elect or appoint a suitable person as the Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director, the Reserve Bank may, by order, remove the first-mentioned person from the office of the Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director of the banking company and appoint a suitable person in his place whereupon the person so appointed shall be deemed to have been duly elected or appointed, as the case may be, as the Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director of such banking company and any person elected or appointed as Chairman on a whole-time basis or Managing Director under this sub-section shall hold office for the residue of the period of office of the person in whose place he has been so elected or appointed. For ready reference, the Section 10B of the 1949, Banking Act is reproduced herein below:

“10B. Banking company to be managed by whole time Chairman

1[(1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking company in existence on the commencement of the Banking Regulation (Amendment) Act,1994 (20 of 1944), or which comes into existence thereafter shall have one of its Directors, who may be appointed on a whole-time or a part-time basis, as Chairman of its board of Directors, and where he is appointed on a whole-time basis, as Chairman of its board of Directors, he shall be entrusted with the management of the whole of the affairs of the banking company :

PROVIDED that the Chairman shall exercise his powers subject to the superintendence, control and direction of the board of Directors.

(1A) Where a Chairman is appointed on a part-time basis,-

(i) such appointment shall be with the previous approval of the Reserve Bank and be subject to such conditions as the Reserve Bank may specify while giving such approval;

(ii) the management of the whole of the affairs of such banking company shall be entrusted to a Managing Director who shall exercise his powers subject to the superintendence, control and direction of the board of Directors.]

(2) 1[Every Chairman of the board of Directors who is appointed on a whole-time basis and every Managing Director] of a banking company shall be in the whole-time employment of such company and shall hold office for such period, not exceeding five years, as the board of Directors may fix, but shall, subject to the provisions of this section, be eligible for re-election or reappointment:

PROVIDED that nothing in this sub-section shall be construed as prohibiting a Chairman from being a Director of a subsidiary of the banking company or a Director of a company registered under section 25 of the Companies Act, 1956 (1 of 1956).

(3) Every person holding office on the commencement of section 3 of the Banking Laws (Amendment) Act, 1968 (58 of 1968), as Managing Director of a banking company shall-

(a) if there is a Chairman of its board of Directors, vacate office on such commencement, or

(b) if there is no Chairman of its board of Directors, vacate office on the date on which the Chairman of its board of Directors is elected or appointed in accordance with the provisions of this section.

(4) 2[Every Chairman who is appointed on a whole-time basis and every Managing Director of a banking company appointed under sub-section (1A)] shall be person who has special knowledge and practical experience of-

(a) the working of a banking company, or of the State Bank of India or any subsidiary bank or a financial institution, or

(b) financial, economic or business administration :

PROVIDED that a person shall be disqualified for being a 1[Chairman who is appointed on a whole time basis or a Managing Director], if be-

(a) is a Director of any company other than a company referred to in the proviso to sub-section (2), or

(b) is a partner of any firm which carries on any trade, business or industry, or

(c) has substantial interest in any other company or firm, or

(d) is a Director, manager, Managing agent, partner or proprietor of any trading, commercial or industrial concern, or

(e) is engaged in any other business or vocation.

(5) 2[A Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] of a banking company may, by

writing, under his hand addressed to the company, resign his office, 3[* * *].

4[(5A) 5[A Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] whose term of office has come to an end, either by reason of his resignation or by reason of expiry of the period of his office, shall, subject to the approval of the Reserve Bank, continue in office until his successor assumes office.

(6) Without prejudice to the provisions of section 36AA where the Reserve Bank is of opinion that any person who, is, or has been elected to be, the 6[Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director]of a banking company is not a fit and proper person to hold such office, it may, after giving to such person and to the banking company a reasonable opportunity of being heard by order in writing, require the banking company to elect or appoint any other person as the 7[Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director]and if, within a period of two months from the date of receipt of such order, the banking company fails to elect or appoint a suitable person as the 1[Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director], the Reserve Bank may, by order, remove the first-mentioned person from the office of the 2[Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director]of the banking company and appoint a suitable person in his place whereupon the person so appointed shall be deemed to have been duly elected or appointed, as the case may be, as the 3[Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director] of such banking company and any person elected or 4[appointed as Chairman on a whole-time basis or Managing Director] under this sub-section shall hold office for the residue of the period of office of the person in whose place he has been so elected or appointed.

(7) The banking company and any person against whom an order of removal is made under sub-section (6) may, within thirty days from the date of communication to it or to him of the order, prefer an appeal to the Central Government and the decision of the Central Government thereon, and subject thereto, the order made by the Reserve Bank under sub-section (6), shall be final and shall not be called into question in any court.

(8) Notwithstanding anything contained in this section, the Reserve Bank may, if in its opinion it is necessary in the public interest so to do, permit 5[the Chairman of the board of Directors who is appointed on a whole-time basis or the Managing Director] to undertake such part-time honorary work as is not likely to interfere with his duties as 6[such Chairman or Managing Director].

(9) Notwithstanding anything contained in this section, where a person 6[appointed on a whole-time basis, as Chairman of the board of Directors or the Managing Director]dies or resigns or is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the banking company may, with the approval of the Reserve Bank, make suitable arrangements for carrying out the 1[duties of Chairman or Managing Director] for a total period not exceeding four months.]”

27. That furthermore, the powers of the Reserve Bank of India to appoint Chairman of the Board of directors appointed on a whole time basis or managing director of a banking company is stipulated in Section 10BB of 1949, Banking Act. Pertinently, as per Section 10BB(1) of the 1949, Banking Act categorically provides where the office, of the chairman of the Board of directors appointed on a whole time basis or a managing director of a banking company is vacant, the Reserve Bank may, if it is of the opinion that the continuation of such vacancy is likely to adversely affect the interests of the Banking Company, appoint a person to be chairman of the Board of directors appointed on a whole time basis or a managing director of the banking company and where such person so appointed is not a director of such banking company, he shall be deemed to be director of the banking company so long as he holds the office of the chairman of the board of directors appointed on a whole time basis or a managing director.
28. That further Section 10BB(2) and 10BB(3) of the 1949 Banking Act provides that such person appointed as the chairman of the Board of directors appointed on a whole time basis or a managing director shall be in the whole time employment of the Banking company and shall hold office for such period not exceeding 3 years but subject to the other provisions be eligible for re-appointment. Further, such person appointed as the Chairman of the Board of directors appointed on the whole time basis or managing director shall draw from the banking company such pay and allowances as the Reserve Bank may determine and may be

removed from office only by the Reserve Bank. For ease of perusal and kind consideration of this Hon'ble Court, the Section 10BB of the 1949 Banking Act is reproduced herein below:

10BB. Power of Reserve Bank to appoint 3[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] of a banking company

(1) Where the office, of the 4[Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] of a banking company is vacant, the Reserve Bank may, if it is of opinion that the continuation of such vacancy is likely to adversely affect the interests of the banking company, appoint a person eligible under sub-section (4) of section 10B to be so appointed, to be the 5[Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] of the banking company and where the person so appointed is not a Director of such banking company, he shall, so long as he holds the office of the 6[Chairman of the board of Directors appointed on a whole-time basis or a Managing Director], be deemed to be Director of the banking company.

(2) The 7[Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] so appointed by the Reserve Bank shall be in the whole-time employment of the banking company and shall hold office for such period not exceeding three years, as the Reserve Bank may specify, but shall, subject to other provisions of this Act, be eligible for reappointment.

(3) The 8[Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] so appointed by the Reserve Bank shall draw from the banking company such pay and allowances as the Reserve Bank may determine and may be removed from office only by the Reserve Bank.

(4) Save as otherwise provided in this section, the provisions of section 10B shall, as far as may be, apply to the 9[Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] appointed by the Reserve Bank under subsection (1) as they apply to a 1[Chairman of the board of Directors appointed on a whole-time basis or a Managing Director] appointed by the banking company.]

29. That the power of the Reserve Bank to give directions is stipulated in Section 35A of the 1949 Banking Act. Pertinently, as per Section 35A(1) of the 1949 Banking Act provides that where the Reserve Bank is satisfied that in the public interest, or in the interest of banking policy, or to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the

depositors or in a manner prejudicial to the interest of banking company or 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 deem fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions. For ease of perusal and kind consideration of this Hon'ble Court, the Section 35A of the 1949 Banking Act are reproduced herein below:

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

(1) Where the Reserve Bank is satisfied that- (a) in the 4[public interest]; or
5[(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 interests of the depositors or in a manner prejudicial to the interests 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.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under subsection (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.]

30. That pertinently, from conjoint reading of Sections 10, 10B, 10BB, 35A of 1949, Banking Act, although it is evident that the time and manner for which a Managing Director/Whole Time Director can be appointed in a Banking Company/Urban Cooperative Bank is provided in the 1949, Banking Act. However, the embargo imposed by the Respondent No. 3 vide clause 4.2 of the impugned circular dated 25.06.2021, whereby a Managing Director or a Whole

Time Director of an Urban Cooperative Bank cannot hold the office of the Managing Director / Whole Time Director for more than a period of 15 years without gap of cooling period of three years, has not been provided in the 1949, Banking Act.

31. That it appears that it is only in exercise of the power conferred upon the Reserve Bank of India under Section 35A of the 1949 Act, whereby the Reserve Bank of India has been conferred power to issue such directions in order to prevent the affairs of any banking company/Urban Cooperative Bank being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking to proper management of any banking company/Urban Cooperative Bank, the impugned Clause 4.2 of the impugned circular dated 25.06.2021, has been issued by the Respondent No. 3.
32. That although it appears that the Respondent No. 3 in exercise of power conferred under Section 35A of the 1949, Banking Act has issued the directions in shape of the impugned circular dated 25.06.2021. However, it is submitted that the powers conferred under Section 35A of the 1949, Banking Act cannot be read in isolation.
33. That at this juncture, it is imperative to mention that Section 36AA of the 1949 Banking Act provides for the power of the Reserve Bank of India to move the managerial and other persons from office by an order recorded in writing in public interest or for preventing the affairs of the banking company/Urban Cooperative Bank being conducted

in a manner detrimental to the interests of the depositors or for securing the proper management of the Banking Company/Urban Cooperative Bank. For ready reference, the Section 36AA of the 1949, Banking Act, is reproduced herein below:

“36AA. Power of Reserve Bank to remove managerial and other persons from office

(1) Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a banking company being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of any banking company it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, 2[any Chairman, Director,] chief executive officer (by whatever name called) or other officer or employee of the banking company.

(2) No order under sub-section (1) shall be made 3[unless the Chairman, Director] or chief executive officer or other officer or employee concerned has been given a reasonable opportunity of making a representation to the Reserve Bank against the proposed order:

PROVIDED that if, in the opinion of the Reserve Bank, any delay would be detrimental to the interests of the banking company or its depositors, the Reserve Bank may, at the time of giving the opportunity aforesaid or at any time thereafter, by order direct that, pending the consideration of the representation aforesaid, if any, 4[the Chairman or, as the case may be, Director or chief executive officer] or other officer or employee, shall not, with effect from the date of such order--

(a) 5[act as such Chairman or Director] or chief executive officer or other officer or employee of the banking company;

(b) in any way, whether directly or indirectly, be concerned with, or take part in the management of, the banking company.

(3)(a) Any person against whom an order of removal has been made under sub-section (1) may, within thirty days from the date of communication to him of the order, prefer an appeal to the Central Government.

(b) The decision of the Central Government on such appeal, and subject thereto, the order made by the Reserve Bank under sub-section (1), shall be final and shall not be called into question in any court.

(4) Where any order is made in respect of 1[a Chairman, Director] or chief executive officer or other officer or employee of a banking company under sub-section (1), he shall cease to be 2[a Chairman or, as the case may be, a Director,] chief executive officer or other officer or employee of the banking company and shall not, in any way, whether directly or indirectly, be concerned with, or take part in the management of, any banking company for such period not exceeding five years as may be specified in the order.

(5) If any person in respect of whom an order is made by the Reserve Bank under sub-section (1) or under the proviso to sub-section (2) contravenes the provisions of this section, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues.

(6) Where an order under sub-section (1) has been made, the Reserve Bank may, by order in writing, appoint a suitable person in place of 3[the Chairman or Director], or chief executive officer or other officer or employee who has been removed from his office under that sub-section, with effect from such date as may be specified in the order.

(7) Any person appointed as 4[Chairman, Director or chief executive officer] or other officer or employee under this section shall, -

(a) hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

(b) not incur any obligation or liability by reason only of his being a 1 [Chairman, Director or chief executive officer] or other officer or employee or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.

(8) Notwithstanding anything contained in any law or in any contract, memorandum or articles of association, on the removal of a person from office under this section, that person shall not be entitled to claim any compensation for the loss or termination of office.”

34. That from the perusal of the aforesaid Section 36AA of the 1949 Banking Act read with Section 35A of the 1949 Banking Act, the intention of the legislature i.e. the Parliament is apparent that in the public interest or for preventing the affairs of the Urban Cooperative Bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the Urban Cooperative Bank, the managerial or any other person from the office by an order recorded in writing.
35. That the aforesaid reasoning of the Petitioners hold strong ground on account of the fact that before removing any managerial staff an opportunity of making a representation is given to such managerial and other persons of the office and in case an order of removal is issued against such incumbent, a remedy of appeal is available to such

incumbent. By inclusion of the aforesaid provision by the Parliament, the intention of the Parliament is clear that even in public interest or or for preventing the affairs of the Urban Cooperative Bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the Urban Cooperative Bank, a reasonable opportunity is to be given to the incumbent Managerial Staff of the respective Urban Cooperative Bank to represent himself. If the representation of the incumbent is not found satisfactory by the Reserve Bank of India, by an order in writing, he may be removed from office.

36. That moreover, apart from the aforesaid safeguard provided in the section 36AA of the 1949, Banking Act, whereby the Reserve Bank of India can remove the CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank, after giving opportunity of hearing, another reasonable and necessary safeguard has also been provided in the aforesaid section 36AA of the 1949, Banking Act whereby in case of an emergent situation, the Reserve Bank of India has been conferred with the power to dispense with the services of the CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank without giving any opportunity of hearing.
37. That in addition to the aforesaid safeguards provided in Section 36AA of the 1949, Banking Act, vide clause 4.3 of the impugned circular dated 25.06.2021, it has been made mandatory to obtain approval from Reserve Bank of India after completion of 05 years tenure as CEO/Managing

Director/Whole Time Director of the Urban Cooperative Bank. Thus, in such cases where Reserve Bank of India having any such material which warrants discontinuance of the concerned CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank, the Reserve Bank of India can always disapprove/not grant approval for continuance of the concerned CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank after his five years termed gets over. Thus, in addition to the same there was not occasion warranting imposition of blanket embargo as is sought to be put vide clause 4.2 of the impugned circular dated 25.06.2021.

38. That however, the impact of the impugned circular dated 25.06.2021, is that without any giving any opportunity the Managing Director/Whole Time Director of the Urban Cooperative Bank who have completed 15 years as the Managing Director/Whole Time Director of the Urban Cooperative Bank would be estopped from not even holding the post of the Managing Director/Whole Time Director of the Urban Cooperative Bank but also would be restrained from being directly or indirectly associate from such Urban Cooperative Bank for a period for next 3 years.
39. That thus, the embargo imposed vide clause 4.2 of the impugned circular dated 25.06.2021, whereby a CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank shall have to discontinue from the services of the Urban Cooperative Bank for three years after completion of 15 years as CEO/Managing Director/Whole

Time Director of the Urban Cooperative Bank, has got no nexus with the object sought to be achieved by the parliament by enacting section 36AA in the 1949, Banking Act, making the Clause 4.2 of the impugned circular dated 25.06.2021, wholly illegal and arbitrary.

40. That at this juncture, it is pertinent to note that under the Article 19(g) of the Constitution of India all citizens of India have right to practice any profession, or to carry out any occupation, trade or business. Furthermore, the Article 19(6) of the Constitution of India provides that nothing in sub clause 19 (1) (g) of shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by Article 19(1)(g). For ready reference, the Article 19(1)(g) and Article 19(6) of the Constitution of India are reproduced herein below:

“19(1) All citizens shall have the right

(g) to practice any profession, or to carry on any occupation, trade or business.

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

i. the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

li. the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise”

41. That from the conjoint he conjoint reading of the aforesaid Article 19(1)(g) and Article 19(6) of the Constitution of India, it is apparent that the every citizen of India has right to practice any profession, or to carry out any occupation, trade or business subject to reasonable restrictions imposed by the State. It is submitted that vide Clause 4.2 of the impugned circular dated 25.06.2021, the Respondents have put a restriction on a Managing Director/Whole Time Director of the Urban Cooperative Bank who have completed 15 years as the Managing Director/Whole Time Director of the Urban Cooperative Bank from not even holding the post of the Managing Director/Whole Time Director of the Urban Cooperative Bank but also would be restrained from being directly or indirectly associate from such Urban Cooperative Bank for a period for next 3 years. Such restriction imposed by the Respondent vide Clause 4.2 of the impugned circular dated 25.06.2021, is a restriction imposed on the occupation of the Petitioners for having completed more than 15 years as Chief Executive Officer/Managing Director/Whole Time Director of the Urban Cooperative Bank.
42. That no doubt the sub-clause (6) of Article 19 of the Constitution of India confers power on the appropriate legislature to put reasonable restrictions. However, such power conferred upon the competent legislature can be

exercised by enacting appropriate legislation and not be issuing any circular and executive instructions.

43. That therefore, it is abundantly clear that reasonable restriction on the fundamental rights under Article 19(1)(g) of the Constitution of India can be imposed either by existing law or by a law which may be made by the competent legislature.
44. That in the instant case, assuming while not conceding that the aforesaid restriction of putting an embargo upon any Managing Director/Whole Time Director of the Urban Cooperative Bank who have completed 15 years as the Managing Director/Whole Time Director of the Urban Cooperative Bank from not even holding the post of the Managing Director/Whole Time Director of the Urban Cooperative Bank but also would be restrained from being directly or indirectly associate from such Urban Cooperative Bank for a period for next 3 yearshad to be imposed by the Respondent No. 3, it was incumbent upon the Respondent No, 3 to do the same only by bringing a legislation / statute to that effect.
45. That however, in the instant case, the Respondent No. 3 have resorted to a short cut by passing an executive order in form of clause 4.2 of the impugned circular dated 25.06.2021, which is in wholly illegal, arbitrary and in gross violation of provisions of Article 19(1)(g) of the Constitution of India. Thus, Clause 4.2 of the impugned circular dated 25.06.2021, is wholly illegal and arbitrary and deserves to be quashed in terms that it puts an embargo upon any

Managing Director/Whole Time Director of the Urban Cooperative Bank who have completed 15 years as the Managing Director/Whole Time Director of the Urban Cooperative Bank from not even holding the post of the Managing Director/Whole Time Director of the Urban Cooperative Bank but also would be restrained from being directly or indirectly associate from such Urban Cooperative Bank for a period for next 3 years.

46. That the aforesaid contention of the Petitioners are fortified by plethora of judgments of the Hon'ble Supreme Court of India few of which are reported in **(2010) 10 SCC 715** in re: **Gainda Ram and Ors. Vs. M.C.D.**, reported in **(1986) 3 SCC 615** in re: **Bijoe Emmanuel vs. State of Kerala**, reported in **(2004) 2 SCC 510** in re: **Union of India vs. Naveen Jindal**, reported in **(2006) 2 SCC 545** in re: **State of Bihar and Others vs. Project Uchcha Vidya, Sikshak Sangh**, and also by this Hon'ble Court reported in **(2010) 81 ALR 703** in re: **Noida Rickshaw Chalak Vikas Samita**, reported in **(2018) 1 ALD 180** in re: **G.J. Multicave (India) Pvt. Ltd. vs. State of Telangana**.
47. That it is pertinent to mention that while dealing with issue as to whether at all any reasonable restriction can be imposed by means of a circular or an executive order, the 11 Judges Bench of the Hon'ble Supreme Court in re: **T.M.A. Pai Foundation vs. State of Karnataka**, reported in **(2002) 8 SCC 481**, has held that the requirement of law for the purpose of clause (6) of the Article 19 of the Constitution of India can by no stretch of imagination be

achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution of India or otherwise. Such a law, it is trite, must be enacted by the legislature as to whether all any reasonable restriction by means of a circular or executive order.

48. That thus, in the instant matter, the Clause 4.2 of the impugned circular dated 25.06.2021, being an executive order is wholly illegal and arbitrary and deserves to be quashed in terms that it puts an embargo upon any Managing Director/Whole Time Director of the Urban Cooperative Bank who have completed 15 years as the Managing Director/Whole Time Director of the Urban Cooperative Bank from not even holding the post of the Managing Director/Whole Time Director of the Urban Cooperative Bank but also would be restrained from being directly or indirectly associate from such Urban Cooperative Bank for a period for next 3 years.
49. That beside the above, the instant matter, Clause 4.2 of the impugned circular dated 25.06.2021, is wholly illegal and arbitrary as it puts an embargo upon any Managing Director/Whole Time Director of the Urban Cooperative Bank who have completed 15 years as the Managing Director/Whole Time Director of the Urban Cooperative Bank from not even holding the post of the Managing Director/Whole Time Director of the Urban Cooperative Bank but also would be restrained from being directly or indirectly associate from such Urban Cooperative Bank for a

period for next 3 years, failing the test of reasonableness and thus, deserves to be quashed by this Hon'ble Court.

50. That it is no more *res-integra*, that rules cannot be amended or superseded merely by the issuance of an Executive Order.
51. That at this juncture, it is pertinent to mention that the urban cooperative banks are *inter alia* covered by the Banking Regulation Act, 1949, which already contained necessary safeguards for regulating the services of the CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank in as much as power to dispense with the services of such CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank against which material exists has been *inter alia* conferred upon the Reserve Bank of India which in emergent situations can be exercised without even affording opportunity of hearing.
52. That not only so another safeguard has been provided vide circular dated 25.06.2021 vide clause 4.3 whereby it has been made mandatory to obtain approval from Reserve Bank of India after completion of 05 years tenure. Thus, in such cases where Reserve Bank of India has any such material which warrants discontinuance of the concerned CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank, the Reserve Bank of India can always disapprove/not grant approval for continuance of the concerned CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank after his five years term gets over. Thus, in addition to the same there was no occasion

warranting imposition of blanket embargo as is sought to be put vide clause 4.2 of the impugned circular dated 25.06.2021.

53. That as a matter of fact, since there is no provision contained in the Banking Regulation Act, 1949 (as amended) mandating the discontinuance of CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank on completion of 15 years tenure, such a stringent condition could not have been imposed by the Reserve Bank of India by means of impugned circular dated 25.06.2021, as the same amounts to supplanting the statutory provisions by means of circular which is legally impermissible.
54. That in the instant matter, evidently, when the 1949, Banking Act does not provide for any restriction for with respect to tenure of the Managing Director/Whole Time Director of the Urban Cooperative Bank, the Respondent No. 3 could not have supplanted/amended the statutory provision contained in 1949, Banking Act by means of the impugned circular dated 25.06.2021, which is impermissible in the eyes of the law. Thus, it is evident that the Clause 4.2 of the impugned circular dated 25.06.2021, is *per se* illegal besides being arbitrary and without jurisdiction as such impermissible in the eyes of the law.
55. The aforesaid contention of the petitioners are fortified by catena of pronouncements of the Hon'ble Supreme Court of India, few of which are reported in **AIR 1961 SC 751** In Re: ***State of U.P. and others Vs. Babu Ram***

Upadhyaya,; Judgment reported in **(1987) 3 SCC 622** In Re: **P.D. Agrawal and Ors. Vs. State of U.P. and others;** Judgment reported in **AIR 1987 SC 2111** In Re: **M/s. Beopar Sahayak (P) Ltd. and Ors. Vs. Vishwa Nath and Ors.;** Judgment reported in **AIR 1989 SC 1133** In Re: **State of Maharashtra Vs. Jagannath Achyut Karandikar,;** Judgment reported in **AIR 1990 SC 166** In Re: **Paluru Ramkrishananiah and Ors. Vs. Union of India and Ors.,;** Judgment reported in **AIR 1991 SC 2288** In Re: **Comptroller and Auditor General of India and Ors. Vs. Mohan Lal Malhotra and Ors.;** Judgment reported in **AIR 1991 SC 772** In Re: **State of Madhya Pradesh Vs. G.S. Dall and Flour Mills;** Judgment reported in **AIR 1998 SC 431** In Re: **Naga People's Movement of Human Rights Vs. Union of India and Ors.;** Judgment reported in **AIR 1998 SC 96** In Re: **C. Rangaswamaeah and Ors. Karnataka Lokayukta and Ors.**

56. That while reiterating the aforesaid principles, the Hon'ble Supreme Court of India in a Judgment reported in **(2013) 16 SCC 147** In Re: **Union of India and Another Vs. Ashok Kumar Aggarwal** has held that :

“.....it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory Rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it.”

57. That assuming though not conceding that the Respondents sought to provide the maximum time frame for which a

Managing Director/Whole Time Director could hold the aforesaid post, the proper and appropriate recourse which could have been available to the Respondents was to amend the Statutory Act i.e. the 1949, Banking Act and not supplant the 1949, Banking Act by means of an executive order.

58. That it is no more *res-integra* that the service condition cannot be changed to the detriment of the existing employee. Assuming while not conceding that the Respondent no. 3 is empowered to issue clause 4.2 of the impugned circular dated 25.06.2021, the embargo of discontinuance of service after 15 years of holding of post as Chief Executive Officer/Managing Director/Whole Time Director of the Urban Cooperative Bank cannot be implemented retrospectively. If at all the aforesaid clause 4.2 of the impugned circular dated 25.06.2021, could be implemented, the same could have been implemented prospectively. Thus, the implementation of the clause 4.2 of the impugned circular dated 25.06.2021, on the existing Chief Executive Officer/Managing Director/Whole Time Director of the Urban Cooperative Bank who have already completed 15 years on the aforesaid post is illegal, arbitrary and bad in law.

59. That the impugned circular dated 25.06.2021, is also in violation of the Fundamental Right of livelihood of the Petitioners contained in Article 21 of the Constitution of India in as much as the the Petitioners who are continuing in the Urban Cooperative Bank as CEO is literally being

turned out of employment merely because they have completed 15 years as CEO of the Cooperative Bank, though they have not attained the age of superannuation without considering or realizing that the Petitioners are already overage for Government Employment and on account of implementation of impugned circular dated 25.06.2021 they would be rendered jobless. The aforesaid impugned circular dated 25.06.2021, is violative of legitimate expectation of the Petitioners to continue till attaining age of superannuation and thus is not sustainable.

60. That it is further submitted that there is no rational behind the embargo imposed vide Clause 4.2 of the impugned circular dated 25.06.2021, limiting time period as the Chief Executive Officer/Managing Director/Whole Time Director of the Urban Cooperative Bank for only 15 years after completion of which the incumbent cannot be in service of the Urban Cooperative Bank for next three years, on account of the fact that the same incumbent can join back on the aforesaid post of Chief Executive Officer/Managing Director/Whole Time Director of the Urban Cooperative Bank after three years; as such the embargo imposed vide clause 4.2 of the impugned circular dated 25.06.2021, is superfluous but having adverse effect on the employment of the incumbent as in the cooling period of three years the post of incumbent which would stand vacant upon 15 years of service as Chief Executive Officer/Managing Director/Whole Time Director of the Urban Cooperative Bank, shall be filled by some other incumbent, infringing the

incumbents right to livelihood which is ensuring under Article 21 of the Constitution of India.

61. That the Hon'ble Supreme Court of India in a judgment reported in **AIR 1974 SC 555** in re: ***E.P. Royappa Vs. State of Tamil Nadu and Another*** introduced the concept of arbitrary action of State within the ambit of Right to Equality as enshrined under Article 14 of the Constitution of India.
62. That the Hon'ble Supreme Court of India in ***E.P. Royappa (Supra)*** held that equality is antithetic to arbitrariness and thus, Article 14 of the Constitution of India as a very wide ambit and encompasses within it equality, principle of natural justice and as mandate against arbitrary State action. This imposes a duty on the State to act fairly and good governance in conformity with the mandate of Article 14 of the Constitution of India, raises a reasonable or legitimate expectation to be treated fairly.
63. That the Hon'ble Supreme Court of India in a catena of pronouncement including the judgment reported in **(2005) 1 SCC 625** in re: ***Bannari Amman Sugars Ltd. v. Commercial Tax Officer***, **(2007) 8 SCC 1** in re: ***Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.*** and **(2002) 6 SCC 562** in re: ***Kailash Chand Sharma v. State of Rajasthan*** has held that the policy decision should not give the impression that it was so done arbitrarily or by any ulterior criteria. If any discernible principle emerges from the impugned action it must satisfy the test of reasonableness. Article 14 of the Constitution of

India applies to Government policies and if the policy or Act of the Government fails to satisfy the "test of reasonableness", then such an act or decision would be unconstitutional.

64. That the Hon'ble Supreme Court of India in ***Reliance Energy Ltd. (Supra)*** has held that Article 14 of the Constitution of India embodies the principle of "Non-Discrimination". However, it is not a free standing provision and the same has to be read with others Articles like Article 21 of the Constitution of India where "Right to Life" includes "Opportunity". Decision or acts which results into unequal and discriminatory treatment would violate the Doctrine of "Level Playing Field" embodied in Article 14 of the Constitution of India.
65. That the Petitioners have legitimate expectation that no unreasonable restriction is imposed upon the Petitioners, vide Clause 4.2 of the impugned circular dated 25.06.2021, whereby a Managing Director/Whole Time Director of the Urban Cooperative Bank who has completed 15 years as the Managing Director/Whole Time Director of the Urban Cooperative Bank is restricted from not even holding the post of the Managing Director/Whole Time Director of the Urban Cooperative Bank but also would be restrained from being directly or indirectly associate from such Urban Cooperative Bank for a period for next 3 years.
66. That the Hon'ble Supreme Court of India in a judgment reported in **AIR 2007 SC 1984** in re: ***Southern Petrochemical Industries Co. Ltd. Vs. Electricity***

Inspector and E.T.I.O. and others held that legitimate expectation is now considered to be a part of principles of natural justice. If by reason of the existing state of affairs, a party is given to understand that the other party shall not take away the benefit without complying with the principles of natural justice, the said doctrine would be applicable. The legislature, indisputably, has the power to legislate but where the law itself recognizes existing right and did not take away the same expressly or by necessary implication, the principles of legitimate expectation of a substantive benefit may be held to be applicable.

67. That the Hon'ble Supreme Court of India in a judgment reported in **(2006) 8 SCC 702** in re: **MRF Ltd., Kottayam Vs. Asstt. Commissioner (Assessment) Sales Tax and others** held that the principles underlying legitimate expectation is based on Article 14 of the Constitution of India and the rule of fairness. While the discretion to change the policy in exercise of the executive power, when not trammled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 of the Constitution of India is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria.
68. That the executive order in form of clause 4 of the impugned circular dated 25.06.2021, has been issued by the Respondent No. 3, in a whimsical and capricious manner in utter disregard of right to equality as enshrined under Article 14 of the Constitution of India.

69. That clause 4.2 of the impugned circular dated 25.06.2021, is whimsical and capricious as it does not conform to the mandate contained in the Article 14 and 19(i)(g) of the Constitution of India as the Petitioners Right to practice its profession/trade in a free and fair manner has been adversely affected.
70. That pertinently, to agitate their grievances, the Petitioners through their association i.e. North Indian Urban Cooperative Banks Federation Limited, has agitated its grievances to the Respondent no. 3 vide representations dated 13.07.2021 and 16.07.2021, requesting to amend the directives issued by the Respondent no. 3 and allow the CEO's to work upto the age of retirement. However, till date no decision has been taken by the Respondent no. 3 in respect of the aforesaid representation of the Petitioners through its Federation. Copies of the representations dated 13.07.2021 and 16.07.2021 sent by the Petitioners through its Federation, are collectively annexed herewith as **Annexure-5 (Colly)** to this Writ Petition.
71. That recently vide its representations dated 09.08.2021 and 22.08.2021, sent by the Petitioners, to the Respondent No. 3, the Petitioners have agitate their grievances against the impugned clause 4.2 of the impugned circular dated 25.06.2021 and requested to modify the impugned circular dated 25.06.2021. However, till date no decision has been to the Respondent No.3 on the representation of the Petitioners. The difficulty of the Petitionersare that as per the clause 2.3 of the impugned circular dated 25.06.2021,

all the concerned Urban Cooperative Banks shall review the 'fit and proper' status of the existing MD in terms of the directions contained in impugned circular dated 25.06.2021 and the same with the approval of the Board of Directors, to the concerned Regional Office of the Reserve Bank of India within 2 months from the date of the issuance of the aforesaid circular. Thus, in case the impugned Clause 4.2 of the impugned circular dated 25.06.2021, is not set aside by this Hon'ble Court grave and irreparable loss shall be caused to the Petitioners. Copies of the representations dated 09.08.2021 and 22.08.2021, sent by the Petitioners, to the Respondent No. 3 are collectively annexed herewith as **Annexure-6 (Colly)** to this Writ Petition.

72. That at the cost of repetition, it is submitted that the impugned circular dated 25.06.2021, is violative fundamental right of the Petitioners contained in Article 19(1)(G) of the Constitution of India in as much as the law stands well settled that in exercise of power conferred under Article 19(1)(6) of the Constitution of India reasonable restriction can be imposed only by means of enacting statute or amending the existing statute which can be done by the competent legislature. However, the same cannot be done by merely issuance of circular or executive instruction as the fundamental right under Article 19(1)(G) of the Constitution of India cannot be curbed or such right cannot be taken away by means of a circular etc.
73. That having left with no other alternative, effective and efficacious remedy, the Petitioners are invoking the extra-

ordinary jurisdiction of this Hon'ble Court enshrined under the Article 226 of the Constitution of India, on the following amongst other grounds.

GROUNDS

- A. **Because**, the impugned circular dated 25.06.2021, is *per se* untenable in the eyes of the law for the reason that the same has been issued in gross violation of the Fundamental Right of the Petitioners contained in Article 19(1)(g) and Article 21 of the Constitution of India.

- B. **Because**, the Article 19(1)(g) of the Constitution of India confers a fundamental right on every citizen to practice any profession or any occupation or trade or business. Aforesaid fundamental right contained in Article 19(1)(g) of the Constitution of India is subject to any reasonable restriction imposed by the State as provided in Article 19(1)(g) of the Constitution of India by *inter alia* making any law imposing in the interest of general public, reasonable restriction on the exercise of right conferred under Article 19(1)(g) of the Constitution of India.

- C. **Because**, a Constitutional Bench of the Hon'ble Supreme Court of India as also subsequently various other occasions, the Hon'ble Supreme Court after considering the aforesaid issue of imposition of the reasonable restriction to the freedom contained in Article 19 of the Constitution of India has time and again held that such reasonable restriction can be imposed only by competent legislature by enacting acts or amending the existing enactment. However, the same cannot

be done merely by issuance of circulars/executive instructions. The aforesaid view has been expressed by the Hon'ble Supreme Court of India in a catena of Judgment details whereof have been enumerated in succeeding paragraphs.

- D. **Because**, the impugned circular dated 25.06.2021, is also in violation of the Fundamental Right of livelihood of the Petitioners contained in Article 21 of the Constitution of India in as much as the the Petitioners who are continuing in the Urban Cooperative Bank as CEO is literally being turned out of employment merely because they has completed 15 years as CEO of the Cooperative Bank, though they have not attained the age of superannuation without considering or realizing that the Petitioners are already overage for Government Employment and on account of implementation of impugned circular dated 25.06.2021 they would be rendered jobless. The aforesaid impugned circular dated 25.06.2021, is violative of legitimate expectation of the Petitioners to continue till attaining age of superannuation and thus is not sustainable.
- E. **Because**, the urban cooperative bank are *inter alia* covered by the Banking Regulation Act, 1949, which already contained necessary safeguard for regulating the services of the CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank in as much as power to dispense with the services of such CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank against which material exists has been *inter alia* conferred upon the Reserve Bank of India which in emergent situation can be exercised with even affording opportunity of hearing.

F. **Because**, not only so another safeguard has been provided vide circular dated 25.06.2021 vide clause 4.3 whereby it has been made mandatory to obtain approval from Reserve Bank of India after completion of 05 years tenure. Thus, in such cases where Reserve Bank of India having any such material which warrants discontinuance of the concerned CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank, the Reserve Bank of India can always disapprove/not grant approval for continuance of the concerned CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank after his five years term gets over. Thus, in addition to the same there was not occasion warranting imposition of blanket embargo as is sought to be put vide clause 4.2 of the impugned circular dated 25.06.2021.

G. **Because**, as a matter of fact, since there is no provision contained in the Banking Regulation Act, 1949 (as amended) mandating the discontinuance of CEO/Managing Director/Whole Time Director of the Urban Cooperative Bank on completion of 15 years tenure, such a stringent condition could not have been imposed by the Reserve Bank of India by means of impugned circular dated 25.06.2021, as the same amounts to supplanting the statutory provisions by means of circular which is legally impermissible.

H. **Because**, thus, it is evident that the clause 4.2 of the impugned circular dated 25.06.2021, is *per se* illegal besides being arbitrary and without jurisdiction as such is unsustainable in the eyes of law.

- I. **Because**, while dealing with issue as to whether at all any reasonable restriction can be imposed by means of a circular or an executive order, the 11 Judges Bench of the Hon'ble Supreme Court in re: ***T.M.A, Pai Foundation vs. State of Karnataka***, reported in **(2002) 8 SCC 481**, has held that the requirement of law for the purpose of clause (6) of the Article 19 of the Constitution of India can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution of India or otherwise. Such a law, it is trite, must be enacted by the legislature as to whether all any reasonable restriction by means of a circular or executive order.
- J. **Because**, the Hon'ble Supreme Court of India in a judgment reported in **AIR 1974 SC 555** in re: ***E.P. Royappa Vs. State of Tamil Nadu and Another*** introduced the concept of arbitrary action of State within the ambit of Right to Equality as enshrined under Article 14 of the Constitution of India.
- K. **Because**, the Hon'ble Supreme Court of India in ***E.P. Royappa (Supra)*** held that equality is antithetic to arbitrariness and thus, Article 14 of the Constitution of India as a very wide ambit and encompasses within it equality, principle of natural justice and as mandate against arbitrary State action. This imposes a duty on the State to act fairly and good governance in conformity with the mandate of Article 14 of the Constitution of India, raises a reasonable or legitimate expectation to be treated fairly.
- L. **Because**, the Hon'ble Supreme Court of India in a catena of pronouncement including the judgment reported in **(2005) 1**

SCC 625 in re: **Bannari Amman Sugars Ltd. v. Commercial Tax Officer, (2007) 8 SCC 1** in re: **Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.** and **(2002) 6 SCC 562** in re: **Kailash Chand Sharma v. State of Rajasthan** has held that the policy decision should not give the impression that it was so done arbitrarily or by any ulterior criteria. If any discernible principle emerges from the impugned action it must satisfy the test of reasonableness. Article 14 of the Constitution of India applies to Government policies and if the policy or Act of the Government fails to satisfy the "test of reasonableness", then such an act or decision would be unconstitutional.

M. **Because**, the Hon'ble Supreme Court of India in a judgment reported in **AIR 2007 SC 1984** in re: **Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and others** held that legitimate expectation is now considered to be a part of principles of natural justice. If by reason of the existing state of affairs, a party is given to understand that the other party shall not take away the benefit without complying with the principles of natural justice, the said doctrine would be applicable. The legislature, indisputably, has the power to legislate but where the law itself recognizes existing right and did not take away the same expressly or by necessary implication, the principles of legitimate expectation of a substantive benefit may be held to be applicable.

N. **Because**, the Hon'ble Supreme Court of India in a judgment reported in **(2006) 8 SCC 702** in re: **MRF Ltd., Kottayam**

Vs. Asstt. Commissioner (Assessment) Sales Tax and others held that the principles underlying legitimate expectation is based on Article 14 of the Constitution of India and the rule of fairness. While the discretion to change the policy in exercise of the executive power, when not trammled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 of the Constitution of India is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria.

P R A Y E R

- I. To issue Writ, Order or Direction in the nature of Certiorari quashing the clause 4.2 of the impugned circular dated 25.06.2021, a copy whereof is annexed as Annexure-1 to this Writ Petition.
- II. To issue Writ, Order or Direction in the nature of Mandamus declaring the clause 4.2 of the impugned circular dated 25.06.2021 as *ultra vires* to Article 14 and Article 19(g) and Article 21 of the Constitution of India.
- III. To issue Writ, Order or Direction in the nature of Mandamus commanding Respondents not to create any hindrance in the services of the Petitioners in terms of Clause 4.2 of the impugned circular dated 25.06.2021.
- IV. To issue such other Writ, Order or Direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case, protecting the rights and interests of the Petitioners.

V. Award the costs of the Writ Petition to the Petitioners.

LUCKNOW

DATED: 2021

(Tushar Mittal)
Advocate

(Ritika Singh)
Advocate
Counsel for the Petitioners

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

C.M. APPLICATION NO. OF 2021

IN RE:

WRIT PETITION NO. (M/B) of 2021

1. Ms. Ranjana Singh, aged about 58 years, daughter of Mr. Harihar Prasad Singh, resident of A-3, PWD Bungalows, Sector A, Near Chhanni Lal Chauraha Mahanagar, Lucknow - 226 006, presently working on the post of Secretary/Chief Executive Officer, Nagrik Sahakari Bank Ltd., Lucknow.
2. Mr. Shaval Gupta, aged about 54 years, son of Shri Santosh Kumar Gupta, resident of 766, Hospital Road, Nai Basti, Lakhimpur Kehri, Uttar Pradesh - 262701, presently working on the post of Secretary/Chief Executive Officer of Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur.

.....PETITIONERS

-Versus-

1. Union of India through its Secretary, Department of Financial Services, Ministry of Finance, Government of India.

2. Reserve Bank of India through its Governor, Central Office, Central Office Building, 12th/ 13th Floor, Shahid Bhagat Singh Marg, Fort, Mumbai - 400001.
3. Chief General Manager-in-Charge, Reserve Bank of India , Department of Regulation, Central Office, Central Office Building, 12th/ 13th Floor, Shahid Bhagat Singh Marg, Fort, Mumbai - 400001.
4. Regional Director, Reserve Bank of India, Regional Office, 8-9 Vipin Khand, Gomtinagar, Lucknow-226010.
5. State of U.P. through its Additional Chief Secretary/ Principal Secretary, Cooperative, U.P. Civil Secretariat, Lucknow.
6. Nagrik Sahakari Bank Ltd., Lucknow an Urban Cooperative Bank, a Cooperative Society registered under the Cooperative Societies Act, 1965, through its Chairman.
7. Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur, an Urban Cooperative Bank, a Cooperative Society registered under the Cooperative Societies Act, 1965, through its Chairman.

.....RESPONDENTS

APPLICATION FOR INTERIM RELIEF

That the Applicants/Petitioners most respectfully beg to submit as under:

For the facts and circumstances contained in the instant Writ Petition duly supported with an Affidavit, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to stay the operation and implementation of the Clause 4.2 of the impugned circular dated 25.06.2021, a copy whereof

are annexed as Annexure-1, to this Writ Petition, in so far as relates to the Petitioners, during the pendency of the instant Writ Petition.

Further, such other relief as may be deemed fit in the facts and circumstances of the case protecting the rights of the Petitioners may also be passed by this Hon'ble Court in the interest of justice.

LUCKNOW
DATED: 2021

(Tushar Mittal)
Advocate

(Ritika Singh)
Advocate
Counsel for the Petitioners

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

WRIT PETITION NO. (M/B) of 2021

Ms. Ranjana Singh and another**PETITIONERS**

-Versus-

Union of India and others**RESPONDENTS**

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S. No.	Particulars	Page Nos.
1.	Dates and Events.	
2.	Application for Interim Relief.	
3.	Memo of Writ Petition.	
4.	<u>Annexure-1</u> Copy of the Circular bearing no RBI/2021-22/60/DOR.GOV.REC.25/12.10.000/2021-22, dated 25.06.2021, issued by the Chief General Manager-in-Charge, Reserve Bank of India, Department of Regulation, Respondent No. 3.	
5.	<u>Annexure-2</u> Copy of the Curriculum-Vitae of the Petitioner no. 1.	
6.	<u>Annexure-3</u> Copy of the Curriculum-Vitae of the Petitioner no. 2.	
7.	<u>Annexure-4</u> Copy of the relevant provision contained in Section 10, 10B, 10BB, 35A, 35B, 36A and 53A read with Section 56 of the 1949 Banking Act.	

8.	<u>Annexure-5 (Colly)</u> Copies of the representations dated 13.07.2021 and 16.07.2021 sent by the Petitioners through its Federation.	
9.	<u>Annexure-6 (Colly)</u> Copies of the representations dated 09.08.2021 and 22.08.2021, sent by the Petitioners, to the Respondent No. 3.	
10.	Affidavit	
11.	Identity Proof.	
12.	Vakalatnama.	

Lucknow

Dated: 2021

(Tushar Mittal)
Advocate

(Ritika Singh)
Advocate
Counsel for the Petitioners

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

WRIT PETITION NO. (M/B) of 2021

Ms. Ranjana Singh and another**PETITIONERS**

-Versus-

Union of India and others**RESPONDENTS**

DATES AND EVENTS

Dates	Particulars
1997	The Petitioner no. 1 completed her Post Graduate Diploma in Business Management before joining the Nagrik Sahkari Bank Limited, Lucknow in the year 1997.
30.04.2003	After providing her services to the utmost satisfaction of its employer, the Petitioner no. 1 was promoted as Secretary/Chief Executive Officer of the Nagrik Sahkari Bank Limited, Lucknow .
1991	The Petitioner no. 2 completed his Master in Business Administration (Finance) and other educational qualification before joining the Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur as Manager.
28.10.2004	After providing his services to the utmost satisfaction of its employer, the Petitioner no. 2 was promoted as Secretary/Chief Executive Officer of the Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur
2021	The Petitioners have completed more than 17 years of service as Secretary/CEO of their respective Urban Cooperative Bank.
25.06.2021	Impugned circular was issued by the Respondent No. 3.

13.07.2021 And 16.07.2021	The Petitioners through its federation sent representation to the Respondent No. 3.
09.08.2021 And 22.08.2021	The Petitioners sent representation to the Respondent No. 3.
	Hence this Writ Petition.

Lucknow

Dated: 2021

(Tushar Mittal)
Advocate

(Ritika Singh)
Advocate
Counsel for the Petitioners

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

WRIT PETITION NO. (M/B) of 2021

Ms. Ranjana Singh and another**PETITIONERS**

-Versus-

Union of India and others**RESPONDENTS**

A F F I D A V I T

I, Shaval Gupta, aged about 54 years, son of Shri Santosh Kumar Gupta, resident of 766, Hospital Road, Nai Basti, Lakhimpur Kehri, Uttar Pradesh - 262701, presently working on the post of Secretary/Chief Executive Officer of Lakhimpur Urban Cooperative Bank Ltd., Lakhimpur, having educational qualification- Post Graduate,, Occupation: Service, the deponent do hereby solemnly affirm and state on oath as under:

1. That the deponent is the Petitioner no. 2 in the instant Writ Petition and has been duly authorized to file and do pairvi on behalf of the Petitioner no. 1 in the instant matter; and as such is fully conversant with the facts and circumstances of the case deposed to hereinafter.

2. That the contents of paragraphs no. 1, 2(PART), 3(PART), 4(PART), 5(PART), 6(PART), 7, 8, 9, 10, 11(PART), 12(PART), 13(PART), 14(PART), 15(PART), 16(PART), 17(PART), 18(PART), 19(PART), 20(PART), 21(PART), 22(PART), 23(PART), 24(PART), 25(PART), 26(PART), 27(PART), 28(PART), 29(PART), 30(PART), 31(PART), 32(PART), 33(PART), 34(PART), 35(PART), 36(PART), 37(PART), 38(PART), 39(PART), 42(PART), 43(PART), 44(PART), 45(PART), 47(PART), 48(PART), 49(PART), 50(PART), 51(PART), 52(PART), 53(PART), 54(PART), 57(PART), 58(PART), 59(PART), 60(PART), 65(PART), 68(PART), 69(PART), 70(PART), 71(PART) and 73(PART) of the accompanying Petition are true to my personal knowledge and belief, while those of paragraphs no. 2(PART), 3(PART), 4(PART), 5(PART), 6(PART), 11(PART), 12(PART), 13(PART), 14(PART), 15(PART), 16(PART), 17(PART), 18(PART), 19(PART), 20(PART), 21(PART), 22(PART), 23(PART), 24(PART), 25(PART), 26(PART), 27(PART), 28(PART), 29(PART), 30(PART), 31(PART), 32(PART), 33(PART), 34(PART), 35(PART), 36(PART), 37(PART), 38(PART), 39(PART), 42(PART), 43(PART), 44(PART), 45(PART), 47(PART), 48(PART), 49(PART), 50(PART), 51(PART), 52(PART), 53(PART), 54(PART), 57(PART), 58(PART), 59(PART), 60(PART), 65(PART), 68(PART), 69(PART), 70(PART), 71(PART) and 73(PART) are believed to be true by me on the basis of information gathered from records and paragraphs no. 40, 41, 46, 55, 56, 61, 62, 63, 64, 66, 67 and 72 are based on legal advice.

3. That Annexures no. 1 to 6 of the accompanying Petition are true photocopies of their respective originals, which are found to be true and compared by the deponent.

LUCKNOW

DATED:-

DEPONENT

VERIFICATION

I, the above-named deponent, do hereby verify that the contents of paragraphs 1 to 3 of this Affidavit are true to my personal knowledge and belief. No part of it is false and nothing material has been concealed. So, help me God.

LUCKNOW

DATED:-

DEPONENT

IDENTIFICATION

I, Shashi Prakash, S/o Fauzdar Yadav, Clerk of Sri Gaurav Mehrotra, who has his chamber at 498/206-12-A, Ram Krishna Marg, Faizabad Road, (Near IT College), Lucknow 226006 declare that I am satisfied on the grounds stated below that the person making this affidavit and alleging himself to be Shri Shaval Gupta, the deponent is that very person.

GROUND:

Identity proof shown to me by Shri Shaval Gupta is also annexed as Annexure No. A to this affidavit.

Person identifying the deponent

Solemnly affirmed before me by the deponent Shri Shaval Gupta on , 2021 at a.m. / p.m. who has been identified by Sri Ravi Shankar, Clerk of Sri Gaurav Mehrotra,

Advocate, High Court, Lucknow. I have satisfied myself by examining the deponent that he understands the contents of this affidavit, which have been read over and explained to him by me.