IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, THE CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.9147 and 9150 of 2020
and W.M.P.Nos.11162, 11157, 11163 and 11156 of 2020

Big Kanchipuram Cooperative Town
Bank Ltd. (No.3),
Rep. by its President,
No.90-91, Annai Indira Gandhi Salai,
Kanchipuram. .. Petitioner in WP.9147/20

The Velur Co-operative Urban Bank
Ltd., No.20, Rep. by its President,
32-A, Cauvery Road, Velur, Paramathi
Velur Taluk, Namakkal District. .. Petitioner in WP.9150/20

-vs-

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

2.Reserve Bank of India,
16, Rajaji Salai, Fort Glacis,
Chennai, Tamil Nadu 600 001. ..Respondents in both WPs.

PRAYERS: Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Declaring Sections 4(A), 4(F), 4(G), 4(J), 4(L), 4(M) and 4(Q) of the Banking Regulation amendment Ordinance 2020 as ultra vires and unconstitutional for being without legislative competence and violative of Article 123 (3) r/w Article 246 and Entry 32, List II, Schedule VII of the Constitution of India.

For Petitioners : Mr.P.H.Aravindh Pandian
Addl. Advocate General
assisted by
Mr.L.P.Shanmugasundaram

For Respondent No.1 : Mr.R.Sankaranarayanan
Addl. Solicitor General of India
assisted by
Mr.C.V.Ramachandramoorthy
SCGSC, for R-1

For Respondent No.2 : Mr.A.L.Somayaji,
Senior Counsel
for Mr.C.Mohan
for M/s.King & Partridge

COMMON ORDER

THE CHIEF JUSTICE

The petitioners herein are some of the pioneers in Cooperative Banking in this country and their activities date back almost to a century. They have pitched up a challenge to the constitutional

validity of certain Sections of the Banking Regulation Amendment Ordinance, 2020 promulgated on 26.06.2020 as being *ultra vires* the Constitution of India, on the ground that the impugned Ordinance legislates on subject matters which are entirely beyond the legislative competence of the Union Parliament and cannot be presumed to be covered by Entries 43 and 45 of List I of the Seventh Schedule to the Constitution of India, in as much as the petitioners are Cooperative Societies and, therefore, the impugned Ordinance amounts to impinging upon the rights of the Cooperative Societies to be governed exclusively by State framed law, which stands protected by virtue of Entry 32 of List II of the Seventh Schedule to the Constitution of India. The contention is that the incorporation, organization, regulation and functioning of the cooperative society by itself would not constitute the activity of Banking, which is managed as a business by the Cooperative Society and, therefore, the impugned Ordinance, which encroaches upon this field of legislation, is totally beyond the Ordinance making power of the Centre and parliamentary competence and hence, the Ordinance deserves to be struck down.

2. The offending provisions, which are alleged to be suffering from incompetence and may ultimately suffer the pain of invalidation contained in the Ordinance, have been enumerated by the petitioner banks in the affidavit filed in support of the petitions. Paragraphs (10) to (25) of the affidavit filed in support of W.P.No.9150 of 2020 are extracted herein under:

> *"**Unconstitutionality of Section 4(A) of the Amendment Ordinance***
>
> *10. I am advised to state that section 4(A) of the Amendment Ordinance substitutes the words "Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act" for the words "The provisions of this Act, as in force for the time being" in section 56 of the Banking Regulation Act, 1949. I am advised to state that as a result of the said section 4(A) of the Amendment Ordinance, provisions of section 56 of the Banking Regulation Act, post amendment would apply notwithstanding anything contained in any other law for the time being in force. A mere perusal of section 56 of the Banking Regulation Act, as amended by the Amendment Ordinance, deals*

with matters pertaining to "incorporation, regulation and winding up" in addition to matters relating to "banking". I am advised to state that insofar as the provisions relating to "banking" are concerned, the exclusive domain for legislation lies with the Parliament whereas, for matters pertaining to "incorporation, regulation and winding up", the exclusive domain for legislation lies with the State. Consequently, it is submitted that insofar as the non obstante clause introduced vide section `in the Amendment Ordinance, the effect of the said provisions would be to supersede provisions made in the State Legislation, i.e. the Cooperative Societies Act in relation to "incorporation, regulation and winding up", as a result of which, the Central legislation would be colourably enforced on aspects which are exclusively covered by the State Legislation, for which reason alone section 4(A) of the Amendment Ordinance ought to be found unconstitutional for want of legislative competence, as matters pertaining to Entry 32, List II are also superseded by the impugned section 4(A) of the Amendment Ordinance.

Unconstitutionality of Section 4(F) of the Amendment Ordinance, 2020

11. I am advised to state that vide section 4(F) of the Amendment Ordinance, section 56(fi), section 56(fii) and section 56(g) of the Banking Regulation Act, 1949 are omitted. Prior to the amendment, section 56(fi) provides for certain modifications to section 8 of the Banking Regulation Act, 1949, in relation to its application to cooperative banks. Similarly, section 56(fii) provides for certain modifications to section 9 of the Banking Regulation Act, 1949, in relation to its application to cooperative banks. Similarly, section 56(g) of the Banking Regulation Act, 1949, prior to the amendment, provided that sections 10, 10A, 10B, 10BB, 10C and 10D of the Banking Regulation Act, 1949, would not apply to cooperative banks. I am advised to state that the modifications made vide section 56 to the Banking Regulation Act, 1949, in relation to the applicability of the said Act to cooperative banks, have been withdrawn by the impugned section 4(F) of the Amendment Ordinance. By virtue of section 4(F) of the Amendment Ordinance, sections 56(fi), section 56(fii) and section 56(g), stand omitted, as a result of which, section 8, 9, 10, 10A, 10B, 10BB, 10C and 10D as they exist in the Banking Regulation Act, 1949, would directly become applicable to cooperative banks.

12. I state that with the applicability of sections 10, 10A, 10B, 10BB, 10C and 10D of the Banking Regulation Act, 1949 to cooperative bank, essential aspects of management of cooperative banks, which were previously governed by the concerned state legislations, shall now be governed by the Banking Regulation Act. I am advised to state that section 10 deals with the prohibition of employment of managing agents and restrictions on certain forms of employment. Section 10A of the Act deals with the obligation to the board of directors to include persons with professional or other experience. Section 10B of the Act deals with the obligation of the banks to be managed by whole time Chairman. Section 10BB of the Act deals with the power of the Reserve Bank to appoint a Chairman to the Board of Directors who may be appointed on a whole-time basis or a Managing Director for the banking company. Section 10C of the Act deals with the requirement for the chairman and certain Directors to hold qualification shares. Section 10D of the Act deals with the overriding of all other laws, contracts, etc by sections 10A and 10B of the Act. I am advised to state that as a result of the section 4(F) of the Amendment Ordinance, section 10, 10A, 10B, 10BB, 10C and 10D of the Act, which deal with management of these companies, have been

made applicable to cooperative banks.

13. I state that management of cooperative societies, including cooperative banks, being matters which can be legislated under Entry 32, List II and as such, cannot be governed by sections 10, 10A, 10B, 10BB, 10C and 10D of the Banking Regulation Act, 1949. I am advised to state that the effect of section 4(F) of the Amendment Ordinance is to make applicable to cooperative banks, section 10, 10A, 10B, 10BB, 10C and 10D, which are enacted in exercise of powers under Entries 43, 45 and 38 of the Constitution of India. Consequently, it is submitted that section 4(F) of the Amendment Ordinance, which makes applicable the aforesaid sections relating to management to cooperative banks, is without legislative competence and as such, deserves to held as null, void and unconstitutional.

Unconstitutionality of Section 4(G) of the Amendment Ordinance, 2020

14. I am advised to state that vide section 4(G) of the Amendment Ordinance, section 56(i) of the Banking Regulation Act, 1949 stands amended. Prior to the amendment, section 56(i) excluded the applicability of

sections 12, 12A, 13, 15, 16 and 17 of the Banking Regulation Act, 1949 to cooperative banks. By virtue of section 4(G) of the Amendment Ordinance, section 56(i) has been amended and sections 12A, 13, 15, 16 and 17 of the Act have been made applicable to cooperative banks. Further, section 12 of the Act has been modified, insofar as its application to cooperative banks is concerned. Section 12 deals with access to capital, i.e. regulation of paid-up capital, subscribed capital and authorized capital and voting rights of shareholders. Section 12A regulates acquisition of shares or voting rights in the banking company. Section 13 restricts and prohibits commission, brokerage, discount, etc. on sale of shares. Section 15 deals with restrictions as to payment of dividend. Section 16 prohibits having of directors and prescribes norms for management of the banking company. Section 17 deals with the reserve fund that needs to be maintained by a bank.

15. I am advised to state that as a result of section 4(G) of the Amendment Ordinance, provisions which were previously excluded in their application to cooperative banks on account of Entry 32, List II, have now been made applicable, thereby making matters concerning incorporation, regulation and winding up of

cooperative banks, come within the purview of the Banking Regulation Act, passed under Entries of the Union List, which does not have any competence over the said subject matters. I am advised to state that section 12, dealing with share capital and access to funds, is an essential facet of the very incorporation of the cooperative bank and regulations with respect to such terms and norms of incorporation directly impinge upon the legislative competence of the State under Entry 32 of List II, for which reason alone, section 4(G) of the Amendment Ordinance deserves to be held unconstitutional for lack of legislative competence. Further, it is submitted that section 12A, dealing with voting rights concerns the management of the cooperative banks, for which, regulations can only be prescribed under Entry 32 of List II. Consequently, section 4(G), which provides for application of section 12A in connection with cooperative banks, seeks to introduce laws made under Entry 43, 45 and 38 of List I to matters falling within Entry 32 of List II, for which reason also, section 4(G) of the Amendment Ordinance is without legislative competence. Further, section 16 of the Act provides for restrictions on persons who can be appointed as directors in the cooperative banks, which, beyond an iota of doubt, is a matter concerning management of the cooperative bank, on which,

regulations can be made under Entry 32 of List II only. For this reason as well, section 4(G) of the Amendment Ordinance, which makes section 16 applicable to cooperative banks, should be found unconstitutional.

Unconstitutionality of Section 4(J) of the Amendment Ordinance

16. I am advised to state that vide section 4(J) of the Amendment Ordinance, section 56(r), section 56 (ri) and section 56(sa) of the Banking Regulation Act, 1949 stand omitted. Prior to the amendment, section 56(r) omitted section 25 of the Banking Regulation Act, 1949, in its applicability to cooperative banks. Section 56(ri) made modifications to section 26, in their application to cooperative banks and section 56(sa) provided for an different audit mechanism for cooperative banks, by substituting section 30 with a different mechanism, insofar as cooperative banks were concerned. By virtue of section 4(J) of the Amendment Ordinance, with sections 56(r), 56(ri) and 56(sa) having been repealed, section 25, 26 and 30 of the Banking Regulation Act, have been made applicable to cooperative banks. The exclusions and modifications, which had been previously given to cooperative banks, in deference to the difference in

legislative competence of the Parliament in relation to cooperative banks have been taken away, as a result of which provisions enacted under Entry 43, 45 and 38 for management of commercial banks, have been extended to cooperative banks, in respect of which matters concerning management can be provided for under Entry 32, List II only.

17. I am advised to state that prior to section 4(J) of the Amendment Ordinance, the RBI under section 56(sa) was only competent to pass orders for additional audit, without prejudice to any other law. However, by virtue of section 4(J) of the Amendment Ordinance, section 30 of the Banking Regulation Act, has been made directly applicable to cooperative banks, as a result of which cooperative banks have been put at par with commercial banks in relation to audit obligations and extensive powers in this regard have been conferred on the RBI, which by law, cannot have any supervisory powers on non-banking aspects of a cooperative society, including on matters of audit, which essentially is a facet of management itself. For this reason alone, I am advised to state that section 4(J) of the Amendment Ordinance, 2020 is unconstitutional and invalid for lack of legislative competence, as it enables by enactment through

reference, the application of section 30 to cooperative banks, which in respects of audit, can only be governed by a state legislation under Entry 32 and not under a central legislation like the Banking Regulation Act.

Unconstitutionality of Section 4(L) of the Amendment Ordinance, 2020

18. I am advised to state that vide section 4(L) of the Amendment Ordinance, section 56(u), section 56 (v), section 56(x), section 56(y), section 56(z) and section 56(za) of the Banking Regulation Act, 1949 stand omitted. Prior to the amendment, section 56(u) provided for the omission of sections 32 to 34 in the application of the Banking Regulation Act, in connection with cooperative banks. Section 56(v) provided for the exclusion of section 34A(3) to be omitted in connection with the application of the Banking Regulation Act, in connection with cooperative banks. Section 56(x) provided for modification of certain words in section 35A of the Banking Regulation Act, in connection with cooperative banks. Section 56(y) provided for the omission of section 35B, in relation to the application of the Banking Regulation Act, to cooperative banks. Section 56(z) provided for certain modifications to section 36 in connection to its application to

cooperative banks. Section 56(za), modifications were made to section 36A of the Banking Regulation Act, in connection with cooperative banks.

19. As a result of section 4(L) of the Amendment Ordinance, sections 32 to 34, which were previously excluded from application in connection to cooperative banks have now been made applicable. Section 32 deals with copies of balance-sheets and accounts to be sent to Registrar of Companies, whereas section 33 deals with obligations to display of audited balance-sheet by companies incorporated outside India. Section 34 provides that the accounting practices prescribed under the Banking Regulation Act shall be prospective. I am advised to state that as a result of section 4(L) of the Amendment Ordinance, new obligations, pertaining to the accounts and consequently, the management of cooperative banks has been made applicable. I state that such obligations cannot be imposed on cooperative banks by a central legislation, as it pertains to the very management of the cooperative society, which can only be dealt with under Entry 32, List II.

20. Similarly, as a result of section 4(L), section 56(y) of the Banking Regulation Act has been omitted, consequent to which section 35B of the Banking

Regulation Act has been made applicable to cooperative banks. I state that section 35B of the Act which provides for certain provisions relating to appointments of Managing Directors, etc in banking companies. I state that the said provision also requires the cooperative bank to take prior approval of the RBI in relation to matters concerning appointment of managing directors, etc in banking companies. I am advised to state that these provisions amount to restrictions on the management rights of cooperative banks, which restrictions can only be imposed under Entry 32, List II, failing which, they are ultra vires.

21. In light of the above, it is most humbly submitted that section 4(L) of the Amendment Ordinance is unconstitutional and ultra vires, for having been passed without legislative competence.

Unconstitutionality of Section 4(M) of the Amendment Ordinance, 2020

22. I am advised to state that vide section 4(M) of the Amendment Ordinance, section 56(zaa) of the Banking Regulation Act stands amended. Prior to the amendment, section 56(zaa) provided for certain modifications to section 36AAA in its application to

cooperative societies. By virtue of the amendment in section 56(zaa) vide section 4(M) of the Amendment Ordinance, the applicability of section 36AAA is extended to intra-state cooperative banks, in addition to multi-state cooperative banks, as a result of which the power to supersede the board of the cooperative bank is conferred upon the RBI, even in relation to local and intra-state cooperative banks, which power as such is in derogation of the powers conferred on the Registrar of Cooperative Societies of the State, who is merely given a consultative role in proviso to section 36AAA(1) as introduced by section 4(M) of the Amendment Ordinance, 2020.

23. I state that as a result of the said amendment, powers to supersede the board of a cooperative bank, which is an essential facet of the power to regulate its management, is conferred on the RBI, for which, no powers vest with the Parliament, but can only be done under Entry 32 of List II. Consequently, it is submitted that section 4(M) of the Amendment Ordinance is unconstitutional for want of legislative competence.

Unconstitutionality of Section 4(Q) of the Amendment Ordinance

24. I am advised to state that vide section 4(Q) of the Amendment Ordinance, section 56(zg) of the Banking Regulation Act stands amended. Prior to the amendment, section 49B and 49C of the Banking Regulation Act were not applicable to cooperative banks. Section 49C deals with the power to amend the MOA of a banking company. I state that by virtue of the amendment in section 4(Q) of the Amendment Ordinance, section 49C has been made applicable to cooperative banks, as a result of which, amendments to the MOA, which is also a facet of incorporation and management, cannot be undertaken without consent from the RBI. Consequently, it is submitted that an essential facet of management and regulation is being dealt with, vide section 4(Q) of the Amendment Ordinance, for which, the Parliament has no legislative competence, being within the exclusive domain of Entry 32, List II. Consequently, it is submitted that section 4(Q) of the Amendment Ordinance is unconstitutional and ultra vires.

25. I state that from the foregoing discussion and for the grounds stated herein below, sections 4(A), 4(F), 4(G), 4(J), 4(L), 4(M) and 4(Q) of the Amendment Ordinance are without legislative competence and consequently, null, void and unconstitutional."

To support the said allegations, sixteen grounds have been taken with the aid of the provisions of the Constitution of India; the Banking Regulation Act, 1949, and other ancillary enactments coupled with the following judgments:

(i)S.R.Bommai v. Union of India, (1994) 3 SCC 1;

(ii)Sant Sadhu Singh v. State of Punjab, AIR 1970 PH 528 (Punjab and Haryana High Court);

(iii)Nagpur District Central v. Divisional Joint Registrar, AIR 1971 Bom 365 (Bombay High Court);

(iv)***Virendra Pal Singh v. District Assistant Registrar, (1980) 4 SCC 109***; and

(v)***K.K.Baskaran v. State of Tamil Nadu, (2011) 3 SCC 793***.

3. Shri Aravindh Pandian, learned Additional Advocate General appearing on behalf of the petitioners articulated his submissions by tracing the background of the Ordinance and contended that the impugned Ordinance proceeds to amend the Banking Regulation Act, 1949, the amendment whereof was sought through a Bill

introduced in the Parliament on 3.3.2020. The Ordinance inaugurates by announcing that since the said Bill could not be taken up for consideration and passing in the House of the People, as the Parliament was not in session, the President of India was satisfied that circumstances did exist that rendered it necessary to take immediate action and, therefore, exercising powers under Article 123(1) of the Constitution of India, the Ordinance was being promulgated, the date of promulgation being 26.06.2020.

4. Shri Pandian pointed out that the Bill had been introduced in the House of People on 3.3.2020, while the Parliament's competence to amend the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, "*the SARFAESI Act*") in relation to its applicability to Cooperative Banks was staged in a challenge before the Constitution Bench of the Apex Court for being answered in a reference in view of certain conflicting decisions of the Apex Court, in the case of ***Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Ltd., 2020 SCC OnLine SC 431***.

The judgment of the Constitution Bench came to be pronounced on 5.5.2020. It is urged that keeping in view the answer given by the Constitution Bench of the Apex Court in the said reference, the entity of a Cooperative Society stands protected and, according to Shri Pandian, the judgment categorically holds that the affairs of a Cooperative Society running a Bank, other than its banking affairs, would continue to be controlled by law made by the State Legislature exclusively under Entry 32 of List II of the Seventh Schedule to the Constitution of India.

5. Shri Pandian contends that the answers given by the Constitution Bench, therefore, clearly save the laws relating to incorporation, regulation and winding up of Cooperative Societies, the subject matter whereof falls exclusively within the competence of the State Legislature and hence, any law, including the impugned Ordinance, trenching upon Entry 32 of List II of the Constitution of India is liable to be struck down, as it is totally beyond the competence of the Parliament and, therefore, also beyond the Ordinance making power of the Centre.

6. Shri Pandian has extensively taken us through the judgment of the Constitution Bench, but in order to appreciate the arguments, it would be apt to reproduce the question raised and the answer given by the Constitution Bench for a bird's eye view of the issue decided therein. Paragraph (1) of the judgment that poses the question to be answered by the Constitution Bench is extracted herein under:

> *"The matters have been referred in view of conflicting decisions in Greater Bombay Coop. Bank Ltd v. United Yarn Tex (P) Ltd., (2007) 6 SCC 236, Delhi Cloth & General Mills Co. Ltd. v. Union of India, (1983) 4 SCC 166, T. Velayudhan Achari v. Union of India, (1993) 2 SCC 582 and Union of India v. Delhi High Court Bar Association, (2002) 4 SCC 275.* ***The question relates to the scope of the legislative field covered by Entry 45 of List I viz. 'Banking' and Entry 32 of List II*** *of the Seventh Schedule of the Constitution of India, consequentially power of the Parliament to legislate.* ***The moot question is the applicability of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') to the co-operative banks.***

The Parliament's competence to amend Section 2(c) of the SARFAESI Act by adding sub-clause '(iva) - a multi-State co-operative bank' has also been questioned. ***The issue arises whether*** *the definition of 'banking company' contained in Section 5(c) of the* ***Banking Regulation Act, 1949*** *(for short, 'the BR Act, 1949')* ***covers cooperative banks*** *registered under the State law and also multi-State co-operative societies under the Multi-State Co-operative Societies Act, 2002 (for short, 'the MSCS Act').* ***Consequently, (i) whether cooperative banks at State*** *and multi-State level* ***are co-operative banks*** *within the purview of the SARFAESI Act? and (ii) whether provisions of the SARFAESI Act apply to the co-operative banks registered under the MSCS Act ?"*

7. The answer given in the reference is contained in paragraph (103) of the report, which is extracted herein under:

"103. Resultantly, we answer the reference as under:

(1) (a) ***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.***

(b) ***The co-operative banks run by the co-operative 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 Entry 45 of List I of the Seventh Schedule of the Constitution of India,* ***are governed by the said legislation relatable to Entry 32 of List II of the Seventh Schedule of the Constitution of India.***

(2) ***The co-operative banks involved in the activities related to banking are covered*** *within the meaning of 'Banking Company' defined under Section 5(c) read with Section 56(a) of the Banking Regulation Act, 1949, which is a legislation relatable to Entry 45 of List I.* ***It governs the aspect of 'banking'*** *of co-operative banks run by the co-operative societies.* ***The co-operative banks***

cannot carry on any activity without compliance of the provisions of the Banking Regulation Act, 1949 and *any other legislation applicable to such banks* ***relatable to 'Banking'*** *in Entry 45 of List I and the RBI Act relatable to Entry 38 of List I of the Seventh Schedule of the Constitution of India.*

(3) (a) The co-operative banks under the State legislation and multi-State co-operative banks are 'banks' under section 2(1)(c) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. ***The recovery is an essential part of banking; as such, the recovery*** *procedure prescribed under section 13 of the SARFAESI Act, a legislation relatable to Entry 45 List I of the Seventh Schedule to the Constitution of India, is applicable.*

(3)(b) The Parliament has legislative competence under Entry 45 of List I of the Seventh Schedule of the Constitution of India ***to provide additional procedures for recovery*** *under section 13 of the 159 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,*

2002 with respect to co-operative banks. ***The provisions of Section 2(1)(c)(iva), of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002****, adding "ex abundanti cautela", 'a multi-State co-operative bank'* ***is not ultra vires as well as the notification dated*** *28.1.2003 issued with respect to the co- operative banks registered under the State legislation."*

8. It is the submission of the learned Additional Advocate General for the petitioners that after the Bill had been introduced in the Parliament on 3.3.2020, the Constitution Bench judgment intervened on 5.5.2020 and it is barely a month thereafter, on 26.6.2020, that the Ordinance came to be promulgated. The argument is that once the Constitution Bench had declared a law particularly about incorporation, regulation and winding up relating to Cooperative Societies running Cooperative Banks to be protected and governed by the legislation relatable to Entry 32 of List II of the Seventh Schedule to the Constitution of India, then the impugned Ordinance amounts to clearly overruling and overriding the law

declared by the Apex Court that almost came immediately preceding the issuance of the Ordinance.

9. Relying on the various paragraphs of the judgment of the Constitution Bench, Shri Pandian, submits that undisputedly both the petitioners are registered and are presently governed by the Tamil Nadu Cooperative Societies Act, 1983. He submits that the Reserve Bank of India exercises control over all banking business activities of the petitioners and was continuing to do so under the existing laws prior to the impugned Ordinance, with which the petitioners have no qualms, and any law made by the Parliament relating to the banking affairs of the Society can be countenanced for being enforced keeping in view the aforesaid constitutional position as urged by him, but once the law travels beyond the banking affairs of the society, the same is not incidental or a minimal trenching on the entity of the society, as would be evident from the impugned provisions of the Ordinance which are under challenge. He submits that by virtue of the impugned Ordinance, it is not only the banking affairs which are sought to be controlled, but

it is the very entity of the society which is sought to be now controlled by parliamentary legislation, thereby making the State legislation completely redundant. He submits that the Constitution Bench has appreciated this split between the entity of a society and its activity and while ruling on the activity of the Cooperative Banks run by the Cooperative Societies, has clearly carved out a distinction of the applicability of laws which relate to banking affairs and those that relate to other than banking affairs of the society.

10. It is then urged that the Constitution Bench was dealing with the amendments in the SARFAESI Act, which was clearly an amendment in order to regulate, control and simplify the mode of recovery of bank loans, as there were many defaulting bankers, as well as large number of defaulting customers, that was leading to a collapse of cooperative banking and other financial constraints. He submits that it is in the said context that the Constitution Bench went into the issue of the competence of the Parliament *vis-a-vis* the State Legislature and pronounced that such an amendment in the SARFAESI Act related to the banking affairs of a Cooperative

Bank run by a Cooperative Society and consequently, while doing so, the Constitution Bench has saved the affairs of the Cooperative Society, which is a Cooperative Bank, other than the banking affairs of such society.

11. Shri Pandian then points out that if the arguments advanced before the Constitution Bench by the Central Government and the Reserve Bank of India are scanned, the same would clearly reflect that the governance of the Cooperative Banks run by the Cooperative Societies were depicted unequivocally so as to protect the Cooperative Societies running Cooperative Banks to the extent the State was exclusively competent to make laws under Entry 32 of List II of the Seventh Schedule to the Constitution of India. The impugned Ordinance, according to Shri Pandian, is therefore a reversal of the said stand and is also unconstitutional, as the Parliament/Centre does not have any legislative competence to the extent the laws that have now been introduced by the impugned Ordinance so as to amend the Banking Regulation Act, 1949.

12. To elaborate and substantiate his submissions, he submits that the Constitution Bench has virtually thrashed out the distinction between the entity of a Cooperative Society running a Cooperative Bank and the activity of banking, for which he has invited the attention of the Court to paragraphs (34) to (44) of the Constitution Bench judgment and has also referred to the definition of a "*banking company*" under Section 5(c) and Section 6(1) of the Banking Regulation Act, 1949. He has also referred to the Constitutional entries that fall for consideration that have also been extracted in paragraph (20) of the judgment to gather the legislative competence of the Parliament with respect to Cooperative Banks within the State. To emphasize on his submissions, he has laid stress on the language used in paragraphs (41) to (44) of the judgment of the Constitution Bench, which are extracted herein under:

> *"41. In our opinion, the framers of the Constitution cannot be said to have confined the meaning of 'banking' to a particular definition, as given in the BR Act, 1949. The word 'banking' has been incorporated in Entry 45 of List I. The decision in Rustom Cavasjee*

Cooper v. Union of India, (1970) 1 SCC 248, vividly leaves no room for doubt that banking done by the co-operative bank is covered within the ambit of Entry 45 of List I. The decision in State of Madras v. Gannon Dunkerley & Co., (Madras) Ltd., AIR 1958 SC 560 stands neutralised by introduction of Article 366(29A) of the Constitution of India and the meaning of the said term has been redefined. Entries have to be given full effect in pith and substance considering forms of business of cooperative banks performing the activities of banking under a licence. The same is covered within the purview of Entry 45 of List I.

42. On the strength of Sections 32 and 33 of the State Bank of India Act, 1955, learned counsel on behalf of appellants argued that Section 32 recognises that State Bank of India can carry on 'agency business' on behalf of Reserve Bank of India. Section 33 enables the State Bank of India to carry on banking business under Section 5(b) and other forms of business under Section 6(1) of the BR Act, 1949. The argument is of no avail. The State Bank of India Act, 1955, is independent and is not co-related with the co-operative banks, and the State Bank of India has been established as a corporation under the Act. Thus, the provision is of no help to take home the submission espoused on behalf

of appellants to take them out of the purview of Entry 45 of List I.

43. Learned Counsel on behalf of appellants argued that there is a difference between entity and activity. On a plain reading of Section 75 6(1) of the BR Act, 1949, it becomes evident that there is a distinction between the business of banking and entity that performs the banking functions. Section 6(1) and 6(2) enable only an entity to perform certain additional business functions. It does not confer any such status upon such an entity.

44. In our opinion, Section 6 deals with the forms of business in which banking companies may engage. There cannot be any form of activity/business of banking without there being an entity. Section 6 is not a provision of the conferral of the status of the banking company. The definitions of 'banking' and 'banking company' are contained in Section 5(b) and 5(c) of the BR Act, 1949 respectively, and when reading with Section 56(a), it means co-operative banks also. The co-operative bank falls within the definition of Section 5(c), and its activity is of banking, and in addition to the business of banking, a co-operative bank may

engage in any of the business as enumerated in Section 6."

13. Shri Pandian formulated his submissions on the analysis made by the Constitution Bench on the effect of Entries 43 and 45 of List I and Entry 32 of List II of the Seventh Schedule to the Constitution of India that has been enumerated in paragraphs (45) to (60) of the judgment and he contends that the Constitution Bench very consciously, after examining the amendment brought about in the SARFAESI Act, came to the following conclusion in paragraph (58):

*"58. ..... **It is apparent that 'incorporation, regulation and winding up' of the co-operative societies are covered under Entry 32 of List II of the Seventh Schedule** of the Constitution of India, whereas 'banking' is covered by Entry 45 of List I. Thus, aspect of 'incorporation, regulation and winding up' would be covered under Entry 32 of List II. However, **banking activity of such co-operative societies/banks shall be governed by Entry 45 of List I**. The said banks are governed and regulated by legislation related to Entry 45 of List I,*

the BR Act, 1949 as well as the Reserve Bank of India Act under Entry 38 of List I. In the matter of licencing and doing business, a deep and pervasive control is carved out under the provisions of the BR Act, 1949 and banking activity done by any entity, primary credit societies, is a bank and is required to submit the accounts to the Reserve Bank of India, and there is complete control under the aforesaid Act. For activity of banking, these banks are governed by the legislation under Entry 45 107 of List I. Thus, recovery being an essential part of the banking, no conflict has been created by providing additional procedures under Section 13 of the SARFAESI Act. It is open to the bank to adopt a procedure which it may so choose. When banking in pith and substance is covered under Entry 45 of List I, even incidental trenching upon the field reserved for State under Entry 32 List II is permissible."

In conclusion, the Apex Court, while considering the aforesaid amendments in the SARFAESI Act, concluded that the notification issued on 28.1.2003 was not *ultra vires*, as it fell within the ken of Entry 45 of List I of the Seventh Schedule to the Constitution of India.

14. The learned Senior Counsel then referred to the comparative status of the State Entry under List II *vis-a-vis* the constitutional protection in respect of incorporation, regulation and winding up of Cooperative Societies by referring to Articles 243ZI and 243ZL of the Constitution of India that have been discussed by the Constitution Bench in paragraphs (61) to (70) of the said judgment. He has reemphasized the Second and Third provisos to Article 243ZL(1)(v) and (3) of the Constitution of India to urge that for a Cooperative Society carrying on the business of banking the provisions of the Banking Regulation Act, 1949 do apply, but at the same time, has carved out exceptions, where the State Legislatures may make provisions of conditions relating to management of Cooperative Societies, including supersession and the appointment of an Administrator. He has urged that in paragraph (63) it has been clarified that the provisions of the Banking Regulation Act, 1949 shall also apply "*besides the State Act*".

15. Shri Pandian has then indicated the analysis made by the

Constitution Bench of the respective judgments and then has pointed out the conclusions enumerated in paragraph (70), which are as follows:

> *"70.* ***The concept of regulating non-banking affairs of society and regulating the banking business of society are two different aspects and*** *are covered under different Entries, i.e., Entry 32 of List II and Entry 45 of List I, respectively. The law dealing with regulation of banking is traceable to Entry 45 of List I and only the Parliament is competent to legislate. The Parliament has enacted the SARFAESI Act.* ***It does not intend to regulate the incorporation, regulation, or winding up of a corporation, company, or co-operative bank/ cooperative society****. It provides for recovery of dues to banks, including co-operative banks, which is an essential part of banking activity.* ***The Act in no way trenches on the field reserved under Entry 32 of List II and is a piece of legislation traceable to Entry 45 of List I****. The 119 decision in Virendra Pal Singh v. District Assistant Registrar, Cooperative Societies, Etah, (1980) 4 SCC 109, has been rendered regarding service regulations. It does not apply to the instant case concerning the*

regulation of 'banking' covered under Entry 45 of List I. The Court did not deal with the aspect of the regulation of banking in the said decision as it was not required to be decided. Thus, the ratio of the decision operates in a different field. Moreover, the U.P. Co-operative Services Act was saved on the ground of incidental trenching on the subject of another list, i.e., Entry 45 List I, which is permissible."

16. With the aforesaid background of his arguments and the contentions raised, the case of the petitioners clearly is that they cannot be subjected to any law made by the Parliament which offends the subject matter of incorporation, regulation and winding up of Cooperative Societies that does not relate to the banking affairs of a bank run by a Cooperative Society.

17. Responding to the submissions, Shri A.L.Somayaji, learned Senior Counsel appearing for the Reserve Bank of India, borrowing the *ratio decidendi* in the case of ***Pandurang Ganpati Chaugule*** (supra), defended the Ordinance contending that the very essence of the constitutional framework empowering the

Parliament to make laws on banking is exclusive and, therefore, the petitioner banks, which are Cooperative Societies exclusively running the banking business, are for all intent and purposes Cooperative Banks and, hence, the impugned Ordinance which is there to regulate the banking affairs of such banks, squarely falls within the Union List and there is no scope to carve out a dichotomy so as to denude the Central Government from promulgating an Ordinance, or the Parliament from making any law on the concerned subject.

18. Shri Somayaji submits that the impugned Ordinance covers the area intended to control the financial banking activities of the petitioner banks and it does not in any way trench upon the autonomy of the State to make any laws under List II of the Seventh Schedule to the Constitution of India. The Ordinance had to be brought into to exercise sufficient control over banking affairs, in order to protect larger public interest and to secure financial trust imposed by investors and customers in the banking business of Cooperative Societies. He submits that the impugned Ordinance in

no way tends to curtail any cooperative movement, so as to violate any constitutional mandate or trench upon the powers of the State Legislatures in the affairs of running Cooperative Societies that stand protected under the State List, except the area of the business of banking. The class to which the petitioners belong is exclusively the existence of an entity, that is solely carrying out the banking activity. The core function of banking being the exclusive affair of the petitioners, their very existence cannot be segregated from the activity in which they are involved and, therefore, the impugned Ordinance having been brought in to control banking affairs, the same would also cover the activities related thereto, in the background that the petitioners are engaged in exclusive banking business.

19. Shri Somayaji relies on the very same judgment of the Constitution Bench in ***Pandurang Ganpati Chaugule*** (supra) to contend that it in no way carves out any exception and rather declares the law categorically that Cooperative Societies running Banks and their activities are exclusively covered by Entry 45 of List

I of the Seventh Schedule to the Constitution of India. He submits that paragraph (63) of the judgment clarifies this position, and has then invited the attention to paragraph (79) thereof to contend that Part V in the Banking Regulation Act, 1949 has been amended to make it workable only with an intention of covering the financial banking affairs of Cooperative Banks that needed to be controlled in order to secure a financially viable bank and preventing it from incurring any disability on account of any deviant activities jeopardizing the financial interest, particularly of a large number of small and big investors in almost 2000 banks throughout the country.

20. Shri Somayaji further submits that the Constitution Bench in paragraph (103) of the judgment in ***Pandurang Ganpati Chaugule*** (supra) held that the Cooperative Banks cannot carry on any activity without the compliance of the provisions of the Banking Regulation Act, 1949 and any other legislation, which would save the impugned Ordinance herein, being applicable to the petitioners, that is clearly relatable to Entry 45 of List I. There is no scope of

gathering any inference of incompetence on the part of the Central Government to issue the Ordinance or the Parliament to make any law on the said subject. He, therefore, contends that even if the Constitution Bench had intervened during the pendency of the Bill before the Parliament, the introduction of the Ordinance impugned herein nowhere runs counter to the dictum of the Constitution Bench, which rather supports the impugned Ordinance and, hence, the arguments advanced on behalf of the petitioners are unacceptable.

21. Advancing his submissions Shri Sankaranarayanan, learned Additional Solicitor General of India, in addition to the submissions raised by Shri Somayaji, submits that it had become necessary to empower the Reserve Bank of India through the Banking Regulation Act, 1949 with sufficient provisions to embark upon a control on the banking institutions, particularly Cooperative banks, many of whom were facing financial disruptions on account of fiscal indiscipline creeping in, so as to damage the very purpose for which these banks were set up, and which clearly amounted to

playing with the savings of small investors and customers. In order to prevent and regulate the banking affairs of the Cooperative Banks, there was a necessity to exercise greater control over the banking affairs of such banks and, therefore, the impugned Ordinance was introduced, which in no way disrupts the entity of the petitioner banks. There is, therefore, no dichotomy to be inferred on account of the introduction of the impugned Ordinance, as the impugned Ordinance nowhere tends to alter or modify the nature of the activity for which the entity of the bank was set up and to the contrary, it is to secure its functioning in the ultimate public interest and in the interest of investors and customers, for whose benefit the banks have been ultimately set up. The impugned Ordinance nowhere trenches upon the status of the Cooperative Societies, which are running the petitioner banks, and the impugned Ordinance proceeds to exercise a control so as to avoid any form of mismanagement touching upon the banking affairs of the petitioner banks.

22. The learned Additional Solicitor General of India has

advanced another argument that, even for the sake of arguments if it is assumed that some part of the Ordinance does incidentally trench upon the affairs of the Society, so as to indicate any inroad on the field of legislation protected under Entry 32 of List II, then such incidental trenching upon is legally permissible, for which he has relied on certain judgments and to that extent the same has also been discussed in the Constitution Bench judgment in ***Pandurang Ganpati Chaugule*** (supra), where, in paragraph (60), such incidental trenching has been acknowledged relying on earlier Supreme Court decisions, discussing the aspects' theory coupled with the principle of pith and substance.

23. The learned Additional Solicitor General of India contends that any control exercised through the impugned Ordinance either by the Reserve Bank of India or otherwise, would only protect the entity of the Bank, which in turn amounts to protecting the interest of the investors and customers of the Bank, for whom the bank exists, and is the core activity of the petitioner banks.

24. Having considered the rival submissions, prima facie, the issue that has been raised on the basis of the ratio of the Constitution Bench judgment in the case of ***Pandurang Ganpati Chaugule*** (supra) appears to be that the introduction of the impugned provisions of the Ordinance, whereby a substantial amendment has been made in Part V of the Banking Regulation Act, 1949, proceeds to bring about substantial changes that would effect the incorporation, regulation and winding up of Cooperative Societies, which in turn amounts to intruding upon the affairs of a Cooperative Society running a Cooperative Bank.

25. To be more precise, the constitutional issues as precisely and broadly formulated by my esteemed colleague *Senthilkumar Ramamoorthy,J.* that may ultimately crystallize to be answered by us are as follows:

(i)Whether Entry 32 of List II of the Seventh Schedule to the Constitution of India is exhaustive, and whether parliamentary

intrusion is constitutionally impermissible, as regards incorporation, regulation and winding up of Cooperative Banks?

(ii) Whether there are aspects or dimensions of incorporation, regulation and winding up of Cooperative Banks, which are legitimately within the purview of banking regulation and, if so, whether such aspects or dimensions of the aforesaid activities would be within the legislative competence of Parliament under Entry 45 of List I of Seventh Schedule to the Constitution of India?

(iii) Whether the scope of Entry 45 of List I and Entry 32 of List II can be clearly and completely segregated on the basis that all business activities of a Cooperative Bank would fall within Entry 45 of List I and all entity related activities under Entry

32 of List II of Seventh Schedule to the Constitution of India?

26. The argument is that the affairs, other than banking affairs, are now sought to be directly controlled through the impugned Ordinance, which exclusively falls within the domain of Entry 32 of List II of the Seventh Schedule to the Constitution of India, and for which the provisions of the Tamil Nadu Cooperative Societies Act, 1983 exist. The contention appears to be that where a field is exclusively allocated to the State Legislature under List II and a legislation fully occupying the field exists, the impugned Ordinance, which intends to invade this autonomy preserved in the State Legislature through an Ordinance, cannot take the shape of law to be made by the Parliament under Entry 43 read with Entry 45 of List I of the Seventh Schedule to the Constitution of India. The incorporation, regulation and winding up of a Cooperative Society cannot be regulated by any law made by the Parliament which is other than the core banking activity of the bank and is an affair of the Cooperative Society, which cannot be read as an

integral part of the banking affairs of the petitioner banks.

27. The argument on behalf of the petitioners is sought to be supported by the provisions of Articles 243ZI and 243ZL of the Constitution of India to contend that it is only the legislature of a State which can by law make provisions with regard to incorporation, regulation and winding up of Cooperative Societies and to that extent the impugned Ordinance impinging upon this exclusive legislative business allocated to the State Legislature impinges upon the constitutional mandate, thereby violating the basic structure, where the control through State autonomy preserved under the Constitution over the Cooperative Societies is sought to be overridden by a law introduced by the impugned Ordinance, the competence whereof is completely wanting in the Union Parliament.

28. The activity of the bank and the entity of the bank entail, according to the petitioners, split functions and Shri Pandian, learned Additional Advocate General for the petitioner banks

contends that so far as the financial dealings of the banking business of the petitioner banks are concerned, they are regulated by the Reserve Bank of India, but when it comes to the affairs of the Cooperative Society, then the State law, which continues to exist, cannot be impinged upon on the premise of an incidental trenching.

29. Shri Pandian submits that the impugned provisions of the Ordinance tend to take complete control of the affairs of the Cooperative Society as if the entity and the activity of the petitioner banks are absolutely integral and one, which was not even acknowledged by the Constitution Bench judgment in the case of ***Pandurang Ganpati Chaugule*** (supra). The petitioners, therefore, appear to be contending that the impugned Ordinance is in no way an incidental control over the banking affairs, rather it is to take control of the affairs of the society so as to completely regulate it on the ground that the Parliament has full competence to make any law even touching upon the affairs of the society, because the society is nothing else but a Cooperative Bank.

30. The Banking Regulation Act, 1949 is there in place to control the banking affairs and to that extent the judgment in the case of ***Pandurang Ganpati Chaugule*** (supra) also indicates that banks run by Cooperative Society are governed by Entry 45 of List I of the Seventh Schedule to the Constitution of India. **The question is as to whether all the affairs of a Cooperative Society running a bank, which is incorporated under the State enacted Cooperative Societies Act, would also be governed by Entry 45 of List I of the Seventh Schedule to the Constitution of India?**

31. **The issue is that if a Cooperative Society is carrying out only the business of banking, can it be said that all the affairs of such a Cooperative Society can be controlled by the law made under Entry 45 of List I, even if it overlaps the existing law which stands covered under Entry 32 of List II, and thereby make the State law redundant?**

32. **The issue of incidental trenching would depend upon the concept of the existence of an entity as a Cooperative Society being so integral, and rather dissolved with its activity of Banking, so as to lose its very authority of governance in matters of incorporation, regulation and winding up and be overridden by a law made by the Parliament.**

33. **This interplay of the Entries, as explained by the Constitution Bench, leads to the debate from the expressions used in the judgment, particularly paragraph (103)(b), as advanced by the petitioners, as to whether a Cooperative Bank run by a Cooperative Society can continue to exist as an entity with the affairs of the society segregated and controlled in the aspects of incorporation, regulation and winding up by the law made by the State Legislature?**

34. **The ultimate answer would depend upon as to how far the impugned Ordinance proceeds to allegedly encroach**

upon such affairs of the Cooperative Society, which is running a Cooperative Bank, and as to whether the impugned provisions suffer from the vice of incompetence, and thereby *ultra vires* the Constitution of India.

35. The parameters that have been set out time and again, applying the doctrine of pith and substance in the case of a conflict of a subject falling within List I or List II as well as incidental trenching upon, for adjudicating the legislative competence or otherwise by the Hon'ble Supreme Court have been worded very succinctly in the case of ***UNION OF INDIA v. SHAH GOVERDHAN L.KABRA TEACHERS COLLEGE, (2002) 8 SCC 228,*** in paragraphs 6 and 7 thereof that are gainfully reproduced for guidance herein below:

> *"6. In view of the rival submissions at the bar, the question that arises for consideration is whether the impugned legislation can be held to be a law dealing with coordinated development of education system within Entry 66 of the List I of the Seventh Schedule*

or it is a law dealing with the service conditions of an employee under the State Government. The power to legislate is engrafted under Article 246 of the Constitution and the various entries for the three lists of the Seventh Schedule are the "fields of legislation". The different entries being legislative heads are all of enabling character and are designed to define and delimit the respective areas of legislative competence of the Union and the State legislature. They neither impose any restrictions on the legislative powers nor prescribe any duty for exercise of the legislative power in any particular manner. It has been a cardinal principle of construction that the language of the entries should be given the widest scope of which their meaning is fairly capable and while interpreting an entry of any List it would not be reasonable to import any limitation therein. The rule of widest construction, however, would not enable the legislature to make a law relating to a matter which has no rational connection with the subject matter of an entry. When the vires of enactment is challenged, the court primarily presumes the constitutionality of the statute by putting the most liberal construction upon the relevant legislative entry so that it may have the

widest amplitude and the substance of the legislation will have to be looked into. The Court sometimes is duty bound to guard against extending the meaning of the words beyond their reasonable connotation in anxiety to preserve the power of the legislature.

7. It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of the Parliament as well as the State legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to over-ride another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them. 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 a 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 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. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of "pith and substance' has to be applied not only in cases of conflict between the powers of two legislatures but in any case where the question arises whether a legislation is covered by particular legislative power in exercise of which it is purported to be made."

36. Shri Aravindh Pandian has then urged that since the Ordinance has already been notified, the petitioner banks are under a clear threat, the apprehension whereof is not far to see, of being invaded in their rights to administer the society, the interference with which is now imminent under an incompetent law and, therefore, it is necessary that the impugned provisions should not be allowed to operate through the amendment introduced, so as to impinge upon the affairs of the Cooperative Society, particularly, where the law relating to incorporation, regulation and winding up under the Tamil Nadu Cooperative Societies Act, 1983 continues to exist. He, therefore, submits that the petitioner banks, which are neither defaulters, nor are they in any way alleged to have violated any law, should not be additionally penalized by the exercise of any such powers under the Banking Regulation Act, 1949, through the impugned provisions, thereby hampering the affairs of the society and, hence, a *prima facie* case has been made out for a grant of interim relief.

37. This prayer has been opposed by the learned Additional Solicitor General of India as well as the learned Senior Counsel for the Reserve Bank of India to urge that the law being competent so long as it is not declared *ultra vires*, cannot be stayed and also should not be interfered with at this stage. They contend that in the event the Court is proceeding to examine and test the validity of the provisions on the ground of competence, then they should be granted time to file counter affidavits, whereafter the matter can be disposed of finally.

38. **The ambivalence of the constitutional provisions may have to be considered on the principles of the basic structure doctrine, involving constitutional federalism, and also to the extent of constitutional supremacy, which outlines the doctrine of separation and distribution of powers between its various organs, thereby ensuring to its citizens a rule under the Constitution, more particularly described as the Rule of Law. Nonetheless the presumption**

of the constitutional validity of a law is a well known guiding principle, the barrier whereof has to be measurably calibrated before a certainty can be spelt out from the submissions raised on behalf of the petitioners.

39. Having weighed the consequences, we find that for the grant of an interim relief the sounding of a trumpet and war drums is sufficient to entertain a legal debate, the arbiter whereof is this Court, but, in our opinion, unless there is an imminent tangible cause or evidence indicating actual invasion of the rights of the petitioner banks in running the affairs of the Society, it would not be appropriate to consider the issue of interim relief at this stage, leaving it open to be considered as and when any overt or covert act by the Central Government authorities or the Reserve Bank of India based upon the impugned provisions of the Ordinance actually impinges upon the functioning of the affairs of the Society, for which any appropriate material can be brought on record by the petitioner banks for such consideration.

40. We, therefore, grant four weeks to both the respondents to file their counter affidavits, and thereafter two weeks to the petitioner banks to file a rejoinder.

List on 1.9.2020.

(A.P.S., CJ.) (S.K.R., J.)
20.07.2020

Index : Yes
sasi

To

1.The Secretary,
Union of India,
Ministry of Law & Justice,
4th Floor, A-Wing, Shastri Bhawan,
New Delhi - 110 001.

2.Reserve Bank of India,
16, Rajaji Salai, Fort Glacis,
Chennai, Tamil Nadu - 600 001.

THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY, J.

(sasi)

W.P.Nos.9147 and 9150 of 2020

20.07.2020