SUPREME COURT OF INDIA

Ganesh Bank, Kurundwad Ltd.

Vs.

The Union of India

C.A.No.3698 of 2006

(Arijit Pasayat and C.K. Thakker JJ.)

28.08.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

The present appeal is directed against the judgment and order dated 5.4.2006 passed by a Division Bench of the Bombay High Court in Writ Petition No.337/2006 questioning Notification dated 7th January, 2006 issued by the Government of India, Ministry of Finance imposing a moratorium in respect of the appellant-Ganesh Bank of Kurundwad Ltd. (hereinafter referred to as "Bank") for a period of three months from the date of order upto and inclusive of 6th April, 2006. Amongst others, the said Bank was directed not to grant any loan or advances or incur liability without the permission in writing of the Reserve Bank of India (in short the 'RBI"). Further, withdrawal of sums not exceeding 5,000/- by a Savings Bank or Current Account holder was permitted with a further relaxation of amount not exceeding Rs.10,000/- or the actual balance whichever is less in the event of certain difficulties such as medical treatment, higher education and obligatory expenses like marriage etc. Challenge was also made to the appointment of two Directors on the Board of Directors of the Bank.

Further Challenge was made to the Notification dated 9.1.2006 proposing a scheme of amalgamation of the Bank with Federal Bank, another private sector commercial bank and to the order dated 24.1.2006 sanctioning amalgamation of Bank with Federal Bank.

It is to be noted that along with the said writ petition filed by the Bank, another writ petition (WP(C) No. 160/2006) was filed by one Mr. Sunil Mahadev Chavan.

The background facts in which the writ petitions were filed are essentially as follows:

Appellant Bank was founded sometimes in the year 1920 and is having a banking license given by the RBI. It has some 32 branches situated principally in districts of Kolhapur and Sangli of Maharashtra and the adjoining Belgaum District of Karnataka. It has around 1,75,000 depositors in the rural areas of these three districts.

It was carrying on its activities smoothly, and it incurred losses only once and that was in the financial year 2004-05. That was also for the reasons which were beyond its control, viz (i) the value of the government securities, wherein it had made deposits, went down, and (ii) the provisioning norms set up by the RBI were made more stringent by it. It was on this background that it was shocked to receive the order of moratorium in the morning of 8th January, 2006. It led to unnecessary long queue at its Dadar branch, Mumbai, though there was no run on the bank any time in the past or even on that day as such. Thereafter, the issuance of the moratorium and the decision of the RBI to take further steps was duly advertised. The RBI appointed two directors of its own on the Board of Directors of the appellant-Bank on 7th January, 2006. The RBI then notified the proposed scheme of amalgamating the appellant-Bank with the Federal Bank on 9th January, 2006. The appellant-Bank objected to it by filing its objections on 23rd January, 2006, yet a decision was taken by the RBI and the Central Government on 24th January, 2006 sanctioning amalgamation of the appellant-Bank with the Federal Bank.

An interim order was passed by the High Court in W.P.337/2006 by which operation of the order dated 24.6.2006 was stayed and status quo was directed to be maintained. The order was challenged by the RBI and Federal Bank before this Court.

By Order dated 30.1.2006 this Court directed that the petitions were to be heard and decided early by the High Court. However, the interim order was left undisturbed.

Before the High Court the principal submissions of the writ petitioners were two-fold, namely that the order dated 7th January, 2006 imposing moratorium and then the order dated 7th January, 2006 appointing two Directors are both mala fide to suit the convenience of Federal Bank, ultra vires the power of the RBI and the Central Government and, therefore, bad in law, illegal and void. Similarly, the other submission of the writ petitioners was that the subsequent framing of scheme of amalgamation on 9th January, 2006 and the decision to sanction the amalgamation taken on 24th January, 2006 are motivated and pre-planned decisions for the benefit of the Federal Bank, mala fide and ultra vires the powers of the Central Government and the RBI. It was further submitted that both these decisions are not justified on facts and have been arrived at without taking into consideration the relevant materials. As far as the first decision imposing the moratorium is concerned, it was submitted that there were no good reasons to impose the same and, as far as the decision to amalgamate is concerned, it was submitted that the said decision was arrived at without considering the proposals of four other banks which were better placed and had made better offers.

As against these submissions of the writ petitioners, the stand of the RBI and the Central Government was that the Bank was in serious financial difficulties and therefore, the moratorium had to be imposed. The moratorium was fully justified on the facts of the case. The decision to amalgamate the appellant Bank with the Federal Bank was arrived at in full compliance with the statutory requirements and after considering relevant materials on record as well as the suggestions and objections from the appellant-Bank and all concerned, and after examining the proposals from the four other banks. It was, therefore, submitted that there is no reason to interfere with the decisions arrived at by the RBI and the Central Government which essentially were for benefit of the depositors. It was submitted that the interest of the employees was taken care of and the interest of the shareholders obviously came last.

According to the High Court the following two questions were to be adjudicated:

"(A) Whether the decision dated 7th January, 2006 of the Central Government imposing moratorium and to appoint two directors was mala fide, ultra vires the powers of the Central Government and the RBI, bad in law and void and unjustified on facts?

(B) Whether the notification dated 9th January, 2006 containing the proposed scheme of amalgamation and the decision to sanction the amalgamation dated 24th January, 2006 were mala fide, ultra vires the powers of the Central Government and the RBI and unjustified on facts?"

Taking note of the factual background the High Court held that the inference drawn by RBI was a positive inference and cannot be termed to be perverse. The High Court felt that it is the discretion of the decision maker where two views are possible and if the regulatory body arrived at a conclusion on the basis of facts and figures before it and points out that it has been warning the Bank for last over three years it will not be proper for the High Court to substitute its judgment for that of the RBI. Therefore, it was held that the decision of the RBI to impose the moratorium was neither unjustified nor against the provisions of Section 45(1) of the Banking Regulation Act, 1949 (in short the 'Act'). It was noted that the RBI is an expert body to regulate the banking activities and its judgment based on the factual scenario cannot be substituted by the High Court, may be because another view of the matter was possible. The High Court held that the allegation of mala fides was not substantiated. It was also of the view that while dealing with the question of mala fides, the following questions were also to be dealt with:

"(i) The first one is non-consideration of any scheme for reconstruction before going for amalgamation.

(ii) The second is with respect to proposing amalgamation with Federal Bank on 9th January, 2006 itself.

(iii) The third facet is not considering the proposal of other banks.

(iv) The fourth is in respect to an adequate opportunity under Section 45(6) and (7) of the Act."

After considering the rival submissions, the High Court held that the allegations were mala fides and were not established. Accordingly, the writ petitions were dismissed.

The stands taken before the High Court were re-iterated by learned counsel appearing for the appellant and the respondents.

Learned counsel for the appellants submitted that the undue and unseemly haste with which the order of moratorium dated 7.1.2006 was passed is a clear indication of mala fides. Moreover, full and correct facts were not placed by the RBI before the Central Government, in particular, facts regarding bank balances with the RBI and other banks and cash at hand amounting to Rs.36.62 crores were not placed before the Central Government. Actual figure of those liquid assets were Rs.119 crores as against total deposits of Rs.217.43 crores which is 55% against required 25% as per RBI norms. This was indicative of the bank's strong liquidity position. Total assets of the bank as on 31.3.2005 were Rs.235.44 crores as against total liabilities of Rs.220.45 crores. Therefore, the assets were exceeding the liabilities by Rs.14.99 crores. Even as on 31.12.2005, the assets were exceeding the liabilities by Rs.17.70 crores. The net loss in the year 2004-05 on which great stress

was laid by the RBI and the Central Government was on account of notional/book entry loss with respect to additional provision for Non Performing Assets (in short the 'NPAs') and depreciation in the value of Government securities. In respect of Urban Cooperative Banks, the RBI has relaxed provisional norms up to 5 years in respect of depreciation in the value of Government securities. However, the same was denied to the Bank. Majority advances of the banks were given to the priority sector namely Agricultural advances to which Securitisation Act is not applicable. Therefore, relaxation was necessary to be given. The RBI had granted permission to the Bank to open three new Branches after being satisfied that the Bank was in a sound financial position. Several awards were given to the Bank for exercising banking services. There was no complaint from any depositor, customer or shareholder and the Bank has not defaulted in payment of taxes or other government dues.

When objections were called for by the RBI regarding amalgamation within a span of 15 days in January, 2006, out of the total objections received by RBI, 97.49% of the customers/depositors objected to moratorium and/or amalgamation of the Bank and have opted for independent entity of the Bank.

The factual scenario indicates that the proposal for amalgamation with the Federal Bank was circulated and in a pre-determined manner the proposal was ultimately approved on 24.1.2006. The draft scheme of amalgamation was sent to the Central Government to be operative w.e.f. 27.1.2006. When the appellant-Bank approached the High Court on 24.1.2006 and the copy of the writ petition was served on the RBI and the Central Government, the Notification of amalgamation w.e.f. 25.1.2006 was issued on 24.1.2006 itself so that it could be argued before the High Court that the appellant Bank was no longer in existence on 25.1.2006. The exercise of power under Section 45 of the Act was done solely for the purpose of favoring the Federal Bank. Though Section 36(AB) of the Act empowers the RBI to appoint Additional Directors there is no provision which empowers RBI to direct that no decision of the Board of Directors would be valid unless it is approved by the Directors appointed by the RBI.

The entire exercise was pre-conceived under the garb of exercise of statutory authority. There was a systematic plan to amalgamate the appellant-Bank with the Federal Bank. The entire proceedings are thus vitiated by malice in law. The rejection of the proposal of Saraswat Bank is vitiated on account of misunderstanding of Section 56(zb) of the Act and on account of a failure to consider the interest of shareholders whose interest would continue to be of paramount importance. On account of heavy floods there was temporary disruption of banking activities and this aspect has not been considered.

The fact that Federal Banks' Board Meeting was preponed from 11.1.2006 to 8.1.2006 is a pointer to the fact that they were very much in know of things to gain under advantage.

The data given by the RBI relating to some other amalgamation i.e. in cases of Global Trust Bank and Nedgundi Bank have no relevance as in those cases there were large scale complaints of fraud.

In response, learned counsel for the respondent No.4 i.e. Federal Bank submitted as follows:

The procedure, process and yardsticks envisaged under Section 45 of the Act for the amalgamation of a financially unviable bank with a stronger bank, cannot be the same as are applicable to a tender process. It is submitted that when acting under Section 45 of the Act, the primary consideration

must be of public interest. Under the said provision, the RBI has the statutory duty and responsibility to act swiftly and decisively to protect interests of depositors and public confidence in the banking system. In contrast, when awarding a tender, it is primarily commercial considerations that must be the selection process. It is, therefore, submitted that it is in public interest not to interfere on commercial consideration with a decision made under Section 45 so long as it safeguards depositors' interests and public confidence in the banking system in an emergent situation.

The respondent No.4-Federal Bank is a financially strong bank with high net worth, large capital funds and huge amount of deposits with more than adequate capital to Risk Weighted Assets Ratio (in short the 'CRAR'). Its net worth is about Rs.897 crores and its capital is about Rs.85 crores It has deposits to the tune of Rs.16,448 crores and its CRAR at 11.34%, exceeds the Reserve Bank of India requirement of 9%. It has a very low percentage of NPA with its Gross NPAs being 5.17% and Net NPA being 1.41%. As of 31st December, 2005 Federal Bank has recorded a profit of Rs.174.48 crores. The contrast on each of these parameters with the appellant-Bank is striking. On each parameter, the performance of the appellant-Bank is abysmal in comparison to Federal Bank.

It is also pertinent to note that Section 45 of the Act does not contemplate or require the consent of either the transferor or the transferee bank, although both are given an opportunity to lodge their objections/suggestions to the draft scheme, before a final decision is taken.

It was submitted that Federal Bank was not privy to any information from RBI regarding the status of the appellant- Bank or any proposal to impose a moratorium at any time prior to 7.1.2006 when for the first time the order of moratorium and the RBI's press release was placed on RBI's website.

It was also submitted that allegations of complicity based on the advancement of the date of Federal Bank's Board Meeting from 11.1.2006 to 8.1.2006 are completely unfounded. It was submitted that Federal Bank had indeed vide its Notice dated 29.12.2005 originally scheduled the said Board Meeting for 11.1.2006 at Kochi, but this date was found to be inconvenient to several directors. Instead, 8.1.2006 was found to be a more convenient date for the meeting, since firstly many of the directors were congregating at Kochi for the wedding of the son of one of Directors on that date, and secondly, one other director, an NRI was scheduled to attend a meeting at the PMO on 7.1.2006. The said director would also have found it convenient to attend the Board Meeting, if it were to be held on 8.1.2006. In view thereof, for bona fide reasons and in good faith, the said Board meeting was rescheduled for 8.1.2006 vide notice dated 4.1.2006.

Certain aspects which have been noted by the High Court to dismiss the appellant's writ petition need to be noted to test how for the conclusions are correct.

The first is whether there were "good reasons" for the RBI to apply to the Central Government for the moratorium which led to the impugned order dated 24th January, 2006, the concept of "good reasons" contemplated under Section and as to how the RBI justifies its decision on the basis of the yardstick applied by it. As far as the appellant bank is concerned, its case is that it is a small commercial bank and the only year in which it had made losses was for the financial year 2004-05. That was because of the value of the Government securities going down and the provisioning norms being made more stringent by the RBI. According to the RBI's application to the Central Government, the net worth of the petitioner bank had become negative and so also CRAR had become negative and was at 5.83.

As against this stand of the RBI, it was pointed out on behalf of the appellant-Bank that Annexure-I to RBI's application under Section 45(1) dated 4th January, 2006 contained the key financial positions of the Bank. Clause 8 thereof dealt with the NPAs. It was pointed that the net NPAs had gone down from 10.59% to 8.32%. It was also pointed out that the Bank had done good resource mobilization in the meantime and its paid up capital had gone up from Rs.1.52 crore to Rs.1.82 crore.

In para 5 of the letter, the RBI wrote to the Additional Secretary, Ministry of Finance that infusing fresh capital did not appear to be feasible. There was reluctance on the part of the shareholders and directors to merge with the stronger Bank. It was therefore imperative to make immediate arrangement to protect the interest of the depositors to merge with another bank. It is for this purpose that the moratorium was proposed under Section 45(1)

In the counter affidavit filed before the High Court, it was stated on behalf of RBI that in June 1998, the Chairman of the appellant Bank was advised that old private sector banks having present net worth of Rs.5 lakhs should attain the level of Rs.50 crores within a period of 3 years On 12th January, 1999, the appellant -Bank sent the plan to augment resources up to Rs.20.08 crores over the period of 5 years. At on 31st March, 2002 its net worth stood at only Rs.6.62 crores and its paid up capital as on 31st March, 2005 was Rs.1.82 crore. It was further stated that as per the Bank's Balance Sheet as on 31st March, 2005, it had reported the net loss of Rs.5.97 crores. In view of the deteriorating financial position, further meetings were held on 12th August, 2005, 26th August, 2005 and 12th September, 2005 to point out the major concerns of RBI vis. low paid up capital of Rs.182 crore, high level of gross NPAs (18.04%) and net loss of Rs.5.97 crores. On 14th October, 2005 the bank was asked to submit a detailed plan for capital augmentation. It is on the background that the moratorium was imposed on 7th January, 2006.

Appellants' stand was that since deposits with the Bank were Rs.92 crores, it was irrational to insist that it should have capital funds of Rs.50 crores. It was however pointed out that the Bank was consistently increased its capital and it stood at Rs.2.95 crores by 5th January, 2006 which included Rs.1.13 crore in the form of share application money. It was nothing but a part of share capital. Again, as far as NPAs are concerned, they had gone down from 14.10% to 9% and, as far as loss of Rs.5.97 crores is concerned, it is because of the change in the provisioning norms.

High Court noted that the Bank had paid up capital of Rs.1.82 crores only, high gross NPAs at 18.04% and net loss of Rs.3.97 crores. It was in these circumstances that the RBI had to decide as to whether the depositors of the Bank required any protection. RBI had been monitoring the financial position of the Bank since June 1998 and since December 2003 the Bank had been placed under monthly monitoring as provided under Section 27 of the Act. According to High Court, expression "good reasons" under Section 45(1), primarily relates to interest of the depositors and the interest of the Bank. This is because the primary objective of the Act is protection of the interest of depositors as against the primary objective of the Company Law which is to safeguard the interest of shareholders. This is what is specifically stated in the Objects and Reasons of the Act. On these facts, the RBI was of the view that an appropriate action was necessary. It could not be said that the decision was lacking in the absence of good reasons. It is difficult to say that it was taken for the benefit of the Federal Bank since these reasons go back to December 2003 when Federal Bank was not in picture.

It has been submitted that a small bank like the appellant cannot be expected to have the Capital Adequacy of Rs.50 crores as advised in June 1998 and which was later on revised to Rs.300 crores by circular dated 20th February 2004. Reference is made to Section 11(3)(i) of the Act which provides that if a banking company has places of its business in more than one State, it is required to have the aggregate value of its paid-up capital and reserves at not less than Rs.5 lakhs. If that is the expectation, the RBI cannot insist on the requirement of Rs.50 crores and then go on increasing it further. Reliance is placed on the decision of this Court in Assam Co. Ltd. v. State of Assam (2001 (4) SCC 202), which lays down that a delegate cannot over-ride the Act either by exceeding the authority or by making provision which is inconsistent with the Act. On the other hand, stand of RBI is that the language of Section 11(3)(i) is that in the case of such a banking company, the aggregate value of paid-up capital and reserves shall not be less than Rs.5 lakhs. Therefore, insistence of Rs.50 crores or a higher amount cannot be said to be erroneous. With globalisation, finance and banking in rural areas also have to improve and it is from that point of view that the RBI had expected the above referred enhancement. That was expected from all similarly situated banks and not merely from the appellant-Bank alone. Reference is made to the expectations under the Basle Committee on Banking Supervision, 1988 and the first Narasimham Committee Report on Financial System, 1991 which recommended on the basis of the Basle Committee that India also must conform to the international standards of capital adequacy in a phased manner. Second Narsimham Committee Report on Banking Sector Reforms of 1998 led RBI to issue guidelines to revise the minimum paid-up capital for the private sector banks.

The actual scenario shows that when the paid-up capital of the Bank is so low, namely Rs.1.82 crore, its gross NPAs are at higher level (8.04%), its net worth had turned negative and the net loss is Rs.5.97 crores. There was nothing wrong on the part of the RBI to expect an appropriate plan of capital augmentation. The Bank has not been able to do that and it was quite likely that it would land into difficulties. The phrase "good reasons" in sub-section (1) of Section 45 is a term of wide amplitude and it will not be correct to restrict it only to the actions mentioned under sub-section (2) of Section 45 of the Act as is contended by the appellant. The provision is concerned with preparing a scheme of reconstruction or amalgamation which would become necessary where the RBI is satisfied about the existence of any of the four grounds mentioned in Section 45(4). Apart from public interest and the interest of the banking system, which are provided in sub-clause (a) and (d) thereof, Section 45(4) provides for the necessary action in the interest of the depositors or with a view to secure proper management of the bank which are grounds (b) and (c) in that sub-section. Precursor to the framing of the scheme is the imposition of the moratorium which is provided in sub-sections (1) and (2) of Section 45. Existence of court proceedings, mentioned in section 45(2), would certainly be one of the good reasons to impose moratorium, but that certainly cannot be the only one. Considering that object of the Act is protection of the interest of the depositors, such an interpretation of the concept of "good reasons" will have to be adopted, and not a narrow one. It has been contended that there was a negative impact when moratorium was imposed, and there were long queues at four branches of the appellant Bank on 8th January 2006. The RBI arranged to send an amount of Rs.2 crores to the Bank from its Current Account to meet the depositors' demands. The manager of the Appellant Bank's branch at Dadar has made an affidavit to state that he had not asked for an amount of Rs.2 crores and yet it was sent by RBI. The branch manager has further stated that depositors were unhappy with the decision of RBI. These are all disputed questions as rightly noted by the High Court. As far as the views of the depositors are concerned, they are bound to vary from person to person and no definite conclusion can be drawn merely on the bank manager's affidavit that people were angry against RBI. Besides, no depositor has questioned legality of the action. It can be said that the action of the RBI is a pre-emptive action which it took

considering the then financial position of the appellant Bank and to prevent further difficulties which were likely. It is not that when there is a run on the bank then only RBI must intervene or that it must intervene only when there are good number of court proceedings against the concerned bank. The RBI has to take into account the totality of the circumstances and has to form its opinion accordingly.

The ultimate question is whether the inference drawn by the RBI is a possible inference or is something which can be said to be a perverse one. Even if two views are possible since the regulating body has arrived at a conclusion on the basis of the facts and figures before it, and it has pointed out that it has been warning the appellant Bank for last over 3 years, it will not be proper for the Courts to substitute their judgment for that of RBI. In the circumstances, it cannot hold that the decision of RBI to impose the moratorium was unjustified or against the provisions of section 45(1) or such that one can call it a perverse one and interfere with it. The RBI is an expert body to regulate the banking activities. The moratorium has been challenged on the ground of malafides also. This challenge along with the challenge to amalgamation also on the basis of malafides needs to be considered. As far as the challenge to the appointment of two directors on the Board of Directors of the appellant Bank is concerned, the RBI has the necessary power under Section 36AB of the Act. In the circumstances, it cannot be faulted for appointing the two directors.

That brings into focus the question as to whether the decision of RBI to recommend a scheme for amalgamation on 9th January 2006 and the decision of the Government to sanction the amalgamation on 24th January 2006 could be said to be mala fide or bad in law. As far as this question is concerned, it contains many sub-questions which are as follows:-

(i) The first one is non-consideration of any scheme for reconstruction before going for amalgamation.

(ii) The second is with respect to proposing amalgamation with Federal Bank on 9th January 2006 itself.

(iii) The third facet is not considering the proposal of four other banks.

(iv) The fourth is with respect to an adequate opportunity under Section 45(6) and (7) of the Act.

Now, as far as the first two questions of non- consideration of reconstruction and proposing merger with Federal Bank, the RBI has noted that the Bank was in difficulties from 1990 and particularly from December 2003 when it was placed under monthly monitoring. RBI in its application for moratorium to the Central Government dated 4th January 2006 had clearly stated that during the discussion with the appellant-Bank, major shareholders and directors had shown total reluctance to merge into the stronger bank. In view thereof, it was imperative that immediate arrangement to protect the interest of the depositors was to be made through its merger with a bank under Section 45 of the Act. RBI had, therefore, made an effort and called upon the appellant-Bank, that if possible, to explore the possibility of merger with another stronger bank. It had also made an effort to impress that there should be infusion of fresh capital. That was not coming. There could be a reconstruction by bringing in more money or by narrowing the size of the appellant-Bank which did not appear to be feasible. The only option left was that of amalgamation. When a moratorium is imposed, RBI was duty bound to prepare a scheme either of reconstruction or of amalgamation under Section 45(4) with any other banking institution. Thus, RBI had to give a scheme. Federal

Bank had responded immediately and unconditionally. The fact that the appellant- Bank was put under moratorium was advertised on web site on 7th January 2006 itself. It is at that stage that Federal Bank promptly gave its proposal on 8th January 2006. The Federal Bank gave three reasons in its letter to RBI which were as follows:-

(i) Ganesh Bank of Kurundwad Ltd. has 32 branches situated in Western Maharashtra and Belgaum area of Karanataka. Our presence in this area is very minimal and adding up of the branches of Ganesh Bank of Kurundwad Ltd. will enable us to have significant presence in the area.

(ii) Ganesh Bank of Kurundwad Ltd. has mot of the branches in the agricultural heartland which would enable us to augment our credit disbursal to agricultural sector.

(iii). Small size of Ganesh Bank of Kurundwad Ltd. ensures that there will not be any difficulty in the merger process between our bank and them.

Thereafter it stated as follows:-

We also inform our unconditional acceptance to make full payment to depositors and that we will not demand any regulatory forbearance."

Thus, the Federal Bank was ready to honour full liabilities of the depositors and did not ask for any concessions. Therefore, on the basis of a standard scheme, the opinion of the appellant-Bank was sought on 9th January 2006 with respect to merger in Federal Bank. The scheme was described as a "cut and paste scheme" and of RBI's action as a regulator in the interest of the depositors was highlighted.

It appears that the action of the RBI was based on the finding about the negative net worth and CRAR of the Appellant-Bank, its inability to infuse fresh capital and the continued existence of a high level of NPAs. It has been rightly pointed out that once it was decided to amalgamate by reason of Section 45 of the Act, the RBI had to move with utmost expedition. This is of paramount importance to prevent erosion of the confidence of the depositors. Once such confidence is lost it becomes difficult to revive the confidence and the credibility.

This Court had occasion to deal with need for expedition in Joseph Kuruvilla Vellukunnel v. Reserve Bank of India and Ors. (1962 (Supp.) 3 SCR 632) and Reserve Bank of India and Ors. v. Timex Finance and Investment Co. Ltd. and Ors. (1992 (2) SCC 344). It is not in dispute that there were long queues and on 8.1.2006 the one branch of the appellant-Bank actually faced cash shortage and had to draw its funds with the RBI protecting the interest of the depositors because during such period there are severe restrictions on the ability of the depositors to operate their bank accounts. Therefore, with a view to protect the interest of the depositors, the RBI has to act expeditiously to identify another bank prepared to take over the appellant-Bank and keeping in view the background principles governing merger and amalgamation RBI had to act with expedition. The factual scenario does not show that there was any undue haste or mala fides involved.

Under Section 45 of the Act, the primary consideration is public interest. There is an underlying object of acting swiftly and decisively to protest interests of depositors and ensure public confidence in the banking system. The emergent situation which warrants action with expedition cannot be lost sight of while deciding the legality of the action.

It is brought on record that Federal Banks' strength lay on the fact that it is a strong bank with huge net worth, large capital funds and huge amount of deposits with more than adequate CRAR. Its net worth is about Rs.897 crores, capital is around Rs.85 crores, and deposits to the tune of Rs.16,448 crores. Its CRAR (11.34%) exceeds the RBI requirement (9%) and percentage of NPAs (Gross and Net) is (5.17% and 1.41% respectively). For the accounting period ending 31st December, 2005 its profit is Rs.174 Crores.

As observed by this Court in Bari Doab Bank Ltd. v. Union of India and Ors. (1997 (6) SCC 417) the provisions of Section 45 of the Act provide adequate opportunity of a representation and no additional opportunity is required to be given. The objection filed by the appellant-Bank was duly considered. In fact, certain objections were raised and comments of the RBI on them were forwarded to the Central Government along with the final recommendations. The RBI was of the view that the proposal received from the Federal Bank was best under the circumstances and, therefore, the same appears to have been accepted.

At this juncture it is to be noted that offer of Federal Bank was an unconditional offer, whereby it proposed to take over the responsibility of any regulatory forbearance. Three reasons given by the Federal Bank to take over the appellant's Bank were considered cogent reasons and, therefore, RBI's decision cannot be faulted. As rightly contended the offers received from the City Bank, Standard Chartered Bank were neither comprehensive nor unconditional. In fact, they were not concluded offers, since they were both dependent upon a request for due diligence and in certain instances regulatory forbearances. Ratnakar Bank's offer was not accepted as it was itself an ailing bank.

Learned counsel for the appellants has highlighted that Sarastwat Bank's offer was an equally good offer if not better and should have been accepted. It has been pointed out by learned counsel for the respondents that Saraswat Bank is a Multi State Co-operative Bank and its functioning is governed by Multi State Cooperative Societies Act, 2002 (in short '2002 Act'). The legal opinion available to the RBI was that it was not feasible or permissible to amalgamate a commercial bank with a cooperative Bank by reason of the provisions of the Act as well as 2002 Act. The RBI was of the view that such amalgamation is not possible under Sections 17 and 18 of the 2002 Act as also Section 56 (zb) of the Act. It was pointed out that Saraswat Bank cannot be considered to be a banking company for the purpose of Section 45(4) to 45(15) of the Act. In order to be a banking company within the meaning of the Act, the entity in question must be a company. Section 56(zb) of the Act excludes the applicability of Section 45(4) to 45(15) so far as cooperative banks are concerned. It was pointed out that even if it is conceded for the sake of argument that legally amalgamation is permissible it could have taken a very long time to get requisite clearance from several other agencies under the 2002 Act and could not have gone through expeditiously. It is also pointed out that an amalgamation of Multi State Cooperative Bank is subject to far less regulatory control of the RBI especially in relation to non banking matters. There is no dispute that the application made by Saraswat Bank was duly considered by the RBI.

The scope of Judicial review in administrative matters has been the subject matter of consideration before this Court in several cases.

There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for

interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority exceeded its powers (c) committed an error of law (d) committed breach of the rules of natural justice and (e) reached a decision which no reasonable Tribunal would have reached or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi- legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (See State of U.P. and Ors. v. Renusagar Power Co. and Ors. (AIR 1988 SC 1737). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.

The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of cases which relate to deployment of troupes, entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the Courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is 'illegality' the second 'irrationality', and the third 'procedural impropriety'. These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (1984 (3) All.ER.935), (commonly known as CCSU Case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether

legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See commissioner of Income-tax v. Mahindra and Mahindra Ltd. (AIR 1984 SC 1182) . The effect of several decisions on the question of jurisdiction has been summed up by Grahame Aldous and John Alder in their book "Applications for Judicial Review, Law and Practice" thus:

"There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradig, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in council of civil Service Unions v. Minister for the civil Service this is doubtful. Lords Diplock, Scaman and. Roskili appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power, in that case national security. May prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved.

Another nonjusticiable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."

(Also see Padfield v. Minister of Agriculture, Fisheries and Food (LR (1968) AC 997).

The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

The famous case commonly known as "The Wednesbury's case" is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

Before summarizing the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. (KB at p. 229: All ER p. 682). It reads as follows:

"It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably' . Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers the authority. . . . In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done

in bad faith; and in fact, all these things run into one another."

Lord Greene also observed (KB p.230: All ER p.683)

"..it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another."

(emphasis supplied)

Therefore, to arrive at a decision on "reasonableness" the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.

The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:

".Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a casebycase basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community."

Lord Diplock explained "irrationality" as follows:

"By 'irrationality' I mean what can by now be succinctly referred to as Wednesbury unreasonableness'. It applies to a decision which is to outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

In other words, to characterize a decision of the administrator as "irrational" the Court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

These principles have been noted in aforesaid terms in Union of India and Anr. v. C. Ganayutham (1997 [7] SCC 463). In essence, the test is to see whether there is any infirmity in the decision making process and not in the decision itself. (See Indian Railways Construction Co. Ltd. v. Ajay Kumar (2003 (4) SCC 579).

Looked at from the aforesaid angle, the judgment of the High Court does not suffer from any infirmity to warrant interference. The appeal is dismissed.