

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

WRIT PETITION NO. OF 2021 (M/S)
(Under Article 226 of the Constitution of India)

District-Almora
Almora Urban Cooperative Bank through its General
Manager, Gururani Complex, Lala Bazaar, Almora.

.....Petitioner.

Versus

1. Union of India through its Secretary, Ministry of Finance,
15 Safdarjung Road, New Delhi-110006.
2. Reserve Bank of India through its Governor, Central
Office Building, 18th Floor, Shahid Bhagat Singh Road,
Mumbai-400001.
3. Reserve Bank of India through its Chief General
Manager, 74/1, GMVN Building, Rajpur Road,
Dehradun-248001.
4. State of Uttarakhand, through its Secretary, Cooperative
Department, Near Railway Crossing Miyawala,
Dehradun-248001.Respondents

To,

The Hon'ble the Chief Justice and his other companion
Judges of the aforesaid Court.

The humble writ petition of the above named petitioner most respectfully showeth as under:-

1. That petitioner is aggrieved by the circular dated 25.6.2021 issued by respondent no 2 and circular dated 26.7.2021 issued by respondent no 3. Vide circular dated 25.6.2021 respondent no 2 gave detailed directions to the Primary (Urban) Co-operative Banks regarding appointment of Managing Director (**hereinafter called MD**) / Whole-Time Director (**hereinafter called WTD**). Guideline No. 4 stipulates tenure of MD/WTD. It states that the post of MD/WTD shall not be held by the same incumbent for more than 15 years. Thereafter such person shall be eligible for reappointment thereafter after a minimum gap of three years, during which such individual shall not be appointed or associated with the bank in any capacity either directly or indirectly. Further vide the circular bearing no. DoS(ADG) S-109/03.01.05/2021-22 dated 26.7.2021, respondent no 3 gave a direction to petitioner to comply with para 4 of above circular and initiate fresh appointment process for the post of CEO. In this connection true copy of RBI circular dated 25.6.2021 is being filed herewith and marked as **Annexure No. 1** to this writ petition and true copy of

circular dated 26.7.2021 is being filed herewith and marked as **Annexure No. 2.**

2. That petitioner has challenged the very competency of Reserve Bank of India (**hereinafter called RBI**) issue such a circular qua the provisions of the Banking Regulation Act 1959 and Entry 45 of Union List in conjunction with provisions of the State Act of 2003 and entry 32 of List II (State List) with reference to Article 19(1)(c) and Article 43-B of the Constitution of India. The very basis of the regulatory legislation in the nature of State Act of 2003, is to promote the cooperative movement by giving widest scope to Entry 32 of the State List. The tenure of employees of cooperative societies can be regulated only in terms of a State Legislation made under the State Act and not by RBI in terms of the impugned circular.

3. That brief facts of the case are that, in the year 1991 present CEO of bank established Almora Urban Cooperative Bank (**hereinafter called Bank**) with a meagre sum of Rs 2.56 lakh and a small workforce of 5 employees. In the year 1992 petitioner no 2 was appointed as Chief Executing Officer (**hereinafter**

called CEO)/General Manager/Secretary of the bank by its Board of Directors (**hereinafter called BoD**) in compliance with the UP Cooperative societies act 1965 (and later Uttarakhand Cooperative Societies Act 2003) and its byelaws, and is still supervising the bank. After its establishment under his able leadership, the bank kept on growing and expanding tremendously. At present the bank has 50 branches functioning all over State of Uttarakhand, with a workforce of 700 employees. As on 30.6.2021, it had a working capital of 4,138.72 Crore. There are more than 4.50 lakh account holders in the bank. The private capital of the bank is more than 500.00 Crore and it has a profit of 29.46 Crore. In the financial year 2020-21, the bank paid an income tax of Rs 21.50 Crore. The bank has a CRAR of 33.53% much above the 9% stipulated by RBI. Petitioner no 2 has great liasioning with the customers of the bank. Further he maintains cordial relations with all the staff of the bank, and till date there has never been any industrial relations problem in the bank. All these are proof of his able leadership and relentless and untiring efforts.

4. That the Board of Directors of bank on 30.4.2016 passed a resolution reappointment of its CEO and further increasing the age of retirement of CEO. Registrar Cooperative Society vide order dated 3.7.2017, approved the name of present CEO of Bank and also increased the retirement age of CEO of bank from 60 to 65 years. The same was approved by State Level Task Force for Cooperative Urban Banks (T AFCUB) in its minutes of meeting held on 25.7.2017. In this connection a true copy of resolution of Board of Directors of Bank dated 30.4.2016 is being filed herewith and marked as **Annexure No. 3**. True copy of order dated 3.7.2017 passed by Registrar Cooperative Society is being filed herewith and marked as **Annexure No. 4**. True copy of minutes of meeting of T AFCUB dated 25.7.2017 is being filed herewith and marked as **Annexure No. 5**.

5. That the bank has been incorporated/registered as a Primary co-operative Society under the provisions of the Uttar Pradesh Cooperative Societies Act 1965, and upon banking license issued by the Reserve Bank of India, has been conducting the banking operations as a

Cooperative Bank since. On the creation of State of Uttarakhand and enactment of Uttaranchal Co-operative Societies Act 2003 (**hereinafter called State Act 2003**), the bank was deemed to be registered under Section 129 of State Act 2003. It should also be noted that Primary Co-operative Banks are under dual control. RBI exercise control over banking business of the bank under Banking Regulation Act 1949 (as amended from time to time). Matters concerning employees of bank are administered by bank itself subject to control of the Registrar cooperative societies and State of Uttarakhand as provided in State Act 2003. Thus RBI has no powers to fix the minimum or maximum age limit or maximum term of office of any MD/CEO of urban co-operative banks. In this connection a true copy of the banking license issued in favor of bank is being filed herewith and marked as **Annexure No. 6.**

6. That it is pertinent to mention here that Almora Urban Cooperative Bank is not receiving any financial aid from the State Government and is doing business with the help of equity contributed by its shareholders. The State Government has no financial control over the

affairs of the Bank, except general control of the Registrar in terms of Uttarakhand Cooperative Societies Act 2003. Further the Bank is under the legislative control of State of Uttarakhand, as 'cooperative societies' falls in entry 32 of List II of Schedule 7.

7. That in the year 2003, State of Uttarakhand in exercise of its legislative powers under Entry 32 of Schedule 7 List II, framed Uttarakhand Cooperative Societies Act applicable on all cooperative societies in the State of Uttarakhand. Under the Act, Registrar of Cooperative Societies is to be appointed by the State Government for carrying out the purposes of the Act. Section 4 provides that a society may be registered if it has as its objects the goal of promotion of economic interest of its members or general welfare of its members in accordance with economic interest of its members. Further *cooperative principle* has been defined to include democratic member control and autonomy and independence as its essentials. Section 7 provides that the Registrar on his satisfaction that the object of proposed society is in accordance with Section 4 of the Act, shall register the society and its bye-laws.

8. That Chapter IV of the Act talks about Management of Societies. Section 28 therein states that subject to provisions of this act and the rules, final authority of a cooperative bank shall vest in the general body of its members or in circumstances as prescribed in the elected delegates of such members. Regarding appointment of CEO, Section 31 provides that CEO in every cooperative society shall be appointed and removed by the society, subject to rules and regulations framed under Section 121 and 122; and the emoluments and other conditions of service of the CEO shall be prescribed in the same. Section 121 empowers Registrar to frame regulations to regulate the emoluments and other conditions of service of employees of the cooperative society. Section 122 provides that State Government may constitute an authority for recruitment, training and disciplinary control of the employees of cooperative societies; and may require such authorities to frame regulations regarding same which shall be subject to approval of State Government. Regarding removal of an officer of cooperative society, Section 38 of the Act provides that if any officer of cooperative society has

contravened or omitted to comply with the provisions of the act, the Registrar may call upon the society to remove such employee. Thus from the said provisions it is clear that CEO of cooperative society shall be appointed and removed by society itself; subject to rules and regulations framed under Section 121 by Registrar Cooperative Societies or those framed under Section 122 by State Government.

9. That in pursuance to the UP Cooperative Societies Act 1965, to govern itself the bank framed its bye-laws. In the byelaws, CEO is defined as Secretary-cum-manager appointed by Board of Directors. Bye law 29(i) provides that CEO shall be under general superintendence, direction and control of Board of Directors. Bye law 40(a) provides that appointment of CEO/MD of the bank shall be done by banks Board of Director with the prior approval of RBI, Regional Office Dehradun, atleast three months prior to the end of tenure of the incumbent CEO. Further Bye law 40(b) provides qualifications for appointment as CEO/MD and provides that the person should not be less than 35 years and more than 70 years of age and should have atleast 8 years of working experience at middle/senior

level in the banking sector. It is submitted that petitioner no 2 appointment was made in compliance to these byelaws and State Act 2003. Further the circular dated 25.6.2021 is in violation to the byelaws of the bank. In this connection a true copy of bye-laws of bank are being filed herewith and marked as **Annexure No. 7.**

10. That vide circular dated 25.6.2021, respondent no 2 and 3 issued detailed directions to the Primary (Urban) Co-operative Banks regarding appointment of Managing Director (**hereinafter called MD**) / Whole-Time Director (**hereinafter called WTD**). The circular was made in pursuance to powers conferred under Section 10, 10B, 10 BB, 35A, 35B, 36AA and 53A r/w Section 56 of Banking Regulation Act 1949 (as amended). The circular is applicable to all Primary (Urban) Cooperative Banks (UCBs). Paragraph No. 4 stipulates tenure of MD/WTD. It states that the post of MD/WTD shall not be held by the same incumbent for more than 15 years. Thereafter such person shall be eligible for reappointment thereafter after a minimum gap of three years during which such individual shall not be appointed or associated with the bank in any

capacity either directly or indirectly. For kind perusal of this Court para no 4 of circular dated 25.6.2021 is being extracted below:-

“ 4. Tenure of MD/WTD

1.1 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.

1.2 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.

1.3 UCBs whose existing MD/CEO has completed a tenure of five years at the time of issue of circular or subsequently, shall approach RBI

either to seek re-appointment of the incumbent, if he/she is eligible, or for appointment of a new MD/CEO, within a period of two months from the date of issue of this circular.”

It is submitted that the said provision is in direct contravention to Section 28 and Section 31 read with Section 121 and 122 of the State Act 2003, which provides that CEO shall be appointed and removable by the society subject to rules and regulations framed by State Government and Registrar.

11. That there is no provision in BR Act which empowers RBI to fix tenure of employees of cooperative societies as it concerns regulation of cooperative societies, which in pith and substance is a State subject in Entry 32 of List II. Thus the impugned orders being delegated legislations are ultravires the parent act i.e. BR Act.

12. That it is relevant to point out Section 36AA read with Section 56 of BR Act: -

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

(1) Where the Reserve Bank is satisfied that in 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, [any chairman director,], chief executing officer (by whatever name called) or other officer or employee of the banking company.

- (2) *No order under sub-section (1) shall be made [unless the chairman, director] or Chief Executing 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.*

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

It is submitted that the circular dated 25.6.2021 also contravenes the provisions of Section 36AA of BR Act,

which empowers RBI to remove a CEO, if it is satisfied that it is necessary to do so in public interest or 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 by reasons recorded in writing. Such an order under sub section (1) can be made by RBI only after such CEO has been given a reasonable opportunity of making a representation against such order. Further such employee can prefer an appeal to Central Government against such an order within 30 days of date of communication of the same. Thus it can be seen that an order for removal of CEO can be done by RBI on a case to case basis on being satisfied of either of 3 conditions mentioned in Section 36AA(1) in accordance with the procedure laid therein. However the circular dated 25.6.2021 is a blanket order directing removal of all CEO working beyond 15 years, and no representations were ever invited from aggrieved CEO of cooperative banks.

13. That para 5 of the circular dated 25.6.2021 provides the procedure for obtaining approval from RBI for appointment/ reappointment /termination and

renumeration of MD/CEO by UCBs. It states that UCBs shall constitute a Nomination and Remuneration Committee (**hereinafter called NRC**) consisting of three directors from amongst the BoD. The NRC shall undertake a process of due diligence to determine the 'fit and proper status' of person being considered for appointment as MD/ WTD and also recommend the remuneration payable. On completion of the process, the NRC shall recommend the names of eligible candidates to BoD, who would pass a resolution for forwarding the name(s) of the candidates which would then be approved by RBI. For termination of services of MD/WTD before the expiry of tenure UCBs have to seek prior approval of RBI along with detailed reasons thereto. It is submitted that the said provisions contravene Section 28, 31 and 38 of State Act 2003.

14. That para no 2.2 of the circular dated 25.6.2021, mentions another circular dated 31.12.2019 issued by respondent no 2. Vide circular dated 31.12.2019, directions were issued to Primary UCBs with deposit size of Rs. 100 Crore and above for constitution of Board of Management (BoM). Further UCBs were directed to constitute make suitable amendments in their bye-laws to

constitute a BoM in addition to Board of Directors (BoD). Members of BoM had to satisfy 'fit and proper criteria' as laid down in Appendix I. It was also directed that UCBs having deposit size of Rs 100 Crore and above had to obtain prior approval of respondent no 2 for appointment of CEO. However the provisions relating to appointment of CEO in circular dated 31.12.2019 were repealed in terms of para 8 of circular dated 25.6.2021. In this connection a true copy of circular dated 31.12.2019 issued by respondent no 2 is being filed herewith and marked as **Annexure No. 8**.

15. That against circular dated 31.12.2021, **Writ Petition No. 10860 of 2021** was filed before **Hon'ble Karnataka High Court** by Nyayamithra Sahakari Bank. Petitioner therein contended that he is entitled to be regulated in terms of law made by a competent authority and State Legislation being a parent legislation under Entry 32 of List 2 of Schedule VII is entitled to conduct its affairs of management. Further Petitioner contended that RBI has no jurisdiction to issue the circular dated 31.12.2019 and prayed for a writ of appropriate nature declaring the same to be ultravires power of RBI under provisions of Banking Regulation Act 1949 and Entry 45 of List I in

contradistinction to the State Legislative powers under Entry 32 of List II and the Karnataka Co-operative Societies Act 1959, and to consequently quash the same. The Hon'ble Karnataka High Court vide its order dated 28.6.2021, was pleased to stay the operation and implementation of the circular dated 31.12.2019 pending disposal of writ petition. In this connection true/typed copy of order dated 28.6.2021 as downloaded from official website of Karnataka High Court is being filed and marked herewith as **Annexure no 9.**

16. That the bank is a society registered under the State Act of 2003, and is governed by the State Act 2003 and its byelaws in relation to its employees. Circular dated 25.6.2021 of RBI, providing for a different procedure for appointment/termination/re-appointment of employees of UCBs and further subjecting it to its absolute control; impinges upon the State Legislation thereby making the State Act of 2003 absolutely redundant or otios.
17. That as per Article 246 of Constitution of India, Parliament has exclusive power to legislate on matters enumerated in List I (Union List) of Schedule VII. Further State Legislature has exclusive power to legislate

on matters enumerated in List II (State List). The constitution was designed by its framers in such a manner, that no conflicts between the legislative fields in Union List and State List occur. To test the competence of any enactment, the courts devised doctrine of pith and substance; wherein if the pith and substance of legislation is within its legislative competence the same is held to be valid, even if it incidentally encroaches on matters of the other list. Relevant provisions of Entry 45 of List I (Union) and Entry 32 of List II (State List) have been enumerated below for the kind perusal of this court:-

“List I- Union List

Entry 45- Banking

List II- State List

Entry 32-Incorporation, regulation and winding up of corporations other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; cooperative societies.”

It is submitted that banking is in the exclusive domain of Union List. Banking has been defined in

Section 5(b) of Banking Regulation Act 1949(**hereinafter called BR Act**) as under:-

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

Thus from bare perusal of the above provisions it can be seen that banking functions of cooperative societies are within the legislative competence of RBI, whereas all other functions of cooperative societies are under the control of respective States. As circular dated 25.6.2021 is a delegated legislation fixing tenure of employees of cooperative banks; which is essentially a non-banking function of cooperative banks falling in exclusive domain of State Legislature, it is ultravires the parent act i.e BR Act.

18. That it is settled law that RBI has power to legislate in respect of banking functions of cooperative banks and State Legislations govern incorporation, management and winding-up of cooperative societies. The Constitutional bench of Supreme Court in Pandurang Ganapati Chowgle v Viswas Rao Patil Murgod Sahkari

Bank (2020) 9 SCC 215 has held that provisions in BR Act relating directly or indirectly to incorporation, management and winding up of cooperative banks were omitted as these were not in pith and substance within scope of any entry in Central or concurrent list; and fall within legislative competence of States in Schedule VII List II Entry 32. Relevant paragraphs are extracted hereinafter:

“28. What is of utmost importance is that extensive amendments and omissions of several provisions of the BR Act, 1949 became necessary concerning matters covered under List II Entry 32; as such various amendments were separately reflected in a separate chapter, amendments were incorporated under various provisions of the Act in Parts II-A, III and III-A. The provisions relatable directly or indirectly to incorporation, management and winding up of cooperative banks were proposed to be omitted as these Parts or provisions were not in pith and substance within the scope of any entry in the Central or Concurrent List of subjects in the Seventh Schedule of the Constitution of India.

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142.1(b) The cooperative banks run by the cooperative societies registered under the State legislation with respect to the aspects of “incorporation, regulation and winding up”, in particular, with respect to the matters which are outside the purview of Schedule VII List I Entry 45 of the Constitution of India, are governed by the said legislation relatable to Schedule VII List II Entry 32 of the Constitution of India.”

19. That against the circular dated 25.6.2021, petitioner submitted a representation dated 19.7.2021 to respondent no 2. In the representation, petitioner sought permission to retain present CEO/Secretary of Bank. It was stated that present CEO has been intimately associated with the bank since its very inception, and any abrupt change of MD/CEO would have serious destabilizing effect on the business of the bank; especially in the difficult times of the ongoing pandemic. It was also mentioned that present CEO of bank vide order dated 3.7.2017 issued by Registrar Cooperative Society, and the minutes of meeting of Task Force on Cooperative Urban Banks (TAFUCUB) for Uttarakhand dated 25.7.2017 the retirement age of CEO of Bank has already been increased to 65 years for the bank as an exception. It was

also prayed to allow present CEO to continue as CEO/Secretary of the bank till his date of retirement on 30.6.2023. In this connection a true copy of representation dated 19.7.2021 made by petitioners to respondent no. 2 is being filed herewith and marked as **Annexure No. 10.**

20. That on 26.7.2021, respondent no 3 issued an order addressed to petitioner, asking him to initiate the process of appointment of a new CEO in the bank in compliance to para 4.2 of the RBI circular dated 25.6.2021. Respondent no 3 contended that present CEO of bank has been holding the post of CEO of the bank for more than 15 years as on the date of issue of circular i.e. 25.6.2021. Further respondent no 3 directed Chairman to ensure compliance to the RBI circular and submit an action report not later than 25.8.2021.
21. That on 27.7.2021, petitioner submitted a representation against order dated 26.7.2021 to respondent no 3. Petitioner stated that a representation dated 19.7.2021 has already been filed by them before respondent no 2 against the circular dated 25.6.2021, which is still awaited. Further it was stated that as and when they

receive a reply to the same, an appropriate decision will be taken in the matter. In this connection a true copy of representation dated 27.7.2021 submitted by petitioners to respondent no 3 is being filed herewith and marked as **Annexure No. 11.**

22. That on 30.7.2021, respondent no 3 issued another order to petitioner, directing him to comply with circular dated 25.6.2021 and initiate process for fresh appointment of CEO. In this connection a true copy of order dated 30.7.2021 is being filed herewith and marked as **Annexure No. 12.**

23. That in the year 2011, Parliament enacted Constitution (Ninety Seventh Amendment) Act. Statement of objects and reasons state that “cooperative society” is a subject enumerated in Entry 32 of State List and the State legislatures have accordingly enacted legislations on cooperative societies. Further a strong need was felt for amending the constitution for amending the Constitution so as to keep the cooperatives free from unnecessary outside interference and also to ensure their autonomous organizational setup and democratic functioning. Extract of relevant provisions added by 97th Constitutional Amendment is given below:-

“Art 19. Protection of certain rights regarding freedom of speech etc:-

(1) All citizens shall have right –

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(c) to form associations or unions or cooperative societies;

Art 43B. Promotion of cooperative societies:-

The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.

Part XIB

THE COOPERATIVE SOCIETIES

Art 243ZH: Definitions.-

In this part, unless the context otherwise requires,-

(c) “co-operative society” means a society registered or deemed to be registered under any law relating to cooperative societies for the time being in force in any State;

(h) “State level cooperative society” means any cooperative society having its area of

operation extending to whole of State and defined as much in any law made by the Legislature of State.

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Art 243ZI. Incorporation of cooperative societies:-

Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member control, member economic participation and autonomous functioning.”

24. That from above provisions it is clear that Right to form cooperative societies is now a fundamental right under Article 19(1)(c). Further by Article 43B, a duty has been enjoined on the State to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies. It is submitted that circulars dated 25.6.2021 and 27.7.2021 issued by respondent no 2 and 3 respectively are ultravires Article 43B of Constitution, as they impinge

upon the autonomous functioning and democratic control of cooperative societies.

25. That the question regarding validity of Part IXB of Constitution of India, was settled by 3 judge bench of Hon'ble Supreme Court vide its judgement dated 20.7.2021 in **2021 SCC Online SC 474**. Therein Supreme Court by a majority decision struck down provisions contained in Part IXB dealing with State level cooperative societies, holding the same to be curtailment of exclusive legislative power of State as contained in Entry 32 List II; and being non-est for want of ratification of States under proviso to Article 368(2). Moreover the majority made operative the provisions contained in Part IXB of Constitution dealing with Multi-State Cooperative societies, by application of doctrine of severability. Relevant extract of the majority judgement is given below:-

“67. The aforesaid analysis of Part IXB of the Constitution leads to the result that though Article 246(3) and entry 32 List II of the 7th Schedule have not been ‘changed’ in letter, yet the impact upon the aforesaid articles cannot be said to be insignificant. On the

contrary, it is clear that by curtailing the width of Entry 32 List II of the 7th Schedule, Part IXB seeks to effect a significant change in Article 246(3) read with Entry 32 List II of the 7th Schedule inasmuch as the States exclusive power to make laws with regard to the subject of co-operative societies is significantly curtailed thereby directly impacting the quasi federal principle contained therein. Quite clearly, therefore the, Part IXB, insofar as it applies to co-operative societies which operate within a State, would therefore require ratification under both sub-clauses (b) and (c) of the proviso to Article 368(2) of the Constitution of India.”

In this connection true copy of judgement dated 20.7.2021 passed by Hon’ble Supreme Court in 2021 SCC Online SC 474 is being filed herewith and marked as **Annexure no. 13.**

26. That paragraph no 4 of circular dated 25.6.2021 and circular dated 26.7.2021 are arbitrary and unreasonable. There is no intelligible differentia or reasonable nexus to the object sought to be achieved. Further the said action is not proportional to the wrong it seeks to correct. It is submitted that the impugned circulars are in fact blanket orders for removal of all MD/CEO of all cooperative

banks on completion of their 15 years. No intelligible differentia has been made between banks whose growth has been constant and those banks whose growth is negative. Such an order is in fact counter-productive to the object it seeks to achieve; because if the head management of those cooperative banks who have been growing steadily is changed abruptly and suddenly an outsider is given charge then it would be detrimental to the interests of such bank, its depositors and shareholders. In fact it is contrary to the principles sought to be achieved by parent act i.e. BR Act which is promotion of efficient financial system in the country.

27. That there is no other adequate alternative remedy available to the petitioner except to approach this Hon'ble Court under Article 226 of the Constitution of India inter-alia on the following grounds:-

GROUND

- a) Because petitioners have challenged the very competency of RBI to issue such a circular qua the provisions of the Banking Regulation Act 1959 and Entry 45 of Union List in conjunction with provisions of

the State Act of 2003 and entry 32 of List II (State List) with reference to Article 19(1)(c) and Article 43-B of the Constitution of India. The very basis of the regulatory legislation in the nature of State Act of 2003, is to promote the cooperative movement by giving widest scope to Entry 32 of the State List. The tenure of employees of cooperative societies can be regulated only in terms of a State Legislation made under the State Act and not by RBI in terms of the impugned circular.

- b) Because the Board of Directors of bank on 30.4.2016 passed a resolution reappointing petitioner no 2 as its CEO and further increasing the age of retirement of CEO. Registrar Cooperative Society vide order dated 3.7.2017, approved the name of petitioner no 2 as CEO of Bank and also increased the retirement age of CEO of bank from 60 to 65 years. The same was approved by State Level Task Force for Cooperative Urban Banks (TAFUCB) in its minutes of meeting held on 25.7.2017.
- c) Because bank has been incorporated/registered as a Primary co-operative Society under the provisions of the Uttar Pradesh Cooperative Societies Act 1965, and upon banking license issued by the Reserve Bank of India, has

been conducting the banking operations as a Cooperative Bank since. On the creation of State of Uttarakhand and enactment of Uttaranchal Co-operative Societies Act 2003 the bank was deemed to be registered under Section 129 of State Act 2003. It should also be noted that primary co-operative Banks are under dual control. RBI exercise control over banking business of the bank under Banking Regulation Act 1949 (as amended from time to time). Matters concerning employees of bank are administered by bank itself subject to control of the Registrar cooperative societies and State of Uttarakhand as provided in State Act 2003. Thus RBI has got no powers to fix the minimum or maximum age limit or maximum term of office of any MD/CEO of urban co-operative banks. That comes under the jurisdiction of the Registrar, Co-operative Societies of the States concerned.'

- d) Because Almora Urban Cooperative Bank is a primary cooperative society within the meaning of Section 2(L-2) of the Uttarakhand Cooperative Societies Act, 2003. The Bank is not receiving any financial aid from the State Government and is doing business with the help of equity contributed by its shareholders. The State Government

has no financial control over the affairs of the Bank, except general control of the Registrar in terms of Uttarakhand Cooperative Societies Act 2003. Further the Bank is under the legislative control of State of Uttarakhand, as 'cooperative societies' falls in entry 32 of List II of Schedule 7.

- e) Because in the year 2003, State of Uttarakhand in exercise of its legislative powers under Entry 32 of Schedule 7 List II, framed Uttarakhand Cooperative Societies Act applicable on all cooperative societies in the State of Uttarakhand. Under the Act, Registrar of Cooperative Societies is to be appointed by the State Government for carrying out the purposes of the Act. Section 4 provides that a society may be registered if it has as its objects the goal of promotion of economic interest of its members or general welfare of its members in accordance with economic interest of its members. Further *cooperative principle* has been defined to include democratic member control and autonomy and independence as its essentials. Section 7 provides that the Registrar on his satisfaction that the object of proposed society is in accordance with Section 4 of the Act, shall register the society and its bye-laws.

- f) Because Chapter IV of the Act talks about Management of Societies. Section 28 therein states that subject to provisions of this act and the rules, final authority of a cooperative bank shall vest in the general body of its members or in circumstances as prescribed in the elected delegates of such members. Regarding appointment of CEO, Section 31 provides that CEO in every cooperative society shall be appointed and removed by the society, subject to rules and regulations framed under Section 121 and 122; and the emoluments and other conditions of service of the CEO shall be prescribed in the same. Section 121 empowers Registrar to frame regulations to regulate the emoluments and other conditions of service of employees of the cooperative society. Section 122 provides that State Government may constitute an authority for recruitment, training and disciplinary control of the employees of cooperative societies; and may require such authorities to frame regulations regarding same which shall be subject to approval of State Government. Regarding removal of an officer of cooperative society, Section 38 of the Act provides that if any officer of cooperative society has contravened or omitted to comply with the provisions of the act, the

Registrar may call upon the society to remove such employee. Thus from the said provisions it is clear that CEO of cooperative society shall be appointed and removed by society itself; subject to rules and regulations framed under Section 121 by Registrar Cooperative Societies or those framed under Section 122 by State Government.

- g) Because vide circular dated 25.6.2021, respondent no 2 and 3 issued detailed directions to the Primary (Urban) Co-operative Banks regarding appointment of Managing Director (**hereinafter called MD**) / Whole-Time Director (**hereinafter called WTD**). The circular was made in pursuance to powers conferred under Section 10, 10B, 10 BB, 35A, 35B, 36AA and 53A r/w Section 56 of Banking Regulation Act 1949 (as amended). The circular is applicable to all Primary (Urban) Cooperative Banks (UCBs). Paragraph No. 4 stipulates tenure of MD/WTD. It states that the post of MD/WTD shall not be held by the same incumbent for more than 15 years. Thereafter such person shall be eligible for reappointment thereafter after a minimum gap of three years during which such individual shall not be appointed or associated with the bank in any capacity either directly or indirectly. The

said provision is in direct contravention to Section 28 and Section 31 read with Section 121 and 122 of the State Act 2003, which provides that CEO shall be appointed and removable by the society subject to rules and regulations framed by State Government and Registrar.

- h) Because there is no provision in BR Act which empowers RBI to fix tenure of employees of cooperative societies as it concerns regulation of cooperative societies, which in pith and substance is a State subject in Entry 32 of List II. Thus the impugned orders being delegated legislations are ultravires the parent act i.e. BR Act.
- i) Because the circular dated 25.6.2021 also contravenes provisions of Section 36AA of BR Act, which empowers RBI to remove a CEO, if it is satisfied that it is necessary to do so in public interest or 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 by reasons recorded in writing. Such an order under sub section (1) can be made by RBI only after such CEO has been given a reasonable opportunity of making

a representation against such order. Further such employee can prefer an appeal to Central Government against such an order within 30 days of date of communication of the same. Thus it can be seen that an order for removal of CEO can be done by RBI on a case to case basis on being satisfied of either of 3 conditions mentioned in Section 36AA(1) in accordance with the procedure laid therein. However the circular dated 25.6.2021 is a blanket order directing removal of all CEO working beyond 15 years, and no representations were ever invited from aggrieved CEO of cooperative banks.

- j) Because para no 2.2 of the circular dated 25.6.2021, mentions another circular dated 31.12.2019 issued by respondent no 2. Vide circular dated 31.12.2019, directions were issued to Primary UCBs with deposit size of Rs. 100 Crore and above for constitution of Board of Management (BoM). Further UCBs were directed to constitute make suitable amendments in their bye-laws to constitute a BoM in addition to Board of Directors (BoD). Members of BoM had to satisfy 'fit and proper criteria' as laid down in Appendix I. It was also directed that UCBs having deposit size of Rs 100 Crore and above had to obtain prior approval of respondent no 2 for

appointment of CEO. However the provisions relating to appointment of CEO in circular dated 31.12.2019 were repealed in terms of para 8 of circular dated 25.6.2021.

- k) Because against circular dated 31.12.2021, **Writ Petition No. 10860 of 2021** was filed before **Hon'ble Karnataka High Court** by Nyayamithra Sahakari Bank. Petitioner therein contended that he is entitled to be regulated in terms of law made by a competent authority and State Legislation being a parent legislation under Entry 32 of List 2 of Schedule VII is entitled to conduct its affairs of management. Further Petitioner contended that RBI has no jurisdiction to issue the circular dated 31.12.2019 and prayed for a writ of appropriate nature declaring the same to be ultravires power of RBI under provisions of Banking Regulation Act 1949 and Entry 45 of List I in contradistinction to the State Legislative powers under Entry 32 of List II and the Karnataka Co-operative Societies Act 1959, and to consequently quash the same. The Hon'ble Karnataka High Court vide its order dated 28.6.2021, was pleased to stay the operation and implementation of the circular dated 31.12.2019 pending disposal of writ petition.

- l) Because the bank is a society registered under the State Act of 2003, and is governed by the State Act 2003 and its byelaws in relation to its employees. Circular dated 25.6.2021 of RBI, providing for a different procedure for appointment/termination/re-appointment of employees of UCBs and further subjecting it to its absolute control; impinges upon the State Legislation thereby making the State Act of 2003 absolutely redundant or otios.

- m) Because as per Article 246 of Constitution of India, Parliament has exclusive power to legislate on matters enumerated in List I (Union List) of Schedule VII. Further State Legislature has exclusive power to legislate on matters enumerated in List II (State List). The constitution was designed by its framers in such a manner, that no conflicts between the legislative fields in Union List and State List occur. To test the competence of any enactment, the courts devised doctrine of pith and substance; wherein if the pith and substance of legislation is within its legislative competence the same is held to be valid, even if it incidentally encroaches on matters of the other list. Banking is in the exclusive domain of Union List in entry 45 of List I of Seventh Schedule, whereas incorporation, management and

winding up of cooperative societies is in exclusive legislative domain of State Legislature in entry 32 of List II of Seventh Schedule. Banking has been defined in Section 5(b) of Banking Regulation Act 1949(hereinafter called **BR Act**) as under:-

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

As circular dated 25.6.2021 is a delegated legislation fixing tenure of employees of cooperative banks; which is essentially a non-banking function of cooperative banks falling in exclusive domain of State Legislature, it is ultravires the parent act i.e BR Act.

- n) Because it is settled law that RBI has powers to legislate in respect of cooperative banks with regard to their banking functions and State Legislations govern incorporation, management and winding-up of cooperative societies. The Constitutional bench of Supreme Court in Pandurang Ganapati Chowgle v Viswas Rao Patil Murgod Sahkari Bank (2020) 9 SCC 215 has held that provisions in BR Act relating directly

or indirectly to incorporation, management and winding up of cooperative banks were omitted as these were not in pith and substance within scope of any entry in Central or concurrent list; and fall within legislative competence of States in Schedule VII List II Entry 32.

- o) Because in the year 2011, Parliament enacted Constitution (Ninety Seventh Amendment) Act. Statement of objects and reasons state that “cooperative society” is a subject enumerated in Entry 32 of State List and the State legislatures have accordingly enacted legislations on cooperative societies. Further a strong need was felt for amending the constitution for amending the Constitution so as to keep the cooperatives free from unnecessary outside interference and also to ensure their autonomous organizational setup and democratic functioning. Extract of relevant provisions added by 97th Constitutional Amendment is given below:-

“Art 19. Protection of certain rights regarding freedom of speech etc:-

(2)All citizens shall have right –

xxxxxxxxxxx

(c) to form associations or unions or cooperative societies;

Art 43B. Promotion of cooperative societies:-

The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.

Part XIB

THE COOPERATIVE SOCIETIES

Art 243ZH: Definitions.-

In this part, unless the context otherwise requires,-

(c) “co-operative society” means a society registered or deemed to be registered under any law relating to cooperative societies for the time being in force in any State;

(h) “State level cooperative society” means any cooperative society having its area of operation extending to whole of State and defined as much in any law made by the Legislature of State.

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Art 243ZI. Incorporation of cooperative societies:-

Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member control, member economic participation and autonomous functioning.”

- p) Because from above provisions it is clear that Right to form cooperative societies is now a fundamental right under Article 19(1)(c). Further by Article 43B, a duty has been enjoined on the State to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies. It is submitted that circulars dated 25.6.2021 and 27.7.2021 issued by respondent no 2 and 3 respectively are ultravires Article 19(1)(c) and Article 43B of Constitution, as they impinges upon the autonomous functioning and democratic control of cooperative societies.
- q) Because the question regarding validity of Part IXB of Constitution of India, was settled by 3 judge bench of Hon'ble Supreme Court vide its judgement dated

20.7.2021 in **2021 SCC Online SC 474**. Therein Supreme Court by a majority decision struck down provisions contained in Part IXB dealing with State level cooperative societies, holding the same to be curtailment of exclusive legislative power of State as contained in Entry 32 List II; and being non-est for want of ratification of States under proviso to Article 368(2). Moreover the majority made operative the provisions contained in Part IXB of Constitution dealing with Multi-State Cooperative societies, by application of doctrine of severability.

- r) Because paragraph no 4 of circular dated 25.6.2021 and circular dated 26.7.2021 are arbitrary and unreasonable. There is no intelligible differentia or reasonable nexus to the object sought to be achieved. Further the said action is not proportional to the wrong it seeks to correct. It is submitted that the impugned circulars are in fact blanket orders for removal of all MD/CEO of all cooperative banks on completion of their 15 years. No intelligible differentia has been made between banks whose growth has been constant and those banks whose growth is negative. Such an order is in fact counter-productive to the object it seeks to achieve; because if the head

management of those cooperative banks who have been growing steadily is changed abruptly and suddenly an outsider is given charge then it would be detrimental to the interests of such bank, its depositors and shareholders. In fact it is contrary to the principles sought to be achieved by parent act i.e. BR Act which is promotion of efficient financial system in the country.

- s) Because in the year 1991 petitioner no 2 established Almora Urban Cooperative Bank with a meagre sum of Rs 2.56 lakh and a small workforce of 5 employees. In the year 1992 petitioner no 2 was appointed as Chief Executing Officer/General Manager/Secretary of the bank by its Board of Directors in compliance with the UP Cooperative societies act 1965 (and later Uttarakhand Cooperative Societies Act 2003) and its byelaws, and is still supervising the bank. After its establishment under the able leadership of petitioner no 2, the bank kept on growing and expanding tremendously. At present the bank has 50 branches functioning all over State of Uttarakhand, with a workforce of 700 employees. As on 30.6.2021, it had a working capital of 4,138.72 Crore. There are more than 4.50 lakh account holders in the bank. The private capital of the bank is more than 500.00

Crore and it has a profit of 29.46 Crore. In the financial year 2020-21, the bank paid an income tax of Rs 21.50 Crore. The bank has a CRAR of 33.53% much above the 9% stipulated by RBI. Petitioner no 2 has great liasioning with the customers of the bank. Further petitioner no 2 maintains cordial relations with all the staff of the bank, and till date there has never been any industrial relations problem in the bank. All these are proof of able leadership and relentless and untiring efforts of petitioner no 2.

- t) Because petitioner no 2 has been intimately associated with the bank since its very inception, and any abrupt change of MD/CEO would have serious destabilizing effect on the business of the bank; especially in the difficult times of the ongoing pandemic.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- i) Issue a writ or direction of appropriate nature declaring paragraph no 4 of circular bearing No. DOR.GOV.REC.25/12/10.000/2021-22 dated 25.6.2021 (Annexure no 1) issued by respondent no 2 ultravires the

powers of Reserve Bank of India under the provisions of Banking Regulation Act 1949 and Entry 45 List I (Union List of the Constitution of India) in contradistinction to the legislative powers of State Legislature under Entry 32 of List II (State List) of the Constitution of India and Chapter IV of Uttarakhand Cooperative Societies Act 2003; and consequently quash the circular bearing No. DOR.GOV.REC.25/12/10.000/2021-22 dated 25.6.2021 (**Annexure no 1**) issued by respondent no 2, by issuance of writ of certiorari.

- ii) Consequently issue a writ, order or direction in the nature of certiorari for quashing the circular bearing no. DoS(ADG) S-109/03.01.05/2021-22 dated 26.07.2021 (**Annexure No 2**) issued by respondent no 3.
- iii) Issue any other writ order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- iv) Award the cost of the writ petition in favor of the petitioner.

Dated: 08-2021

(Pooja Tiwari) (Devika Tiwari)

Advocates
Counsel for the petitioner

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL
AFFIDAVIT
IN

WRIT PETITION NO. OF 2021 (M/S)
(Under Article 226 of the Constitution of India)

District- Almora

Almora Urban Cooperative Bank & another

.....Petitioners

Versus

Union of India and others

.....Respondents

Affidavit of,
(Male) aged aboutyears,
S/o, presently
posted as Chairman, Almora Urban
Cooperative Bank.

Deponent

I, the deponent above named do hereby solemnly affirm
and state on oath as under:-

1. That the deponent is presently posted as Chairman,
Almora Urban Cooperative Bank and has been
authorized to file the instant writ petition and as such he
is fully acquainted with the facts and circumstances of
the case deposed in the accompanying writ petition.

I, the deponent above named do hereby solemnly affirm and state on oath that the contents of paragraph no. 1 of the affidavit and those of paragraph no.of the writ petition are true to my personal knowledge and those of paragraph no. of the writ petition are based on perusal of records and those of paragraph no. of the writ petition are based on legal advice, which all I believe to be true. Nothing material has been concealed in it.

So Help Me God

Deponent

I, Pooja Tiwari, Advocate, High Court of Uttarakhand at Nainital do hereby declare that the person making this affidavit and alleging himself to be deponent who is known to me from the perusal of the records produces before me in this case.

Solemnly affirmed before me on this day of, 2021 at about A.M./P.M. by the deponent who has been identified by the aforesaid Advocate.

I have satisfied myself by examining the deponent who understood the contents of this affidavit, which has been read over and explained to him by me.

Oath Commissioner

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL
INTERIM RELIEF APPLICATION NO..... OF 2021

On behalf of petitioners

IN

WRIT PETITION NO. OF 2021 (M/S)
(Under Article 226 of the Constitution of India)

District-Almora
Almora Urban Cooperative Bank through its Chairman,
Gururani Complex, Lala Bazaar, Almora.

.....Petitioner.

Versus

1. Union of India through its Secretary, Ministry of Finance,
15 Safdarjung Road, New Delhi-110006.
2. Reserve Bank of India through its Governor, Central
Office Building, 18th Floor, Shahid Bhagat Singh Road,
Mumbai-400001.
3. Reserve Bank of India through its Chief General
Manager, 74/1, GMVN Building, Rajpur Road,
Dehradun-248001.
4. State of Uttarakhand, through its Secretary, Cooperative
Department, Near Railway Crossing Miyawala,
Dehradun-248001.Respondents

To,

The Hon'ble Chief Justice and his other companion Judges of the aforesaid Court.

The humble application of the above named applicant/petitioner most respectfully showeth as under:-

1. That the full facts and circumstances stated in the accompanying writ petition which may form part of this application.
2. That it is expedient and necessary in the interest of justice that this Hon'ble Court may graciously be pleased to stay the effect and operation of impugned orders dated 25.6.2021 and 26.7.2021 issued by respondent no. 2 and 3 respectively, during the pendency of this Writ Petition, otherwise irreparable loss and injury will be caused to the petitioner which cannot be compensated in terms of money.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may Hon'ble Court may graciously be pleased to stay the effect and operation of impugned orders dated 25.6.2021 and 26.7.2021 issued by respondent no. 2 and 3 respectively, during the pendency of this Writ Petition, otherwise irreparable loss and injury will be caused to the petitioner which cannot be compensated in terms of money.

Dated: 08-2021

(Pooja Tiwari) (Devika Tiwari)
Advocates
Counsel for the petitioner

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL
AFFIDAVIT
IN
INTERIM RELIEF APPLICATION NO.....2021
ON Behalf of petitioners
IN
WRIT PETITION NO. OF 2021 (M/S)
(Under Article 226 of the Constitution of India)

District- Almora

Almora Urban Cooperative Bank

.....Petitioner

Versus

Union of India and others

.....Respondents

Affidavit of....., (Male)
aged about years,
S/o....., presently
posted as Chairman, Almora Urban
Cooperative Bank.

Deponent

I, the deponent above named do hereby solemnly affirm
and state on oath as under:-

1. That the deponent is presently posted as Chairman, Almora Urban Cooperative Bank and has been authorized to file the instant writ petition and as such he is fully acquainted with the facts and circumstances of the case deposed in the accompanying writ petition.

I, the deponent above named do hereby solemnly affirm and state on oath that the contents of paragraph no. 1 of the affidavit and those of paragraph no. of the application are true to my personal knowledge and those of paragraph no. of the application are based on perusal of records and those of paragraph no. of the application are based on legal advice, which all I believe to be true. Nothing material has been concealed in it.

So Help Me God

Deponent

I, Pooja Tiwari, Advocate, High Court of Uttarakhand at Nainital do hereby declare that the person making this affidavit and alleging himself to be deponent who is known to me from the perusal of the records produces before me in this case.

Advocate
Regd. No. D/3822/2017
Bar No. P-1131

Solemnly affirmed before me on this day of August, 2021 at about A.M./P.M. by the deponent who has been identified by the aforesaid clerk.

I have satisfied myself by examining the deponent who understood the contents of this affidavit, which has been read over and explained to him by me.

Oath Commissioner

SCHEDULE TO THE RULES

FORMAT NO. 3
IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT
NAINITAL
INDEX
IN
WRIT PETITION NO. OF 2021 (M/S)
(Under Article 226 of the Constitution of India)

District- Almora

Almora Urban Cooperative Bank

.....Petitioner

Versus

Union of India and others

.....Respondents

Sl.No.	Particulars	Page No.	Date of filing	Court fee paid	Part A/B
1.	Scrutiny Report				
2.	Presentation form				
3.	Index				
4.	Dates and Events				
5.	Court fees				
6.	Writ Petition				
7.	Affidavit				
8.	<u>Annexure No. 1</u> True copy of the true				

	copy of RBI circular dated 25.6.2021.				
9.	<u>Annexure No. 2</u> True copy of circular dated 26.7.2021.				
10.	<u>Annexure No. 3</u> True copy of resolution of Board of Directors of Bank dated 30.4.2016				
11.	<u>Annexure No. 4</u> True copy of order dated 3.7.2017 passed by Registrar Cooperative Society.				
12.	<u>Annexure No. 5</u> True True copy of minutes of meeting of TAFCUB dated 25.7.2017.				
13.	<u>Annexure No. 6</u> True copy of the banking license issued in favor of				

	bank.				
14.	<u>Annexure No. 7</u> True copy of bye-laws of bank.				
15.	<u>Annexure No. 8</u> True copy circular dated 31.12.2019 issued by respondent no 2.				
16.	<u>Annexure No. 9</u> True copy order dated 28.6.2021 as downloaded from official website of Karnataka High Court.				
17.	<u>Annexure No. 10</u> True copy of representation dated 19.7.2021 made by petitioners to respondent no. 2.				
18.	<u>Annexure No. 11</u> True copy of				

	representation dated 27.7.2021 submitted by petitioners to respondent no 3.				
19.	<u>Annexure No. 12</u> True copy of order dated 30.7.2021.				
20.	<u>Annexure No. 13</u> True copy of judgement dated 20.7.2021 passed by Hon'ble Supreme Court in 2021 SCC Online SC 474.				
21.	Interim Relief Application.				
22.	Affidavit support of Interim Relief Application.				
23.	Vakalatnama				

Dated: 08-2021

(Pooja Tiwari) (Devika Tiwari)
Advocates
Counsel for the petitioner

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

DATES AND EVENTS

IN

WRIT PETITION NO. OF 2021 (M/S)

(Under Article 226 of the Constitution of India)

District- Almora

Almora Urban Cooperative Bank

.....Petitioner

Versus

Union of India and others

.....Respondents

Sl.No.	Dates	Events
1.	1991	Petitioner no 2 established Almora Urban Cooperative Bank with a meagre sum of Rs 2.56 lakh and a small workforce of 5 employees. In the year 1992 petitioner no 2 was appointed as Chief Executing Officer /General Manager/Secretary of the bank by its Board of Directors in compliance with the UP Cooperative societies act 1965 (and later Uttarakhand Cooperative Societies Act 2003) and its byelaws, and is still supervising the bank. After

		<p>its establishment under the able leadership of petitioner no 2, the bank kept on growing and expanding tremendously.</p>
2.		<p>At present the bank has 50 branches functioning all over State of Uttarakhand, with a workforce of 700 employees. As on 30.6.2021, it had a working capital of 4,138.72 Crore. There are more than 4.50 lakh account holders in the bank. The private capital of the bank is more than 500.00 Crore and it has a profit of 29.46 Crore. In the financial year 2020-21, the bank paid an income tax of Rs 21.50 Crore. The bank has a CRAR of 33.53% much above the 9% stipulated by RBI. Petitioner no 2 has great liasioning with the customers of the bank. Further petitioner no 2 maintains cordial relations with all the staff of the bank, and till date there has never been any industrial relations problem in the bank. All these are proof of able leadership</p>

		and relentless and untiring efforts of petitioner no 2.
3.		<p>The bank has been incorporated/registered as a Primary co-operative Society under the provisions of the Uttar Pradesh Cooperative Societies Act 1965, and upon banking license issued by the Reserve Bank of India, has been conducting the banking operations as a Cooperative Bank since. On the creation of State of Uttarakhand and enactment of Uttaranchal Co-operative Societies Act 2003, the bank was deemed to be registered under Section 129 of State Act 2003. Primary co-operative Banks are under dual control. RBI exercise control over banking business of the bank under Banking Regulation Act 1949 (as amended from time to time). Matters concerning employees of bank are administered by bank itself subject to control of the Registrar cooperative societies and State of Uttarakhand as</p>

		provided in State Act 2003
4.	2003	State of Uttarakhand in exercise of its legislative powers under Entry 32 of Schedule 7 List II, framed Uttarakhand Cooperative Societies Act applicable on all cooperative societies in the State of Uttarakhand.
5.	2011	Parliament enacted Constitution (Ninety Seventh Amendment) Act. Statement of objects and reasons state that “cooperative society” is a subject enumerated in Entry 32 of State List and the State legislatures have accordingly enacted legislations on cooperative societies. Further a strong need was felt for amending the constitution for amending the Constitution so as to keep the cooperatives free from unnecessary outside interference and also to ensure their autonomous organizational setup and democratic functioning in view of which various provisions were added to the constitution.

6.	30.4.2016	Board of Directors of bank passed a resolution reappointing petitioner no 2 as its CEO and further increasing the age of retirement of CEO.
7.	3.7.2017	Registrar Cooperative Society vide its order, approved the name of petitioner no 2 as CEO of Bank and also increased the retirement age of CEO of bank from 60 to 65 years.
8.	25.7.2017	Petitioner no 2 name was approved by State Level Task Force for Cooperative Urban Banks (TAFUCB) in its minutes of meeting.
9.	31.12.2019	Circular issued by respondent no 2. Vide circular dated 31.12.2019, directions were issued to Primary UCBs with deposit size of Rs. 100 Crore and above for constitution of Board of Management (BoM). Further UCBs were directed to constitute make suitable amendments in their bye-laws to constitute a BoM in addition to Board of Directors (BoD). Members of BoM had to satisfy 'fit and proper criteria' as laid down in Appendix I. It

		<p>was also directed that UCBs having deposit size of Rs 100 Crore and above had to obtain prior approval of respondent no 2 for appointment of CEO. However the provisions relating to appointment of CEO in circular dated 31.12.2019 were repealed in terms of para 8 of circular dated 25.6.2021.</p>
		<p>Against circular dated 31.12.2021, Writ Petition No. 10860 of 2021 was filed before Hon'ble Karnataka High Court by Nyayamithra Sahakari Bank. Petitioner therein contended that he is entitled to be regulated in terms of law made by a competent authority and State Legislation being a parent legislation under Entry 32 of List 2 of Schedule VII is entitled to conduct its affairs of management. Further Petitioner contended that RBI has no jurisdiction to issue the circular dated 31.12.2019 and prayed for a writ of appropriate nature declaring the same to be ultravires power of RBI under</p>

		provisions of Banking Regulation Act 1949 and Entry 45 of List I in contradistinction to the State Legislative powers under Entry 32 of List II and the Karnataka Co-operative Societies Act 1959, and to consequently quash the same.
10.	28.6.2021	The Hon'ble Karnataka High Court vide its order was pleased to stay the operation and implementation of the circular dated 31.12.2019 pending disposal of writ petition.
11.	25.6.2021	Respondent no 2 and 3 issued detailed directions to the Primary (Urban) Co-operative Banks regarding appointment of Managing Director (hereinafter called MD) / Whole-Time Director (hereinafter called WTD). The circular was made in pursuance to powers conferred under Section 10, 10B, 10 BB, 35A, 35B, 36AA and 53A r/w Section 56 of Banking Regulation Act 1949 (as amended). The circular is applicable to all Primary (Urban) Cooperative Banks (UCBs). Paragraph

		No. 4 stipulates tenure of MD/WTD. It states that the post of MD/WTD shall not be held by the same incumbent for more than 15 years. Thereafter such person shall be eligible for reappointment thereafter after a minimum gap of three years during which such individual shall not be appointed or associated with the bank in any capacity either directly or indirectly.
12.	19.7.2021	Against the circular dated 25.6.2021, petitioner no 1 submitted a representation to respondent no 2. In the representation, petitioner no 1 sought permission to retain petitioner no 2 as CEO/Secretary of Bank. It was stated that petitioner no 2 has been intimately associated with the bank since its very inception, and any abrupt change of MD/CEO would have serious destabilizing effect on the business of the bank; especially in the difficult times of the ongoing pandemic. It was also mentioned that petitioner no 2 vide

		<p>order dated 3.7.2017 issued by Registrar Cooperative Society, and the minutes of meeting of Task Force on Cooperative Urban Banks (TAFUCB) for Uttarakhand dated 25.7.2017 the retirement age of petitioner no 2 has already been increased to 65 years for the bank as an exception. It was also prayed to allow petitioner no 2 to continue as CEO/Secretary of the bank till his date of retirement on 30.6.2023.</p>
13.	26.7.2021	<p>Respondent no 3 issued an order to Chairman, Almora Urban Cooperative Bank, asking him to initiate the process of appointment of a new CEO in the bank in compliance to para 4.2 of the RBI circular dated 25.6.2021. Respondent no 3 contended that petitioner no 2 has been holding the post of CEO of the bank for more than 15 years as on the date of issue of circular i.e. 25.6.2021. Further respondent no 3 directed Chairman to ensure compliance to the RBI circular and submit an action report before</p>

		25.8.2021.
14.	27.7.2021	Petitioners submitted a representation against order dated 26.7.2021 to respondent no 3. Petitioners stated that a representation dated 19.7.2021 has already been filed by them before respondent no 2 against the circular dated 25.6.2021, which is still awaited. Further it was stated that as and when they receive a reply to the same, an appropriate decision will be taken in the matter.
15.	30.7.2021	Respondent no 3 issued another order to Chairman of the bank, directing him to comply with circular dated 25.6.2021 and initiate process for fresh appointment of CEO.
16.	August2021	Hence this writ petition.

Dated: 08-2021

(Pooja Tiwari) (Devika Tiwari)
Advocates
Counsel for the petitioner

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL
COURT FEES
IN

WRIT PETITION NO. OF 2021 (M/S)
(Under Article 226 of the Constitution of India)

District- Almora

Almora Urban Cooperative Bank & another

.....Petitioners

Versus

Union of India and others

.....Respondents

SCHEDULE TO THE RULES
FORMAT NO. 1
IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT
NAINITAL
PRESENTATION FORM
(To be filled up by the Party/Advocate)

1. Case category.....
2. District
3. Titled as.....
4. Name of Advocate (s) with Bar Council Registration Numbers, Contact Numbers, e-mail addresses etc.
.....
.....
.....
5. Contact numbers, email address of petitioner/appellant/applicant etc.
6. Copies served on whom.....
7. Mode of Service
8. Date of the Service.....
9. Any other information.....

Signature

(Pooja Tiwari)
(Name of Advocate)

Date:
Place:

SCHEDULE TO THE RULES
FORMAT NO. 2
IN THE HON'BLE HIGH COURT OF UTTARAKHAND AT
NAINITAL
SCRUTINY REPORT

1. Filed on.....
2. Case No.....3. CNR Number.....
4. Court Fees paid and if sufficient.....
5. If No, Deficiency of.....
6. Limitation Began on.....Expired on.....
7. If barred by Limitation, there is delay ofdays
8. If Delay Condonation application is filed.....
9. If any Caveat has been filed.....
If Yes by.....
10. Caveator served/not served.....
11. Notice served on opposite party on.....
12. This is.....
.....
13. Defects, if any-
 - (1)
 - (2)
 - (3)
 - (4)
 - (5)
14. Remarks, if any

A.R.O./R.O./S.O.

S.O/A.R. (Stamp Reporting)

S.O./A.R. (Defects Scrutiny)

D.R. (Institution)