Joseph Kuruvilla Vellukunnel

Vs

The Reserve Bank of India and Others

Civil Appeal No. 487 of 1961

(CJI B. P. Sinha, J. L. Kapur, M. Hidayatullah, J. C. Shah,

J. R. Mudholkar JJ)

07.03.1962

JUDGMENT

HIDAYATULLAH, J. -

On August 8, 1960, the Reserve Bank of India made an application in the High Court of Kerala under s. 38 of the Banking Companies Act, 1949 (10 of 1949) read with the Companies Act, 1956 (1 of 1956), for the winding up of the Palai Central Bank, Ltd. (having its registered office at Palai in the State of Kerala), for the appointment of the Official Liquidator of the High Court as the Liquidator with all the powers under the said Acts and for the appointment of the Official Liquidator as the Provisional Liquidator during the pendency of the application. This application was allowed on December 5, 1960, and the present appeal with special leave, has been filed against the order.

The Palai Central Bank, Ltd. (herein referred to as the Palai Bank or the Bank) was incorporated in January, 1927 under the Travancore Companies Regulations. Till 1936, it was known as "The Central Bank, Ltd.", when the name was changed. In March 1937, the Palai Bank was included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934). According to the balance sheet of the Palai Bank for the year ending December 31, 1959, the paid-up capital was Rs. 24,89,639.53. The nominal capital of the Palai Bank was Rs. 40 lakhs divided into 1,60,000 equity shares of Rs. 25/- each. The Palai Banks seems to have greatly extended its business as time passed. In 1928, the deposits were a mere Rs. 77,000/-, but by 1960, they had become almost Rs. 10 crores. It had, during the years, become the foremost Bank in Kerala State, and its place was 15th in the whole of India. It had 25 branches in and outside the State of Kerala.

When Kerala became a Part B State, the Reserve Bank of India Act was extended to that area, and the Palai Bank came under the supervision of the Reserve Bank, which, in exercise of the powers vested in it by the Banking Companies Act as well as the Reserve Bank of India Act, periodically inspected the Palai Bank. These inspections were made in 1951, July 1953, February-March 1956, March 1958 and January-February, 1960. Every time, the Reserve Bank found irregularities which were pointed out to the Bank, and special directions were issued. The main defects were that the advances made by the Palai Bank were not sound that the bulk of the advances were either irrecoverable or "sticky" (which means, not easily recoverable), that the income taken into account represented to a great extent unrealised interest on these advances, that large advances were made to

the Directors, their relations and Companies, in which they were interested, on no security or inadequate security, and that the Bank was declaring dividends on the basis of profits which were computed without making provision for bad and doubtful debt and by using up the reserves at an alarming rate, while the deposits were going down. In the beginning, the Reserve Bank contended itself by prohibiting further advances to Directors, their relations and individuals, firms or companies, in which the Directors were interested, advising the Palai Bank to reduce clean advances and to regularise others, warning the Bank that the Reserve Bank was considered that the business of the Bank was being conducted in the manner detrimental to the interests of its depositors, and that if the directions were not carried out, action under the first proviso to sub-s. (2) of s. 22 of the Banking Companies Act would be taken by issuing a notice that a licence could not be granted to the Bank.

From the correspondence which has been filed in this case, it does appear that the Reserve Bank was not satisfied at each following inspection that the position had improved; rather it apprehended that it had worsened, and that the directions had not been carried out. This was denied on behalf of the Bank, but nothing depends upon who is right and who is wrong, because no charge of mala fide conduct is now made against the Reserve Bank. As a result of the inspection in February-March, 1956, the Reserve Bank avers, it was found that on December 31, 1955, the advances stood at Rs. 355.02 lakhs, of which Rs. 171.27 lakhs were irrecoverable, and that the deposits of the Bank had been impaired by Rs. 139.13 lakhs. The Reserve Bank also avers that the Bank did not satisfy the requirements of the Banking Companies Act, particularly s. 11, about the minimum paid-up capital and reserves, and ss. 22(3)(a) and (b) about the ability of the Bank to pay its depositors, present and future, in full or conducting its affair in a manner not detrimental to the interests of the depositors, and did not satisfy the requirements of ss. 42(6)(a)(i) and (ii) of the Reserve Bank of India Act. The Reserve Bank at this stage deputed an observer, and issued further directions and threatened to remove the name of the Palai Bank from the Second Schedule to the Reserve Bank of India Act, if the directions were not faithfully and punctually carried out. All this time, the Reserve Bank was requiring the Palai Bank to submit statements and returns. In the inspection which was made in March-May, 1958, the position as on February 28, 1958, was found to be even worse. Though the deposits had gone up, the advances had raisen to Rs. 421.56 lakhs, of which Rs. 208.05 lakhs were said to be irrecoverable, and in the opinion of the Reserve Bank, after writing off the paid-up capital, reserves etc. of the value of Rs. 41.17 lakhs, deposits to the extent of Rs. 177.24 lakhs were impaired. More directions in the same key followed, and the Bank was warned that it was conducting its affairs in a way which was detrimental to the interests of the depositors. In the scrutiny in January-February, 1960, the position as on December 31, 1959, was said to be that out of the advances of Rs. 529 lakhs, Rs. 218.51 lakhs were irrecoverable, Rs. 17.71 lakhs were doubtful, and Rs. 111.57 lakhs were frozen or sticky.

On July 21, 1960, the Reserve Bank issued a letter containing the warnings to which the Palai Bank appeared to have become indurated, and further gave the Bank 12 month's time to improve matters and 30 days to reply to the inspection report. An Officer of the State Bank of India (Mr. Sivaraman) had already been deputed as the General Manager of the Palai Bank, and had taken charge on July 1, 1960. On June 23, 1960, the balance sheet of the Bank was published showing the position as on December 31, 1959. The balance sheet showed a loss of Rs. 14-1/2 lakhs. The Reserve Bank alleges that even in previous years there were losses, but were hidden. In June 1960, there was a run on several branches of the Palai Bank. Whether this was due to the publication of the balance sheet showing a loss, or whether it was due to the appointment of Mr. Sivaraman, it is hardly possible now to say. Between June 24, 1960 (deposits, Rs. 9.82 crores) and July 22, 1960 (deposits, Rs. 9.32 crores) there was a withdrawal of Rs. 50 lakhs. By August 3, 1960 (deposits, 8.50 crores) there was

a withdrawal of Rs. 82 lakhs in 12 days. To meet this run, the Bank had to borrow against Government securities with the result that all its Government securities except those worth Rs. 25 lakhs were pledged. The deposits (Rs. 8.50 crores) consisted of Rs. 4 crores in fixed deposits, Rs. 2.25 crores in current accounts and Rs. 2.25 crores in savings deposits. Against these, the Reserve Bank found that the Palai Bank had cash to the extent of Rs. 50 lakhs and a capacity to borrow Rs. 1 crore against its securities. The appellant, however, urged before us that in the report of the General Manager dated November 8, 1960, the cash in hand was shown to be Rs. 42.18 lakhs and at Banks, Rs. 83.68 lakhs, the marketable securities, Rs. 22.98 lakhs and the estimated surplus from assets specifically pledged, Rs. 142.63 lakhs. These figures do not, of course, show that all this money would have been available immediately to stem the run. It is thus evident that if the run continued longer there was a likelihood that these depositors who were able to withdraw their money would obtain payment in full, leaving the others with nothing or next to nothing. The Bank alleges in its affidavits in reply that the run was subsiding, while the Reserve Bank maintains that it was going on unabated. Whether it was abating or continuing, the reputation and security of the Bank had been considerably shaken. The learned Company Judge, in his judgment under appeal, estimated that Rs. 158 lakhs (about one-sixth of the deposits) represented the sudden withdrawals. The Directors of the Palai Bank sent Mr. Sivaraman on August 3, 1960, to Bombay for urgent consultations, and Mr. Sivaraman on his return, announced on the 8th that an application for the winding up of the Bank had been made that day, and a provisional Liquidator had been appointed. He accordingly, issued orders to the Branches to stop business and close the doors. The Reserve Bank was of the opinion that the Palai Bank was not in a position to pay its depositors in full, and that the continuance of the Bank was prejudicial to the interests of the depositors.

The application, as already stated, was made on August 8, 1960. It was heard by Raman Nayar, J. He dispensed with notice under s. 450(2) of the Companies Act before passing the order appointing the provisional Liquidator. He, however, issued notice of the main application, and heard the Reserve bank, the Palai Bank, the creditors supporting the petition and the creditors opposing it, and read several affidavits filed by the parties. On December 5, 1960, he accepted the application of the Reserve Bank, and ordered that the Palai Bank be wound up. He was moved for a certificate under Art. 132(1) of the Constitution by the present appellant (Mr. Joseph Kuruvilla Vellukunnel), a former Director of the Palai Bank and also a contributory, but he declined to certify the case. The appellant then obtained special leave of this Court, and filed this appeal, Some others applied to intervene in the appeal, and were allowed to be heard. One Mr. D. Chacko Kappon (a contributory and also a depositor) filed a petition under Art. 32 of the Constitution. That petition was heard along with this appeal. This judgment will dispose of the appeal as well as the writ petition.

In the High Court, the application of the Reserve Bank was opposed to two grounds. The first was that the action of the Reserve Bank in making the application for the winding up of the Palai Bank was mala fide. This ground appears to have been given up in the High Court itself, and has not been raised before us. The second ground was that s. 38(3)(b)(iii) of the Banking Companies Act, 1949, was void, inasmuch as it offends against Arts. 14 and 19 of the Constitution. In the hearing before us, Art. 301 was also invoked. The decision of the High Court was against the Bank and other answering respondents, and this ground alone has been urged before us.

Though the facts cease to play an important part in the decision of the question of law which survives, those narrated above were referred to by the learned Attorney-General as showing the background of the action taken by the Reserve Bank. The appellant, in his reply, referred to some other facts in explanation to avoid a possible prejudice to the his case, if the facts as presented by the Reserve Bank only were considered. While we are not required to express any opinion upon the

correctness or otherwise of the allegations and counter-allegations, we think it necessary to set out in brief some of the facts, to which our attention was drawn by the appellant, to show that we have borne in mind the rival contentions in determining the validity of the section.

The appellant contended that enquiries by the Reserve Bank in the past were not thorough; but in the application for winding up, the Reserve Bank had given specific details of the advances and their realisability. In this connection, we were referred to a reply made by the Reserve Bank in answer to four schemes of compromise between the Bank and its creditors suggested by the Palai Bank. In that the reply, the Reserve Bank said that no definite opinion could be expressed on the schemes except "after a detailed examination of the Bank's books of account with a view to assessing the realisability of its assets and the probable pace of recovery of the realisable assets." This, in our opinion, was a proper attitude to take, because by then, the condition of the Bank had materially altered, and all the past data had become out of date. The reply did not show that the Reserve Bank's inspection was not thorough. Next, it was argued that the Reserve Bank's estimate of cash and realisable assets was wrong, if one reads the report of the Provisional Liquidator and the General Manager, dated November 8, 1960. We have already referred in an earlier part of this judgment to the amounts which, in their opinion, constituted the available assets, and have also shown why the Reserve Bank cannot be said to have made mistake. It was then contended that the run was under control, and our attention was drawn to certain statements in which the withdrawals during the months of July and August are shown in a tabular form. The run on the Bank did not follow a uniform course. Sometimes, it was more, and sometimes it was less, but continue, it did; and that is the main point of the matter. It was said that the Reserve Bank itself thought well of the Palai Bank, because in the year 1954, it allowed the opening of a new Branch at Madurai, and even in its last letter of July 21, 1960, it gave the Palai Bank one year to improve matters, and 30 days to show cause against the inspection reports, but took a hasty action before even the 30 days had expired. The action of the Reserve Bank was undoubtedly taken during the period of grace; but after July 21, the situation had altered so radically that delay might have defeated the very purpose of the law, under which action was taken.

Finally, it was contended that the Palai Bank began by being a rural Bank, which was making advances on the security of land, and such security, though "sticky" was capable of being realised. Reference was made to the Report of the Travancore Cochin Banking Enquiry Commission, which was appointed in 1956, where, in making a survey of banking in Travancore-Cochin State, it was pointed out that the Banks were "spread out into the rural interior of the State", and the main business of these banks was "to finance the rural people engaged in a small business-crop raising, produce processing, transporting, vending, etc." It was argued that to a rural Bank of this kind the standards of a commercial bank could not be applied and that the Reserve Bank should have made allowances in respect of the realisability of the advances, the worse of which belonged to a period prior to the extension of the Reserve Bank of India Act to this area. These advances given time, could have been cleared, and an attempt was, in fact, being earnestly made with the assistance of Mr. J. A. Frost, a retired senior grade Officer of the Imperial Bank of India, who was appointed an adviser. It was pointed out that 3 accounts were closed 26 were sued upon, and in 13, substantial remittances were received. All this may be true; but it is useless for us to speculate as to what would have happened if the depositors did not take a hand in the affairs by making a run; and the action of the Reserve Bank was precipitated by the exigencies of the situation, which had arisen. Those who made a run for their money, were not going to wait till the Bank acquired sufficient funds to pay them after recovering its advance. Those advances, as conceded, could not so easily be realised as the advance made by a commercial bank on security other than that of land. If this rural bank began to arrange its business like a commercial bank it must necessarily be judged by the same standard,

and the affairs of the Palai Bank, in our opinion, had long left behind the rural character, and had emerged into those of a modern commercial bank.

What we have said above is sufficient to show that there was not enough material on which the action of the Reserve Bank could strictly be characterised as mala fide. Indeed, the forbearance with which the Reserve Bank acted (and it proved unwise) has completely demonstrated the futility of granting time, and we are not surprised that the answering respondents in the High Court and the appellant in this Court have not chosen to raise any issue about the honesty of the action.

We are thus concerned with the contention that ss. 38(1) and (3)(b)(iii) are void, being a breach of Arts. 14 and 19 of the Constitution, and ultra vires being in the conflict with Art. 301. The arguments anent Arts. 14 and 19 are based. On the same reasoning, but that under Art. 19 takes a few more facts into accounts. Shortly stated, the argument is that ss. 38 (1) and (3)(b)(iii) make the Reserve Bank the sole judge to decide whether the affairs of a banking company are being so conducted as to be prejudicial to the interests of the depositors, and the Court has no option but to pass an order winding up the banking company, when the application is made Section 38 lays down :

> "38(1). Notwithstanding anything contained in section 391, section 392, section 433 and section 583 of the Companies Act, 1956, but without prejudice to its powers under sub-section (1) of section 37 of this Act, the High Court shall order the winding up of a banking company -
>
> (a) if the banking company is unable to pay its debts; or
>
> (b) if an application for its winding up has been made by the Reserve Bank under section 37 or this section.
>
> (2) The Reserve Bank shall make an application under this section for the winding up of a banking company if it is directed so to do by an order under clause (b) of sub-section (4) of section 35.
>
> (3) The Reserve Bank may make an application under this section for the winding up of a banking company -
>
> #* * *##
>
> (b) if in the opinion of the Reserve Bank -
>
> #* * *##
>
> (iii) the continuance of the banking company is prejudicial to the interests of its depositors.

It is said that the word "shall" in the first sub-section is mandatory, and compels the High Court to pass an order winding up a banking company when ever the Reserve Bank chooses to make an application. It is further pointed out that these powers exclude the operation of s. 433 of the Companies Act, under which companies are wound up.

The power conferred on the Reserve Bank by the section is said to be bad under Art. 14, because it

enables a discrimination between a banking company and any other company by prescribing different laws for their respective winding up, and is bad under Arts. 19(1)(f) and (g) as amounting to an unreasonable restriction on the holding of property and the right to carry on business as a banking company. The amplify the first, it is argued that s. 433 of the Companies Act, when an application is made to wind up a company, the High Court has to be satisfied after a fair trial that an order to wind up the company is called for, and the Judge, who is independent of executive control, is completely free to reach a decision after the Company has shown cause, and there is a right of appeal against the decision, if adverse to the company. But under the procedure laid down in s. 38 of the Banking Companies Act, the banking company proceeded against has no opportunity to show cause either before or after the winding up order, the Reserve Bank records no reasons in writing or communicates them, there is no access to Court and no hearing before the Court to determine whether the proposed action is justified, and no redress if a mistake were made. Under the exercise of that power, it is said, any banking company can be suppressed by the Reserve Bank or by the Central Government and the Courts are powerless, since the opinion of the Reserve Bank and/or the central Government is not justiciable and there is no appeal against the decision of the Reserve Bank or of the Court acting on the application of the Reserve Bank.

It is said that the unreasonableness of the law arises further from the fact that the Reserve Bank is not an independent or impartial judge, the members of the Central and Local Boards whereof, being all nominees of Government with no security of tenure, such as is enjoyed by the High Court Judges. The Reserve Bank is subject to directions from the Central Government, and even if the Reserve Bank be of a contrary opinion, it has to file an application for the winding up of a banking company, if directed to do so by the Central Government. It is further argued that this drastic power under a law which is characterised as 'Draconic' is 'uncanalised', 'uncontrolled' and 'despotic', and in its exercise, every principle of natural justice is set at nought, and the very fundamental conception of it, namely, resort to Court is completely absent. Such a law, it is said, is so patently, unreasonable as to be a gross violation of all fundamental rights. Lastly, it is contended that in giving the Reserve Bank the power to elect to proceed under the Companies Act or under the Banking Companies Act, there is further room for discrimination. It is thus contended that s. 38(1) of the Banking Companies Act cannot be upheld as a valid law on any principle.

The learned Attorney-General appearing for the answering respondents contends that the action of the Reserve Bank was fully supported and justified by the facts. Accordingly to him, the Palai Bank was inspected frequently for ten years and the reports of the inspecting officers were made available to the Palai Bank not only for information but also for explanation and compliance. The action, says he, drastic though it may seem, was taken after numerous opportunities to the Palai Bank to mend matters, that even as late as 1960 the Reserve Bank gave a year's time for improvement, but immediate action had to be taken in view of the loss of confidence among the depositors, a large number of whom made a run for their money. The learned Attorney-General thus says that there were many person who were of the opinion that the Reserve Bank should have acted earlier and that perhaps the Reserve Bank could be blamed for delaying the action but not for taking a precipitate action. He urgues that the Reserve Bank and not the Court was in a position to take prompt action because the Reserve Bank already possessed all the necessary information. He contends that the position of the Reserve Bank and its statue as a responsible body make it the proper authority to make such an important decision requiring immediate action and that unless the Reserve Bank could be charged with dishonesty (which is not the case) the action of the Reserve Bank not only cannot be questioned, but should not be open to doubt. According to him, banking companies are in a class by themselves, and special law dealing with their winding up cannot be described as discriminatory. He contends that the law is neither discriminatory nor unreasonable, and that a prior judicial

determination of an issue of this kind is not a condition precedent to the making of a winding up order against a bank. He therefore, says that the appeal and the petition should be dismissed.

Before we consider the arguments of the two sides in detail, we wish to say a few words about the position of the Reserve Bank in the financial affairs of India and also about its place in the scheme of the law. The Reserve Bank of India was established on April 1, 1935, by the Reserve Bank of India Act, 1934. Even before the establishment of the Reserve Bank, suggestions were made that there should be a central bank in India, and the Royal Commission on Indian Currency and Finance had recommended in 1926 that the currency and credit of the country could only be put on a firm foundation, if a central bank was established. The first Bill introduced in 1927 by Sir Basil Blackett was dropped. The Indian Central Banking Inquiry Committee, however, reported in 1931 that there was a need for a central banking institution in India "for securing the development of the Indian banking and credit system on a sound and proper basis." The Committee pointed out that some of the Provincial Committees had also suggested the establishment of the Reserve Bank. The Committee ended by saying :

> "We accordingly consider it to be a matter of supreme importance from the point of view of the development of banking facilities in India, and of her economic advancement generally, that a Central or Reserve Bank should be created at the earliest possible date. The establishment of such a bank would by mobilization of the banking and currency reserves of India in one hand tend to increase the volume of credit available for trade, industry and agriculture and to mitigate the evils of fluctuating and high charges for the use of such credit caused by seasonal stringency." (Vol. I, Part I. Chap. XXII, para, 605)

The White Paper on Indian Constitutional Reforms also recommended the establishment of a Reserve Bank 'free from political influence'. As a result of these findings, when a fresh Bill was introduced by Sir George Schuster on September 8, 1933, it was accepted and received the assent of the Governor-General on March 6, 1934.

The functions of the Reserve Bank were generally indicated in the preamble as the regulation of the issue of the Bank notes and the keeping the reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage. But to enable the Reserve Bank to function in this manner, it had to be given other powers, so that it may function effectively as a central bank. To this end, the Reserve Bank was given the right to hold the cash balances of important commercial banks, a right to transact Government business in India which was also its obligation, and to enter into agreements with State Governments to transact their business. In addition to these, the Reserve Bank could require all Banks included in the Second Schedule to the Act to maintain with the Reserve Bank a balance not less then 5 per cent, of their demand liabilities and 2 per cent. of their time liabilities. The Reserve Bank also performed the normal functions of a central bank as well as an ordinary bank, though the latter functions are not as detailed as those of an ordinary bank.

But the most important function of the Reserve Bank is to regulate the banking system generally. The Reserve Bank has been described as a Banker's Bank. Under the Reserve Bank of India Act, the scheduled banks maintain certain balances and the Reserve Bank can lend assistance to those banks "as a lender of the last resort". The Reserve Bank has also been given certain advisory and regulatory functions,. But its position as a central bank, it acts as an agency for collecting financial information and statistics. It advises Government and other banks on financial and banking matters,

and for this purpose, it keeps itself informed of the activities and monetary position of scheduled and other banks and inspects the books and accounts of Scheduled bank and advises Government after inspection whether a particular bank should be included in the Second Schedule or not. Every scheduled bank is required to send to the Reserve Bank and to the Central Government a weekly return of its position in a form, which is prescribed. Sometime, however, the Reserve Bank allows a particular bank to send its returns once a month instead of every week. From these returns, the Reserve Bank prepares and publishes consolidated statements showing the monetary position in the country. The inclusion of a bank in the Second Schedule is the function of the Reserve Bank, and under ss. 42(6) (a)(iii) and (b)(ii) it satisfies itself inter alia that the affairs of the particular bank are not being conducted in a manner detrimental to the interests of its depositors. The Reserve Bank has further the power to prohibit any scheduled bank from receiving, after a week, any fresh deposits.

The above analysis of some of the provisions of the Reserve Bank of India Act show that the Reserve Bank of India has been created as a central bank with powers of supervision, advice and inspection, over banks, particularly those desiring that they be included in the Second Schedule or those scheduled already. The Reserve Bank thus safeguards the economy and the financial stability of the country. No doubt, the Board is composed of nominated members; but from the nature of things, it could not be otherwise. Neither election nor competitive examinations can effectively take the place of nominations, if the Board is to be composed of men of proved worth and standing, and there is no other method which can even be contemplated. No doubt, the members of the Board are subject to removal, but neither integrity nor efficiency is secured only by such guarantee, and we have no reason to think that the Reserve Bank acted in this case, or acts in other cases under pressure or from oblique motives. As was pointed out in another connection by this Court in All India Bank Employees Association v. National Industrial Tribunal ((1962) 3 S.C.R. 269, 299.).

> "If It was not the Reserve Bank of India, the only other authority that could be entrusted with the function would be the Finance Ministry of the Government of India and that department would necessarily be guided by the Reserve Bank having regard to the intimate knowledge which the Reserve Bank has of the banking structure of the country as a whole and of the affairs of each bank in particular."

The position of the Reserve Bank being such as we have stated from the Reserve Bank of India Act, the next thing to enquire is its powers under the Banking Companies Act. The Banking Companies Act, in its present form, is the product of many legislative enactments. The Banks Liquidation Proceedings Committee (1962) correctly described it as "made up of shreds and patches." We were taken through the entire evolutionary process by the learned Attorney General; but we do not consider it necessary to trace the various steps. We shall content ourselves with a reference to the salient landmarks. In the Indian Companies Act, 1913, there was no special procedure for banking companies, particularly relating to their winding up. Special provisions were introduced in that Act by the Indian Companies (Amendment) Act, 1936. Part X-A, which was then introduced, merely enacted certain regulatory provisions, but of winding up of banking companies, it said nothing. The amendment hardly met the purpose and the Reserve Bank of India framed a draft bill as far back as 1939 from which has been fashioned the present Banking Companies Act.

During the War years, the Indian Companies Act was amended several times to meet some special exigencies, with which we are not concerned. But by July, 1946, it was realised that certain undesirable features in banking had come to exist. Banks were then getting control of non-banking companies and by the interlocking of shares, the banking companies were able to manipulate the finances at their disposal. The main features were "the grant of loans to persons connected with the

management of banks without adequate security extensive window-dressing at the time of preparing balance-sheets, and, in general, a tendency to utilise the bank's funds to the detriment of the interests of the depositors." It must not be forgotten that the Indian Companies Act, 1913, was concerned primarily with safeguarding the interests of the stock- holders, whereas in a banking company, the interests of the depositors are invariably many times those of the stockholders, if those interests can be said to be represented by the monies invested respectively. In 1946, an Ordinance was promulgated consisting of only six sections, of which the operative sections were the last four. Section 3 enabled the Central Government to direct the Reserve Bank to cause an inspection to be made of any banking company and its books and accounts and to make a report to the Central Government. Section 4 provided the machinery and the procedure to implement s. 3. Section 5 empowered Government to prohibit a bank from receiving fresh deposits or to direct the Reserve Bank not to include a particular bank in the Second Schedule, or to exclude it if already included. Sub-section (2) provided for certain penalties, and s. 6 authorised the Central Government to publish, after reasonable notice to the banking company concerned, any report or parts thereof. This was an attempt to ensure the depositors a certain measure of safety in regard to their money.

This Ordinance was followed by the Banking Companies (Restriction of Branches) Act, 1946, which, as its name shows, put a curb on the indiscriminate opening of branches by some banks. The evil of indiscriminate advances and loans was then sought to be met by an Ordinance promulgated in 1948 intituled "The Banking Companies Control Ordinance" (XXV of 1948). In that Ordinance, it was provided that the Court shall appoint the Reserve Bank as the Official Liquidator of a banking company on the application of the Reserve Bank in that behalf. The Reserve Bank of India Act was also amended to enable the Reserve Bank to give a loan or loans to a banking company with a first charge on the assets, if wound up. A large number of banking companies had failed during the years, 1947, 1948 and 1949. Between 1926 and 1937, 23 Banks had suspended payment. In 1938 and 1939, 46 Banks failed, from 1940 to 1946, 95 Banks were involved. But, in 1947, 1948 and 1949 there were as many as 123 failures involving outside liabilities of Rs. 82 crores ! The largest number was in Calcutta with 83 Banks. In the winding up proceeding that followed, many unsatisfactory features were noticed. It was noticed that the realisations were insignificant, while the costs were great, and enormous expenditure of time took place. The winding up of any company, be it a banking company or any other, requires an investigation of the affairs, the recovery and realisation of assets and distribution of what is realised. While these matters can, of course, be carried on without undue hurry, the decision whether there should be a winding up or not, cannot be unduly deferred in the case of a banking company, if the interests of the depositors are to be safeguarded. To achieve solidarity in banking operations and also to preserve the rights of the depositors while a bank continues and more so when it cannot, the Banking Companies Act was the logical, and indeed, the only answers.

We have seen that the Reserve Bank was already functioning as a Central bank with a certain measure of control over the other banks, scheduled or unscheduled. This control was tightened in the Banking Companies Act by making provisions which were intended to protect the interests of the depositors. Differences noticeable between the Banking Companies Act, on the one hand and the Companies Act, on the other, which have been characterised as discriminatory, are thus explainable on the basis of the object to be achieved. We shall soon illustrate this by a reference to the sections themselves. For the present we only wish to emphasise that banking companies cannot be compared with other companies. The ordinary companies deal with the money of the stockholders, who own a share in the assets, who appoint their own Directors, for better or for worse, and whose liability is also limited. The banking companies are in an entirely different class, as they deal with the money of the depositors, who have no security except the solvency of the banking company and its sound

dealings with their money. Ex facie, the banking companies must be regulated somewhat differently, and the interests of the depositors must be paramount and the winding up of such companies depends upon other considerations, chief among which is the desire to pay off the creditors as far as possible in full or at least equitably. The action is thus dictated not from any abstract consideration of a long-range view of the future ability of a bank to pay its creditors but its ability to pay them at any given time. In this connection, the Reserve Bank has been given by the Banking Companies Act the power and invested with the duty of watching the affairs of every banking company with a view to ensuring the safety of the depositors' money. There is thus, at the very start, a reasonable classification, which is also a very just and practical classification, to achieve the avowed purpose.

It is hardly necessary to examine each and every provision of the Banking Companies Act. When the Banking Companies Act was originally enacted, the main objects were to prescribe minimum capital standards, to prohibits the non-banking companies to accept deposits repayable on demand and to limit dividends payable. But included in the Act was a comprehensive scheme for licensing of banks and a conferral on the Reserve Bank of power to call for periodical returns and balance sheets and to inspect books and accounts of banking companies. The Act also empowered the Central Government to take action against banks conducting their affairs in a manner detrimental to the interests of the depositors, and provided for a quicker procedure for winding up banking companies.

When the Banking Companies Act was passed in 1949, it was explained in the note on cl. 37, which corresponded to s. 38, that the provisions of the Indian Companies Act in respect of liquidation of companies did not seem to be suitable for banking companies, that a bank's business being of an over-the-counter kind, the bank has to meet immediately its liability and a provision for winding up of the banking company when it refuses to meet a lawful demand within a stated time, was necessary. It was also stated that the Reserve Bank was given authority to apply for the liquidation of the banking company, if its affairs were conducted to the detriment of the interests of the depositors. An examination of the Banking Companies Act reveals two things prominently. The first is that the whole intend and purpose of that Act is to secure the interests of the depositors. The second is that the Reserve Bank is the instrumentality by which this intend is to be achieved. The Act, at every turn, makes the Reserve Bank the authority to sanction, permits, certify, inspect, report, advise, control, direct, license and prohibit. There is hardly any provision where the Reserve Bank's judgment is not made final vis-a-vis a banking company except rarely where an appeal to the Central Government can lie. No useful purpose will be served in referring to these sections in detail.

Nor do the powers of the Reserve Bank end there. The Reserve Bank not only has powers over banking companies while they are functioning, but it has also powers when the banking companies wish or are forced to cease to function. If a banking company wants to suspend its business and applies to the High Court for a moratorium, the application is not maintainable, unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts. When the High Court grants the relief without such report, it has to call for a report from the Reserve Bank. The High Court is also required to have regard to the interests of the depositors, and even during the period of moratorium granted by the High Court, the Reserve Bank can apply for the winding up of the banking company. Sections 39 and 41-A give special powers to the Reserve Bank in winding up proceedings. Even in voluntary winding up of a banking company, the Reserve Bank has to certify that the banking company is able to pay in full all its debts to its creditors, as they accrue. In amalgamation of banking companies, the scheme has to be approved by the Reserve Bank. Similarly, in compromises or arrangements between the banking company and its creditors, the Reserve Bank has to be satisfied. In all these

matters, the satisfaction inter alia, must be as to the interests of the depositors. In reconstruction of banking company after an application by the Reserve Bank for an order moratorium, the Reserve Bank has to satisfy itself and prepare a scheme, which, inter alia, must be in the interests of the depositors.

This brief survey of some of the other provisions of the Banking Companies Act, in addition to the general provisions earlier noticed, makes it plain that the legislature considers that consistent with its position as a central bank and more so with its duties and obligations, the Reserve Bank must have a decisive voice in certain matters. It is in this context and setting that the provisions of ss. 38(1) and (3)(b)(iii) of the Banking Companies Act must be viewed. It must not be overlooked that the legislature, in view of the sad experiences of the past, was anxious to devise a machinery for the supervision, inspection and effective functioning of banking companies in the country. Associated with this was the speedy closure of banking companies, which were harmful to the interests of the depositors. The legislature achieved both these objectives through the Reserve Bank, which, because of its special powers and advantages, was in a position to act promptly and effectively. To aid the Reserve Bank, the Courts were required by law to be guided in certain matters by the opinion and judgment of the Reserve Bank, and in the matter of their disposal of winding up cases relating to banking companies, a special procedure was enacted in Part IIIA of the Banking Companies Act.

We are now in a position to deal with the argument that ss. 38(1) and (3)(b)(iii) of the Banking Companies Act are void - firstly because they permit discrimination between banking companies on the one hand, and non-banking companies on the other, and also between banking companies inter se, and secondly because they create an unreasonable restriction upon the right to carry on banking, and lastly, because the whole procedure is a denial of the principles of natural justice, chiefly by denying an access to Courts. Though the arguments in this appeal have for their immediate object the declaration that ss. 38(1) and (3)(b)(iii) of the Banking Companies Act are void, they have ranged over a very wide field. In support of the first limb of the argument, Art. 14 is invoked, and in support of the second and third, Arts. 19(1)(f) and (g); and the argument proceeds along lines so well-known now as to need hardly any further amplification. There being no direct ruling either of this Court or of any High Court, assistance is sought to be derived from observations in previous decisions of this Court relating to other laws. In reply, the learned Attorney-General has relied upon the provisions of certain banking laws in America and Japan and decisions of the American Courts, where such American laws were tested under the 'due process' clause. We shall refer to those laws and briefly rulings in the sequel.

As regards the first point, viz., discrimination between banking companies and non-banking companies, we have already sufficiently indicated the wide difference that exists between these two types and the need for special laws dealing with banking companies. We have also pointed out the mischief that was sought to be remedied and how the present law has been evolved after considerable deliberation. A special Committee called the Banks' Liquidation Proceedings Committee was appointed in 1952, and the findings and recommendations of the Committee were implemented, amending the Banking Companies Act and incorporating changes, of which the impugned section in its present form is one. There being a very clear-cut and valid classification, the different, procedure cannot be said to be discriminatory, because it is based on differences which are related to the end sought to be achieved. Further, we do not think that the possibility that the procedure under ss. 38(1) and (3)(b)(iii) may be invoked in some cases and the procedure of the Companies Act in others, makes any difference, because the different procedures will be invoked to suit different situations, and it cannot be said that the Reserve Bank would act arbitrarily from case to case. The Reserve Bank, apart from its being a reasonable body, is answerable to the Central

Government, and the public opinion is certainly strong and vocal enough for it to heed. If the Reserve Bank were to act mala fide, the Central Government and in the last resort, the Courts, will be there to intervene. In our judgment, the provisions of ss. 38(1) and (3)(b)(iii) cannot be said to be a breach of Art. 14 of the Constitution.

That leaves over the second and third arguments, which proceed upon the same materials. In this connection, the main grounds of attack have already been set out in this judgment. Before we deal with the central point, we shall deal with certain others which proceed, so to speak, from the side lines. The objection that the Reserve Bank gives no hearing, records no reasons in writing and does not communicate them is met at least in this case by the admitted facts. The numerous inspection reports and directions issued by the Reserve Bank over a period of nearly nine years, together with the application filed in this case, prove amply that there was enough hearing of and enough communication of the grounds of action to, the Palai Bank. The Bank had also sufficient time and opportunity to establish its own point of view before the Reserve Bank. It was impossible that the Reserve Bank, with the run on the Bank, would sit down to decide after hearing whether to take action or not, while withdrawals were being made at the rate of Rs. 7 lakhs per day. The emergency of the situations which may arise, is itself the justification for the procedure open under the Act and taken in this case. In our opinion, these grounds cannot be entertained. It is difficult to imagine that the Reserve Bank would act differently in another case.

The main ground of attack is the way ss. 38(1) and (3)(b)(iii) make it mandatory for the High Court to pass an order winding up a banking company whenever the Reserve Bank under its powers or under an order of the Central Government makes an application for the winding up of a banking company. It is argued that such a power to the Reserve Bank is an uncontrolled and despotic power and to crown all, access to Courts is not possible because the Court itself must pass an order without deciding whether the affairs of the banking company are being conducted in a manner detrimental to the interests of the depositors - a fact capable of being proved like any other fact. It is argued as a matter of principle that any law which bars a decision by the Court is itself unreasonable without more. Mr. Pathak, in supplementing the above contentions of Mr. Nambiar, also contends that by the law in question a judicial process has been converted into an executive action, and subjective determination has taken the place of judicial determination. He also contends that the Reserve Bank accuses a banking company, and then tries the issue to the complete exclusion of Courts.

It must not be overlooked that the winding up of a banking company takes place before the High Court and under the process of law. The judicial process is excluded only in respect of the momentous decision whether a winding up order should be made or not. This opinion is left to the Reserve Bank, and the Court merely passes an order according to the Reserve Bank's opinion, and then proceeds to wind up the banking company according to law. The narrow question is whether in leaving this decision to the Reserve Bank the law offends the principles of natural justice, and becomes so unreasonable, viewed in the light of Art. 19, as to become void. This is the point on which the respective parties joined issue and had much to say, and this is the crucial point in this case.

In support of this contention, reliance on behalf of the appellant is placed upon certain cases of this Court, and we shall begin by noticing them in brief. The first case relied upon is A. K. Gopalan v. The State ((1950) S.C.R. 88.). In that case, the validity of ss. 3, 7, 10-14 of the Preventive Detention Act, 1950, was challenged on a petition under Art. 32 of the Constitution for a writ of habeas corpus. Certain observations of Kania, C.J., and Fazl Ali, J., were relied upon to show that the right to be heard and tried is the very basis of the rule of law Fazl Ali, J., observed that there is a

fundamental principle that a person whose rights are affected must be heard. The learned Judge referred to several cases in which the maxim, audi alteram partem, has been invoked and applied particularly the observations of Lord Macnaghten in Lapointe v. L' Association etc., de Montreal ((1906) A.C. 535.), who condemned a procedure which required no hearing as being "contrary to rules of society and above all contrary to the elementary principles of justice."

It cannot reasonably be said that there would be no hearing in cases of this type. While we agree that it is obnoxious to the rule of law as it exists among civilized nations, that a person should be condemned, unheard, we cannot say that in this case the Palai Bank was not heard, and this case is really typical of those cases in which such a power would be invoked. The learned Attorney-General was justified in saying that there was plenty of hearing before the application was filed. The gist of the objection must thus be taken to be that the Palai Bank was not heard in the High Court before the making of the impugned order. If a valid law could be made leaving to the determination of the Reserve Bank whether a banking company should be wound up and the Court to implement that decision, then this petition must fail; but if it cannot be made, then it must succeed. We have thus to see whether there is any inviolable rule that every determination must always be made by the Court and by no other authority.

In dealing with the rulings of this Court cited to us, of which we have already mentioned one, we shall enquire whether such a wide proposition can be said to have been established before. In A. K. Gopalan's case ((1950) S.C.R. 88.), s. 14 of the Preventive Detention Act was held void as contravening Art. 22(5) of the Constitution in so far as it prohibited a person who was detained from disclosing even to the Court the grounds of his detention and the representation made by him. It was said that the right to move an appropriate Court for a writ of habeas corpus and therein to show that the detention was improper, was undeniable and it was held that s. 14, which stood in the way of this right, was void. No general proposition that the Court must decide whether the person should be detained or not was laid down in that case. The law which allowed a subjective determination of the executive was in fact, upheld, and there are passages in the judgments of the majority to show that a judicial trial in cases of preventive detention was not considered necessary.

In State of Madras v. V. G. Row ((1952) S.C.R. 597.), ss. 15(2)(b) and 16 of the Indian Criminal Law Amendment Act, 1908 (as amended by the Indian Criminal Law Amendment (Madras) Act, 1950), were called in question, inter alia, on the ground that they empowered the State to declare associations illegal by a notification without a provision for judicial enquiry. It was held by this Court that the conferral of authority on the executive Government to impose restrictions on the right of association without allowing the grounds of such imposition both in their factual and legal aspects to be duly tested in a judicial enquiry was a strong element to be taken into account in judging the reasonableness of the restriction. It was also added :

> "The formula of subjective satisfaction of the Government or of its officers, with an Advisory Board thrown into review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional, circumstances....".

Earlier, in the same judgment it was said :

> ".... the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases."

V. G. Row's case ((1952) S.C.R. 597.) shows that laws allowing subjective determination by the executive are not to be struck down out of hand, but that their reasonableness must be judged according to the standards appropriate to the circumstances. It may, however, be mentioned that in V. G. Row case ((1952) S.C.R. 597.) a distinction was made between a law requiring anticipatory action particularly on grounds of suspicion, and a law which authority action based on the factual existence of certain grounds. A. K. Gopalan's case ((1950) S.C.R. 88.) and Dr. N. B. Khare v. The State of Delhi ((1950) S.C.R. 519.) were distinguished on this narrow ground which appears to have been conceded then by the learned Attorney General. The factual existence of grounds - amenable to an objective determination by the Court in the present case, namely prejudice to the interests of the depositors was said to place this case within the rule in V. G. Row's case ((1952) S.C.R. 597.). But cases of detention and associations declared unlawful are not in the same class as a banking company on which there is a run by the depositors and whose affairs, on inspection, are found to be mismanaged and conducted in such a way that it is unable to pay all lawful demands upon it. The factual background will not be one of suspicion, and action will be based on concrete facts, which will normally be checked and re-checked before the final decision, and, in our opinion, it is impossible to equate such a case with either A. K. Gopalan's case ((1950) S.C.R. 88.) or V. G. Row's case ((1952) S.C.R. 597.).

The next case to which reference was made is Thakur Raghubir Singh v. The Court of wards Ajmer ((1953) S.C.R. 1049.). In that case, s. 112 of the Agra Tenancy and Land Records Act (42 of 1950) was declared void. That section allowed the Court of Wards to take over the property of a landlord under the Ajmer Government Wards Regulation (1 of 1888) if the landlord habitually infringed the rights of tenants. Such a landlord was under s. 112 deemed to be "disqualified to manage his property." The reason for striking down the section was that it completely negatived the fundamental right under Art. 19(1)(f) by making the enjoyment of the right to depend on the mere discretion of the executive. The absence of any provision which would enable the landlord held to be a habitual infringer of the rights of his tenants, to have recourse to a Civil Court to test the correctness of the determination against him was held to create the invalidity. It is to be noticed that the learned Attorney-General in that case conceded the point, but the reason behind the rule appears to be that the law there prescribed a punishment or penalty for the bad behaviour of the landlord, and no person should be punished without having an opportunity to show cause. The question, therefore, is, can the ruling be made applicable ? It does not lay down any general principle applicable to all cases beyond the one we have mentioned. The action to wind up a banking company cannot be said to be a punishment for mismanagement but action designed to preserve the rights of the depositors, and the two situations are hardly similar.

The next two cases relied upon were The Commissioner, Hindu Religious Endowments, Madras v. Sri. Lakshmindra Tirtha Swamiar of Sri Shirur Mutt ((1954) S.C.R. 1005.) and Mahant Sri Jagannath Ramanuj Das v. The State of Orissa ((1954) S.C.R. 1046.). In these case, it was conceded by the counsel for the State that certain sections of the Madras Religious and Charitable Endowments Act (XIX of 1951) and of the Orissa Hindu Religious Endowments Act, 1939 (as amended in 1952), were ultra vires Arts. 19(1)(f), 25 and 26 of the Constitution. This Court also found in the former case that the provisions were extremely drastic in their character and the worst feature was that there was no access to Courts. The Act in question was considered drastic because under it a religious institution could be notified and taken over and vested in an executive officer merely by stating that the Board "was satisfied that in the interests of proper administration of the Math and its endowments, the settlement of a scheme was necessary." In the latter case, it was observed as follows :

> "Sections 38 and 39 relate to the framing of a scheme. A scheme can certainly be settled to ensure due administration of the endowed property but the objection seems to be that the Act provides for the framing of a scheme not by a civil court or under its supervision but by a Commissioner who is a mere administrative or executive officer. There is also no provision for appeal againsts his order to the court."

After commenting upon the amendment of sub-s. (4) of s. 39, which took away the right of suit and made the order of the Commissioner final and conclusive, this Court concluded :

> "We think that the settling of a scheme in regard to a religious institution by an executive officer without the intervention of any judicial tribunal amounts to an unreasonable restriction upon the right of property of the superior of the religious institution which is blended with his office. Sections 38 and 39 of the Act must, therefore, be held to be invalid."

These words would seem to show that the 'intervention' of a 'judicial tribunal' is the sine qua non of reasonable determination of any issue. But these cases must be read with the case reported in Sri Sadasib Prakash Brahmachari v. The State of Orissa ((1956) S.C.R. 43.). After the judgment of this Court in the case from Orissa, the Orissa Legislature passed Orissa Act XVII of 1954 purporting to amend not the Act of 1939 but Orissa Act II of 1952 which had been passed but not brought into force. The Orissa Act XVIII of 1954 on receiving the assent of the President came into force at once, and Act II of 1952 became amended and modified. The 1952 Act was then brought into force from January 1, 1955, by a notification.

By the new Act, which provided for the same subject-matter as the Act of 1939, the right of suit still remained taken away, but a right of appeal direct to the High Court was provided. It was contended again that the Act continued to be bad for the reasons given in the earlier case of 1954. This Court then observed :

> "It is further urged that the initial decision in a scheme-proceeding is still on the basis of an executive enquiry by an executive officer and that in any case a direct appeal to the High Court as against the Commissioner's order cannot be as adequate a safeguard regarding the rights of Mahants, as a suit and a right of appeal therefrom in the ordinary course to the higher courts would be. It is undoubtedly true that from a litigant's point of view an appeal to the High Court from the Commissioner's order is not the same as, an independent right of suit and an appeal to the higher courts from the result of that suit. But in order to judge whether the provisions in the present Act operate by way of unreasonable restriction for constitutional purposes what is to be seen is whether the person affected gets a reasonable chance of presenting his entire case before the original tribunal which has to determine judicially the questions raised and whether he has a regular appeal to the ordinarily constituted court or courts to correct the errors, if any, of the tribunal of first instance. For that purpose it is relevant to notice that in the present Act, the Commissioner of Endowments has, by virtue of section 4 thereof, to be a member of the Judicial Service (of the State) not being below the rank of a Subordinate Judge, while under section 7 of Act IV of 1939, Commissioner of Endowments could be a person of either the judicial or the executive service and that even where a member of the judicial service is appointed he may be a person below the rank of a Subordinate Judge. Another important difference has also to be noticed, viz., that while under section 38 of the previous Act

> the enquiry has to be conducted 'in such manner as may be prescribed' which means as prescribed by the Provincial Government by rules made under the Act and hence changeable by the Government, under the present Act, section 42(1)(b) specifically enjoins that the 'Commissioner shall hold an enquiry in the manner prescribed and so far as may be in accordance with the provisions of the Code of Civil Procedure relating to the trial of suits".

This Court, therefore, held that the scheme framed was not unreasonable. At p. 59 of the Report, a summary of the four steps which made for reasonableness was given as follows :-

> "(1) The scheme is to be framed by a Commissioner, who is, by appointment a judicial officer.
>
> (2) The procedure is, as far as may be, the same as that in the trial of suits.
>
> (3) There is a preliminary enquiry by the Assistant Commissioner.
>
> (4) There is an appeal to the High Court."

This was a departure from the insistence on the intervention of a judicial tribunal. It was considered enough if the person was a judicial officer and the procedure was that of the trial of suits, as laid down in the Civil Procedure Code. The Court still went further when it dealt with the earlier schemes which might have been framed by (a) an executive officer and (b) in pursuance of procedure prescribed by the Executive Government. The Court said that "this was merely a theoretical possibility". The absence of a preliminary enquiry in No. (3) was not considered a serious point. The order of the executive officer in No. (1) was held not of importance, as the Commissioner was a Subordinate Judge of the Orissa Judicial Service. The question of procedure (No. 2) was also not considered important, because the procedure prescribed by rules resembled that of trial of suits. As regards the right of appeal, s. 79A gave a right in all decided cases, and that was considered enough; but whether it was invoked or not in all cases does not appear to have been ascertained.

It would appear from these three decisions that the gist of reasonableness was held to be not so much in the label of the officer as in a judicial approach to the question to be decided according to a procedure which gave an adequate hearing. That the Commissioner was a judicial officer of the rank of a Subordinate Judge was considered enough for upholding his action as reasonable. That every decision should be by the Court was thus not the proposition laid down. In fact, the case shows that it is not the sine qua non so long as a person trained to the task of deciding controversies does it according to a procedure in which parties can be said to have been heard fully.

We need not consider in detail the case of Ebrahim Vazir Mavat v. The State of Bombay ((1954) S.C.R. 933.), in which s. 7 of the Influx from Pakistan (Control) Act, 1949, was held void. Section 7 authorised the Central Government to remove from India, any person "who has committed or against whom a reasonable suspicion exists that he has committed, an offence under this Act...." In dealing with the section, this Court said :

> "..... section 7 imposes the penalty of removal not only upon a conviction under section 5 but goes further and brings about the same result even where there is a reasonable suspicion entertained by the Central Government that such an offence has been committed. The question whether an offence has been committed is left entirely

to the subjective determination of Government."

This Court pointed out that there was no opportunity to the offender to clear his conduct, and held that this was "nothing short of a travesty of the right of citizenship". The case is explainable on the ground that an Indian citizen has a fundamental right to stay in India and if he is to be removed for committing an offence or under suspicion that he has committed an offence, the removal is a penalty which cannot be inflicted without an opportunity to the offender to clear his conduct. As pointed out by us already, while dealing with Thakur Raghubir Singh's case ((1953) S.C.R. 1049.), there is no question of a punishment here, and there is, in fact, a hearing, though not before a Court. There is nothing in the Influx from Pakistan (Control) Act to show that the opportunity to clear his conduct of the alleged offence must be by resort to the Court.

The appellant also relied upon K. T. Moopil Nair v. State of Kerala ((1961) 3 S.C.R. 77.), where a taxing statute was struck down on the ground that it provided no procedure for assessment of the tax, Abdul Hakim v. State of Bihar ((1961) 2 S.C.R. 610.) and State of Madhya Pradesh v. Baldeo Prasad ((1961) 1 S.C.R. 1970.), but they do not deal with the point now raised, and were decided on facts which were entirely different. It will thus be seen that the wide proposition, that every determination affecting liberty, rights or property must always be made by a judicial tribunal and none else, does not find support from the cases above considered. It is enough to say that the Reserve Bank in its dealings with banking companies does not act on suspicion but on proved facts. These facts are statutorily required to be submitted to the Reserve Bank, and the Reserve Bank further inspects the banking companies. It licenses such banking companies as conduct their affairs in the interests of the depositors, and can withdraw the licence if they do not. With such a statutory access to the affairs of a banking company, there is sufficient guidance in the words 'detrimental to the interests of the depositors' to show to the Reserve Bank when and how the power is to be exercised. Indeed, in this case itself, the Reserve Bank has given an easily understandable view of the monetary position of the Palai Bank. By comparing the total demand and time liabilities of the Palai Bank with the liquid assets, borrowing power and realisable advances, the Reserve Bank has shown the inability of the Palai Bank to meet lawful demands, and a state of affairs is disclosed, which is certainly not beneficial to the interest of those unfortunate depositors, whose money is still involved. The Reserve Bank has not yet told us all that it has found. It will all be found in the winding up proceedings. But this seems certain that the action would not be taken without scrutinising all the evidence and checking and rechecking all the findings. It is impossible to say that observations in the cases discussed above can apply to the facts here.

The learned Attorney-General, on the other side, drew our attention to Virendra v. The State of Punjab ((1958) S.C.R. 308.), where it has been pointed out that in judging the reasonableness of any particular law "the surrounding circumstances in which the impugned law came to be enacted, the underlying purpose of the enactment and the extent and urgency of the evil sought to be remedied" must also be considered. That case concerned the freedom of speech and its alleged curtailment by the Punjab Special Powers (Press) Act, 1956. In judging the reasonableness of the law from the angle of the exclusion of Courts, this Court observed :

> "Legislature had to ask itself the question : who will be the appropriate authority to determine at any given point of time as to whether the prevailing circumstances require some restriction to be placed on the right to freedom of speech and expression and the right to carry on any occupation, trade or business and to what extent ? The answer was obvious, namely, that as the State Government was charged with the preservation of law an order in the State, as it alone was in possession of all

> material facts it would be the best authority to investigate the circumstances and assess the urgency of the situation that might arise and to make up its mind whether any and, if so, what anticipatory action must be taken for the prevention of the threatened or anticipated breach of the peace. The court is wholly unsuited to gauge the seriousness of the situation, for it cannot be in possession of materials which are available only to the executive Government. Therefore, the determination of the time when and the extent to which restrictions should be imposed on the Press must of necessity be left to the judgment and discretion of the State Government and that is exactly what the legislature did by passing the statute..... Quick decision and swift and effective action must be of the essence of these powers and the exercise of it must, therefore, be left to the subjective satisfaction of the Government..... To make the exercise of these powers justiciable and subject to the judicial scrutiny will defeat the very purpose of the enactment."

These observations lay down clearly that there may be occasions and situations in which the legislature may, with reason, think that the determination of an issue may be left to an expert executive like the Reserve Bank rather than to Courts without Incurring the penalty of having the law declared void. The law thus made is justified on the ground of expediency arising from the respective opportunities for action. Of course, the exclusion of Courts is not lightly to be inferred nor lightly to be conceded. The reasonableness of such a law in the total circumstances will, if challenged, have to be made out to the ultimate satisfaction of this Court, and it is only when this Court considers that it is reasonable in the individual circumstance that the law will be upheld.

In the present case, in view of the history of the establishment of the Reserve Bank as a Central Bank for India, its position as a Banker's Bank, its control over banking companies and banking in India, its position as the issuing bank, its power to license banking companies and cancel their licenses and the numerous other powers, it is unanswerable that between the Court and the Reserve Bank, the momentous decision to wind up a tottering or unsafe banking company in the interests of the depositors, may reasonably be left to the Reserve Bank. No doubt, the Court can also, given the time, perform this task. But the decision has to be taken without delay, and the Reserve Bank already knows intimately the affairs of banking companies and has had access to their books and accounts. If the Court were called upon to take immediate action, it would almost always be guided by the opinion of the Reserve Bank. It would be impossible for the Court to reach a conclusion unguided by the Reserve Bank if immediate action was demanded. But the law which gives the same position to the opinion of the Reserve Bank is challenged as unreasonable. In our opinion, such a challenge has no force. The situation that arose in this case is typical of the occasions on which this extraordinary power would normally be exercised, and, as we have said already, if the power is abused by the Reserve Bank, what will be struck down would be the action of the Reserve Bank but not the law. An appeal against the Reserve Bank's action or a provision for an ex post facto finding by the Court is hardly necessary. An appeal to the Central Government will be only an appeal from Caesar to Caesar, because the Reserve Bank would hardly act without the concurrence of the Central Government and the finding by the Court would mean, to borrow the macabre phrase of Raman Nayar, J., a post-mortem examination of the corpse of the banking company.

It is a matter of not a little interest that a procedure for winding up other banks and institutions to the exclusion of the Companies Act is to be found in other statutes. The co-operative Societies, the State Financial Corporations, the State Bank of India, the Industrial Finance Corporation, the Life Insurance Corporation and finally, the Reserve Bank itself are to be liquidated under special laws to the exclusion of the Companies Act, under the statutes creating them.

In view of what we have said above, it is not necessary to refer to American and Japanese precedents. However, if these laws are examined, they show that even in the United States of America and Japan, the closure of banks and also their liquidation proceed from executive action. Under the Banking Law of Japan (Law No. 21, March 30, 1929), Arts. 22, 23, 24 and 27 provide that the competent Minister would decide such issues. Article 22 may be read in this connection :

> "If the competent Minister finds it necessary so to do in view of the affairs of a bank or the conditions of its property, he may order it to suspend business, deposit property, with official depository, or issue any such order as may be necessary." (Japanese Laws Relating to Banks-Eibun-Horei-Sha, Inc. Tokyo Japan, p. VI (BA 4).

It is also interesting to note that Arts. 22 and 29 of the Japanese Constitution guarantee to the people the freedom to own property and choose occupations, much as has been done under our Constitution.

In the United States of America, Banks are regarded as proper subject of legislative regulation under the police power (Corpus Juris Secundum, Vol. IX, paras 4 and 5, p. 32), and this power is not subject to the limitations arising from the Fourteenth Amendment, except that it must be reasonably exercised. The Banks in the United States being either National or State Banks, different laws have been framed to deal with the winding up of insolvent Banks. In almost all the States, statutes provide special proceedings for the affairs of insolvent State Banks, and the National Bank Act also makes special provision in respect of National Banks. The closing of the doors of a National Bank by the Comptroller of Currency on account of its insolvency and the appointment of a receiver do not amount to a breach of the due process clause. As stated in Corpus Juris Secundum, Vol. IX, para 419, p. 835 :

> "The courts have generally upheld the validity of statutes providing for the liquidation of state banks, including the control and administration of the assets by state officials or by receivers or liquidators appointed by them, the determination of the bank's solvency, claims against the bank...".

The power is thus conferred on the Comptroller of Currency by the National Bank Act and by the State law upon the superintendents of Banks. Under some statutes of the States, banking officials have no power to liquidate insolvent Banks independently of the judiciary. But in others, this power is specifically conferred. These propositions were cited to us from American Jurisprudence Vol. 7, Vols. IX, XIII and XVIA of Corpus Juris Secundum and from the Law Reports, particularly Title Guaranty and Surety Co. v. Idaho Ex Rel. Allen ((1916) 240 U.S. 130 : 60 L. ed. 566.), Bushnell v. Leland (), Ex parte Chetwood ((1897) 165 U.S. 443, 41 L. ed. 782.) and some others.

Mr. Nambiar, however, joined issue on the use of the American precedents on the grounds that banking in America is by grace of legislature, and is either a franchise or a privilege, which has no place in our Constitution. He added that the carrying on of business is not one of the provisions of the American Bill of Rights, nor a fundamental right, as we understand it, though by judicial construction the individual right has been brought within the Fourteenth Amendment. He, therefore, contended that American cases and American laws should not be used. In our opinion, no useful purpose will be served by trying to establish the similarities or discrepancies between the American Constitution and banking laws, on the one hand, and our Constitution and our banking laws, on the other, and we do not wish to rest our decision on the American and Japanese analogies.

We do not also agree that the impugned section amounts to an encroachment on the judicial power by the legislature. The statute book is full of instances in which the Courts of Civil Judicature guide themselves by the decision of an outside agency. The Arbitration Act itself affords a readily available instance. Under that Act the Court passes its decree on an award of almost any one the parties may choose. Nor is the possibility of a mistake by the Reserve Bank of such vital consequence. If the Reserve Bank acts in good faith and with circumspection, there is as much or as little chance of error as before a Court of law.

Lastly, we do not think that this was a case in which some lesser action like moratorium or amalgamation or reconstruction would have been feasible. The difficulty of the Palai Bank was the nature of its advances, which were either not recoverable or not easily recoverable. A moratorium with the limitation of time involved in it would not have been an adequate measure, and amalgamation and reconstruction were out of question at the stage which had been reached.

We are thus satisfied that ss. 38(1) and (3)(b)(iii) of the Banking Companies Act are neither discriminatory nor unreasonable, and cannot be declared void under Arts. 14 and 19 of the Constitution. Since the provisions are manifestly in the public interest, they cannot also be declared ultra vires under Art. 301, because they are protected by Art. 302 of the Constitution.

The appeal and the petition thus fail, and are dismissed with costs one set only.

KAPUR, J. -

The facts of this case have been set out in the judgment of our learned brother Hidayatullah, J., and it is not necessary to restate them.

The main question for decision is whether the provisions of s. 38(3)(b)(iii) of the Banking Companies Act (Act X of 1948) are ultra vires of the Constitution as being unreasonable restriction which infringe the petitioners' right under Art. 14 and Art. 19(1)(f) and (g) of the Constitution. Under s. 38(3)(b)(iii) of the Banking Companies Act the winding up petition was filed by the Reserve Bank of India against the Palai Bank Ltd., in the Kerala High Court on August 8, 1960. On the same day an application for the appointment of a Provisional Liquidator was also made and a Provisional Liquidator was appointed. On behalf of the Directors an objection was taken in the High Court that s. 38(3)(b)(iii) was invalid and unconstitutional because it contravenes Arts. 14 and 19 of the Constitution and that the petition was mala fide.

After the appointment of the liquidator four scheme of arrangement under s. 44B of the Banking Companies Act were presented to the Court. On October 6, 1960, the Court ordered the Reserve Bank to examine the work ability and efficacy of the schemes. The Reserve Bank of India filed its report on October 22, 1960, to the effect that prima facie the schemes were not workable. The order of winding up was then passed on December 5, 1960. The plea of mala fides was not pressed and the High Court held that there was no infringement of the petitioners' right under Arts. 14 and 19. The Court also held that although according to the language used in the impugned provision the Reserve Bank of India need not have disclosed the material on which it arrived at the conclusion that the continuance of the Palai Bank was prejudicial to the interest of the depositors, it had chosen to place all the materials before the Court which showed that ever since 1952 the Reserve Bank of India was drawing the attention of the Palai Bank to the grave defects in its working and had given it opportunities to explain the defects or to remedy them. The Palai Bank chose to do neither and "the Reserve Bank far from having acted without material or in a hasty and ill-considered manner,

had, doubtless alive to grave responsibility placed upon it to preserve the banking structure of the country, acted with a degree of care and circumspection which has drawn to it adverse criticism from those who do not share its responsibility. Faced with the run it would have failed in its duty by the depositors had it not acted as it did."

The history of the Banking Companies Act and how it came to be enacted is this. The Government of India appointed the Indian Central Banking Enquiry Committee which made its report on June 2, 1931. In para. 674 it pointed out the principal causes of failures of Banks. By Act 2 of 1936 Part XA was introduced into the Indian Companies Act of 1913 and that part dealt with Banking Companies but no separate and special provision was made for the winding up of banking companies. In 1934 the Reserve Bank of India Act (Act II of 1934) was enacted. There were minor amendments in the Indian Companies Act in regard to Banking Companies by Acts 21 of 1942 and 4 of 1944. On January 15, 1946 Banking Companies Ordinance (4 of 1946) was promulgated which enabled the Central Government to direct the Reserve Bank to cause inspection to be made of any banking company and its books and accounts. It empowered the Central Government, on the receipt of a report that the affairs of a banking company were being conducted to the detriment of the interest of the depositors, to prohibit the banking company from receiving fresh deposits or to refuse it to be placed in the schedule of the Reserve Bank of India Act or to de-schedule it. On March 10, 1949, the Banking Companies Act (Act X of 1949) was passed. On December 31, 1952, the Banks' Liquidation Proceedings Committee of 1952 made its report. According to that report the number of bank which suspended payments during the year 1926 to 1952 was 351. The total liabilities of these banks were Rs. 96.86 lakhs. Of these banks 123 were in Travancore-Cochin which were the most numerous. Then it was stated how many banks failed during different periods and it was pointed out that the slow progress of liquidation proceedings was due to the facts that the advances were mostly unsecured and recovery involved litigation, so much so that there were not enough funds to take legal proceedings; many claims were barred by limitation : contributories could not be traced and the unpaid capital could not be recovered. In cases of small banks advances were small and legal expenses for realisation were out of proportion to the amounts involved and the claims had therefore to be given up and the Directors invariably delayed the submission of their statements under s. 177A of the Companies Act and this hampered the progress of the liquidation proceedings. The Banking Companies Act was then amended from time to time and by s. 26 of Act 33 of 1959 the present s. 38 providing for winding up was substituted in place of the old s. 38.

In order to determine the constitutionality of the impugned provision it will be helpful to examine the scheme of the Reserve Bank of India Act and of the Banking Companies Act. The preamble of the Reserve Bank of India Act is that is has been constituted with a view to ensure monetary stability in India and to operate the currency and credit system of the country. By s. 3 the Reserve Bank has been established for the purpose of taking over the management of the currency from the Central Government and of carrying on the business of banking in accordance with the provisions of the Reserve Bank Act. Section 7 deals with management and it gives to the Central Government the power to give such directions to the Bank after consultation with the Government of the Bank which are considered necessary in the public interest. The Central Board of the Bank is constituted under s. 8 and it consists of the Governor four Directors nominated by the Central Government from amongst the local Boards, six Directors nominated by the Central Government and one Government official to be nominated by the Central Government. In other words all the Directors are nominees of the Central Government. By s. 11 the Central Government has the power of removing the Governor or any Director and casual vacancies are also to be filled by the Central Government under s. 12. Section 17 deals with the business which the bank may transact and Chapter III relates to Central banking functions. Under s. 30 the Central Government has the power to supersede the

Central Board and to entrust it to such agency as it may determine. It will thus be seen that the Reserve Bank is an institution established for the purpose of carrying on Central banking functions and its management is entirely in the hands of the Central Government or its nominees.

Section 2 of the Banking Companies Act provides that the provisions of that Act are in addition to and not, unless expressly so provided, in derogation of the Companies Act, 1956, and any other law for the time being in force. Section 4 gives the Central Government the power to suspend the operation of the Act on the representation of the Reserve Bank. Section 5 is the interpretation clause. Part II deals with "Business of the Banking Companies". Section 11 in that Part deals with requirement as to minimum paid up Capital and reserve of banking companies. Section 22 empowers the Reserve Bank to give licences to banking companies, and prohibits the carrying on of banking business without a licence issued by the Reserve Bank which may be issued subject to such conditions as the Reserve Bank thinks fit. Every banking company in existence at the commencement of this Act had to apply for such a licence within six months of the commencement of the Act and every other company had to apply before commencing banking business but companies which were in existence could continue their banking business until the licence was granted or it was refused. But it could not be refused before the expiry of three years referred to in sub-s. (1) of s. 11 Sub-section (3) of that section entitles the Reserve Bank of inspect books of the Banking company to satisfy itself in regard to matters contained in that sub-section. Under sub-s. (4) the Reserve Bank can cancel a licence granted to a banking company provided that before cancelling the licence it gives an opportunity to the Banking Company to show cause why its licence should not be cancelled. Under sub-s. (5) any banking company aggrieved by the order of the Reserve Bank cancelling its licence can appeal to the Central Government whose decision is final.

Under s. 24 every banking company has to maintain a percentage of its assets in cash, gold or unencumbered approved securities and an amount which is not less than 20% of the total of its time and demand liabilities and return to that has to be furnished periodically to the Reserve Bank. Section 25 deals with assets of every banking company in India, s. 27 with the making of monthly returns by the banking companies to the Reserve Bank and s. 30 with audit. The Reserve Bank under s. 35 may at any time and on being directed by the Central Government shall cause an inspection to be made of any banking company. Sub-section (4) of that section reads :-

> "The Reserve Bank shall, if it has been directed by the Central Government to cause inspection to be made, and may, in any other case report to the Central Government on any inspection made under this section, and the Central Government, if it is of opinion after considering the report that the affairs of the banking Company are being conducted to the detriment of the interests of its depositors may, after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable by order in writing.
>
> (a) prohibit the banking company from receiving fresh deposits;
>
> (b) direct the Reserve Bank to apply under section 38 for the winding up of the banking company;
>
> Provided that the Central Government may defer, for such period as it may think fit, the passing of an order under this sub-section, or cancel or modify any such order,

upon such terms and conditions as it may think fit to impose."

Under s. 35A power is given to the Reserve Bank to give directions. When quoted it reads :

S. 35A(1) "Where the Reserve Bank is satisfied that -

(a) in the public interest; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally;

it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

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

Section 36 defines further powers and functions of the Reserve Bank. It has power to caution or to prohibit a banking company from entering into any particular transaction or class of transactions, to assist any proposal for amalgamation of companies, to give loans to banking companies, to require banking companies to call a meeting of the directors for the purpose of considering any matter relating to or arising out of the affairs of the banking company to depute one or more of its officers, to watch proceedings at any meeting of the board of directors, to appoint one or more of its officers to observe the manner in which the affairs of the banking company are conducted or to require the banking company to make such changes in the management as Reserve bank may consider necessary.

Part III deals with the suspension of business and winding up of banking companies. Section 37 provides that on the application of a banking company the High Court may stay commencement or continuance of all actions against a banking company and may impose a moratorium; but the application is not maintainable unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted, provided that the High Court may for sufficient reason grant relief under this section even if the application is not accompanied by such report. In that case the High Court shall call for a report from the Reserve Bank on the affairs of the banking company and pass such order as may be proper in the circumstances. Under sub-section 3 the High Court can appoint a special officer to take into custody or control all assets, books and documents of the banking company and shall exercise such other powers as it thinks fit having regard to the interests of the depositors of the banking company. Under sub-s. 4 if the Reserve Bank is satisfied that a banking company in respect of which an order has been so made conducts its affairs in a manner detrimental to the interests of its depositors it can make an application to the High Court for the winding up of the company and where such an application is made the High Court shall not make any order extending the period. The impugned provision of section 38 which deals with winding up reads :-

S. 38(1) "Notwithstanding anything contained in section 391, section 392, section 433 and section 583 of the Companies Act, 1956 but without prejudice to its powers under sub-section (1) of section 37 of this Act the High Court shall order the winding up of a banking company -

(a) if the banking company is unable to pay its debts; or

(b) if an application for its winding up has been made by the Reserve Bank under section 37 or this section.

(2) The Reserve Bank shall make an application under this section for the winding up of a banking company if it is directed so to do by an order under clause (b) of sub-section (4) of section 35.

(3) The Reserve Bank may make an application under this section for the winding up of a banking company -

(a) if the banking company -

(i) has failed to comply with the requirements specified in section 11; or

(ii) has by reason of the provisions of section 22 become disentitled to carry on banking business in India; or

(iii) has been prohibited from receiving fresh deposits by an order under clause (1) of sub-section (4) of section 35 or under clause (b) of sub-section 3(A) of section 42 of the Reserve Bank of India Act, 1934 or;

(iv) having failed to comply with any requirement of this Act other than the requirements laid down in section 11, has continued such failure, or having contravened any provision of this Act has continued such contravention beyond such period or periods as may be specified in that behalf by the Reserve Bank from time to time after notice in writing of such failure or contravention has been conveyed to the banking company; or

(b) if in the opinion of the Reserve Bank -

(i) a compromise or arrangement sanctioned by a Court in respect of the banking company cannot be worked satisfactorily with or without modifications; or

(ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Act disclose that the banking company is unable to pay its debts; or

(iii) the continuance of the banking company is prejudicial to the interests of its depositors.

(4) Without prejudice to the provisions contained in section 434 of the Companies Act 1956, a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand made at any of its offices or branches within two working days if such demand is made at a place where there is an office, branch or agency of the Reserve Bank or within five working days, if such demand is made

elsewhere, and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.

(5) A copy of every application made by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the registrar."

Section 44A lays down the procedure for amalgamation of banking companies and s. 44B for restriction on the powers of the High Court to sanction compromise or arrangement between a banking company and its creditors unless compromise or arrangement is certified by the Reserve Bank as being capable of being worked as not being detrimental to the interest of the depositors. Section 45 gives to the Reserve Bank the power to apply to the Central Government for an order of moratorium in respect of banking company which the Central Government may order and it also gives to the Reserve Bank the power to prepare a scheme for reconstitution or amalgamation. Sub-section (1) and (2) of s. 45 are as follows :-

S. 45(1) "Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or any agreement or other instrument for the time being in force, where it appears to the Reserve Bank that there is good reason so to do the Reserve Bank may apply to the Central Government for an order of moratorium in respect of a banking company.

(2) The Central Government, after considering the application made by the Reserve Bank under sub-section (1) may make an order of moratorium staying the commencement or continuance of all action and proceedings against the company for a fixed period of time on such terms and conditions as it think fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed six months."

It will thus be seen that the Banking Companies Act gives very extensive powers to the Reserve Bank in regard to banking companies. It gives to the Reserve Bank the power to license existing banking companies or the banking companies, which want to commence business, and for that purpose it can inspect the books of the banking company in order to determine whether it is or will be able to pay its depositors. It can cancel a licence in certain circumstances but after giving to the banking company, an opportunity to be heard. A banking companies is required to keep a portion of its assets in a liquid form the Reserve Bank can order inspection of any banking company at any time it thinks proper and Central Government can order the Reserve Bank to make an inspection of any banking company and on that report drastic steps against the company may follow. The Reserve Bank can give directions as to how the business of a banking company shall be conducted. It can appoint observers and give directions to the directors of a banking company as to what they should do or should not do. Moratorium can be imposed by the High Court at the instance of a banking company but the Reserve Bank may have that order varied and set aside if the order is not in the interest of the depositors and if the Reserve Bank thinks that the continuance of a banking company is not in the interest of the depositors it may apply to the High Court for winding up of the banking company. In regard to amalgamation of banking companies through scheme of compromise and arrangement the Reserve Bank has a great deal of control and power. The Reserve Bank may apply to the Government to impose a moratorium on any banking company and if an application is so made the Government may make such an order. But when it comes to winding up provisions the Reserve Bank has pre-emptory powers, in that if it applies for the winding up of a banking company the Court is bound to order winding up because the words used are "the High Court shall" order the

winding up. Moreover the Government can direct the Reserve Bank to make such an application so that the Executive Government can take any banking company into liquidation. The power given in sub-s. (3)(b)(iii) of s. 38 is still more drastic because if the Reserve Bank is of the opinion that the continuance of a banking company is prejudicial to the interest of the depositors it may apply for winding up; in other words on its subjective satisfaction it may apply and if it does so the High Court has no option but to order the winding up it is this provision to which strong objection has been taken by the appellant and is assailed by him.

This provision was sought to be supported on behalf of the Reserve Bank by the learned Attorney-General who first drew our attention to the facts of the present case and to the various opportunities which were given to the Palai Bank since 1952 to carry out certain directions and on different occasions the Palai Bank had made representations and its Directors had interviewed the officers of the Reserve Bank and had given explanations till ultimately on July 21, 1960, the Reserve Bank called upon the Palai Bank to carry out certain directions which were enclosed with the letter. The Reserve Bank there wrote as follows :

> "The bank should therefore, in the interest of its depositors remedy within a period of 12 months the features observed in its working."

It was also stated therein that if the Palai Bank desired to make any representation in regard to contents of the inspection report it could make its representation within 30 days of the receipt of the letter and the complaint of the appellant is that before these thirty days were over winding up application was made on August 8, 1960, which the Reserve Bank submits was for very good reasons, the protection of the interest of the depositors.

The test of reasonableness has to be applied to each individual statute and no abstract standard or general pattern can be laid down which will be applicable to all cases : Patanjali Sastri, C.J., in State of Madras v. V.G. Row ((1952) S.C.R. 597, 607, 608.) observed :

> "The formula of subjective satisfaction of the Government or of its officers, which an advisory Board thrown in to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits, and cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights."

See also Abdul Hakim v. State of Bihar ((1961) 2 S.C.R. 610.) Although the legislature is the best judge of what is good for the community; State of Bihar v. Kameshwar Singh ((1952) S.C.R. 889.) the ultimate responsibility for determining the validity of the law must rest with the Court and the Court must not shirk that final duty cast on it by the constitution. Abdul Hakim's case ((1961) 2 S.C.R. 610.).

It was submitted by the learned Attorney General that ((1952) S.C.R. 597, 607, 608.) reasonableness of the impugned legislation has to be judged in its own setting and not on any abstract test and ((1961) 2 S.C.R. 610.) that the absence of judicial scrutiny is not an inviolable rule. It can be dispensed within certain circumstances as being unsuitable or defeating the purpose for which an Act is passed. In support of the former he relied upon the observations of Patanjali Sastri, C.J., in State of Madras v. V.G. Row ((1952) S.C.R. 597, 607, 608.) where the learned Chief Justice observed :

> "The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

and also to the following observation at p. 608 :

> "As pointed out by Kania, C.J., at p. 121 quoting Lord Finlay in Rex v. Halliday (1917) A.C. 260, 269, the court was the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based."

But in that very case the learned Chief Justice pointed out that the formula of subjective satisfaction of the Government with an Advisory Board thrown in to review the materials on which the Government seeks to override a basic guaranteed freedom can be viewed as reasonable only in very exceptional circumstances and within the narrowest limits and cannot receive judicial approval as a general pattern of reasonable restriction. In that case the court did not find any reasonableness in the claim of the Government to shut out judicial enquiry into the underlying facts.

In support of the second submission reference was made to Virendra v. The State of Punjab ((1958) S.C.R. 308.) where the constitutional validity of a Punjab Act which prohibited the publication by the Editor and Printer of any matter relating to the "Save Hindi" agitation was challenged. The question raised there was, are the restrictions imposed reasonable in view of all the surrounding circumstances. In other words were they reasonably necessary in the interest of public order under Art. 19(2) or in the interest of general public under Art. 19(6). Das, C.J., there observed that the legislature had to ask itself the question as to who would be the proper authority to determine at any given time as to whether the prevailing circumstances required some restrictions on the right to freedom of speech and expression and the answer was obvious that the State Government was charged with the preservation of law and order; it alone had in possession all the material facts and it would be the best authority, to investigate the circumstances and assess the urgency of the situation and make up its minde as to what anticipatory action must be taken for prevention of the threatened or anticipated breach of peace :

> "The court is wholly unsuited to gauge the seriousness of the situation, for it cannot be in possession of material which are available only to the executive Government. Therefore, the determination of the time when and the extent to which restrictions should be imposed on the Press must be necessity be left to the judgment and discretion of the State Government and that is exactly what the Legislature did by passing the statute."

This passage from the judgment of Das, C.J., and the passage from the judgment of Patanjali Sastri, C.J., in State of Madras v. V.G. Row ((1952) S.C.R. 597, 607, 608.) where reference was made to the observations of Kania, C.J. were strongly relied upon by the Attorney-General in support of his contention that the power given to the Reserve Bank in regard to winding up and the mandatory provision for the order for winding up by the court were reasonable restrictions; because the judge of the urgency and of the measures to meet the urgency could be the Reserve Bank or the court; and the legislature had rightly given the power to the Reserve Bank, because it was in possession of all the material facts and was the best authority to investigate the circumstances and assess the urgency of the situation. The analogy between Virendra's case ((1958) S.C.R. 308.) and the present case is, in our opinion, wholly in apt. In Virendra's case ((1958) S.C.R. 308.) there was an agitation by a

section of the Punjab public which was likely to have serious consequences on the public order and the tranquility of the state. It required quick measures to control it. The order was to meet an emergency, the order could at the most remain applicable for two months and there was a provision for making a representation to the Government. In the case of a banking company, assuming that an urgency like that which existed in Virendra's case ((1958) S.C.R. 308.) arises and a proper case is made out the Court will act with promptitude make such interim orders as the facts of the case may require e.g. the appointment of a provisional liquidator. There is one essential difference between V.G. Row's case ((1952) S.C.R. 597, 607, 608.) and Virendra's case ((1958) S.C.R. 308.) and the one before us. In the former two cases executive action of State Government was challenged. The Court there had not to give a judicial verdict in accordance with the opinions of the executive but had to determine the constitutionality of action already taken. It did not pass an order, judgment or decree in accordance with the subjective determination of the Executive but expressed the opinion that in the circumstances there was no infringement of constitutional rights. In the present case the Court is debarred from deciding the adequacy of the acts of mismanagement and the parlous state of its finances alleged against the Palai Bank. Besides the complaint before us is not that the Reserve Bank should not have filed an application but that the court could not order liquidation till after it had heard the Palai Bank in its defence and had afforded it an opportunity of meeting the allegations in the winding up petition. In other words a law which authorises a banking company to be condemned unheard merely on the subjective satisfaction of one of the suitors even though it was the Reserve Bank is unconstitutional.

It was next contended that the provision of s. 38 of the Banking Companies Act were not so unusual and that in other countries in similar circumstances much wider powers had been given in regard to the winding up of banking companies. Reference was made to the National Bank Act in the United States Code, s. 191 of which deals with general grounds for appointment of receivers. It provides inter alia that whenever the Comptroller shall be satisfied of the insolvency of a National Banking association, he may, after due examination of its affairs appoint a receiver who shall proceed to close up such association and enforce the personal liability of the shareholder. It also empowers the Comptroller to appoint receivers for insolvent national banks and to make rateable assessments upon the stockholders but do not vest judicial power in him in violation of the Constitution. The power of the Comptroller is exclusive and not subject to review of all matters properly within his discretion. A National Bank in America is a banking corporation organised by private persons and operated for private gain, the power and duties of which are defined and limited by Acts of Congress, providing for creation and liquidation of such institutions and being established to aid or promote governmental purpose and to provide national currency they are often regarded as public or quasi-public institutions.

Reference was next made to 92 American L.R. (Annotated), pp. 1257-58, which deals with the constitutionality of the power given under the statute conferring authority upon the Bank Commissioner to wind up the affairs of the Bank. It is there stated that the fact of insolvency having been discovered the statute directs the Bank Commissioner's course and the designation by him of a person to wind up the affairs of the Bank which is no more a judicial act than his order to the Board of Directors to remove a dishonest cashier."His powers are purely administrative, and in no way infringe upon the ancient authority of courts determine rights of person and property in specific controversies pending before them."

Reference was also made to Corpus Juris Secundum, Vol. IX, p. 844, para 425, where it is stated that under some statutes banking officials liquidating a Bank are not subject to the directions of a court.

Again reference was made to Corpus Juris Secundum, Vol. 16A, pp. 1219-1220, para. 711, where similar statement is made in regard to the same statutes. But the following passage from that paragraph is significant :

> "Legislation is in contravention of the guaranty where it takes away one's property and leaves him no remedy whatever by which he can regain it or obtain redress."

In Corpus Juris Secundum, Vol. 16, p. 506, para. 117, it is stated that appointment of a receiver, in certain instances, does not perforce violate constitutional provisions with regard to separation of legislative and judicial powers. So the appointment of a receiver by the legislature to settle the affairs of an insolvent bank has been held not to be a judicial act but where the cause is properly before a court the appointment of a receiver constitutes a judicial function without the scope of legislative control.

It was then submitted that in America closing the doors of a bank without awaiting court's orders is not a violation of due process of law. See Title Guaranty & Surety Company of Scranton v. State of Idaho ((1916) 240 U.S. 136. 60 L. Ed. 566.) where it was held that the State's power to put upon a Bank Commissioner the duty of closing the doors of State Bank if, on examination, it is found to be insolvent without awaiting judicial proceedings is not a violation of the due process of law, but it appears that the proposition that such a power was a violation of the 14th Amendment had not been argued in the State Court. The following observations of Mr. Chief Justice White at p. 569 are significant.

> "We say this because, in its opinion, the court observed that if that was the contention, it was irrelevant, as the statute did not authorise liquidation except as a result of judicial proceedings although they did impose upon the bank commissioner the duty, after he found a bank to be insolvent, to close its doors and prevent the further transaction of business until, in the orderly course of procedure, a judicial liquidation might be accomplished."

The only question there was whether the State could empower the Commissioner to close the doors of a bank. It was not a case where the statute authorised any liquidation except as a result of judicial proceedings. Therefore it was not a case of liquidation being ordered by an authority other than a court.

Another case relied upon was Bushnell v. Leland ((1897) 164 U.S. 684. 41 L. Ed. 598.) where the assessment made upon stock-holder of a national bank by the Comptroller of Currency was held to be evidence in an action brought by the receiver of a bank against a stock-holder to enforce payment of double liability imposed by law. It was also held that the giving of authority to the Comptroller empowering him to make a rateable call upon stockholder was not tantamount to vesting that officer with judicial power. In Ex parte Johan Chetwood ((1897) 165 U.S. 443 41 L. Ed. 782.) it was held that the receiver of a national bank appointed by the Comptroller of Currency is not an officer of any court but agent and officer of the United States.

The aid of American concepts, laws and precedents in the interpretation of our laws is not always without its dangers and they have therefore to be relied upon with some caution if not with hesitation because of the difference in the nature of those laws and of the institutions to which they apply. Mr. Nambiyar relied upon these different concepts and submitted that in U.S.A. the right to carry on business is not a fundamental right but is a "franchise", though, it has by legal

interpretation, been brought within the fourteenth amendment and the doctrine of "franchise" has no place in the Indian Constitution : C.S.S. Motor Service v. State of Madras (I.L.R. (1953) Mad. 304.) approved in Saghir Ahmad v. State of U.P. ((1955) 1 S.C.R. 707, 718.). Similarly the right to form a corporation is in U.S.A. a "franchise" or a "privilege" which can be withdrawn. To apply the analogy of Banks in U.S.A. to those in India or the mode of exercise by and extent of the powers of a Controller of Currency or some similar authority will more likely than not lead to erroneous conclusions.

To support the submission that this procedure for winding up in the case of banking companies was not unreasonable, it was submitted that there are many other corporations and societies which are not wound under the Companies Act but under a different procedure - by the orders of the Central Government - e.g. the Life Insurance Corporation, the State Finance Corporation, the State Bank of India and some others. They are all owned by the Central Government and are therefore not comparable with the respondent company. Besides merely because some other corporations or societies of a different kind can be wound up in a different manner or under a special procedure is hardly a ground for holding in favour of the constitutionality of the impugned provision. To further support the reasonableness of the impugned provision it was argued that because of the special knowledge of financial matters possessed by the Reserve Bank and to protect financial structure of the country special powers have been conferred on the Reserve Bank and the learned Attorney-General relied on the observations of Rajagopala Ayyangar, J., All India Bank Employees' Association v. National Industrial Tribunal ((1962) 3 S.C.R. 269, 298.) :

> "From what we have stated earlier as the genesis of the legislation now impugned it would be apparent that Government had to effect a reconciliation between two conflicting interests; one was the need to preserve and maintain the delicate fabric of the credit-structure of the country by strengthening the real as well as the apparent credit-worthiness of banks operating in the country."

But that was in a different context. That was a matter in regard to the provisions s. 34A of the Banking Companies Act, sub-s. (1) of which gives immunity under certain circumstances to books and accounts of a banking company against production and inspection in a proceeding before the Industrial Tribunal and sub-section (2) of which provides that if in any proceedings in relation to any company other than the Reserve Bank any question arises whether the amount of reserves should be taken into account by the authority before which such proceeding is pending the authority may refer the question to the Reserve Bank and the Reserve Bank shall, after taking into account the principle of sound banking and other circumstances furnish to the authority a certificate, stating that the authority shall not take into account any amount as such reserve and such certificate shall be final. All that this case laid down was that such a provision balanced the interests of the parties and the delicate fabric of the credit structure of the country. Besides that provision relates to production and inspection of documents and relates to what facts can be taken into consideration by an Industrial Tribunal or whether a certificate by the bank is proof of a particular fact or not. Again what is applicable to a quasi-judicial authority like an Industrial Tribunal adjudicating upon industrial disputes seeking to do social justice may be inapplicable to Courts of law adjudicating upon the rights of a citizen to carry on his trade and avocation or not.

Next case cited was Sajjan Bank v. Reserve Bank ((1959) 2 M.L.J. 455.). That was a case where the validity of s. 22 of the Banking Companies Act was challenged on the ground of Art. 19(1) of the Constitution and it was held not to be ultra vires on the ground that power of licensing is not vested with a mere officer of the bank and the standard for exercise of power has been laid down in the

section itself and the power granted to the Reserve Bank is not an arbitrary one.

The vital question for decision is whether a law which requires the High Court to order winding up because the Reserve Bank is of the opinion that a banking company should be wound up is constitutional. In other words can a statute which takes away the power of the Court to proceed in a normal judicial manner to determine a question submitted to it for its decision on the materials proved before it and requires it to decide it merely in accordance with the subjective satisfaction of one party to the dispute and without giving the other party the right to be heard at any stage of the proceeding and prove its defence be called a reasonable restriction under Art. 19(1)(f) and (g) of the Constitution. Will the law which excludes the application of the judicial process, and compels the Court to merely carry out the behests of one of the parties by giving effect to that party's subjective satisfaction and thus to abdicate its judgment to the opinion of a suitor be valid. Dealing with emergence of judicial power Griffith, C.J., in Waterside Workers' Federation of Australia v. J. W. Alexander Ltd. ((1918) 25 C.L.R. 434, 442.) said that as soon as man emerged from the savage state and formed settled communities it became necessary to have rules to regulate conduct for the enforcement of which provision was made and this power vested in some person or authority representing the community. Hence arose law givers and Judges and as civilisation advanced distinction began to be drawn between the diverse functions of the community and these functions were called "the judicial power" as distinguished from the legislative and executive powers. The learned Chief Justice then defined what "Judicial power" is. He said :

> "Without attempting an exhaustive definition of the term "judicial power," it may be said that it includes the power to compel the appearance of person before the tribunal in which it is vested, to adjudicate between adverse parties as to legal claims, rights, and obligations whether their origin, and to order right to be done in the matter."

Lord Macnaghten in Lapointe v. L' Association de Bienfaisance et de Retraite de la Police de Montrial ((1906) A.C. 535, 539.) condemned in the case of persons, other than, judges performing judicial functions, following a procedure "contrary to the rules of the society and above all contrary to the elementary principles of justices."

The importance of the judicial process was emphasised by Patanjali Sastri, C.J. in Ram Prasad Narain Sahi v. The State of Bihar ((1953) S.C.R. 1129, 1134.), a case where the dispute was between the State of Bihar and a private individual about the settlement of lands belonging to Bettiah Raj :

> "This is purely a dispute between private parties and a matter for determination by duly constituted courts to which is entrusted, in every free and civilised society, the important function of adjudicating on disputed legal rights after observing the well established procedural safeguards which include the rights to be heard, the right to produce witness and so forth. This is the protection which the law guarantees equally to all persons, and our Constitution prohibits by Article 14 every State from denying such protection to anyone."

No doubt there the question was raised under Art. 14; but it is the importance of the judicial process in disputes between the State and a private individual that was emphasised. At p. 1133 the learned Chief Justice pointed out the dangers inherent in special enactments in a system of Government by political parties depriving particular named persons of their liberty or property. In Mahant Sri. Jagannath Ramanuj Das v. The State of Orissa ((1954) S.C.R. 1046, 1052.), objection was taken to

certain provisions in the Orissa Hindu Religious Endowments Act which related to the framing of a scheme. Under those provisions a scheme could be settled to ensure due administration of the endowed properties but the objection was that the Act provided for the framing of a scheme not by the Civil Courts nor under provisions of the Civil Procedure Code but by a Commissioner who was merely an administrative officer. There was no provision for appeal against his order. Mukherjea, J. (as he then was), said at p. 1052 as follows :

> "We think that the setting of a scheme in regard to a religious institution by an executive officer without intervention of any judicial tribunal amounts to an unreasonable restriction upon the right of property of the superior of the religious institution which is blended with his office. Sections 38 and 39 of Act must, therefore, be held to be invalid."

See also The Commissioner of Hindu Religious Endowments v. Sri Lakshmindra ((1954) S.C.R. 1005, 1037.). In Sri Sadasib Prakash Brahmachari v. The State of Orissa ((1956) S.C.R. 43.) which was a decision in regard to the same Act after its amendment after ss. 38 and 39 had been declared to unconstitutional. By the amendment although the scheme was to be prepared by the Commissioner a right of appeal direct to the High Court was given against the determination of the Commissioner settling the scheme. It was held that although from the litigant's point of view an appeal to the High Court from the Commissioner's order is not the same as an independent right of suit and an appeal to the higher court but in order to judge whether the operation of the provision was or was not an unreasonable restriction what had to be seen was whether the person affected got a reasonable chance of presenting his entire case before the original tribunal which has to determine judicially the question raised and whether he has a right to regular appeal to the ordinary constitution court or courts to correct the errors if any of the tribunal of first instance. It was also emphasised in that case that the Commissioner had to be a member of the judicial service and the enquiry before the Commissioner was assimilated to and was governed by the provisions relating to the trial of suits by enjoining that as far as it might to it was to be in accordance with the provisions of the Code of Civil Procedure relating to trial of suits. The framing of a scheme in this manner was held not to be an unreasonable restriction on the rights of the Mahant under Art. 19(1)(f). It is important to notice that there the right of appeal was in very wide and general terms both on facts and on law and it could relate not merely to the merits of the scheme but also to all basic matters the determination of which was implicit in the very framing of the scheme.

The importance of the judicial power was pointed out by the Privy Council in Attorney-General for Australia v. The Queen and the Boilermakers' Society of Australia ((1957) A.C. 288.) where it was held that the function of an industrial arbitrator is completely outside the realms of judicial power and is of a different order. At p. 315 Viscount Simonds observed as follows :-

> "On the other hand, in a federal system the absolute independence of the judiciary is the bulwark of the constitution against encroachment whether by the legislature or by the executive. To vest in the same body executive and judicial power is to remove a vital constitutional safeguard".

A great deal of emphasis was laid by the learned Attorney-General on the fact that the Reserve Bank is a body of expert bankers which could more appropriately determine as to when the continuance of a banking company is prejudicial to the interest to the depositors than a judicial tribunal. This argument is in our opinion fallacious because the liquidation of banking companies in this country as of any other company is a judicial function and therefore within the jurisdiction of Courts and it

has never been seriously suggested that the Courts have found or will in future find any difficulty in adjudicating on any technical matter dealing with the peculiar nature of banking companies. It cannot with any justification be argued that in dealing with such matters the exercise of jurisdiction by Courts is less desirable than any other matters which are litigated before them. Indeed it would be a negation of the rule of law if the citizen were to be denied to have his rights adjudicated by an independent tribunal like a Court of law and it will not subserve the interests of the Rule of Law in a free democratic society, if adjudication of the question of the solvency of banking houses was left to the subjective opinion of an executive body like the Reserve Bank even though it may be expert in banking. The following observations of Lord Morton of Henryton in Baldwin & Francis Ltd. v. Patents Appeal Tribunal ((1959) A.C. 663, 679.) which was a case relating to patents are very relevant :-

> "It would, indeed, be regrettable in present times, when certiorari lies to so many tribunals dealing with scientific matters, if the courts were precluded from considering whether there was an errors of law on the face of the record because they did not know the meaning of certain technical terms."

In an American case Ohio Valley Water Company v. Ben Avon Borough ((1920) 253 U.S. 287, 64 L Ed. 908.), it was held that withholding from courts power to determine question of confiscation according to their own independent judgment must be deemed to deny due process of law.

In Halsbury's Laws of England, Vol. 7, (Simonds Edition), at p. 198 it has been stated that it is the right of a subject to have any dispute affecting him brought before a judicial tribunal and tried in accordance with the principles of natural justice and that no party ought to be condemned unheard or to have a decision given against him unless he has been given a reasonable opportunity of putting forward his case.

It was further submitted by the appellant that the Reserve Bank is entirely an executive body, and therefore a mandatory provision like s. 38(1) and 38(3)(b)(iii) practically leaves the question of liquidation of banking companies in the hands of the Executive. By s. 7 of the Reserve Bank Act the Reserve Bank is required to act according to the orders of the Government. The Directors of the Reserve Bank, according to s. 8 are all nominated by the Government. Under s. 38(2) the Reserve Bank is enjoined to apply for the liquidation of a bank if it is so directed by the Central Government and therefore any opinion formed by the Reserve Bank in regard to the insolvency or otherwise of a bank must necessarily be the determination of an important branch of the Executive and when s. 38(1) requires the court to order the winding up of a banking company if an application in that behalf is made by the Reserve Bank then it is the substitution of executive power in place of judicial determination and judicial decision is one of the main features of the rule of law. To quote from Stephen's Commentaries on the Laws of England, Vol. III, p. 565 :

> "The importance of the judicial element in our Constitution can hardly be exaggerated, for it rests with the Courts to ensure the conformity of Government with law..... The 'Rule of Law' which Dicey held to be a leading principle of our Constitution, does not involve the decision of every dispute by Courts of law. But it does imply that all authorities in the State act under the eye of the Courts, and are liable to have the legality of their conduct inquired into."

What then is the position in the present case. It is claimed on behalf of the Reserve Bank that the position of the Palai Bank was very precarious and that its assets were not sufficient for the purpose

of the payment to its depositors in full or to meet its liabilities. It was also alleged that on several occasions directions had been given to the Palai Bank to conduct its affairs in the manner required by the Reserve Bank and that many opportunities had been given to it to give its explanation as to the defects and irregularities in its working and to carry out the directions of the Reserve Bank and it had failed to comply with them. The allegation that the bank was in a precarious position, unable to meet its demands and it had no liquid assets to pay off its depositors, has been challenged by the appellant. The High Court would have adjudicated upon that question if it had been competent to do into it. That is exactly what is required in a judicial determination and that is what the Palai Bank, has been deprived of and it is that which affects the constitutionality of the impugned statute. The position under s. 38 of the Banking Companies Act is that if the Reserve Bank is of the opinion that the constitution of a banking company is deterimental to the interests of the depositors and it makes an application for winding up, the Court is bound to order winding up irrespective of whether the banking company has or has not a good defence. Therefore the Court has to put its judicial seal on the opinion of another which is absolute negation of the exercise of the judicial process. It was argued that the Reserve Bank, before it takes action, inspects, gives instructions, takes explanations and hears the banking company but it is not bound to do so.

The vice of the impugned provision lies in (a) the power vested in the Reserve Bank to apply to the High Court for an order winding up a bank exercisable solely on its subjective satisfaction as to the existence of conditions prescribed by s. 38, and (b) the obligation imposed by law upon the High Court to make the order of winding up without at any time enquiring whether the conditions on which the application is founded do in truth exist. In adjudging the reasonableness of the restriction imposed by a statute the Court has to consider its purpose, the evil it intends to remedy and it tries to strike a balance between the interest of the aggrieved citizen and the larger public interest sought to be served by the statute; the Court in each case considers whether the restriction imposed is appropriate, fair and reasonable. The Court will not uphold a restriction which is not necessary for achieving the purpose of the statute or is a arbitrary. Are the circumstances so compelling in the present case that unless the provision requiring a Court to order winding up of a banking company because the Reserve Bank feels satisfied that it should be wound up to protect the interests of the depositors is upheld the interests of the public cannot be safeguarded ? In considering this question it may be legitimate to enquire whether the High Court which normally exercises jurisdiction in the matter of ordering winding up of companies is incompetent or its procedure inadequate to examine the charges against a banking company. The credit of a banking institution is undoubtedly very sensitive. It thrives upon the confidence of the public in the honesty of its management, and its reputation of solvency. There is however nothing peculiar in the business of a banking company that it must be ordered to be wound up on the subjective satisfaction of the Reserve Bank.

The Reserve Bank is undoubtedly an expert body with vast facilities for making enquiries into the affairs of banking companies in India. But on that account it cannot be presumed that the view of the Reserve Bank that any banking institution should be liquidated must always be correct. It cannot be said that the Reserve Bank can never act mistakenly or even negligently. The Reserve Bank may even be directed by the Central Government for reasons of its own to apply for liquidation of a Bank. Under the Constitution the Courts are the custodians of the fundamental rights of citizens; but by this extra-ordinary piece of legislation these very custodians are made the instruments of the Reserve Bank for imposing an order which prima facie is destructive of a guaranteed fundamental freedom. Under our Constitution the legislative and executive action are subject to judicial review within certain well defined limits. But by s. 38(1)(b) read with cl. (iii) the Court is not only deprived of its Constitutional functions but is commanded to lead its aid in defeating a fundamental freedom of banking companies. The impugned provision makes the Reserve Bank the complainant and Judge

in its own cause; it authorities the Reserve Bank on it subjective satisfaction as to the existence of a state of affairs prescribed by the statute even without an enquiry if it deems fit, to demand that the High Court shall order liquidation of a banking company without making any enquiry as to the sufficiency or even the existence of the material on which its satisfaction depends. The provision making a litigant the Judge in his own cause is an absolute negation of the rule of law. It is the foundation of the edifice of our judicial system that no one shall be condemned unheard, however strong the circumstances against him may appear to be. He is entitled to be told, if the freedom of citizen is to have any reality, what he has done to merit punishment or penalty, he must be afforded an opportunity to deny the correctness of the charge and to set up his plea in denial or extenuation, and also be afforded an opportunity to persuade the authority imposing penalty or punishment that the appropriate order is not the one proposed against him. But by a stroke of the legislative pen all these protections which are the foundation of the rule of law are destroyed and the satisfaction of the Reserve Bank is made conclusive for entering a verdict for determination of the right of a banking company to continue to exist.

In our view it would be a tragedy if by this and similar legislation citizens are to be convicted of offences, penalties are to be imposed upon them, their property sequestered, and their rights trampled upon without enquiry by the courts by the simple expedient of requiring the courts to lend their aid in imposing their authority and thereby creating a judicial facade to what is in truth exercise of purely executive authority. It is a matter of no moment that the executive authority invested with the power to call upon the court to lend its aid, is an expert body which performs an important function directly or indirectly in the governance of the State. However august the body so set up may be, a provision of law providing for imposition of restrictions on a citizen's fundamental right pursuant to its subjective satisfaction as to the existence of a state of affairs, and thereby permanently depriving the citizen of his right or property is in our judgment wholly unreasonable.

The plea of constitutionality of a statute infringing a fundamental right cannot be negatived on the assumption that the autocratic power of imposing penalty or punishment is entrusted to the executive authority which will exercise it only in proper cases and there will be no abuse of power. In the larger interest, our Constitution makers have been averse to conferral of auto cratic power and have tried to protect the citizen against the exercise of such power by guaranteeing him the fundamental freedoms and have also provided protection against infringement or those freedoms by legislative or executive action.

We are prepared to assume, though counsel for the Palai Bank very vehemently challenged the truth of the case of the Reserve Bank, that the affairs of the Palai Bank were mismanaged and that there was a mounting run on the bank and it was practically in an insolvent condition. The validity of a statute is not to be judged in the light of the propriety or otherwise of executive action, or its beneficient effects, in a given case. The invalidity of this statute arises because of the exclusion of any opportunity of judicial investigation into the fairness, propriety and reasonableness of executive action involving deprivation of a fundamental rights. It is unnecessary to consider the steps which it is claimed the Reserve Bank had taken from time to time to obtain information and to give advice and direction and also the allegation that the application to wind up was submitted because the condition of the Bank was deteriorating as each day passed. These are it must be observed, matters in dispute. Normally, it is the function of the judicial power to investigate whether a banking company should continue to function or should be liquidated. By the impugned provision the exercise of that judicial power is excluded. That exclusion is, in our opinion, not based on any inappropriateness of exercise of the judicial power, or existence of other compelling circumstances in the public interest, and is invalid because the statute, examined in the light of its repercussion on

the fundamental right of the citizen is unreasonable.

As we have shown above, under the Constitution the courts are the bulwark for the protection of the right of the citizens and they are a check on the vagaries, negligence and mistakes of the executive or on the high-handedness of one party before it against another. This Court has emphasised that the deprivation of the right to resort to court is an unreasonable restriction. It is true that in the present case an appeal in this Court has not been taken away but what is left is a wholly ineffective right of appeal because if the law is constitution then all that a court can do is to act according to the opinion of the Reserve Bank and abdicate its judicial function in favour of the opinion of an executive body.

We are therefore of the opinion that s. 38 is an unreasonable restriction on the right of the Palai Bank to carry on its business and is therefore unconstitutional. We need express no opinion on the question of hostile discrimination by the adoption of the procedure prescribed but the statute, if it be found unreasonable, is liable to be declared invalid. For these reasons the appeal must be allowed and the order of the High Court set aside.

BY COURT -

In accordance with the opinion of the majority, the appeal and the writ petition fail, and are dismissed with costs, one set only.

Appeal and petition dismissed.

</html