

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

(Special Original Jurisdiction)

**W.P.Nos.9147 & 9150 of 2020**

1. Big Kancheepuram Cooperative Town Bank Ltd (No.3),  
Represented by its President,  
No.90-91,Annai Indra Salai,  
Kanchipuram .....Petitioner in WP.No.9147of 2020

2. The Velur Co-Operative Urban Bank Ltd, No.20,  
Represented by its President  
32-A,Cauvery Road, Velur,  
Paramathi Velur Taluk,  
Namakkal District. ....Petitioner in WP.No.9150 of 2020

Vs

1. Union of India  
Represented by its  
Ministry of Law & Justice,  
4<sup>th</sup> Floor, A-Wing,  
Shastri Bhawan, New Delhi-110 001

2. Reserve Bank of India  
16, Rajaji Salai, Fort Glacis,  
Chennai, Tamil Nadu – 600001 .....Respondents

**COMMON COUNTER AFFIDAVIT FILED ON BEHALF OF THE**  
**2<sup>ND</sup> RESPONDENT- RESERVE BANK OF INDIA**

I, Suresh Kumar.V son of K.Venu aged about 44 years residing at RBI Quarters, X-30 MG Road, Besant Nagar, Chennai-600090 do hereby solemnly affirm and sincerely state as follows:

1. I am working as Assistant General Manager Department of Supervision in the Reserve Bank of India the 2<sup>nd</sup> Respondent herein and as such, I am well acquainted with the facts and circumstances of the case as disclosed from the records and I am duly authorized to swear to this Common Counter Affidavit. I have carefully perused the affidavits filed in support of the writ petitions and deny all the averments and allegations contained therein except those that are specifically admitted hereunder as true and put the Petitioners to strict proof of the rest.

2. I respectfully submit that both the Writ Petitions are filed by the Writ Petitioners seeking for a Writ of Declaration or any other Writ or order declaring sections 4(A),4(F),4(G),4(J),4(L),4(M) and 4(Q) of the



  
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Banking Regulation Amendment Ordinance, 2020 as ultra vires and unconstitutional for being without legislative competence and violative of Articles 123(3) r/w Article 246 and Entry 32, List II, Schedule VII of the Constitution of India and pass any other or such further order or orders as may be deemed fit and proper in the circumstances of the present case and thus render justice.

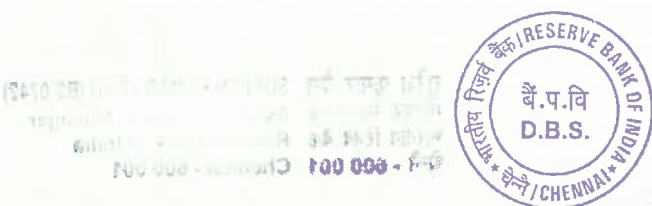
3. It is submitted by this respondent that this Hon'ble Court during Admission of these Writ Petitions was pleased to frame three issues which, for brevity, this respondent has not extracted it hereunder. This respondent has, through the averments hereunder, fully addressed the issues framed by this Hon'ble Court.


4. It is submitted by this respondent that before traversing into the affidavits filed by the Petitioners, certain facts which are important to the present case are set out hereunder:

#### **Preliminary Facts**

5. The Reserve Bank of India (hereinafter referred to as "RBI") is a body corporate, constituted under section 3 of the Reserve Bank of India Act, 1934 (the RBI Act) *inter alia* to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage. RBI acts as banker to the Central Government and State Governments as also banker to banks in India. RBI also acts as the Central Bank of the Country, exercises supervisory and regulatory powers as contemplated under various legislations including the Banking Regulation Act 1949, the Foreign Exchange Management Act, 1999, Payment and Settlement Systems Act, 2007, Credit Information Companies (Regulation) Act, 2005 and the Reserve Bank of India Act, 1934 etc.

6. It is submitted that RBI is entrusted with the statutory obligation of administering the provisions of the Banking Regulation Act, 1949 (hereinafter to be referred as BR Act). I submit that no banking company shall carry on banking business in India, except after obtaining the license from RBI. RBI has the power to regulate banking companies and can issue such other directions that are necessary and expedient in the



  
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public interest and in the interest of depositors or the banking company or banking policy. It is the duty of RBI to ensure the development of banking in India in an orderly manner.

7. The BR Act empowers RBI to supervise and regulate the banking institutions in the country. The banking business involves financial intermediation and plays a key role in the mobilization and distribution of the country's savings. In view of these considerations, banking business has been a highly regulated area all over the world.

8. It is submitted that until the year 1965, Co-operative Banks were not brought under the regulatory purview of the BR Act and as such, the banking business of the Co-operative Banks was not regulated by RBI till 1965. It is submitted that to prevent the emergence of weak urban Co-operative Banks and also to ensure the growth of Co-operative Banking on sound lines, in the year 1965, it was felt necessary to extend the provisions of the BR Act to Co-operative Societies which were carrying on the Banking business. Accordingly, the Parliament enacted the Act 23 of 1965, called the Banking Laws (Application to Co-operative Societies) Act, 1965, and the then Banking Companies Act has been, with certain modifications, made applicable to Co-operative Societies carrying on the business of Banking. The Amending Act came into effect from 1 March 1966 by inserting to the principal Act, a new Part-V, which consists of Section 56 providing for the application of the BR Act to Co-operative Banks. Section 56 of the BR Act provides to the effect that the provisions of the Act as in force for the time being shall apply to, or in relation to, Co-operative Societies as they apply to banking companies, but subject to the modifications laid down in the said section. Every Co-operative Bank is obliged to comply with the provisions of the BR Act, 1949 (As Applicable to Cooperative Societies) and directions/guidelines issued by RBI from time to time. At the same time it is relevant to state here that certain provisions of the BR Act, particularly, incorporation, amalgamation and winding up were not made applicable to the Co-operative banks.

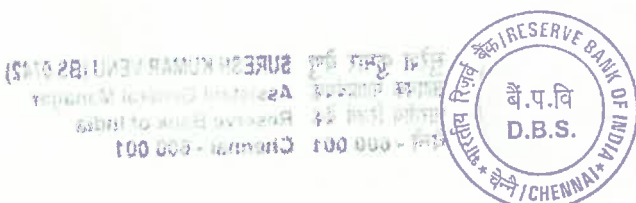
9. The Provisions of the BR Act applied initially only to Banking Companies. As stated above, the provisions of the BR Act were extended to co-operative banks by Act No.23 of 1965 w.e.f 01.03.1966. The earlier



  
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section of 56 was repealed by Act No.36 of 1957, w.e.f 17.09.1957. Section 56 of the BR Act provides to the effect that the provisions of the BR Act as in force for the time being shall apply to, or in relation to, co-operative societies as they apply to banking companies subject to modifications provided therein. This respondent would categorically state before this Hon'ble Court that with respect to the 1965 amendment to the BR Act, all the aggrieved Cooperative Banks ought to have challenged the amendments then itself. Therefore, every Cooperative Bank is obliged to comply with the provisions of the BR Act.

10. Since certain provisions of the BR Act were not made applicable to Co-operative Banks, problems had been cropping up in regulation of the Co-operative Banking sector. As the powers had been vested in the State Governments and the Registrar of Co-operative Societies in case of Co-operative Banks confining their operations to one state and the Central Registrar of Co-operative Societies in case of Multi State Co-operative Banks in the matter of amalgamation and winding up of a Co-operative Bank, RBI had to approach the respective authorities in case of amalgamation, merger and winding up of Co-operative Banks. Every State had enacted a separate Act for Co-operative Societies. Provisions in all Co-operative laws are not the same. Provisions in the State Acts differ from one State to another. Further, in some States more than one Act is there for regulation of Co-operative Societies. Apart from the State Co-operative Acts, Multi-State Co-operative State Act, 2002 has been enacted by the Parliament which is applicable to the Co-operative Societies operating in more than one state. In case of amalgamation or merger of Co-operative Banks carrying on business in different states or operating in more than one State, application of law has become very difficult. Further, merger or amalgamation of a Co-operative Bank operating in a single State with a Multi-State Co-operative bank has become very difficult as applications of laws to them are different. Similarly, even in the case of winding up of a Co-operative Bank both the BR Act and the State Co-operative Laws have to be followed. Further framing scheme for revival of a Co-operative Bank was also not possible for RBI as such power to revive a Co-operative Society is vested in the State under the State Laws. It is relevant to state here that in case of Banking Companies, the provisions are made in the BR Act for amalgamation, merger, winding up and framing of scheme for revival of the bank. The Ordinance has



  
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made applicable certain provisions of the BR Act, which were not applicable to Co-operative banks. The Ordinance has not made any new provision in the BR Act. The provisions which are already applicable to Banking Companies are now made applicable to Co-operative banks. It is also relevant to state here that Banking is the area, which falls under the Entry 45 of List I, 7th Schedule of the Constitution of India and regulation of all Banking activity falls under the regulation of the RBI. As regulation, merger, winding up and framing of a scheme for revival of a Co-operative bank pertains to Banking activity, there is no illegality in making the BR Act applicable to the Co-operative Banks.

11. A brief overview of the structure of the Co-operative Banks in India is provided hereunder to provide clarity. The rural Co-operative credit system in India is primarily mandated to ensure flow of credit to the agriculture sector. It comprises short-term and long-term Co-operative credit structures. The short-term Co-operative credit structure operates with a three-tier system - Primary Agricultural Credit Societies (PACS) at the village level, District / Central Co-operative Banks (DCCBs) at the District level and State Cooperative Banks (StCBs) at the State level. PACS are outside the purview of the Banking Regulation Act, 1949 and hence not regulated by RBI. StCBs/DCCBs are registered under the provisions of State Co-operative Societies Act of the State concerned and are regulated by RBI. In this regard, powers have been delegated to National Bank for Agricultural and Rural Development (NABARD) under Sec 35 A of the BR Act (As Applicable to Cooperative Societies) to conduct inspection of State and Central Cooperative Banks. Primary Cooperative Banks (PCBs), also referred to as Urban Cooperative Banks (UCBs), cater to the financial needs of customers in urban and semi-urban areas. UCBs are primarily registered as Co-operative Societies under the provisions of either the State Cooperative Societies Act of the State concerned or the Multi State Cooperative Societies Act, 2002 if they operate in more than one state.

12. A relatively large number of Co-operative Banks are found plagued with management issues. In some of the Co-operative Banks, which have come under the scanner presently, dubious activities of the management have resulted in depositors being duped out of their hard earned money. In such banks, there is often complicity of the management with



  
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dishonest borrowers in fraudulent sanction of loans. This aspect in reference to the certain banks which are under the scanner is fully explained infra. Thus, to put it in a nutshell, “Management” and “Banking” are intrinsically interlinked and cannot be separated. Thus “Incorporation, Regulation and Winding up” of cooperative banks cannot be separated from Banking. The aspect of banking cannot be regulated effectively without regulatory power over the aspects of management. It is desirable that Co-operative Banks are regulated like a bank so as to minimize the cases of frauds involving public’s hard earned money. Therefore, the actions of the regulator to safeguard the depositors interest plays a vital role and necessary changes in legislation is required from time to time to strengthen the hands of the regulator to deal with the emerging issues.

13. The need for more powers for regulating the Co-operative Banks is imperative because the regulation of these Co-operative Banks without adequate control or regulatory power has been challenging. This respondent would bring to the forefront the examples of how the machinery of the State which prevailed earlier had led to many a lapse as in the case of the “Madurai Urban Cooperative Bank” wherein the liquidation process started on January 07, 2005 by the Registrar of Co-operative Societies. Due to delay in appointment of the liquidator and inaction by the Registrar of Co-operative Society the deposit amount of Rs. 9.43 lakhs is yet to be paid to depositors as on June 30, 2020. This respondent would also bring to the attention of this Hon’ble Court that both in the cases of “Theni Urban Cooperative Bank” or in the case of “Kothagiri Urban Cooperative Bank”, even though the liquidation process started in the years 2002 and 2005, respectively, the deposit amount of Rs. 62.37 lakh and Rs. 74.77 lakh, respectively, is due to be paid as on June 30, 2020 and there are many such cases where settlement to depositors is pending for more than 15 years. Thus, the need to regulate the Co-operative Banks is paramount and have led to the promulgation of the Banking Regulation (Amendment) Ordinance, 2020.

14. The press release of Government of India while notifying the promulgated Banking Regulation (Amendment) Ordinance, 2020 in the Gazette is as under:



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“In pursuance of the commitment to ensure safety of depositors across banks, the President has promulgated the Banking Regulation (Amendment) Ordinance, 2020.

The Ordinance amends the Banking Regulation Act, 1949 as applicable to Cooperative Banks. The Ordinance seeks to protect the interests of depositors and strengthen Co-operative banks by improving governance and oversight by extending powers already available with RBI in respect of other Banks to Co-operative Banks as well for sound Banking regulation, and by ensuring professionalism and enabling their access to capital. The amendments do not affect existing powers of the State Registrars of Co-operative Societies under State Co-operative laws. The amendments do not apply to Primary Agricultural Credit Societies (PACS) or Co-operative Societies whose primary object and principal business is long-term finance for agricultural development, and which do not use the word “bank” or “banker” or “banking” and do not act as drawees of cheques.

The Ordinance also amends Section 45 of the Banking Regulation Act, to enable making of a scheme of reconstruction or amalgamation of a Banking Company for protecting the interest of the public, depositors and the Banking system and for securing its proper management, even without making an order of moratorium, so as to avoid disruption of the financial system.”

15. This Hon’ble Court has in its order dated July 20, 2020 referred to the following observations of the Hon’ble Supreme Court in the case of **Union of India (UOI) and Ors. v. Shah Goverdhan L. Kabra Teachers College in (2002) 8 SCC 228**

7. *“When it appears to the Court that there is apparent overlapping between the two entries the doctrine of “pith and substance” has to be applied to find out the true nature of legislation and the entry with which it would fall. In case of conflict between entries in List I and List II, the same has to be decided by application of the principle of “pith and substance”. The doctrine of “pith and substance” means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. **When a law is impugned as being***



  
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*ultra-vires of the legislative competence, what is required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object and scope and effect, is required to be gone into.”*

*(emphasis supplied)*

In this context, the purpose and rationale for the introducing the BR Amendment Ordinance is summarized as under:

### **Rationale for the Amendments**


(i) RBI has been regulating the Banking related functions of all Co-operative Banks and supervising the UCBs under the provisions of the BR Act and other applicable Acts. However, the matters related to management, audit, amalgamation, liquidation, etc. in respect of these banks were not governed by the provisions of the BR Act, unlike in case of the Banking Companies. These aspects are regulated by the State Governments under the provisions of the respective State Co-operative Societies Acts or by the Central Government under the provisions of the Multi-State Co-operative Societies Act, 2002 (for Co-operative Banks whose area of operation extends to more than one State). Such dual regulation of Co-operative Banks comes in the way of effective regulation of these Banks.

(ii) Co-operative Banks, though incorporated as Co-operative Societies, are not strictly Societies as their sources of funds are not limited to the members' contributions. The difference is also borne out from the fact that Co-operative banks are prohibited from undertaking any business other than those specifically enumerated in the BR Act and, therefore, the entire business of a Co-operative bank would only comprise Banking and Para-Banking activities as permitted under the Act.

(iii) In fact, major part of the deposits of Urban Co-operative Banks (UCBs) come from non-members / general public. To illustrate, as on March 31, 2020, the UCBs had approx. 8.49 crore depositors while

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their members were only approx. 2.02 crore. The shareholder members are primarily borrowers of the UCBs who elect the Board of Directors which is not only the policy making body of the UCBs but also takes executive decisions like sanctioning loans. This is a highly anomalous situation where representatives of borrowers take decisions on the money of the depositors.

(iv) The Co-operative Societies Acts primarily lay down the rights and duties of the members of the Co-operative Societies. On the other hand, BR Act lays emphasis on depositors. To quote from the Statement of Objects and Reasons of the Banking Regulations Act, 1949,

*“.....while the primary objective of Company Law is to safeguard the interests of the stock-holder, that of banking legislation should be the protection of the interests of the depositor.....”*

(v) It is for this reason that a Co-operative Society carrying on Banking business was looked at differently than other types of Co-operative Society and was sought to be regulated by the BR Act through the Banking laws (Application to Co-operative Societies) Act, 1965. However, as experience demonstrates, certain vital factors which critically impact the Banking activities of the societies licenced to do so and consequently the interests of the depositors were either overlooked at the time of the enacting the aforesaid law or were not considered enough.

(vi) The Amendments covered areas which are of crucial importance for ensuring sound functioning of Co-operative Banks and also resolution of the stressed Co-operative Banks.

(vii) A large number of UCBs are suffering from various kinds of serious financial problems. A brief account of these problems, as on March 31, 2020, is furnished as under:

a. RBI imposes supervisory action on UCBs having weak financials. As on March 31, 2020, there were 535 UCBs under the supervisory action framework (SAF) constituting a whopping 34.7% of the total number of UCBs. The assets and deposits of these UCBs under SAF constitute about 29.6% and 29% of the total assets and total deposits with the UCB sector respectively. About 2.89 crore



  
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customers are having their deposits with these banks constituting 34.1% of the total depositors of the sector. Of the above, 79 banks have their CRAR (Capital to Risk Weighted Assets Ratio) less than the regulatory minimum of 9%.


b. RBI has currently placed 30 UCBs operating in different States across the country under All Inclusive Directions. All Inclusive Directions are issued under Section 35A of BR Act in respect of Banks which are having Negative Net Worth and whose deposits have eroded significantly and/or the continued normal functioning of which is not considered to be in the interest of the depositors/public. Among other things, these Banks are restricted from accepting fresh deposits, lending and the deposit withdrawal is restricted to a certain ceiling depending on the availability of liquid funds. These Banks have high Negative Net Worth and significant deposit erosion. Very often, in absence of a revival or merger with a stronger Co-operative Bank, licence of these Banks is required to be cancelled. About 32.14 lakh depositors are having their deposits (Rs 17244 crores) with these Banks and are not able to withdraw because of precarious financial position.

c. In addition, there are another 30 Banks which have Negative Net Worth and there is a high probability of these Banks slipping under All Inclusive Directions if further deterioration of their financials takes place. These Banks have about Rs 1974 Crore worth deposits from approx. 8.97 lakh depositors.

(viii) If we look at sectoral data, some significant parameters as assessed through RBI inspections as on March 31, 2019 and as reported by them (unaudited) as on March 31, 2020 are as under:

<b>Gross NPAs</b>	<b>As on 31.03.2019</b>	<b>As on 31.03.2020</b>
Banks having Gross NPAs > 10%	384	555
Banks having Gross NPAs > 30%	104	108
Banks having Gross NPAs > 50%	46	56



  
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It may be observed that the Gross NPAs in the UCB sector have significantly worsened. After audit and subsequent assessment of the March 2020 position by RBI, the actual situation is likely to be much worse.

(ix) Over the last two decades, RBI has cancelled the banking licenses of about 430 UCBs across the country, in most cases, due to their precarious financial position. In contrast, there hardly have been instances of cancellation of licence of a Banking Company during last few decades. It will be expedient to discuss the reasons behind the plight of the Co-operative Banks and their customers in the country as below would encompass:

### **Structural weaknesses**

#### **a. Capital**

First and foremost reason which plagues the Co-operative Bank is their very structure – being a Co-operative Society dealing with funds of people, who are not their members. Capital is the most vital aspect of any Bank. It represents the portion of a Bank's assets, which have no associated contractual commitment for repayment. It is, therefore, available as a cushion in case the value of the Bank's assets decline or its liabilities rise. In a Banking company, the Capital is perpetual as it can be transferred but can never be extinguished. However, in a Co-operative Society, Capital can be withdrawn anytime a member so wishes. In many jurisdictions, Shareholders' Equity is not considered Capital at all. Further, unlike in a Banking company, the shares are not listed and therefore there is no appreciation of value of the Share Capital. There is little incentive for people to invest their money in a Co-operative Bank as Capital. Most of their Capital comes because of the Share linking norms prescribed by RBI which require a borrower to subscribe to certain percentage of their loans as Shares which however are withdrawable after the loan is repaid. Co-operative Banks mostly rely on reserves for capital. When the financial position of a Bank is not good, accretion to reserves does not happen to the desired extent and the bank finds it difficult to come out of this situation.



  
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## **b. Management / Board**

(a) Unlike banking companies, the BR Act provisions related to management/Board of Director matters were not applied on the Co-operative banks. Even the State Co-operative Societies Acts and the Multi-State Co-operative Societies Act do not prescribe any norms or criteria for a fit and proper management and an appropriate governance structure. As a result, it has virtually been a 'free for all' in the Co-operative Banks in respect of these areas.

(b) As a matter of fact, management of Banking entity cannot be decoupled with the Banking activities. Unlike other entities, 'poor judgment' or 'malfeasance' by management and / or the board of a Bank can have a far higher impact. This is inherent to the nature of business of a Bank and irrespective of its 'form' of Incorporation.

(c) Recognising this and in the interest of depositors, RBI has from time to time issued various regulations on governance applicable to management and board of commercial banks. Coverage of these regulations *inter alia* include:

- (i) The role and duties of Directors;
- (ii) Recognition and management of conflicts of interests;
- (iii) 'Fit and Proper' criteria while appointing Directors including the CEO;
- (iv) Special knowledge or experience required in the Board;
- (v) Composition and mandate of various committees of the Board;
- (vi) Independence of audit, risk, compliance and vigilance functionaries; and
- (viii) Independent internal 'whistle blowing' procedure under the Protected Disclosures Scheme.

(d) The objective of these regulations is to align current regulatory framework with global best practices while being mindful of the context of domestic financial system. When it comes to sound governance practices in banks globally, the standard setting body is the Basel Committee on Banking Supervision (BCBS). It published initial guidance in 1999, with revised principles in 2006. Thereafter,



  
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to reflect key lessons from the global financial crisis that began in 2007, revisions were published in 2010. In the light of ongoing developments in governance, and to take account of various peer review recommendations, BCBS revisited the 2010 guidance and issued its revised guidelines on governance in banks in 2015. This guidance issued by BCBS forms one of the basis for the latest such reviews by RBI which is currently in progress. In this regard, a Discussion paper on Governance in Commercial Banks in India was released in the public domain by RBI on June 11, 2020.

(e) However, in absence of management related powers being available to RBI under the BR Act in respect of Co-operative Banks, RBI has not been in a position to prescribe similar norms for the Co-operative Banks leading to multiplicity of issues in the sector.

(f) It is however to be noted that every action of management of Co-operative Banks has a bearing on its performance / financial health. Section 22 of the BR Act 1949 (AACS) already provided (prior to the amendments) that the general character of the management of Co-operative Banks should not be prejudicial to the public interest or the interest of its depositors. Another licensing condition is that the affairs of the Co-operative Banks should not be conducted in a manner detrimental to the interests of its present or future depositors. However, the powers to prescribe the requisite criteria somehow got excluded from the Act.

(g) It is an established fact that the Banks, whether commercial or Co-operative, run into problems because of issues with their management – either incompetence or complicity with rogue elements. For the sake of brevity, it may not be possible to describe each case of failure of UCBs but the precarious financial position of two very large UCBs, namely, the Punjab and Maharashtra Cooperative Bank, Mumbai and Shri Guru Raghvendra Sahakara Bank Ltd., Bangalore are very apt examples of complicity of the management with the corrupt borrowers and fraudulent sanction of loans. These banks are under AID and have a deposit base of approx. Rs 10500 crore and Rs 2360 crore, respectively. Even with the enhanced insurance cover of Rs 5 lakh, less than 50% of the total deposits will be payable leaving scores of innocent depositors losing their hard earned money. There are several such instances of frauds happening in Co-operative Banks with the



  
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complicity of management including Board. In smaller Banks, management is sometimes so incompetent that they are not able to manage the complex business of Banking leading to such Banks getting into financial problems and sometimes ultimately their failure.

(h) To summarize, "Management" in any Bank cannot be separated from "Banking". On the other hand, it is perhaps the most critical element which separates a good Bank from one which is in dire straits.

(x) Co-operative Banks play a very important role in the Indian financial system. These Banks traditionally deal with customers at the bottom of the pyramid or the lower end of the social strata who are often left untouched by the Commercial Banks. It is of utmost importance that these institutions are preserved and strengthened. However, due to the inherent weaknesses, the Co-operative Banks (both Urban and Rural Co-operative Banks) account for only about one-tenth of the assets of the Commercial Banks as on March 31, 2019 despite being in existence for a very long time. UCBs alone have only 3.6% of the total assets of the Commercial Banks. Clearly, these Banks have not been able to keep pace with the changing times. If they have to regain and retain their relevance, which they must, it is imperative that they are regulated intensely on sound principles, current practices and emerging scenarios. This will not only be in the interests of the depositors but also these institutions as a whole.

16. "Co-operative Societies" is a subject enumerated in Entry 32 of the List II (State List) of the 7<sup>th</sup> Schedule of the Constitution and the State Legislatures have accordingly enacted legislations on Co-operative Societies. Entry 43 of List I (Union List) covers "Incorporation, regulation and winding up of trading corporations, including Banking, Insurance and any financial corporations but not including Co-operative Societies". Therefore, the Entry 43 of Union list includes Incorporation, Regulation and Winding up pertaining to "Banking" or Banking entities. It excludes such Co-operative Societies which are not carrying on the Banking business. Further, a Co-operative society which has been granted license under the provisions of the BR Act cannot carry on any business other than what is enumerated in section 6 of the BR Act, besides the business of banking. Therefore, a Co-operative bank is distinctly different from a



  
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Cooperative society by virtue of this aspect of banking business. Therefore, it is clear that a Co-operative society which has been granted license under the BR Act to carry on Banking Business is a 'Bank' for all purposes and as such, its business activities, regulation and application of law shall be read in Entry 43 of the Union List. Further, this respondent is empowered to regulate the business of a Co-operative Bank and hence it falls within the purview of "Banking" as is covered by Entry 45 of the Union List.

17. Therefore, the Co-operative Banks, are regulated by legislation related to Entry 43 and Entry 45 of Union List i.e. the BR Act as well as the RBI Act under Entry 38 of Union List. Further, it is also relevant to state here that in case of banking companies also, despite the fact that there are provisions dealing with amalgamation, winding up and management in the Companies Act, 2013, special provisions enacted in the BR Act are applicable to the banking companies. Similarly, the provisions of the BR Act are extended to the Co-operative Banks without disturbing the existing provisions on the State Co-operative Laws. It is submitted that as long as the Co-operative Societies are carrying on the banking business, they are bound to comply with all the provisions of the BR Act in all respects in the interest of depositors and public. In this regard, the interest of depositors and public alone is paramount. Therefore, there is no substance in the contention of the Petitioners. Further, it is submitted that the provisions made applicable through the Ordinance are not inconsistent with the Co-operative laws and are only complimentary and additional requirements which can be followed independent of the provisions of Co-operative law. These additional and complimentary requirements have been introduced for protecting the interest of depositors and for securing the Banking business of the Co-operative Bank and therefore is very much within the ambit of Entries 43 and 45 of Union List in substance and the validity of the Ordinance is required to be upheld by applying the doctrine of pith and substance. In **Indian Aluminium Co. and Ors. vs. State of Kerala and Ors (1996) 7 SCC 637**, the Hon'ble Supreme Court held as under:

*"20. When the vires of an enactment is challenged, it is very difficult to ascertain the limits of the legislative power. Therefore, the controversy must be resolved as far as possible, in favour of the legislative body putting the*



  
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*most liberal construction upon the relevant legislative entry so that it may have the widest amplitude. The Court is required to look at the substance of the legislation.”*

18. Also in **Chaturbhai M. Patel v. Union of India and Ors in AIR 1960 SC 424**, the Constitutional Bench of the Apex Court had held as under:

*10. “In every case where the legislative competence of the legislature in regard to a particular enactment was challenged with reference to the entries in the various lists, it was necessary to examine the pith and substance of the Act and if the matter came substantially within an item in the Central List, it could not be deemed to come within an entry in the provincial list even though the “classes of subjects looked at singly overlap in many respects””*

19. In terms of section 5 (b) of BR Act, "Banking" is defined, inter alia, as acceptance of deposits from the public, repayable on demand or otherwise, for the purpose of lending or investment. The major stakeholders in other businesses are shareholders; while in the case of Banking it is depositors. Therefore, the Board of Directors managing the Business, who are elected by the Shareholders, can be removed by them and are answerable to them, thereby making them act in the interest of the Shareholders. However, in the case of Banks (both Companies and Co-operatives) depositors who are the major stake holders do not have any control in the election or functioning of the Board. Deposit being unsecured makes it riskier for the depositors. It is in this context that Banks are tightly regulated and there are provisions under the BR Act and regulations framed thereunder for closely regulating the management of the Banks. Without any control over the management, the Banking business would be conducted in the interest of the shareholders and not in the interest of the depositors and the general public. The BR (Amendment) Ordinance, 2020 seeks to produce the greatest good for the greatest number by providing protection for the depositors of the Co-operative Banks. There is no inconsistency between the Banking Regulation (Amendment) Ordinance, 2020 and the Cooperative Societies Act. In so far as a Co-operative Bank is concerned, the BR Act supplements the provisions of the Co-operative Societies Act and both the



  
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laws have to be harmoniously interpreted so as to ensure that the purpose of the law i.e. protection of interest of depositors is ensured. In this regard, it is submitted that the Co-operative Societies registered the State Co-operative Laws are supposed to deal with its members (Shareholders) only in providing its services and carrying on its Business activities but the Banks which have been granted License under the BR Act to commence/carry on banking business are permitted to deal with public in general, accept the deposits from public and extend the loans to public in general. The Banking Regulation Act, 1949, is a code on Banking law enacted with an intention to protect the interest of depositors, general public and all the stakeholders and therefore, it is reasonable that it must be made applicable to all banks equally in the matter of Banking business without any distinction.

20. The expression "Co-operative Banking" is an oxymoron. Co-operative principles provide for members of the Co-operative Society pooling in resources and capital, using it as a common property of the Co-operative and the surplus being utilised for the benefit of members in proportion to their share in the Co-operative. As "Banking" involves acceptance of deposits from the public (and not from the members) for the use of the members of the Co-operative Bank, it cannot be treated as functioning in accordance with the Co-operative principles in the true sense of the term. Under the Co-operative laws, almost all the persons availing the services (including borrowers) are required to be members of the Co-operative bank. Therefore, it is the money collected from the public that is utilised for lending and providing other services to the members of the Co-operative Bank.

21. Section 6(2) of BR Act (as it existed even before the Ordinance), prohibited Co-operative Banks from engaging in any form of business other than those mentioned in section 6(1) of BR Act. As such, banks (including Co-operative Banks) can engage in only Banking business and certain other incidental/allied businesses enumerated in section 6(1) of BR Act. In other words, the entire business of a Co-operative Bank can only be Banking business and other incidental/allied activities. Therefore, the question of the Board of Directors of a Co-operative Bank overseeing some other business other than banking business and incidental/allied businesses does not arise.



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22. Over a period of time since 1966, the regulatory and supervisory regime, world over and in India, has started to consider regulation/supervision of management of a Bank as one of the key attributes of Banking Regulation. Towards effective regulation of Co-operative Banks various special provisions were introduced in the State Co-operative laws by which the Registrar of co-operatives was mandated to take action on recommendation of RBI in matters relating to management of directors, conduct of special audit, requisition for supersession of Board of Directors and winding up of the Co-operative Bank within stipulated time frame. RBI always regulated the Banking activities relating to management, regulation and winding up which squarely fall within the purview of Banking activities. Now to have direct control of the affairs of the Co-operative Banks, reduce delay in taking appropriate action, the provisions of the ordinance are made applicable to Co-operative Banks *Mutatis Mutandis* in the interest of depositors.

23. In view of the above, Co-operative Banks cannot be treated as Co-operatives in the true sense and the principles applied to a Co-operative Society cannot be squarely applied to a Co-operative Bank. The functioning of a Co-operative bank is exclusively connected to "Banking" than any other "Co-operative" activities and therefore would fall within the ambit of Entry 45 of "Banking" including the incorporation, regulation and winding up related to banking covered under Entry 43 of Union List.

24. Without prejudice to the above submissions but with addition to the same, this respondent craves leave of this Hon'ble Court to address the various averments/allegations raised by the petitioner. It is addressed by this respondent in ad-seriatim as follows.

25. It is respectfully submitted by this Respondent that with regard to Para 1 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. Whereas the contentions made by the Petitioner Banks that they were some of the first cooperative banks in the country established by Shri.Rajagopalachari in the year 1904 and being run profitably, in this regard, a case in point is that of one Rupee Cooperative Bank, Pune which was set up in 1912, is a much larger UCB (a scheduled Urban Cooperative Bank) and claimed to have



  
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been set up on the inspiration of Lokmanya Tilak. The Bank, however, has been under All-inclusive Directions (AID) since 2013. It is a much bigger Bank with deposits of Rs 1300 Crores and has about 4.9 lakh depositors. The Bank has been under highly precarious financial position on account of fraudulent loans sanctioned in complicity with management. There are several such examples. Thus, it may be stated that facts of being very old, having been set up by a luminary and presently being run profitably is no guarantee that weaknesses cannot creep in if the management of the Bank is not competent to run it properly in the interests of the depositors.

26. It is respectfully submitted by this Respondent that with regard to Para 2 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. This respondent does not deem it necessary to specifically traverse as the contentions raised are matters of record.

27. It is respectfully submitted by this Respondent that with regard to Para 3 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The contentions in so far as to how the Banking Regulation (Amendment) Ordinance is beyond the legislative competence of the parliament and consequently the central government vide the Ordinance is denied.

28. It is respectfully submitted by this Respondent that with regard to Para 4 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The contentions of the Petitioners that the Amendment Ordinance promulgated on 26<sup>th</sup> June 2020 as being ultra vires the Constitution of India as the Ordinance deals with matters beyond the legislative competence of the Parliament is denied. The contentions so far as to how the Amendment Ordinance deals with matters which are in the exclusive domain of the states under List II of Schedule VII are denied. The Amendment Ordinance is not in violation of Articles 246 read with Article 123(3) of the constitution of India. Further, the contentions made so far as that the Ordinance is contrary to




  
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the Judgment of the Supreme Court of India in “Pandurang” case is completely denied and the ratio laid down would falsify and make the contentions untenable. The Ordinance seeks to protect the interests of depositors and strengthen cooperative Banks by improving governance and oversight by extending powers already available with RBI in respect of other Banks to Co-operative Banks as well for sound Banking Regulation and by ensuring professionalism and enabling their access to Capital. The domain of the Parliament to make laws on “Banking” under Entry 45 of the Union list is very wide as clearly laid out by the Hon’ble Supreme Court in **Ellel Hotels & Investments v UOI** in **(1989) 3 SCC 698** wherein the cardinal rule of Interpretation in the legislative lists are not be read in a narrow or restricted sense and that each general word should be held to extend to ancillary or subsidiary matters which can be said to be comprehended by it. The widest amplitude should be given in construing words in a constitutional document. The other contention that the Amendment Ordinance is contrary to the Judgment of the Hon’ble Supreme Court in Pandurang Ganpati is denied.

29. It is respectfully submitted by this Respondent that with regard to Para 5 & 6 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The contentions made in these paras are the Statutory application of BR Act to Cooperative Banks and this respondent does not deem it necessary for any specific traversal.

30. It is respectfully submitted by this Respondent that with regard to Para 7 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein, each and every allegation made in the said paragraph is denied. Since certain provisions of the BR Act are not made applicable to Co-operative Banks, problems have cropped up in regulation of the Co-operative Banking sector. As the powers have been vested in the State Governments and the Registrar of Co-operative Societies in case of Co-operative Banks confining its operations to one state and the Central Registrar of Co-operative Societies in case of Multi State Co-operative banks in the matter of amalgamation and winding up of a Co-operative bank, RBI may have to approach the respective authorities in case of amalgamation, merger and winding up of



  
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Co-operative banks. Every State has enacted a separate Act for Co-operative Societies. Provisions in all Co-operative laws is not the same. Provisions in the State Acts are different from one State to another State. Further, in some States more than one Act is there for regulation of Co-operative Societies. Apart from the State Co-operative Acts, Multi-State Co-operative State Act is enacted by the Parliament which is applicable to the Co-operative Societies operating in more than one State. In case of amalgamation or merger of Co-operative banks carrying on the business in different states or operating in more than one state, application of law has become very difficult. Further, merger or amalgamation of a Co-operative Bank operating in a single State with a Multi-State Co-operative Bank has become very difficult as application of law to them is different. Similarly, winding up of a Co-operative Bank is also another area where both the BR Act and the State Co-operative Laws has to be followed. Further framing scheme for revival of a Co-operative Bank is also not possible for the Reserve Bank as such power to revive a Co-operative Society is vested in the State under the State Laws. It is relevant to state here that in case of the Banking Companies, the provisions are made in the BR Act for amalgamation, merger, winding up and framing of scheme for revival of the Bank. The Ordinance has made applicable certain provisions of the BR Act 1949, which were not applicable to Co-operative Banks, are made applicable now. The Ordinance has not made any new provisions in the BR Act. These provisions which are already applicable to Banking Companies are now made applicable to Co-operative Banks. It is also relevant to state here that the Banking is the area which falls under the Union list (List-I) of 7th Schedule of the Constitution of India and regulation of all Banking activity falls under the regulation of the RBI. As the regulation, merger, winding up and framing of a scheme for revival of a Co-operative Banks pertains to Banking activity there is no illegality in making the BR Act applicable to the Co-operative Banks.

31. It is respectfully submitted by this Respondent that with regard to Para 8 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. It is also relevant to state here that the Banking is the area which falls under Entry 45 of the Union list (List-I) of 7th Schedule of the Constitution of India and regulation of all Banking activity falls under the regulation of the RBI. As the



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regulation, merger, winding up and framing of a scheme for revival of a Co-operative banks pertains to Banking activity there is no illegality in making the BR Act applicable to the Co-operative banks. Also it is humbly brought to the attention of this Hon'ble Court that it has been repeatedly held by the Apex Court that there is always "*Presumption in favour of Constitutionality*".

32. It is respectfully submitted by this Respondent that with regard to Para 9 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. This respondent would bring to the attention of this Hon'ble Court that the Hon'ble Supreme Court in the case of **Ram Krishan Grover and Ors. vs. Union of India (UOI) in (2019) SCC Online SC 1469**, observed as under:

*46. "The test to judge the validity of any classification has to be practical and pragmatic by looking beyond the classification to the purpose of the law, that is, the purpose or object of the legislation and the circumstances which had prevailed when the law was passed and which had necessitated passing of that law. Not only this, there is a presumption as to constitutional validity of an enactment predicated on the belief that the legislature understands and correctly appreciates the need of its own people and is free to recognise degrees of harm and may confine its restriction to only those cases where the need is deemed to be the clearest."*

Therefore the impugned sections have been introduced are certainly not beyond the legislative competence of the Parliament and consequently not void under Article 123(3) of the Constitution of India.

33. It is respectfully submitted by this Respondent that with regard to Para 10 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The Contentions raised in this para that there is unconstitutionality of Section 4(A) of the Amendment Ordinance is totally denied. The amended Section 56 does not deal with matters pertaining to 'incorporation' of Co-operative banks. Incorporation continues to be exclusively dealt with under the respective Co-operative Societies Acts.



  
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34. As stated, 'regulation' of Co-operative Societies comes under the States' Domain. However, this may be termed as a misnomer since the Entry 32 does not clearly state as to which activities of the Co-operative Societies will be regulated by States. It cannot be disputed that RBI has, even before these amendments, got regulatory powers over several activities of Co-operative Banks. Therefore, it cannot be argued that 'regulation' of Co-operative Banks comes under the exclusive domain of States because of its mention as such under Entry 32.

35. The recent BR Act amendments concern only those co-operative societies which are functioning as Co-operative Banks. There are numerous other types of Co-operative Societies in various States (such as Housing Societies, Consumer Societies, Credit Societies, Milk Societies, Farmers' Societies, and so on). Thus, in any case, these amendments would partly affect States' powers over less than 2000 co-operative societies which are functioning as Co-operative banks, whereas there are lakhs of other Co-operative Societies which will continue to be regulated solely by the States.

36. It is respectfully submitted by this Respondent that with regard to Para 11 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The Contentions raised in this para that there is unconstitutionality of Section 4(F) of the Amendment Ordinance is totally denied. It is brought to the attention of this Hon'ble Court that Section 56 (fi) had become redundant and therefore was omitted. The Amendment to section 56 (fii) does not in any manner infringe upon the States powers. In specific regard to the omittance of Section 56(g), the Management (i.e. persons or body of persons managing the affairs) of a Co-operative Bank cannot be separated from the activities that the Bank performs since every act of the management has a consequence, good or bad, for the bank. RBI is responsible for effective regulation and supervision of these banks. As RBI did not so far have any say in the management of Co-operative Banks even though it was expected to ensure their financial soundness, RBI has been, in a sense, a warrior without the most potent arms and ammunitions so far as co-operative bank regulation is concerned.



  
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37. Section 22 of the BR Act pertaining to licensing of Co-operative Banks, *inter alia*, indicates that the general character of management of a Co-operative Bank should not be prejudicial to the interest of public/depositors. Although this requirement has to be seen by RBI at the time of licensing and in case this requirement is not fulfilled, the license can be cancelled; however, cancellation of license of a Co-operative Bank is often disruptive in nature and is resorted to under extreme circumstances, when all other options are exhausted. Therefore, it is necessary that RBI is empowered adequately to ensure that the general character of management of a Co-operative Bank is not prejudicial to the interest of depositors whereas the Bank continues to be a going concern.

38. A large number of Urban Cooperative Banks are suffering from various kinds of financial problems. Today, about 35% of the UCBs are suffering from weakness in one or more key financial parameters such as asset quality, profitability and capital. Further, as many as 30 UCBs have precarious financial position and have, therefore, been placed under all-inclusive directions (AID) under Section 35A of the BR Act thereby restricting their functioning to a significant extent, since all these UCBs have negative net worth. Besides these, many other UCBs, too, have precarious financial position and may eventually have to be placed under AID. Experience suggests that most of the UCBs under AID may not improve their financials and may have to be finally wound-up/liquidated or merged with another bank or may have to go out of the business of banking by converting themselves into a credit society.

39. Over the last two decades, RBI has cancelled the banking licenses of about 430 UCBs, in most cases due to their precarious financial position. A look at the number of UCBs whose licenses were cancelled or which were merged/ amalgamated with other banks will throw more light on the ills of the sector.

40. From the above, it is evident that there are significant problems in the Co-operative Banking sector for which a non-disruptive or less-disruptive resolution has to be achieved. At the same time, it has also to be ensured that Co-operative Banks which are sound today continue to remain sound. Moreover, today, Banking has no longer remained a matter of simply acceptance of deposits at the counters and disbursing loans sitting across a table. It has become much more dynamic and complex,



  
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particularly because there are many other existing and new categories of Banks and other lenders such as NBFCs, Microfinance companies, etc. in the same space, which have professional management, better human resources and technological supremacy which pose a significant competitive challenge to Co-operative Banks. Therefore, unless Co-operative Banks have an able and competent management, their very existence will be at stake in the long run. It is thus necessary to take steps to improve the quality of management and governance in Co-operative Banks.

41. It is respectfully submitted by this Respondent that with regard to Paras 12 & 13 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The Contentions raised in these paras that there is unconstitutionality of Section 4(F) of the Amendment Ordinance is totally denied. Amendment to Section 10 is for the good of Co-operative Banks, as it seeks to strengthen the management of Co-operative Banks and avoid the possibilities of conflict of interest in the top management personnel. These provisions are intentioned to improve the quality of management of co-operative banks and are in the interest of depositors and other stakeholders. This section prohibits employment of a managing agent for the management of the co-operative bank, so that a Board of Directors only manages the Bank. Further, this section also specifies as to which persons cannot be employed by the Co-operative Bank and restricts certain forms of employments which is intended to avoid conflict of interest. These provisions do not create any contradiction with the provisions of the various Co-operative Societies Acts, but specifies provisions for ensuring quality employments by Co-operative Banks.

42. Section 10A prescribes certain qualifications for at least 51% of the directors of the Co-operative Banks. This is to ensure that the Boards of these banks are qualified enough to run the affairs of the bank efficiently and effectively. Since the Boards of Co-operative Banks are chosen by their members through an election, ensuring election of a reasonable number of knowledgeable/experienced persons is not possible unless certain minimum criteria is prescribed. The said provision also deals with conflict of interest matters and maximum tenure of directors which are in



  
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the best interests of Co-operative Banks. It cannot be the case of the petitioners that Co-operative Banks should be allowed to be managed by Boards which are not competent enough to understand the nuances of modern Banking. Therefore, provisions of the Sections are reasonable and justified for application thereof on Co-operative Banks.

43. Section 10B deals with appointment of Chairman/Managing director, requirement of RBI approval therefor and qualifications/disqualifications for being a Whole Time Chairman / Managing Director. These provisions are justified on the ground that it need to be ensured that Chairman/Managing director is a competent person and RBI must have adequate control over the management to ensure that only the competent persons are appointed as Chairman/Managing director. It cannot be reasonable to expect that RBI regulates Co-operative Banks effectively without having any regulatory authority over the persons who run these Banks. Therefore, these provisions cannot be said to be unjust or unwarranted.

44. Section 10 BB gives power to RBI to appoint Chairman/Managing Director if these posts are vacant in a Co-operative Bank. Such appointments have to be need-based and for a definite period of time. These provisions are meant to ensure that the management of the affairs of the Co-operative Bank is not affected adversely due to vacancy of these posts for an unduly long period of time for any reason. These provisions cannot be said to be unjust or unwarranted.

45. Section 10C is an enabling provision for appointment of persons not having qualification shares as Whole Time Chairman / Managing Director or a Director appointed by RBI. However, not having qualification Shares is not a pre-condition for their appointment.

46. It is respectfully submitted by this Respondent that with regard to Paras 14 & 15 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The Contentions raised in these paras that there is unconstitutionality of Section 4(G) of the Amendment Ordinance is totally denied. Section 12 deals with Capital of Co-operative Banks. Capital has traditionally been one of the biggest constraints for Co-operative Banks. Many Co-operative Banks have gone



  
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into financial problems and have even failed due to being unable to mobilize capital. Therefore, enabling provisions have been made in the Act to relax certain provisions with an intention to bring about changes in the way Co-operative Banks have been functioning rather than maintaining a status quo which has not been helping the sector, so that a Co-operative bank in need of capital can be able to mobilize additional Capital and carry on its business. It may be mentioned that no provision has been made to assign differential voting rights and the **basic Co-operative principle of 'one member one vote' has also been preserved.**

47. Section 12 also makes it non-obligatory for a Co-operative bank to give refund against Shares surrendered by its Members and permits reduction in Share Capital only as specified by the RBI. This is a much needed provision for a Bank experiencing acute shortage of capital. It may be noted that Co-operative Banks, unlike other Co-operative Societies, accept deposits from Non-Members who do not have any shareholding or voting rights in the Bank. Despite the fact that, in general, major part of a Co-operative Bank's working capital comes from Public (i.e. Non-Member) deposits, these depositors do not have any say in the management of the bank. Ironically, the policies, including the lending policy, of a Co-operative Bank are not decided by the persons whose funds are at the stake. It is the shareholders who borrow from a Co-operative Bank and hence it is only they who default in repayment of the borrowed money leading to losses to the bank. When the financial position of a Co-operative Bank deteriorates and eventually the entire Capital and Reserves are eroded, there comes a stage when deposit erosion starts and the depositors start losing their deposits. Even in such a situation, Shareholders had so far been free to withdraw their Share money (even when the same already stood eroded due to losses). This was against the very basic principle that Shareholders have the last right on the assets of an entity, because it is the Shareholders, and not the depositors, who have the voting rights and can thus influence decision making in the bank. Therefore, it is only just that reasonable restrictions are put in place to preserve and protect the capital of Banks.

48. Even before the Amendment, this respondent has been regulating capital of Co-operative Banks as Capital is an inseparable part and lifeline of Banking business. With amendments in the BR Act, RBI will be



  
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able to frame suitable policy for withdrawal/reduction in share of UCBS which will be in the interest of depositors, while still being reasonable for the Shareholders.

49. The Petitioners has not made any case as to how these provisions are against the Co-operative character or conflicting with any provision of the state act. Section 12A is an enabling provision for election of new Directors on being so directed by RBI and is not harmful for the 'Co-operative' in any manner. Section 13 puts restrictions on commission, brokerage, etc. in respect of issue of shares by the Co-operative Bank. This has no adverse effect on Co-operative nature of these Banks. Section 15 deals with payment of dividend by Co-operative Banks. These provisions are reasonable and not contradictory to the provisions of Co-operative Societies Acts. Also, these provisions are already being adhered to by Co-operative Banks under the extant Statutory and/or regulatory provisions. The provisions of section 16 disallowing common Directorship across different Banks seeks to avoid conflict of interest situations and is not in any way harmful to the co-operative bank. Absence of such restriction in the State act cannot be a ground for rendering it unconstitutional. Section 17 relates to creation of Reserve Fund and transfer of a part of the profits to the Fund every year.

50. It is respectfully submitted by this Respondent that with regard to Paras 16 & 17 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The Contentions raised in these paras that there is unconstitutionality of Section 4(J) of the Amendment Ordinance is totally denied. Section 25 deals with assets of co-operative banks in India, which is an innocuous provision as hardly any asset of these Banks are outside India.

51. The Writ Petitions incorrectly mentions that section 56(ri) has been omitted by these amendments; rather it is section 56(ria) which has been omitted. The original section 56(r) amending section 26A was superfluous and hence needed to be omitted. Section 30 deals with audit of Co-operative Banks. The popular notion that audit is related to management only finds no logical basis. Essentially, major part of the audit is performed on banking functions rather than management-related functions. The most important role of the auditor is to certify the



  
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accounts, i.e. balance sheet and profit and loss account of the co-operative banks, which essentially relates to Banking function. In any case, management itself cannot be separated from Banking functions. Management of co-operative banks is primarily engaged in managing the affairs of the banking functions of the Co-operative Banks because Co-operative Banks cannot do any activity which is not permitted under the BR Act.

52. Audit is a crucial aspect for Banks as it validates their accounts. Quality, integrity and sanctity of audit are, therefore, of critical importance. Since most of the audit relates to banking functions and most of the resources of co-operative banks come from public deposits, RBI does have a major role to play as far as audit of Co-operative Banks is concerned. Auditors are paid by the management for the services rendered by them. It has to be ensured that an auditor who has had a negative report in the past is not appointed to audit Co-operative banks. Further, an auditor is also prone to being removed or not being re-appointed by the management if they are not amenable to management views. It is here that RBI's role assumes significance. Furthermore, the provision does not take away powers of audit from the state government which can conduct audit relating to the functioning of the society. In view of the above, it is absolutely correct and legal to extend the section 30 of the principal Act to Co-operative Banks.

53. It is respectfully submitted by this Respondent that with regard to Paras 18 to 21 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The Contentions raised in these paras that there is unconstitutionality of Section 4(L) of the Amendment Ordinance is totally denied. Section 32 requires the Co-operative Bank to send copies of balance sheet and P&L accounts to Registrar of Co-operative Societies, which is a harmless provision. In any case, the bank sends copies of these documents to the Registrar under the Co-operative Societies Acts as well. Section 33 is inconsequential for co-operative banks as they are not incorporated outside India. Section 34 is also inconsequential as the provision was relevant at the time of commencement of the Act and not anymore. As regard to section 35B of the BR Act pertains to provisions relating to appointment, re-



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appointment, termination of Chairman, MD, Directors are subject to previous approval of the RBI. By the said provision, RBI regulates the arbitrary appointments, re-appointments and exorbitant remuneration fixed by the Boards of the co-operative banks thereby curbs mismanagement, arbitrary use of powers in appointment, termination and payment of remuneration to Chairman/MD/Directors. This is necessary power required to control the management. The same is adverted in detail in paras 42 to 44 supra and not repeated again.

54. It is respectfully submitted this Respondent that with regard to Paras 22 & 23 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The Contentions raised in these paras that there is unconstitutionality of Section 4(M) of the Amendment Ordinance is totally denied. By the amendments to section 36AAA, this respondent has been empowered to supersede the Board of Uni-State Co-operative Banks. This power was already available to RBI for multi-state Co-operative Banks. Incidentally, the existing Co-operative Societies Acts already have provisions requiring the Registrar of Co-operative Societies to supersede the Board of a co-operative bank on receiving a requisition in that regard from the RBI. On the contrary, the present amendments require having consultation with the Registrar by RBI, which was not there earlier. In many cases, actions of the Board are found to be causing harm to the interest of the Bank/Depositors and the Board is either unable to or refuses to take necessary corrective action. In this situation, it is necessary that RBI is empowered to supersede the Board to save the bank's/depositors' interests. Therefore, this provision is reasonable and just.

55. It is respectfully submitted by this Respondent that with regard to Paras 24 & 25 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The Contentions raised in these paras that there is unconstitutionality of Section 4(Q) of the Amendment Ordinance is totally denied. Section 49B deals with change of name and 49C deals with alteration of bylaws of a co-operative bank. These sections require a co-operative bank to merely obtain a 'no objection certificate' from this respondent before changing its name or



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altering its bylaws. Change of name of a Co-operative Bank is a critical step as it interferes with the very identity of the bank. Similarly, alteration of bylaws may have an impact on the business that the bank carries on, i.e. Banking business. Bylaws are like a 'constitution' for the Co-operative Bank. Since this respondent is the regulator of co-operative banks and, undoubtedly, has a major stake in the ground rules on the basis of which the management of the bank functions, it is but logical that RBI agrees with the proposed alteration of bylaws by the co-operative bank.

56. It is respectfully submitted by this Respondent that with regard to Ground i of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. This respondent completely denies the notion of Non-legislative competence of the parliament and violation of federalism. The Ordinance has not made any new provisions in the BR Act. These provisions which are already applicable to banking companies are now made applicable to Co-operative Banks. It is also relevant to state here that the banking is the area which falls under the Union list (List-I) of 7th Schedule of the Constitution of India and regulation of all Banking activity falls under the regulation of the RBI. As the regulation, merger, winding up and framing of a scheme for revival of a Co-operative banks pertains to banking activity there is no illegality in making the BR Act applicable to the Co-operative banks.

57. It is respectfully submitted by this Respondent that with regard to Ground ii of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The Impugned Sections are not violative of Art 246 of the Constitution of India as the under Entry 45 of the Union list the union legislature is fully competent to pass laws in the purview of Banking. As the regulation, merger, winding up and framing of a scheme for revival of a Co-operative banks pertains to banking activity there is no illegality in making the BR Act applicable to the Co-operative banks.

58. It is respectfully submitted by this Respondent that with regard to Ground iii of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and



  
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every allegation made in the said paragraph is denied. The contentions raised are extrapolation of statutes i.e. extrapolation of List I entries which this respondent does not want to specifically traverse.

59. It is respectfully submitted by this Respondent that with regard to Ground iv of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The averments raised are Statutes and this respondent does not deem it necessary to specifically traverse.

60. It is respectfully submitted by this Respondent that with regard to Grounds v of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. This respondent would also bring to the attention of this Hon'ble Court that in Hon'ble Supreme Court of India in Pandurang's case had clearly held that the co-operative banks registered under the State legislation and Multi-State level Co-operative Societies registered under the MSCS Act, 2002 with respect to 'banking' are governed by the legislation relatable to Entry 45 of List I of the Seventh Schedule of the Constitution of India. It is also relevant to state here that the banking is the area which falls under the Union list (List-I) of 7th Schedule of the Constitution of India and regulation of all Banking activity falls under the regulation of the RBI. As the regulation, merger, winding up and framing of a scheme for revival of a Co-operative banks pertains to Banking activity there is no illegality in making the BR Act applicable to the Co-operative Banks.

61. It is respectfully submitted by this Respondent that with regard to Grounds vi to ix of the Writ Affidavits filed in support of the Writ Petitions, except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. This respondent has fully addressed all the averments supra. This respondent would bring to the attention of this Hon'ble Court that the Hon'ble Supreme Court in **UCO Bank v Dipak Debbarma 2017 2 SCC 585** has laid down the following



  
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11. "In interpreting Article 246 regard must be had to the constitutional scheme which visualises a federal structure giving full autonomy to the Union Parliament as well as to the State legislatures in their respective/demarcated fields of legislation. The problem may, however, become a little more complex than what may seemingly appear as the two legislations may very well be within the respective domains of the concerned legislatures and, yet, there may be intrusion into areas that fall beyond the assigned fields of legislation. **In such a situation it will be plain duty of the Constitutional Court to see if the conflict can be resolved by acknowledging the mutual existence of the two legislations. If that is not possible, then by virtue of the provisions of Article 246(1), the Parliamentary legislation would prevail and the State legislation will have to give way notwithstanding the fact that the State legislation is within the demarcated field (List II).** This is the principle of federal supremacy which Article 246 of the Constitution embodies. The said principle will, however, prevail provided the pre-condition exists, namely, the Parliamentary legislation is the dominant legislation and the State legislation, though within its own field, has the effect of encroaching on a vital sphere of the subject or entry to which the dominant legislation is referable. This is the principle that is discernible from the Constitution Bench judgment of this Court in *State of West Bengal and Ors. vs. Committee for Protection of Democratic Rights, West Bengal and Ors*"

Therefore banking is the area which falls under the Union list (List-I) of 7th Schedule of the Constitution of India and regulation of all banking activity falls under the regulation of the RBI. As the regulation, merger, winding up and framing of a scheme for revival of a Co-operative banks pertains to banking activity there is no illegality in making the BR Act applicable to the Co-operative banks.

62. It is respectfully submitted by this Respondent that with regard to Ground xi of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The Impugned sections of the Amendment Ordinance do not constitute as colourable legislation as portrayed by the Writ Petitioners.

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63. It is respectfully submitted by this Respondent that with regard to Ground xii of the Writ Affidavits filed in support of the Writ Petitions, except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. That this Amendment Ordinance passed under Article 123(1) of the Constitution is fully legislatively competent and does not suffer from any infirmities and not void.

64. It is respectfully submitted by this Respondent that with regard to Ground xiii & xiv of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. This respondent does not deny that under Art 43B and Art 243ZI directs for promotion and incorporation of Co-operative Societies but the activity of banking falls under Entry 45 of Union List I. As the regulation, merger, winding up and framing of a scheme for revival of a Co-operative banks pertains to banking activity there is no illegality in making the BR Act applicable to the Co-operative Banks.

65. It is respectfully submitted by this Respondent that with regard to Ground xv of the Writ Affidavits, except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. It is also relevant to state here that the Banking is the area which falls under the Union list (List-I) of 7th Schedule of the Constitution of India and regulation of all banking activity falls under the regulation of the RBI. As the regulation, merger, winding up and framing of a scheme for revival of a Co-operative Banks pertains to Banking activity there is no illegality in making the BR Act applicable to the Co-operative Banks.

66. It is respectfully submitted by this Respondent that with regard to Ground xvi of the Writ Affidavits, except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied.

67. It is respectfully submitted by this Respondent that with regard to Para 27 of the Writ Affidavits, except for matters of record and specifically

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admitted herein each and every allegation made in the said paragraph is denied.

68. It is respectfully submitted by this Respondent that with regard to Para 28 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied. The Impugned sections are fully Constitutional and not contrary to and the Union list under Art 45 is fully competent to pass laws in the purview of Banking, as substantial members of the public money cannot be left unregulated. Therefore the Amendment Ordinance is fully Constitutional and the balance of convenience is not in favour of the petitioners.

69. It is respectfully submitted by this Respondent that with regard to Para 29 of the Writ Affidavits filed in support of the Writ Petitions except for matters of record and specifically admitted herein each and every allegation made in the said paragraph is denied.

For all the reasons stated hereinabove this Hon'ble Court may dismiss the Constitutional challenges to the vires of Sections 4(A),(F),(G),(J),(L),(M) and (Q) of Banking Regulation Amendment Ordinance 2020 as put forth by the Writ Petitioners and uphold the Constitutionality of Banking Regulation (Amendment) Ordinance 2020 and dismiss the Writ Petitions with costs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Chennai on this 31<sup>st</sup> day of August 2020 and signed his name in my presence.



*Suresh Kumar Venu*  
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**BEFORE ME**

*P. Mary Pushpa Rani*  
**MS1358/2011**  
**Pt. Mary Pushpa Rani**  
**No. 108/64 Armenian St, Ch-1**  
**ADVOCATE::CHENNAI**

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सुपर कृपा रूपा





**IN THE HIGH COURT OF JUDICATURE AT  
MADRAS**

(Special Original Jurisdiction)

**W.P.Nos.9147 & 9150 of 2020**

1. Big Kancheepuram Cooperative Town Bank  
Ltd (No.3),  
....Petitioner in WP.No.9147of 2020

2. The Velur Co-Operative Urban Bank Ltd,  
...Petitioner in WP.No.9150 of 2020

Vs

Union of India  
and Another

...Respondents

**COMMON COUNTER AFFIDAVIT FILED**  
**ON BEHALF OF THE**  
**2<sup>ND</sup> RESPONDENT-**  
**RESERVE BANK OF INDIA**

**M/S. KING & PARTRIDGE**  
**C.MOHAN (Ms.1778/1999)**  
**Mob: 9840029865**

COUNSEL FOR 2<sup>ND</sup> RESPONDENT-  
RESERVE BANK OF INDIA